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Executive Orders

EXECUTIVE ORDER KBB 06-20

DOTD Guidelines for Vehicles, Trucks, and Loads
Amends Executive Order No. KBB 06-19

WHEREAS, Executive Order No. KBB 2006-19, issued on March 31, 2006, reestablished the Department of Transportation and Development's guidelines for vehicles, trucks and loads traveling on Louisiana's interstates and/or highways with storm-damaged debris and other debris;

WHEREAS, it is necessary to change specific sections to correct information relative to this Order;

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

SECTION 1: Section 5 of Executive Order No. KBB 2006-19, issued on March 31, 2006, is amended as follows:

Nothing in this Order shall be construed or interpreted as being applicable to travel on interstate or non-state maintained highways.

SECTION 2: Section 6 of Executive Order No. KBB 2006-19, issued on March 31, 2006, is amended as follows:

Executive Order No. KBB 2005-28, issued on September 3, 2005, is hereby terminated and rescinded.

SECTION 3: All other sections, subsections, and paragraphs of Executive Order No. KBB 2006-19, issued on March 31, 2006, shall remain in full force and effect.

SECTION 4: This Order is effective upon signature and shall continue in effect until Friday, June 30, 2006, unless amended, modified, terminated, or rescinded by the governor, or terminated by operation of law prior to such date.

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 13th day of April, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0605#076

EXECUTIVE ORDER KBB 06-21

Bond Allocation—Hammond-Tangipahoa
Home Mortgage Authority

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. KBB 2005-12 was issued to establish:

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2006 (hereafter "the 2006 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2006 Ceiling; and

(3) a system of central record keeping for such allocations; and

WHEREAS, the Hammond-Tangipahoa Home Mortgage Authority has requested an allocation from the 2006 Ceiling to be used with a program of financing mortgage loans for single family, owner-occupied residences for low and moderate income families in the city of Hammond and the parish of Tangipahoa, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, KATHLEEN BABINEAUX BLANCO, Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and the 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 2006 Ceiling in the amount shown:

Amount of Allocation	Name of Issuer	Name of Project
\$15,000,000	Hammond-Tangipahoa Single Family Mortgage	Home Mortgage Authority Revenue Bonds

SECTION 2: The allocation granted herein shall be used only for the bond issue described in Section 1 and for the general purpose set forth in the "Application for Allocation of a Portion of the State of Louisiana Private Activity Bond Ceiling" submitted in connection with the bond issue described in Section 1.

SECTION 3: The allocation granted herein shall be valid and in full force and effect through December 31, 2006, provided that such bonds are delivered to the initial purchasers thereof on or before August 2, 2006.

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 4th day of May, 2006.

Kathleen Babineaux Blanco
Governor

ATTEST BY
THE GOVERNOR
Al Ater
Secretary of State
0605#077

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences

Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications (LAC 7:XXIII.145)

In accordance with the emergency provisions of the Administrative Procedure Act, R.S. 49:953 (B), and under the authority of R.S. 3:3203, the Commissioner of Agriculture and Forestry declares an emergency to exist and adopts by emergency process the attached rules and regulations for the application of an ultra low volume insecticide to be applied to cotton fields infested with false chinch bugs.

The application of insecticides in accordance with the current concentration regulations has not been sufficient to control false chinch bugs. Failure to allow the concentrations in ultra low volume (ULV) malathion applications will allow the false chinch bugs the opportunity to destroy the cotton during the growing season. The destruction of the cotton crop or a substantial portion of the cotton crop will cause irreparable harm to the economy of Northern Louisiana and to Louisiana Agricultural producers thereby creating an imminent peril to the health and safety of Louisiana citizens.

This Emergency Rule becomes effective upon the signature of the commissioner, April 20, 2006, and shall remain in effect for 90 days.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticide

Chapter 1. Advisory Commission on Pesticides

Subchapter I. Regulations Governing Application of Pesticides

§145. Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications

A. - A.5.b.xxxvi. ...

c. malathion insecticide applied with the following conditions to control false chinch bugs in cotton:

i. the commissioner hereby declares that prior to making any aerial application of ULV malathion to cotton, the aerial owner/operator must first register such intent by notifying the Division of Pesticides and Environmental Programs ("DPEP") in writing. Upon notification, LDAF shall inspect the aircraft prior to any ULV applications;

ii. spray shall be applied, handled, and stored in accordance with all conditions specified by state or federal regulations, including the strict observance of any buffer zones that may be implied;

iii. aerial applicators shall strictly comply with any and all restrictions or mitigative factors, in regard to sensitive areas, including occupied buildings (churches, schools, hospitals, and homes), lakes, reservoirs, farm ponds, parks, and recreation areas that may be identified by commissioner, and such restriction and mitigation are to be

strictly complied with and observed by said aerial applicators;

iv. aerial applicators will adjust flight patterns, to the degree possible, to avoid or minimize flying over sensitive areas. This restriction does not apply to overflight between take-off and the commencement of spray operations, or overflight between termination of spray operations and landing;

v. aerial applicators shall be alert to all conditions that could cause spray deposit outside field boundaries and use their good faith efforts, including adjustment or termination of operations, to avoid spray deposit outside field boundaries;

vi. there shall be no aerial spraying when wind velocity exceeds 10 m.p.h.;

vii. aerial applicators will terminate application if rainfall is imminent;

viii. insecticide spray will not be applied in fields where people or animals are present. It is the applicator's responsibility to determine if people are present prior to initiating treatment;

ix. spraying will not be conducted in fields where other aircraft are working;

x. all mixing, loading, and unloading will be in an area where an accidental spill can be contained and will not contaminate a stream or other body of water;

xi. all aerial applications of insecticide shall be at an altitude not to exceed 5 feet above the cotton canopy. However, in fields that are not near sensitive areas, if infield obstructions make the 5-foot aerial application height not feasible, then the aerial height may be extended to such height above the cotton canopy as is necessary to clear the obstruction safely;

xii. the aircraft tank and dispersal system must be completely drained and cleaned before loading. All hoses shall be in good condition and shall be of a chemical resistant type;

xiii. insecticide tank(s) shall be leak-proof and spray booms of corrosion resistant materials, such as stainless steel, aluminum, or fiberglass. Sealants will be tested before use;

xiv. the tank(s) in each aircraft shall be installed so the tank(s) will empty in flight. Sight gauges or other means shall be provided to determine the quantity contained in each tank before reloading;

xv. a drain valve shall be provided at the lowest point of the spray system to facilitate the complete draining of the tanks and system while the aircraft is parked so any unused insecticide can be recovered;

xvi. a pump that will provide the required flow rate at not less than 40 pounds per square inch (psi) during spraying operation to assure uniform flow and proper functioning of the nozzles. Gear, centrifugal or other rotary types, will be acceptable on aircraft with a working speed above 150 miles per hour;

xvii. ULV spraying systems with a pumping capacity that exceeds the discharge calibration rate shall have the bypass flow return to the tank bottom in a manner that prevents aeration and/or foaming of the spray formulation. Pumps utilizing hydraulic drive or other variable speed drives are not required to have this bypass, provided the pump speed is set to provide only the required pressure and the system three-way valve is used for on/off control at full throw position. Any bypass normally used to circulate materials other than the ULV will be closed for ULV spraying;

xviii. spray booms will be equipped with the quantity and type of spray nozzles specified by the Boll Weevil Eradication Program. The outermost nozzles (left and right sides) shall be equal distance from the aircraft centerline and the distance between the two must not exceed three-fourths of the overall wing span measurement. For helicopters, the outermost nozzles must not exceed three-fourths of the rotorspan. For both fixed wing and helicopters, the program will accept the outermost nozzles between 60 percent and 75 percent of the wingspan/rotorspan. Longer spray booms are acceptable provided modifications are made to prevent the entrapment of air in the portion beyond the outermost nozzle. Fixed wing aircraft not equipped with a drop type spray boom may require drop nozzles in the center section that will position the spray tips into smoother air to deliver the desired droplet size and prevent spray from contacting the tail wheel assembly and horizontal stabilizer. Most helicopters will be required to position the center nozzles behind the fuselage and dropped into smooth air in order to achieve the desired droplet size;

xix. nozzles, diaphragms, gaskets, etc., will be inspected regularly and replaced when there is evidence of wear, swelling, or other distortion in order to assure optimum pesticide flow and droplet size. Increasing pressure to compensate for restricted flow is unacceptable. A positive on/off system that will prevent dribble from the nozzles is required;

xx. a positive emergency shut-off valve between the tank and the pump, as close to the tank as possible. This valve shall be controllable from the cockpit and supplemented by check valves and flight crew training which will minimize inadvertent loss of insecticide due to broken lines or other spray system malfunction;

xxi. bleed lines in any point that may trap air on the pressure side of the spraying system;

xxii. an operational pressure gauge with a minimum operating range of 0 to 60 psi and a maximum of 0 to 100 psi visible to the pilot for monitoring boom pressure;

xxiii. a 50-mesh in-line screen between the pump and the boom and nozzle screens as specified by the nozzle manufacturer;

xxiv. aircraft equipped so nozzle direction can be changed from 45 degrees down and back to straight back when it is necessary to change droplet size;

xxv. all nozzles not in use must be removed and the openings plugged;

xxvi. nozzle tips for all insecticides shall be made of stainless steel;

xxvii. aircraft shall have an operational Differentially Corrected Global Positioning System (DGPS) and flight data logging software that will log and display the date and time

of the entire flight from take-off to landing and differentiate between spray-on and spray-off;

xxviii. aircraft shall have a DGPS with software designed for parallel offset in increments equal to the assigned swath width of the application aircraft. Fixed towers, portable stations, satellite, Coast Guard, or other acceptable methods may provide differential correction. However, the differential signal must cover the entire project area. In fringe areas from the generated signal, an approved repeater may be used. The system shall be sufficiently sensitive to provide immediate deviation indications and sufficiently accurate to keep the aircraft on the desired flight path with an error no greater than 3 feet. Systems that do not provide course deviation updates at one-second intervals or less will not be accepted;

xxix. a course deviation indicator (CDI) or a course deviation light bar (also CDI) must be installed on the aircraft and in a location that will allow the pilot to view the indicator with direct or peripheral vision without looking down. The CDI must be capable of pilot selected adjustments for course deviation indication with the first indication at 3 feet or less;

xxx. the DGPS must display to the pilot a warning when differential correction is lost, the current swath number, and cross-track error. The swath advance may be set manually or automatically. If automatic is selected, the pilot must be able to override the advance mode to allow respraying of single or multiple swaths;

xxxi. the DGPS must be equipped with software for flight data logging that has a system memory capable of storing a minimum of 3 hours of continuous flight log data with the logging rate set at one second intervals. The DGPS shall automatically select and log spray on/off at one-second intervals while ferry and turnaround time can be two-second intervals. The full logging record will include position, time, date, altitude, speed in M.P.H., cross-track error, spray on/off, aircraft number, pilot, job name or number, and differential correction status. The flight data log software shall be compatible with DOS compatible PC computers, dot matrix, laser, or ink jet printers and plotters. The system must compensate for the lag in logging spray on/off. The system will display spray on/off at the field boundary without a sawtooth effect and must be capable to end log files, rename, and start a new log in flight;

xxxii. the software must generate the map of the entire flight within a reasonable time. Systems that require five minutes or more to generate the map for a three-hour flight on a PC (minimum a 386 microprocessor with 4 MB of memory) will not be accepted. When viewed on the monitor or the printed hard copy, the flight path will clearly differentiate between spray on and off. The software must be capable of replaying the entire flight in slow motion and stop and restart the replay at any point during the flight. Must be able to zoom to any portion of the flight for viewing in greater detail and print the entire flight or the zoomed-in portion. Must have a measure feature that will measure distance in feet between swaths or any portion of the screen. Must be able to determine the exact latitude/longitude at any point on the monitor;

xxxiii. flight information software provided by the applicator must have the capability to interface with MapInfo (version 3.0 or 4.0). The interface process must be

"user friendly," as personnel will be responsible to operate the system in order to access the information;

xxxiv. application of ULV malathion shall be at an application rate of 12 oz. per acre with no dilutions or tank mixes;

xxxv. applications of ULV malathion shall not be made prior to sunrise on July 31, 2001 and shall not be made after sunset on August 30, 2001;

xxxvi. applications of ULV malathion shall be restricted to seven-day intervals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), LR 26:1964 (September 2000), LR 32:

Bob Odom
Commissioner

0605#003

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

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

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

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

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

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

an increasing toxicity level in the unborn child. Although the effect on an infant as a result of nursing from a mother who has taken Chloramphenicol is unknown, it is known that such an infant will run the risk of bone marrow depression.

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

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

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

This Rule become effective upon signature, May 7, 2006, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§143. Chloramphenicol in Crab and Crabmeat Prohibited; Testing and Sale of

A. Definitions

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

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

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

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

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

C. No crab or crabmeat that is harvested from or produced, processed or packed in a geographic area, that the commissioner declares to be a location where

Chloramphenicol is being used on or found in food producing animals or in products from such animals, may be held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E. No crab or crabmeat from any such geographic area may be used, as an ingredient in any food held, offered or exposed for sale, or sold in Louisiana without first meeting the requirements of Subsection E.

D. The commissioner may declare a geographic area to be a location where Chloramphenicol is being used on or found in food producing animals or in products from such animals, based upon information that would lead a reasonable person to believe that Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area. Any such declaration shall be subject to promulgation in accordance with the provisions of the Administrative Procedure Act.

1. The commissioner may release any such geographic area from a previous declaration that Chloramphenicol is being used on food producing animals in that location.

2. Any such release shall be subject to promulgation in accordance with the Administrative Procedure Act.

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

1. Sampling:

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

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

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

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

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

b. For packaged crab or crabmeat, each sample shall be at least 6 ounces, (170.1 grams), in size and shall be taken at random throughout each lot of crab or crabmeat. For all other crab or crabmeat, obtain approximately 1 pound, (454 grams), of crab or crabmeat per sample from randomly selected areas.

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

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

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;
- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

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

4. Sample Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The geographic area or areas are:

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:

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

A. Definitions.

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

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

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

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

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

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

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

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

E. In any case in which the words "United States," or "American," the letters "U.S.A.," any variation of such words or letters, or the name of any state, city or location in the United States, appear on any container or package containing foreign crab or crabmeat, or any sign advertising such foreign crab or crabmeat for sale, and those words,

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:

Bob Odom
Commissioner

0605#032

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

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

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

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

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

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

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

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

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to immediately implement testing of honey for Chloramphenicol, to provide for the sale of honey and products containing honey that are not contaminated with Chloramphenicol. This Emergency Rule becomes effective upon signature, May 7, 2006, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§141. Chloramphenicol in Honey Prohibited; Testing and Sale of

A. Definitions

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

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

Honey—any honey, whether raw or processed.

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

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

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

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

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

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

1. Sampling

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

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

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

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

b. For honey in bulk wholesale containers, each sample shall be at least 1 pound or 12 fluid ounces and must be pulled at random throughout each lot.

c. For packaged honey, each sample shall be at least 8 ounces in size and shall be taken at random throughout each lot.

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

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

2. Each sample shall be identified as follows:

a. any package label;

b. any lot or batch numbers;

c. the country, province and city of origin;

d. the name and address of the importing company;

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

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

4. Sample Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

J. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any honey or any food containing honey that does not meet the requirements

of this Section. Any such order shall remain in place until lifted, in writing, by the commissioner.

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

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

1. The geographic area or areas are:

- a. the country of the People's Republic of China;
- b. the country of Thailand.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:

Bob Odom
Commissioner

0605#034

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

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

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

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

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

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

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

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

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

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

This peril can cause consumers to quit buying shrimp and crawfish from any source, including Louisiana shrimp and crawfish. If consumers cease to buy, or substantially reduce, their purchases of Louisiana shrimp and seafood, Louisiana aquaculture and fisheries will be faced with substantial

economic losses. Any economic losses suffered by Louisiana's aquaculture and fisheries will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

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

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to immediately implement testing of shrimp and crawfish for Chloramphenicol, to provide for the sale of shrimp and crawfish that are not contaminated with Chloramphenicol and to provide for the labeling of shrimp and crawfish harvested from or produced, processed or packed in countries other than the United States. This Rule became effective upon signature, May 7, 2006, and will remain in effect 120 days, unless renewed by the commissioner or until permanent rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

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

A. Definitions

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

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

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

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

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

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

1. The records and information required are:

- a. the quantity and species of shrimp and crawfish acquired or sold;
- b. the date the shrimp or crawfish was acquired or sold;
- c. the name and license number of the wholesale/retail seafood dealer or the out-of-state seller from whom the shrimp or crawfish was acquired or sold;
- d. the geographic area where the shrimp or crawfish was harvested;
- e. the geographic area where the shrimp or crawfish was produced processed or packed;
- f. the trade or brand name under which the shrimp or crawfish is held, offered or exposed for sale or sold; and

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

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

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

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

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

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

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

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

1. Sampling

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

- i. two samples are to be taken of shrimp or crawfish that are in lots of 50 pounds or less;
- ii. four samples are to be taken of shrimp or crawfish that are in lots of 51-100 hundred pounds;
- iii. twelve samples are to be taken of shrimp or crawfish that are in lots of 101 pounds up to 50 tons;
- iv. twelve samples for each 50 tons are to be taken of shrimp or crawfish that are in lots of over 50 tons.

b. For packaged shrimp or crawfish, each sample shall be at least 8 ounces, (226.79 grams), in size and shall be taken at random throughout each lot of shrimp or crawfish. For all other shrimp or crawfish, obtain approximately 1 pound, (454 grams), of shrimp or crawfish per sample from randomly selected areas.

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

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

2. Each sample shall be identified as follows:

- a. any package label;
- b. any lot or batch numbers;
- c. the country, province and city of origin;
- d. the name and address of the importing company;
- e. unique sample number identifying the group or batch sample and subsample extension number for each subsample.

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

4. Sample Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

K. A stop-sale, hold or removal order, including a prohibition on disposal, may be placed on any shrimp or crawfish that does not meet the requirements of this Section.

Any such order shall remain in place until lifted in writing by the commissioner.

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

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

1. The geographic area or areas are:

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:

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

A. Definitions

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

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

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

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

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

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

3. Permanency must be such that, in any reasonably foreseeable circumstance, the marking or label shall remain on the container until it reaches the ultimate retail purchaser

unless it is deliberately removed. The marking or label must be capable of surviving normal distribution and storing.

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:

Bob Odom
Commissioner

0605#033

DECLARATION OF EMERGENCY

Tuition Trust Authority Office of Student Financial Assistance

START Savings Program
(LAC 28:VI.107, 305, 309, and 311)

The Louisiana Tuition Trust Authority (LATTA) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Student Tuition Assistance and Revenue Trust (START Saving) Program (R.S. 17:3091 et seq.).

This Emergency Rule is necessary to allow the Louisiana Office of Student Financial Assistance and educational institutions to effectively administer these programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible students and the financial condition of their families. LATTA has determined that this Emergency Rule are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This Declaration of Emergency is effective April 11, 2006, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (ST0671E).

Title 28 EDUCATION

Part VI. Student Financial Assistance—Higher Education Savings—Tuition Trust Authority

Chapter 1. General Provisions

Subchapter A. Student Tuition Trust Authority

§107. Applicable Definitions

* * *

Independent Student—a person who is defined as an independent student by the Higher Education Act of 1965 (20 U.S.C. 1088) (HEA), as amended, and if required, files an individual federal income tax return in his/her name and designates him/herself as the beneficiary of an educated savings account.

1. The HEA defines *independent student* as a student who:

a. reached 24 years of age prior to January of the year preceding the academic year for which the student is applying for aid;

b. is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm or is currently serving on active duty in the Armed Forces for other than training purposes;

c. is an orphan, in foster care, or a ward of the court or was in foster care or was a ward of the court until the individual reached the age of 18;

d. has legal dependents other than a spouse;

e. is a graduate or professional student;

f. is married; or

g. has been determined independent by a financial aid officer exercising professional judgment in accordance with applicable provisions of the HEA.

2. An independent student may only open an account as an account owner if he/she is 18 years or older.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:1268 (July 1998), LR 25:1794 (October 1999), LR 26:2260 (October 2000), LR 27:37 (January 2001), LR 27:1222 (August 2001), LR 27:1876 (November 2001), LR 28:450 (March 2002), LR 28:777 (April 2002), LR 28:2334 (November 2002), LR 29:556 (April 2003), LR 30:786 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 31:639 (March 2005), LR 32:

Chapter 3. Education Savings Account

§305. Deposits to Education Savings Accounts

A. - A.2. ...

3. An initial deposit is not required to open an Education Savings Account; however, a deposit of at least \$10 must be made within 60 days from the date on the letter of notification of approval of the account.

A.4 - C. ...

1. All deposits must be rendered in amounts of at least \$10 and must be made in cash, check, money order, automatic account debit or payroll deduction, defined as any of the deposit options listed in §305.B.1.

C.2. - D.2. ...

3. The account owner shall select one investment option in completing the owner's agreement.

4. The investment option can be changed no more than once in any 12 month period.

5. Once a selection is made, all deposits shall be directed to the investment option selected.

6. Requests for the transfer of funds from the variable earnings option in which they are currently deposited to a different option shall be assigned a trade date as follows:

a. if an on-line request for a change from a variable earnings option is completed before 7 p.m. Central Standard Time or Central Daylight Savings Time, as applicable, on a trade day, the trade date shall be the date of the request;

b. for all other requests, the trade date shall be one business day after the business day of receipt of the transfer request.

E. - E.2.a. ...

b. Deposits made by electronic funds transfer through the Automated Clearing House (ACH) Network, or its successor, will be assigned a trade date of five business days after the business day during which they were received.

c. Deposits made by all other means of electronic funds transfer will be assigned a trade date of one business day after the business day during which they were received.

E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:1270 (July 1998), LR 26:2263 (October 2000), LR 27:1880 (November 2001), LR 30:788 (April 2004), LR 30:1169 (June 2004), LR 30:2302 (October 2004), LR 32:

§309. Disbursement of Account Funds for Payment of Qualified Higher Education Expenses of a Beneficiary

A. - A.6. ...

7. Disbursements from investment options with variable earnings shall be assigned a trade date as follows:

a. if an on-line request for a disbursement is completed before 7 p.m. Central Standard Time or Central Daylight Savings Time, as applicable, on a trade day, the trade date shall be the date of the request;

b. for all other requests for disbursement, the trade date shall be one business day after the business day of receipt of the transfer request.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997), amended LR 24:1272 (July 1998), LR 24:2238 (December 1998), LR 26:2265 (October 2000), LR 27:1881 (November 2001), LR 30:789 (April 2004), LR 30:1169 (June 2004), LR 32:

§311. Termination and Refund of an Education Savings Account

A. - B.2. ...

3. The LATTA may terminate an account if no deposit of at least \$10 dollars has been made within 60 days from the date on the letter of notification of approval of the account.

B.4. - C.4. ...

5. Refunds from investment options with variable earnings shall be assigned a trade date as follows:

a. if an on-line request for a refund is completed before 7 p.m. Central Standard Time or Central Daylight Savings Time, as applicable, on a trade day, the trade date shall be the date of the request;

b. for all other requests for refund, the trade date shall be one business day after the business day of receipt.

D. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3091-3099.2.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:1273 (July 1998), repromulgated LR 26:2265 (October 2000), amended LR 27:38 (January 2001), LR 27:1882 (November 2001), LR 28:779 (April 2002), LR 30:790 (April 2004), LR 31:639 (March 2005), LR 32:

George Badge Eldredge
General Counsel

0605#005

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Expedited Penalty Agreement (LAC 33:I.801, 803, 805, and 807)(OS054E9)

Editor's Note: This Emergency Rule was originally promulgated on pages 528-534 of the April 20, 2006 edition of the *Louisiana Register*. This Emergency Rule is being repromulgated with the correct effective date.

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

which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement expedited penalty agreements.

Emergency Rule OS054E8, which was effective on March 10, 2006, and published in the *Louisiana Register* on March 20, 2006, is hereby rescinded and is being reissued with additional amendments. This Emergency Rule, OS054E9, retains the amendments made in OS054E8 and adds amendments to clarify the issuance date of the Expedited Penalty Agreement and to change the extension time to allow greater flexibility in working with respondents. The Emergency Rule will abate the delay in correcting minor and moderate violations of the Environmental Quality Act. Delays in enforcement reduce the effectiveness of the action, unnecessarily utilize resources, and slow down the enforcement process. In the past three years alone, the Enforcement Division has received 8,139 referrals and has issued 4,259 actions. Currently strained budget and resource issues pose imminent impairment to addressing minor and moderate violations. This Rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality recommended this action as a pilot program. The legislature approved the report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. This Emergency Rule allows the operation of the pilot program to commence immediately, without the delay and inflexibility of a permanent Rule. It will also allow the department to gather information to formulate a long-term rule and to evaluate the environmental and public health benefits and the social and economic costs of such a program in order to justify these requirements for the permanent rule.

This Emergency Rule is effective on March 20, 2006, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS054E9 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 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 I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 8. Expedited Penalty Agreement

§801. Definitions

Agency Interest Number—a site-specific number assigned to a facility by the department that identifies the facility in a distinct geographical location.

Expedited Penalty Agreement—a predetermined penalty assessment issued by the department and agreed to by the respondent, which identifies violations of minor or moderate gravity as determined by LAC 33:I.705, caused or allowed by the respondent and occurring on specified dates, in accordance with R.S. 30:2025(D).

LPDES General Permit—for the purposes of this Chapter, any Louisiana Pollutant Discharge Elimination System Permit in the LAG530000, LAG540000, LAG750000, LAR050000, or LAR100000 series.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

§803. Purpose

A. The purpose of this Chapter is to provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty assessments in appropriate cases. This Chapter:

1. addresses common violations of minor or moderate gravity;
2. quantifies and assesses penalty amounts for common violations in a consistent, fair, and equitable manner;
3. ensures that the penalty amounts are appropriate, in consideration of the nine factors listed in R.S. 30:2025(E)(3)(a);
4. eliminates economic incentives for noncompliance for common minor and/or moderate violations; and
5. ensures expeditious compliance with environmental regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

§805. Applicability

A. **Limit of Penalty Amount.** The total penalty assessed for the expedited penalty agreement shall not exceed \$1,500 for one violation or \$3,000 for two or more violations per penalty assessed.

B. **Departmental Discretion.** The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty agreement shall specify that the respondent waives any right

to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

C. Notification to the Respondent. The expedited penalty agreement shall serve as notification to the respondent of the assessed penalty amount for the violations identified on the specified dates.

D. Certification by the Respondent. By signing the expedited penalty agreement, the respondent certifies that all cited violations in the expedited penalty agreement have been or will be corrected, and that the assessed penalty amount has been or will be paid, within 30 days of receipt of the expedited penalty agreement.

E. Nine Factors for Consideration. An expedited penalty agreement may be used only when the following criteria for the nine factors for consideration are satisfied.

1. The History of Previous Violations or Repeated Noncompliance. The violation identified in the expedited penalty agreement is not the same as or similar to a violation that occurred within the previous two years at the facility under the same agency interest number, and that was identified in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued to the respondent by the department. Site-specific enforcement history considerations will only apply to expedited penalty agreements.

2. The Nature and Gravity of the Violation. The violation identified is considered to be minor or moderate with regard to its nature and gravity.

a. The violation identified in the expedited penalty agreement deviates somewhat from the requirements of statutes, regulations, or permit; however, the violation exhibits at least substantial implementation of the requirements.

b. The violation identified is isolated in occurrence and limited in duration.

c. The violation is easily identifiable and corrected.

d. The respondent concurs with the violation identified and agrees to correct the violation identified and any damages caused or allowed by the identified violation within 30 days of receipt of the expedited penalty agreement.

3. The Gross Revenues Generated by the Respondent. By signing the expedited penalty agreement, the respondent agrees that sufficient gross revenues exist to pay the assessed penalty and correct the violation identified in the expedited penalty agreement within 30 days of receipt of the expedited penalty agreement.

4. The Degree of Culpability, Recalcitrance, Defiance, or Indifference to Regulations or Orders. The respondent is culpable for the violation identified, but has not shown recalcitrance, defiance, or extreme indifference to regulations or orders. Willingness to sign an expedited penalty agreement and correct the identified violation within the specified timeframe demonstrates respect for the regulations and a willingness to comply.

5. The Monetary Benefits Realized Through Noncompliance. The respondent's monetary benefit from noncompliance for the violation identified shall be

considered. The intent of these regulations is to eliminate economic incentives for noncompliance.

6. The Degree of Risk to Human Health or Property Caused by the Violation. The violation identified does not present actual harm or substantial risk of harm to the environment or public health. The violation identified is isolated in occurrence or administrative in nature, and the violation identified has no measurable detrimental effect on the environment or public health.

7. Whether the Noncompliance or Violation and the Surrounding Circumstances Were Immediately Reported to the Department and Whether the Violation or Noncompliance Was Concealed or There Was an Attempt to Conceal by the Person Charged. Depending upon the type of violation, failure to report may or may not be applicable to this factor. If the respondent concealed or attempted to conceal any violation, the violation shall not qualify for consideration under these regulations.

8. Whether the Person Charged Has Failed to Mitigate or to Make a Reasonable Attempt to Mitigate the Damages Caused by the Noncompliance or Violation. By signing the expedited penalty agreement, the respondent states that the violation identified and the resulting damages, if any, have been or will be corrected. Violations considered for expedited penalty agreements are, by nature, easily identified and corrected. Damages caused by any violation identified are expected to be nonexistent or minimal.

9. The Costs of Bringing and Prosecuting an Enforcement Action, Such as Staff Time, Equipment Use, Hearing Records, and Expert Assistance. Enforcement costs for the expedited penalty agreement are considered minimal. Enforcement costs for individual violations are covered with the penalty amount set forth for each violation in LAC 33:I.807.

F. Schedule. The respondent must return the signed expedited penalty agreement and payment for the assessed amount to the department within 30 days of the respondent's receipt of the expedited penalty agreement. If the department has not received the signed expedited penalty agreement and payment for the assessed amount by the close of business on the thirtieth day after the respondent's receipt of the expedited penalty agreement, the expedited penalty agreement may be withdrawn at the department's discretion.

G. Extensions. If the department determines that compliance with the cited violation is technically infeasible or impracticable within the initial 30-day period for compliance, the department, at its discretion, may grant additional time in order for the respondent to correct the violation cited in the expedited penalty agreement.

H. Additional Rights of the Department

1. If the respondent signs the expedited penalty agreement, but fails to correct the violation identified, pay the assessed amount, or correct any damages caused or allowed by the cited violation within the specified timeframe, the department may issue additional enforcement actions including, but not limited to, a civil penalty assessment and may take any other action authorized by law to enforce the terms of the expedited penalty agreement.

2. If the respondent does not agree to and sign the expedited penalty agreement, the department shall consider the respondent notified that a formal civil penalty is under

consideration. The department may then pursue formal enforcement action against the respondent in accordance with R.S. 30:2025(C), 2025(E), 2050.2, and 2050.3.

I. Required Documentation. The department shall not propose any expedited penalty agreement without an affidavit, inspection report, or other documentation to establish that the respondent has caused or allowed the violation to occur on the specified dates.

J. Evidentiary Requirements. Any expedited penalty agreement issued by the department shall notify the respondent of the evidence used to establish that the respondent has caused or allowed the violation to occur on the specified dates.

K. Public Enforcement List. The signed expedited penalty agreement is a final enforcement action of the department and shall be included on the public list of enforcement actions referenced in R.S. 30:2050.1(B)(1).

L. Date of Issuance. When an expedited penalty agreement is issued in conjunction with a Notice of Potential Penalty, the issuance date shall be the date on the document of initial signature by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

§807. Types of Violations and Expedited Penalty Amounts

A. The types of violations listed in the following table may qualify for coverage under this Chapter; however, any violation listed below, which is identified in an expedited penalty agreement, must also meet the conditions set forth in LAC 33:I.805.E.

Expedited Penalties			
Violation	Citation	Amount	Frequency
ALL MEDIA			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:I.3917.A	\$300	Per day
Failure to provide timely written notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition.	LAC 33:I.3925.A	\$300	Per day
AIR QUALITY			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): Failure to timely submit any applicable annual, semiannual, or quarterly reports.	LAC 33:III.501.C.4	\$500	Per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable.	LAC 33:III.919	\$500	Per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable.	LAC 33:III.5107	\$500	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Control of Fugitive Emissions, sandblasting facilities: Failure to take all reasonable precautions to prevent particulate matter from becoming airborne.	LAC 33:III.1305.A	\$250	Per occurrence
Failure to provide notice of change of ownership within 90 days after the change.	LAC 33:III.517.G	\$200	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report as specified in a minor source permit.	LAC 33:III.501.C.4	\$250	Per occurrence
Failure to timely submit any applicable Specific Condition or General Condition report (other than those specified elsewhere in this Section) as specified in a Part 70 (Title V) air permit.	LAC 33:III.501.C.4	\$350	Per occurrence
Failure to submit an updated Emission Point List, Emissions Inventory Questionnaire (EIQ), emissions calculations, and certification statement as described in LAC 33:III.517.B.1 within seven calendar days after effecting any modification to a facility authorized to operate under a standard oil and gas permit.	LAC 33:III.501.C.4	\$750	Per occurrence/emission point
Failure to submit the Title V permit renewal application at least six months prior to the date of expiration, applicable only when the renewal application is submitted prior to permit expiration and a renewal permit is issued on or before the expiration date.	LAC 33:III.507.E.4	\$1,000	Per occurrence
Failure to maintain records for glycol dehydrators subject to LAC 33:III.2116.F.	LAC 33:III.2116.F	\$250	Per occurrence
Failure to submit an initial perchloroethylene inventory report.	LAC 33:III.5307.A	\$250	Per occurrence
Failure to submit perchloroethylene usage reports by July 1 for the preceding calendar year.	LAC 33:III.5307.B	\$250	Per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to submit an application to the administrative authority prior to installation of the Stage II vapor recovery system.	LAC 33:III.2132.B.6	\$500	Per occurrence
Failure to have at least one person trained as required by the regulations.	LAC 33:III.2132.C	\$300	Per occurrence
Failure to test the vapor recovery system prior to start-up of the facility and annually thereafter.	LAC 33:III.2132.D	\$750	Per occurrence
Failure to post operating instructions on each pump.	LAC 33:III.2132.E	\$100	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to maintain equipment and tag defective equipment "out of order."	LAC 33:III.2132.F.1 and 3-4	\$500	Per inspection
Failure to perform daily inspections and accurately record results.	LAC 33:III.2132.F.2	\$300	Per inspection
Failure to maintain records on-site for at least two years and present them to an authorized representative upon request.	LAC 33:III.2132.G.1-7	\$300	Per compliance inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site.	LAC 33:III.905	\$100	Per occurrence
HAZARDOUS WASTE			
Used Oil			
Failure of a used oil generator to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4013.E	\$500	Per occurrence
Failure of a used oil transfer facility to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4035.H	\$500	Per occurrence
Failure of a used oil processor or re-refiner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4049.G	\$500	Per occurrence
Failure of a used oil burner to stop, contain, clean up, and/or manage a release of used oil, and/or repair or replace leaking used oil containers or tanks prior to returning them to service.	LAC 33:V.4069.G	\$500	Per occurrence
SOLID WASTE			
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority.	LAC 33:VII.10509.B	\$200	Per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate.	LAC 33:VII.10509.C	\$200	Per occurrence
Storing tires for greater than 365 days.	LAC 33:VII.10509.E	\$200	Per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority.	LAC 33:VII.10509.G	\$200	Per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations.	LAC 33:VII.10519.A	\$300	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire.	LAC 33:VII.10519.B	\$100	Per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified.	LAC 33:VII.10519.D	\$100	Per occurrence
Failure to post required notifications to the public.	LAC 33:VII.10519.E	\$100	Per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee.	LAC 33:VII.10519.F	\$100	Per occurrence
Failure to keep waste tires or waste tire material covered as specified.	LAC 33:VII.10519.H	\$200	Per occurrence
Failure to segregate waste tires from new or used tires offered for sale.	LAC 33:VII.10519.M	\$200	Per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires.	LAC 33:VII.10533.A	\$200	Per occurrence
Failure to maintain completed manifests for three years and have them available for inspection.	LAC 33:VII.10533.D	\$200	Per occurrence
Failure to collect appropriate waste tire fee for each new tire sold.	LAC 33:VII.10519.C, 10535.B	\$200	Per occurrence
Failure to submit application and fees for transporter authorization.	LAC 33:VII.10523.A	\$300	Per occurrence
Failure to use a manifest when transporting greater than 20 waste tires.	LAC 33:VII.10523.C	\$200	Per occurrence
Failure of transporter to transport all waste tires to an authorized collection center or a permitted processing facility.	LAC 33:VII.10523.D	\$300	Per occurrence
Failure of out-of-state or out-of-country transporters to comply with state waste tire regulations.	LAC 33:VII.10523.E	\$200	Per occurrence
Failure to provide notification in writing within 10 days when any information on the authorization certificate form changes, or if the business closes and ceases transporting waste tires.	LAC 33:VII.10523.G	\$100	Per occurrence
Failure by collectors or collection centers to follow the requirements for receipt of tires.	LAC 33:VII.10527.A	\$200	Per occurrence
Failure of collection center operators to meet the standards in LAC 33:VII.10525.D.1-10 and 12-24.	LAC 33:VII.10527.B	\$300	Per occurrence
Failure of recyclers to provide notification of their existence and obtain an identification number.	LAC 33:VII.10531.A	\$300	Per occurrence
Failure of waste tire or waste tire material recyclers to meet the requirements of LAC 33:VII.10525.D.	LAC 33:VII.10531.B	\$300	Per occurrence
Failure to follow the requirements for manifest discrepancies.	LAC 33:VII.10533.C	\$300	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
WATER QUALITY			
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$200 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule A permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$300 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG530000 Schedule B permit.	LAC 33:IX.2701.A	\$500 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG540000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$400 and completion of a department-sponsored compliance class	10 or fewer violations
Failure to comply with any portion(s) of an LPDES LAG750000 permit.	LAC 33:IX.2701.A	\$600 and completion of a department-sponsored compliance class	More than 10 violations
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility.	LAC 33:IX.905	\$500	Per occurrence
2. Failing to implement any component of an SPC plan.	LAC 33:IX.905	\$100	Per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to submit certain reports as required by any LPDES permit not previously defined in LAC 33:IX.Chapter 27, including storm water reports, pretreatment reports, biomonitoring reports, overflow reports, construction schedule progress reports, environmental audit reports as required by a municipal pollution prevention plan, and toxicity reduction evaluation reports.	LAC 33:IX.2701.A	\$300	Per required submittal
Failure to prepare and/or implement any portion or portions of a Storm Water Pollution Prevention Plan (SWPPP), Pollution Prevention Plan (PPP), or Best Management Practices/Plan (BMP) as required by any LPDES permit.	LAC 33:IX.2701.A	\$500	Per occurrence
Failure to submit a Notice of Intent for coverage under the LAR050000 or LAR100000 LPDES Storm Water General Permit.	LAC 33:IX.2511.C.1	\$1,000	Per occurrence
Failure to submit a noncompliance report required by any LPDES permit not previously defined in LAC 33:IX.Chapter 27.	LAC 33:IX.2701.L.7	\$200	Per occurrence
Unauthorized discharge of oil field wastes, including produced water.	LAC 33:IX.1901.A	\$1,000	Per occurrence
Unauthorized discharge of oily fluids.	LAC 33:IX.1701.B	\$1,000	Per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register existing or new USTs containing regulated substances.	LAC 33:XI.301.A-B	\$300	Per inspection
Failure to certify and provide required information on the department's approved registration form.	LAC 33:XI.301.B.1-2	\$300	Per inspection
Failure to provide notification within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility.	LAC 33:XI.301.C.1-3	\$300	Per inspection
Failure to provide corrosion protection to tanks that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.1	\$500 and completion of a department-sponsored compliance class	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to provide corrosion protection to piping that routinely contains regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$250 and completion of a department-sponsored compliance class	Per inspection
Failure to provide corrosion protection to flex hoses and/or sub-pumps that routinely contain regulated substances using one of the specified methods.	LAC 33:XI.303.B.2	\$100 and completion of a department-sponsored compliance class	Per inspection
Failure to provide spill and/or overflow prevention equipment as specified.	LAC 33:XI.303.B.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to upgrade existing UST systems to new system standards as specified.	LAC 33:XI.303.C	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to pay fees by the required date.	LAC 33:XI.307.D	\$200	Per inspection
Failure to report, investigate, and/or clean up any spills and overfills.	LAC 33:XI.501.C	\$1,500	Per inspection
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.	LAC 33:XI.503.A.1	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to have UST systems equipped with cathodic protection systems inspected for proper operation as specified.	LAC 33:XI.503.A.2	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to inspect UST systems with impressed current cathodic protection systems every 60 days to ensure that the equipment is running properly.	LAC 33:XI.503.A.3	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with recordkeeping requirements.	LAC 33:XI.503.B	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to meet requirements for repairs to UST systems.	LAC 33:XI.507	\$300	Per inspection

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them after a request.	LAC 33:XI.509	\$300 and completion of a department-sponsored compliance class	Per inspection
Failure to meet the performance requirements when performing release detection required in LAC 33:XI.703.	LAC 33:XI.701	\$750 and completion of a department-sponsored compliance class	Per inspection
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems.	LAC 33:XI.703.A.1	\$1,500 and completion of a department-sponsored compliance class	Per inspection
Failure to satisfy the additional requirements for petroleum UST systems as specified.	LAC 33:XI.703.B	\$350 and completion of a department-sponsored compliance class	Per inspection
Failure to maintain release detection records.	LAC 33:XI.705	\$200 and completion of a department-sponsored compliance class	Per inspection
Failure to report any suspected release within 24 hours after becoming aware of the occurrence or when a leak detection method indicates that a release may have occurred.	LAC 33:XI.703.A.2 or 707	\$500 and completion of a department-sponsored compliance class	Per occurrence
Failure to investigate and confirm all suspected releases of regulated substances that require reporting under LAC 33:XI.707 within seven days.	LAC 33:XI.711	\$1,500	Per occurrence
Failure to maintain corrosion protection and/or release detection on a UST system that is temporarily closed and contains more than 2.5 cm (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system.	LAC 33:XI.903.A	\$500 and completion of a department-sponsored compliance class	Per inspection
Failure to comply with permanent closure and/or changes in service procedures.	LAC 33:XI.905	\$500	Per inspection

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular R.S. 30:2025(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:

Mike D. McDaniel, Ph.D.
Secretary

0605#013

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Services Division

New or Revised Emissions Estimation Methods
(LAC 33:III.501)(AQ240E5)

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

This is a renewal of Emergency Rule AQ240E4, which was effective on December 23, 2005, and published in the *Louisiana Register* on January 20, 2006. The department has proposed a rule to promulgate these regulation changes. This Emergency Rule clarifies requirements set forth in LAC 33:III.919, concerning emissions inventory, and LAC 33:III.507.H, concerning annual compliance certifications. LAC 33:III.919.C requires that emissions reported in the emissions inventory shall be calculated using the best available information.

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

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

This Emergency Rule is effective on April 22, 2006, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning AQ240E5 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe,

LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 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 III. Air

Chapter 5. Permit Procedures

§501. Scope and Applicability

A. - C.10. ...

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division LR 31:2436 (October 2005), LR 32:

Mike D. McDaniel, Ph.D.
Secretary

0605#002

DECLARATION OF EMERGENCY

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Sewage Sludge Regulatory Management
(LAC 33:VII.301 and 303, and IX:107, 6901, 6903,
6905, 6907, 6909, 6911, and 7135)(OS066E2)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to prevent the unauthorized disposal of sewage sludge in treatment works treating domestic sewage and other areas unprepared to receive the waste stream. This is a renewal of Emergency Rule OS066E1, which was effective on December 30, 2005, and published in the *Louisiana Register* on January 20, 2006.

Prior to the Emergency Rule issued September 1, 2005, sewage sludge was managed by three different programs within the state and the EPA. The multiple permitting process is a cumbersome and expensive process for both the state and the regulated community, hence, inadequately permitted and/or designed facilities to accept the waste, which is produced in a persistent manner. The potential for dumping of sewage sludge presents a potential health risk to the public and the environment in areas of the state that are under-developed for receiving the waste. This Emergency Rule attempts to streamline and expedite the permitting process by removing the solid waste requirements for the management of sewage sludge from the solid waste regulations (LAC 33:Part VII). Sewage sludge will be managed by LAC 33:IX.Chapter 69 that is reflective of and equivalent to the Clean Water Act Section 503 program at the federal level.

This Emergency Rule is effective on April 29, 2006, and shall remain in effect for a maximum of 120 days or until a final Rule is promulgated, whichever occurs first. For more information concerning OS066E2 you may contact the Regulation Development Section at (225) 219-3550.

This Emergency Rule is available on the Internet at www.deq.louisiana.gov under Rules and Regulations, and is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 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 VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 3. Scope and Mandatory Provisions of the Program

§301. Wastes Governed by These Regulations

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

A. - A.8. ...

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

B. - B.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 22:279 (April 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), LR 28:780 (April 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2485 (October 2005), LR 32:

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

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

A. - J.2. ...

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:2250 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2515 (November 2000), repromulgated LR 27:703 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2486 (October 2005), LR 32:

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 1. General Provisions

§107. Definitions

* * *

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

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074 (B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2538 (November 2000), LR 30:1473 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Chapter 69. Standards for the Use or Disposal of Sewage Sludge

§6901. General Provisions

A. Purpose and Applicability

1. Purpose

a. This Chapter establishes standards, which consist of general and other requirements, pollutant limits, general and other management practices, and operational standards,

for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works and of domestic septage. Standards are included in this Chapter for sewage sludge and domestic septage (hereafter referred to collectively as *sewage sludge* for the purposes of this Chapter) and a material derived from sewage sludge that is applied to the land and sewage sludge fired in a sewage sludge incinerator. Also included in this Chapter are pathogen and alternative vector attraction reduction requirements for sewage sludge and a material derived from sewage sludge applied to the land; the siting, operation, and financial assurance requirements for commercial preparers or land applicators of sewage sludge and a material derived from sewage sludge; and the standards for transporters of sewage sludge and for vehicles of transporters of sewage sludge.

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

c. This Chapter establishes requirements for the person who prepares sewage sludge, including dewatering and solidification, that is disposed in a Municipal Solid Waste Landfill.

d. ...

2. Applicability

a. This Chapter applies to:

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

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

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

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

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

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

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

c. ...

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

B. Compliance Period

1. - 3.a. ...

b. Compliance with the requirements in Paragraphs F.2, 3, and 4 of this Section shall be achieved as follows.

i. A facility presently meeting all of the requirements for surface disposal in 40 CFR 503, Subpart C, must comply with the requirements in Paragraph F.2 of this Section as expeditiously as practicable, but in no case later than September 1, 2007.

ii. A facility that does not meet all of the requirements for surface disposal in 40 CFR 503, Subpart C, must comply with the requirements in Paragraph F.2 of this Section on December 30, 2005.

iii. All facilities must comply with the requirements in Paragraphs F.3 and 4 of this Section as expeditiously as practicable, but in no case later than September 1, 2007.

c. As of December 30, 2005, those persons who have been:

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

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

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

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

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

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

i. are presently operating under a permit issued under these regulations shall continue operation under the issued permit if they choose to continue operation;

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

C. Permits and Permitting Requirements

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

b. The person who prepares sewage sludge or a material derived from sewage sludge and the person who applies sewage sludge or a material derived from sewage

sludge to the land shall use the application forms indicated in LAC 33:IX.2501.A.2 and furnish the information requested in LAC 33:IX.2501.Q.

c. ...

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

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

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

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

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

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

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

6. Environmental Impact Supplementary Information. In addition to the requirements of this Chapter, all sewage sludge use or disposal permit applications must include a response to each of the following:

a. a detailed discussion demonstrating that the potential and real adverse environmental effects of the proposed facility have been avoided to the maximum extent possible;

b. a cost benefit analysis that balances the environmental impact costs against the social and economic benefits of the facility and demonstrates that the latter outweigh the former;

c. a discussion and description of possible alternative projects that would offer more protection to the environment than the proposed facility without unduly curtailing non-environmental benefits;

d. a detailed discussion of possible alternative sites that would offer more protection to the environment than the proposed facility site without unduly curtailing non-environmental benefits; and

e. a discussion and description of mitigating measures that would offer more protection to the environment than the facility as proposed without unduly curtailing non-environmental benefits.

D. Sewage Sludge Disposed in a Municipal Solid Waste Landfill

1. - 2. ...

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

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

E. Standards for Vehicles of Transporters of Sewage Sludge

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

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

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

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

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

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

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

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

i. necessary for the upgrade, repair, or maintenance of a treatment works treating domestic sewage

or for agricultural storage purposes when the sewage sludge is to be used for *beneficial use* as defined in Subsection I of this Section;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The person who makes use of a pond or lagoon to treat or for treatment of sewage sludge shall provide documentation by a qualified groundwater scientist to the administrative authority that indicates that the area where the pond or lagoon is located will adequately protect against potential groundwater contamination either by natural soil conditions or by a constructed soil or synthetic liner that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less, and protect from the potential to *contaminate an aquifer* as defined in Subsection I of this Section.

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

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

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

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

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

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

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

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

b. If an exemption or approval is granted by the U.S. Department of Transportation's Federal Aviation Administration to allow a sewage sludge composting operation to be located on airport property, the location

restrictions at LAC 33:IX.6905.A.1.f and g for off-airport property operations shall apply.

7.a. The use of raw or untreated sewage sludge as daily, interim, or final cover at a Municipal Solid Waste Landfill is prohibited.

b. The use of sewage sludge as daily, interim, or final cover at a Municipal Solid Waste Landfill is allowed only if the sewage sludge meets the requirements and is used in accordance with the requirements in LAC 33:IX.Chapter 69.

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

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

G. Exclusions

1. Co-Firing of Sewage Sludge

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

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

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

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

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

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

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

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

8. Commercial and Industrial Septage. This Chapter does not establish requirements for the use or disposal of

commercial septage or industrial septage, a mixture of domestic septage and commercial septage, or a mixture of domestic septage and industrial septage, excluding portable toilet waste.

H. Sampling and Analysis

1. Sampling

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

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

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

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

iii. the date(s) analyses were performed;

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

v. the analytical techniques or methods used; and

vi. the results of such analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. any publicly owned treatment works (POTW) or privately owned sanitary wastewater treatment facility (POSWTF), as defined in this Subsection, regardless of ownership, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage;

b. the person who prepares sewage sludge or a material derived from sewage sludge, including commercial preparers of sewage sludge;

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

d. the person who applies sewage sludge or a material derived from sewage sludge to the land (includes commercial land applicers of sewage sludge).

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

Contaminate an Aquifer—to introduce a substance that causes the maximum contaminant level for nitrate in 40 CFR 141.62(b) to be exceeded in the groundwater, or that causes the existing concentration of nitrate in groundwater to increase when existing concentration exceeds the maximum contaminant level for nitrate in 40 CFR 141.62(b).

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

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

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

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

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

Feed Crops—crops produced primarily for consumption by animals.

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

Fiber Crops—crops such as flax and cotton.

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

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

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

Groundwater—water below the land surface in the saturated zone.

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

Industrial Wastewater—wastewater generated in a commercial or industrial process.

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

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

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

Person Who Prepares Sewage Sludge—the person who generates sewage sludge during the treatment of domestic sewage in a treatment works, the person who treats sewage sludge, or the person who derives a material from sewage sludge.

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

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

Private Land Applier—a person who land-applies sewage sludge or a material derived from sewage sludge for private benefit purposes, where the land application is not for monetary profit or other financial consideration and either the person did not generate or prepare the sewage sludge or a material derived from sewage sludge, or the facility or facilities from which the sewage sludge or a

material derived from sewage sludge was obtained are not owned by or associated with the private land applier.

Privately Owned Sanitary Wastewater Treatment Facility (POSWTF)—a privately owned treatment works that is utilized to treat sanitary wastewater and is not a *publicly owned treatment works (POTW)*, as defined in this Subsection.

Publicly Owned Treatment Works (POTW)—a treatment works, as defined by Section 212 of the Clean Water Act, that is owned by a *state* or *municipality* as defined by Section 504(2) of the Clean Water Act. This includes all devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW; and the municipality, as defined by Section 502(4) of the Clean Water Act, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

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

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

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

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

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

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

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

Transporter of Sewage Sludge—any person who moves sewage sludge off-site or moves sewage sludge to a storage

site, treatment or processing site, disposal site, or land application site.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:781 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 32:

§6903. Land Application

A. Applicability

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

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

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

b. ...

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

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

iii. The general requirements in Paragraph C.1 of this Section and the general management practices in Paragraph C.2 of this Section do not apply when a material

derived from sewage sludge is sold or given away in a bag or other container for application to the land if the sewage sludge from which the material is derived is *Exceptional Quality* as defined in LAC 33:IX.6901.I and the preparer has received and maintains an Exceptional Quality Permit under the requirements in Subsection J of this Section.

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

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

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

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

2. General Management Practices

a. All Sewage Sludge or Material Derived from Sewage Sludge

i. ...

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

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

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

(a) - (b). ...

(c). established school, hospital, institution, business, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment—1,000 feet, unless special permission is granted by a qualified representative of the established school, hospital, institution, business, day-care facility, nursing home, hotel/motel, playground, park, golf course, or restaurant/food establishment. The permission must be in the form of a notarized affidavit executed by the owner waiving the 1,000-foot buffer zone. However, in no case shall the application area be located less than 200 feet from any of the above establishments;

(d). property boundary—100 feet, unless special permission is granted by the property owner(s); and

(e). occupied residential home or structure—500 feet, unless special permission is granted by the owner and/or lessee of the occupied residential home or structure. The permission must be in the form of a notarized affidavit executed by the owner and/or lessee waiving the 500-foot buffer zone. However, in no case shall land application of sewage sludge be conducted less than 200 feet from the occupied residential home or structure.

v. Sewage sludge or a material derived from sewage sludge shall not be applied to agricultural land, forest, or a reclamation site during the months when the

water table is less than or at two feet below the soil surface as indicated in the Parish Soil Surveys or the Water Features Data published by the Natural Resources Conservation Service (NRCS); or some form of monitoring device shall be provided to ensure that the annual high water table is greater than two feet below the soil surface at the time of application.

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

b. - b.ii.(d). ...

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

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

3. Repealed.

Equation (1). Repealed.

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

2. Vector Attraction Reduction—Sewage Sludge

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

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

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

G. Frequency of Monitoring

1. The frequency of monitoring for the pollutants listed in Table 1, Table 2, Table 3, and Table 4 of LAC 33:IX.6903.D; the frequency of monitoring for

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

Frequency of Monitoring—Land Application	
Amount of Sewage Sludge¹ (metric tons per 365-day period)	Frequency
Greater than zero but less than 290	Once per year
Equal to or greater than 290 but less than 1,500	Once per quarter (four times per year)
Equal to or greater than 1,500 but less than 15,000	Once per 60 days (six times per year)
Equal to or greater than 15,000	Once per month (12 times per year)

¹Either the amount of bulk sewage sludge applied to the land or the amount of sewage sludge prepared for sale or give-away in a bag or other container for application to the land (dry weight basis).

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

H. Recordkeeping

1. ...

2. Additional Recordkeeping

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

b. - b.ii.(c).Certification. ...

c. For bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site and that meets the pollutant concentrations in Table 3 of LAC 33:IX.6903.D, the Class B pathogen requirements in LAC 33:IX.6909.C.2, and one of the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j:

i. - ii.(b). ...

(c). when the vector attraction reduction requirement in either LAC 33:IX.6909.D.2.i or j is met, a description of how the vector attraction reduction requirement is met;

(d). - (e).Certification ...

d. For bulk sewage sludge applied to the land that is agricultural land, forest, a public contact site, or a reclamation site whose cumulative loading rate for each pollutant does not exceed the cumulative pollutant loading rate for each pollutant in Table 2 of LAC 33:IX.6903.D and that meets the Exceptional Quality or Class B pathogen requirements in LAC 33:IX.6909.C, and the vector attraction reduction requirements in LAC 33:IX.6909.D.2.a-j:

d.i. - e.ii.(b).Certification ...

I. Reporting

1. ...

2. Additional Reporting Requirements

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

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

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

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

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

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

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

Table 2 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period ¹ (Once per Quarter)	Report Due Date
January, February, March	August 28
April, May, June	
July, August, September	February 28
October, November, December	

¹Separate reports must be submitted for each monitoring period.

Table 3 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period ¹ (Once per 60 Days)	Report Due Date
January, February	June 28
March, April	
May, June	October 28
July, August	
September, October	February 28
November, December	

¹Separate reports must be submitted for each monitoring period.

Table 4 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period ¹ (Once per Month)	Report Due Date
January	May 28
February	
March	
April	August 28
May	
June	
July	November 28
August	
September	

Table 4 of LAC 33:IX.6903.I	
Reporting—Land Application	
Monitoring Period ¹ (Once per Month)	Report Due Date
October	February 28
November	
December	

¹Separate reports must be submitted for each monitoring period.

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

J. Exceptional Quality Permit

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

i. - vi.(h). ...

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

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

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

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

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

d. The sewage sludge or material derived from sewage sludge shall not be applied to the land as an Exceptional Quality sewage sludge until the sample analyses have shown that the sewage sludge or material derived from sewage sludge meets the criteria for *Exceptional Quality* as defined in LAC 33:IX.6901.I.

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

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

ii. the following certification statement:

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:785 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

§6905. Siting and Operation Requirements for Commercial Preparers of Sewage Sludge

A. Exemption. A *publicly owned treatment works (POTW)*, as defined in LAC 33:IX.6901.I, shall be exempted from the siting requirements in LAC 33:IX.6909.B and the facility closure requirements in Paragraph C.3 of this Section if the POTW prepares sewage sludge or a sewage sludge treatment facility is located within the POTW's perimeter.

B. Siting

1. Location Characteristics

a. Facilities shall not be located less than 200 feet from a property line. A reduction in this requirement shall be allowed only with the permission, in the form of a notarized affidavit, of the adjoining landowners and occupants. A copy of the notarized affidavit waiving the 200-foot buffer zone shall be entered in the mortgage and conveyance records of the parish for the adjoining landowner's property.

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

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

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

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

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

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

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

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

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

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

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

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

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

i. Facilities shall only be located in a hydrologic section where the historic high water table is at a minimum of a 3-foot depth below the surface, or the water table at the facility shall be controlled to a minimum of a 3-foot depth below this zone.

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

k. Facilities located in, or within 1,000 feet of, swamps, marshes, wetlands, estuaries, wildlife-hatchery areas, habitat of endangered species, archaeological sites, historic sites, publicly owned recreation areas, and similar critical environmental areas shall be isolated from such areas

by effective barriers that eliminate probable adverse impacts from facility operations.

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

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

2. Facility Characteristics

a. Perimeter Barriers, Security, and Signs

i. All facilities must have a perimeter barrier around the facility that prevents unauthorized ingress or egress, except by willful entry.

ii. During operating hours, each facility entry point shall be continuously monitored, manned, or locked.

iii. During non-operating hours, each facility entry point shall be locked.

iv. All facilities that receive wastes from off-site sources shall post readable signs that list the types of wastes that can be received at the facility.

b. Fire Protection and Medical Care. All facilities shall have access to required fire protection and medical care, or such services shall be provided internally.

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

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

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

3. Facility Surface Hydrology

a. Surface-runoff-diversion levees, canals, or devices shall be installed to prevent drainage from the facility to adjoining areas during a 24-hour/25-year storm event. When rainfall records are not available, the design standard shall be 12 inches of rainfall below 31 degrees north latitude and 9 inches of rainfall above 31 degrees north latitude. If the 24-hour/25-year storm event level is lower, the design standard shall be required.

b. The topography of the facility shall provide for drainage to prevent standing water and shall allow for drainage away from the facility.

c. All storm water and wastewater from a facility must conform to applicable requirements of LAC 33:IX.Chapters 23-67.

4. Facility Geology

a. Except as provided in Subparagraph B.4.c of this Section, facilities shall have natural stable soils of low

permeability for the area occupied by the facility, including vehicle parking and turnaround areas, that should provide a barrier to prevent any penetration of surface spills into groundwater aquifers underlying the area or to a sand or other water-bearing stratum that would provide a conduit to such aquifer.

b. The natural soil surface must be capable of supporting heavy equipment operation during and after prolonged periods of rain.

c. A design for surfacing natural soils that do not meet the requirements in Subparagraphs B.4.a and b of this Section shall be prepared under the supervision of a registered engineer, licensed in the state of Louisiana with expertise in geotechnical engineering and geohydrology. Written certification by the engineer that the surface satisfies the requirements of Subparagraphs B.4.a and b of this Section shall be provided.

5. Facility Plans and Specifications. Facility plans and specifications represented and described in the permit application or permit modifications for all facilities must be prepared under the supervision of, and certified by, a registered engineer, licensed in the state of Louisiana.

6. Facility Administrative Procedures

a. Permit Modifications. Permit modifications shall be in accordance with the requirements of this Chapter.

b. Personnel. All facilities shall have the personnel necessary to achieve the operational requirements of the facility.

C. Operations

1. Composters, Mixers, Blenders, and Preparers

a. Facility Operations and Maintenance Manual

i. A Facility Operations and Maintenance Manual shall be developed and forwarded with the permit application to the administrative authority.

ii. The Facility Operations and Maintenance Manual must describe, in specific detail, how the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge (if applicable) will be managed during all phases of processing operations. At a minimum, the manual shall address the following:

- (a) site and project description;
- (b) regulatory interfaces;
- (c) process management plan;
- (d) pathogen treatment plan;
- (e) odor management plan;
- (f) worker health and safety management plan;
- (g) housekeeping and nuisance management

plan;

- (h) emergency preparedness plan;
- (i) security, community relations, and public access plan;
- (j) regulated chemicals (list and location of regulated chemicals kept on-site);

- (k) recordkeeping procedures;
- (l) feedstock, supplements, and process management;

- (m) product distribution records;
- (n) operator certification; and
- (o) administration of the operations and maintenance manual.

iii. The Facility Operations and Maintenance Manual shall be kept on-site and readily available to

employees and, if requested, to the administrative authority or his/her duly authorized representative.

b. Facility Operational Standards

i. The facility must include a receiving area, mixing area, curing area, compost storage area for composting operations, drying and screening areas, and truck wash area located on surfaces capable of preventing groundwater contamination (periodic inspections of the surface shall be made to ensure that the underlying soils and the surrounding land surface are not being contaminated).

ii. All containers shall provide containment of the sewage sludge and the other feedstock or supplements to be blended, composted, or mixed with the sewage sludge and thereby control litter and other pollution of adjoining areas.

iii. Provisions shall be made for the daily cleanup of the facility, including equipment and waste-handling areas.

iv. Treatment facilities for washdown and contaminated water shall be provided or the wastewater contained, collected, and transported off-site to an approved wastewater treatment facility.

v. Leachate Management. Leachate produced in the composting process:

(a). must be collected and disposed off-site at a permitted facility; or

(b). must be collected, treated, and discharged on-site in accordance with LAC 33:IX.Chapters 23-67; or

(c). may be reused in the composting process as a source of moisture.

vi. Sufficient equipment shall be provided and maintained at all facilities to meet their operational needs.

vii. Odor Management

(a). The production of odor shall be minimized.

(b). Processed air and other sources of odor shall be contained and, if necessary, treated in order to remove odor before discharging to the atmosphere.

viii. Other feedstock and supplements that are blended, composted, or mixed with sewage sludge shall be treated for the effective removal of sharps including, but not limited to: sewing needles, straight pins, hypodermic needles, telephone wires, and metal bracelets.

2. Composters Only

a. Any compost made from sewage sludge that cannot be used according to these regulations shall be reprocessed or disposed in an approved solid waste facility.

b. Composted sewage sludge shall be used, sold, or disposed at a permitted disposal facility within 36 months of completion of the composting process.

3. Facility Closure Requirements

a. Notification of Intent to Close a Facility. All permit holders shall notify the administrative authority in writing at least 90 days before closure or intent to close, seal, or abandon any individual unit within a facility and shall provide the following information:

i. date of planned closure;

ii. changes, if any, requested in the approved closure plan; and

iii. closure schedule and estimated cost.

b. Closure Requirements

i. An insect and rodent inspection is required before closure. Extermination measures, if required, must be provided.

ii. All remaining sewage sludge or a material derived from sewage sludge, other feedstock, and supplements shall be removed to a permitted facility for disposal.

iii. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the requirements of Subparagraph C.3.c of this Section must be provided to the administrative authority.

c. Remediation/Removal Program

i. Surface liquids and sewage sludges containing free liquids shall be dewatered or removed.

ii. If a clean closure is achieved, there are no further post-closure requirements. The plan for clean closure must reflect a method for determining that all waste has been removed, and such a plan shall, at a minimum, include the following:

(a). identification (analysis) of the sewage sludge, other feedstock, and supplements that have entered the facility;

(b). selection of the indicator parameters to be sampled that are intrinsic to the sewage sludge, other feedstock, and supplements that have entered the facility in order to establish clean-closure criteria. Justification of the parameters selected shall be provided in the closure plan;

(c). sampling and analyses of the uncontaminated soils in the general area of the facility for a determination of background levels using the indicator parameters selected. A diagram showing the location of the area proposed for the background sampling, along with a description of the sampling and testing methods, shall be provided;

(d). a discussion of the sampling and analyses of the "clean" soils for the selected parameters after the waste and contaminated soils have been excavated. Documentation regarding the sampling and testing methods (i.e., including a plan view of the facility, sampling locations, and sampling quality-assurance/quality-control programs) shall be provided;

(e). a discussion of a comparison of the sample(s) from the area of the excavated facility to the background sample. Concentrations of the selected parameter(s) of the bottom and side soil samples of the facility must be equal to or less than the background sample to meet clean closure criteria;

(f). analyses to be sent to the Office of Environmental Services, Water and Waste Permits Division, confirming that the requirements of Subparagraph C.3.b of this Section have been satisfied;

(g). identification of the facility to be used for the disposal of the excavated waste; and

(h). a statement from the permit holder indicating that, after the closure requirements have been met, the permit holder will file a request for a closure inspection with the Office of Environmental Services, Water and Waste Permits Division, before backfilling takes place. The administrative authority will determine whether the facility has been closed properly.

iii. If sewage sludge or a material derived from sewage sludge or other feedstock and supplements used in the blending, composting, or mixing process remains at the

facility, the closure and post-closure requirements for industrial (Type I) solid waste landfills or non-industrial landfills (Type II), as provided in LAC 33:Part VII, shall apply.

iv. If the permit holder demonstrates that removal of most of the sewage sludge or a material derived from sewage sludge or other feedstock and supplements to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure requirements.

(a). If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Clause C.3.c.iv of this Section shall not apply.

(b). Excepting those sites closed in accordance with Subclause C.3.c.iv.(a) of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish in which the property is located, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

v. Upon determination by the administrative authority that a facility has completed closure in accordance with an approved plan, the administrative authority shall release the closure fund to the permit holder.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of 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 32:

§6907. Financial Assurance Requirements for Commercial Preparers or Land Appliers of Sewage Sludge

A. - A.2. ...

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

2.a.i. - 5.a.i. ...

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

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

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

ii. a list of commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, owned or operated by the permit holder or applicant, for which financial assurance for the closure or post-closure care is

demonstrated through the use of a financial test or self-insurance by the permit holder or applicant, including the cost estimates for the closure and post-closure care of each facility;

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

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

e. - i.i. ...

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

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

8.i.iv. - 12.d. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:796 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2516 (October 2005), LR 32:

§6909. Pathogens and Vector Attraction Reduction

A. Scope. This Section contains the following:

1. ...

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

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

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

C. Pathogens

1. Sewage Sludge—Exceptional Quality

a. - b. ...

c. Exceptional Quality—Alternative 1

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for

application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

c.ii. - d. ...

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

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

e. Exceptional Quality—Alternative 3

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

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

f. Exceptional Quality—Alternative 4

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

ii. ...

iii. The density of viable helminth ova in the sewage sludge shall be less than one per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

g. Exceptional Quality—Alternative 5

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge

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

ii. ...

h. Exceptional Quality—Alternative 6

i. Either the density of fecal coliform in the sewage sludge shall be less than 1000 Most Probable Number per gram of total solids (dry weight basis), or the density of *Salmonella sp.* bacteria in the sewage sludge shall be less than three Most Probable Number per 4 grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed, at the time the sewage sludge is prepared for sale or to be given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements of *Exceptional Quality* as defined in LAC 33:IX.6901.I.

1.h.ii. - 2.e.v. ...

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

vii. - viii. ...

3. Repealed.

a. Repealed.

b. Repealed.

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

d. Repealed.

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

k. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:806 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

§6911. Incineration

A. - A.2. ...

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

* * *

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

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

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

v. samples of the sewage sludge charged to the incinerator shall be collected in nonporous jars at the beginning of each run and at approximately 1-hour intervals thereafter until the test ends, and "2540 G Total Fixed and Volatile Solids in Solid and Semisolid Samples" shall be used to determine dry sewage sludge content of each sample (total solids residue), except that:

D.6.v.(a). - I.3.c. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:809 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 71. Appendices

§7135. Appendix R—Financial Assurances Documents

Document 1. Liability Endorsement

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE
LIABILITY ENDORSEMENT

[See Prior Text in Liability Endorsement]

Document 2. Certificate of Insurance

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
CERTIFICATE OF LIABILITY INSURANCE

[See Prior Text in Certificate of Liability Insurance]

Document 3. Letter of Credit

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
IRREVOCABLE LETTER OF CREDIT

[See Prior Text in Irrevocable Letter of Credit]

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

[See Prior Text in Irrevocable Letter of Credit]

Document 4. Trust Agreement

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
TRUST AGREEMENT/STANDBY TRUST AGREEMENT

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

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

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

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

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

[See Prior Text in Trust Agreement]

Document 5. Surety Bond

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
FINANCIAL GUARANTEE BOND

Date bond was executed: _____

Effective date: _____

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

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name and business address]

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

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

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

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

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

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

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

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

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

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

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

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

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

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety has received written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.6907.B and the conditions of the commercial preparer or land applier of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

[See Prior Text in Financial Guarantee Bond]

Document 6. Performance Bond

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
PERFORMANCE BOND

Date bond was executed: _____

Effective date: _____

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

Type of organization: [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation: _____

Surety: [name(s) and business address(es)]

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

Total penal sum of bond: \$ _____

Surety's bond number: _____

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

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

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

WHEREAS, said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

THEREFORE, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of the facility for which this bond guarantees closure, in accordance with the closure plan and other requirements of the permit as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

AND, if the Principal shall faithfully perform post-closure care of each facility for which this bond guarantees post-closure care, in accordance with the closure plan and other requirements of the permit, as such plan and permit may be amended, pursuant to all applicable laws, statutes, rules, and regulations, as such laws, statutes, rules, and regulations may be amended;

OR, if the Principal shall provide financial assurance as specified in *Louisiana Administrative Code* (LAC), Title 33, Part IX.6907.B and obtain written approval of the administrative authority of such assurance, within 90 days after the date of notice of cancellation is received by both the Principal and the administrative authority, then this obligation shall be null and void; otherwise it is to remain in full force and effect.

The surety shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described hereinabove.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of LAC 33:IX.6905.C.3, or of its permit, for the facility for which this bond guarantees performances of closure, the Surety shall either perform closure, in accordance with the closure plan and other permit requirements, or place the closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has been found in violation of the post-closure requirements of the LAC 33:IX.6905.C.3, or of its permit for the facility for which this bond guarantees performance of post-closure, the Surety shall either perform post-closure in accordance with the closure plan and other permit requirements or place the post-closure amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

Upon notification by the administrative authority that the Principal has failed to provide alternate financial assurance, as specified in LAC 33:IX.6907.B, and obtain written approval of such assurance from the administrative authority during the 90 days following receipt by both the Principal and the administrative authority of a notice of cancellation of the bond, the Surety shall place funds in the amount guaranteed for the facility into the standby trust fund as directed by the administrative authority.

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

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

The Surety may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the administrative authority.

Cancellation shall not occur before 120 days have lapsed beginning on the date that both the Principal and the administrative authority received the notice of cancellation, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety and to the administrative authority, provided, however, that no such notice shall become effective until the Surety receives written authorization for termination of the bond by the administrative authority.

Principal and Surety hereby agree to adjust the penal sum of the bond yearly in accordance with LAC 33:IX.6907.B and the conditions of the commercial preparer or land applier of sewage sludge facility permit so that it guarantees a new closure and/or post-closure amount, provided that the penal sum does not increase or decrease without the written permission of the administrative authority.

[See Prior Text in Facility Performance Bond]

Document 7. Letter of Credit

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
IRREVOCABLE LETTER OF CREDIT

[See Prior Text in Irrevocable Letter of Credit]

Document 8. Certificate of Insurance

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
CERTIFICATE OF INSURANCE FOR CLOSURE AND/OR POST-
CLOSURE CARE

[See Prior Text in Certificate of Insurance]

Document 9. Letter from the Chief Financial Officer

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
LETTER FROM THE CHIEF FINANCIAL OFFICER (LIABILITY
COVERAGE, CLOSURE, AND/OR POST-CLOSURE)

[See Prior Text in Letter]

(A). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which liability coverage is being demonstrated through the financial test specified in LAC 33:IX.6907.A. The amount of annual aggregate liability coverage covered by the test is shown for each facility:

(B). The firm identified above is the [insert "permit holder," "applicant for a standard permit," or "parent corporation of the permit holder or applicant for a standard permit"] of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for [insert "closure," "post-closure," or "closure and post-closure"] is demonstrated through a financial test similar to that specified in LAC 33:IX.6907.B or other forms of self-insurance. The current [insert "closure," "post-closure," or "closure and post-closure"] cost estimates covered by the test are shown for each facility:

(C). This firm guarantees through a corporate guarantee similar to that specified in [insert "LAC 33:IX.6907.B" or "LAC 33:IX.6907.A and B"], [insert "liability coverage," "closure," "post-closure," or "closure and post-closure"] care of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, of which [insert the name of the permit holder or applicant] are/is a subsidiary of this firm. The amount of annual aggregate liability coverage covered by the guarantee for each facility and/or the current cost estimates for the closure and/or post-closure care so guaranteed is shown for each facility:

(D). This firm is the owner or operator of the following commercial preparer or land applier of sewage sludge facilities, whether in Louisiana or not, for which financial assurance for liability coverage, closure and/or post-closure care is not demonstrated either to the U.S. Environmental Protection Agency or to a state through a financial test or any other financial assurance mechanism similar to those specified in LAC 33:IX.6907.A and/or B. The current closure and/or post-closure cost estimates not covered by such financial assurance are shown for each facility:

[See Prior Text in Letter]

Document 10. Corporate Guarantee

COMMERCIAL PREPARER OR LAND APPLIER OF SEWAGE
SLUDGE FACILITY
CORPORATE GUARANTEE FOR LIABILITY COVERAGE,
CLOSURE, AND/OR POST-CLOSURE CARE

[See Prior Text in Corporate Guarantee]

(B). [Subsidiary] is the [insert "permit holder," or "applicant for a permit"] hereinafter referred to as [insert "permit holder" or "applicant"] for the following commercial preparer or land applier of sewage sludge facility covered by this guarantee: [List the agency interest number, site name, facility name, and facility permit number. Indicate for each facility whether guarantee is for liability coverage, closure, and/or post-closure and the amount of annual aggregate liability coverage, closure, and/or post-closure costs covered by the guarantee.]

[Fill in Paragraphs (C) and (D) below if the guarantee is for closure and/or post-closure.]

* * *

[See Prior Text in Corporate Guarantee]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:818 (April 2002), repromulgated LR 30:233 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2519 (October 2005), LR 32:

Mike D. McDaniel, Ph.D.
Secretary

0605#014

DECLARATION OF EMERGENCY

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

Family Planning Waiver (LAC 50:XXII.Chapters 21-27)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XXII.Chapters 21-27 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 adopts the following Emergency Rule to implement a family planning research and demonstration project under the authority of a Section 1115 waiver. This waiver will provide family planning services to women from age 19 through 44 years old with income at or below 200 percent of the federal poverty level. The services provided will offer women in the targeted population the opportunity to decide when to start a family, to space children based on health concerns and on education and economic goals.

This action is being taken to promote the health and welfare of women by improving access to family planning services for women in the targeted population. It is anticipated that the implementation of this Emergency Rule will increase expenditures for family planning services by approximately \$24,879,968 for state fiscal year 2006-2007.

Effective June 1, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing the implementation of the Family Planning Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 3. Family Planning Waiver

Chapter 21. General Provisions

§2101. Purpose

A. The Family Planning Waiver will increase access to family planning services for women who currently are not eligible for such services, but who would be eligible for Medicaid coverage, based on their income, if they became pregnant.

B. The primary goals of the Family Planning Waiver are to:

1. increase access to services which will allow management of reproductive health;
2. reduce the number of unintended pregnancies; and
3. decrease Medicaid expenditures from prenatal and delivery related services for women in the targeted population.

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 32:

§2103. Enrollment

A. Family Planning Waiver services will be available to eligible women according to the following enrollment caps.

1. For the first year, priority will be set to enroll up to 25,000 women whose pregnant woman certifications are being closed.

a. On a first-approved basis, up to 50,000 additional women who are not eligible for participation in the priority group established in Paragraph A.1 above may be enrolled until a cap of 75,000 enrollees has been reached for the first waiver year. Enrollment caps cannot be exceeded.

2. For the second year, priority will be set to enroll up to 22,250 women whose pregnant woman certifications are being closed.

a. On a first-approved basis, additional enrollees, including those established in Paragraph A.2 above, will be allowed to enroll until a cap of 110,250 enrollees has been reached for the second waiver year. Enrollment caps cannot be exceeded.

B. Additional enrollment caps for subsequent years will be published in Potpourri notices.

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 32:

Chapter 23. Eligibility

§2301. Recipient Qualifications

A. Family Planning Waiver services shall be provided to women who:

1. are 19 through 44 years of age;
2. have family income at or below 200 percent of the federal poverty level; and
3. are not eligible for inclusion in any other Medicaid program or State Children's Health Insurance Program (SCHIP).

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 32:

Chapter 25. Services

§2501. Covered Services

A. Services provided in the Family Planning Waiver include:

1. annual physical exams;
2. necessary lab tests; and
3. contraceptive services, including sterilizations and Food and Drug Administration (FDA) approved family planning pharmaceuticals, devices, methods or supplies.

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 32:

§2503. Service Limits

A. There is a limit of four visits per calendar year for services rendered by a physician, nurse practitioner, physician assistant, or nurse.

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 32:

§2505. Service Delivery

A. Family planning waiver services may be delivered through any enrolled Medicaid provider whose scope of practice includes family planning 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 32:

Chapter 27. Reimbursement

§2701. Reimbursement Methodology

A. Reimbursement for family planning waiver services shall be made according to the following.

1. Tribal "638" facilities will be reimbursed at the rate set by the Centers for Medicare and Medicaid Services (CMS) Memorandum of Agreement with the Indian Health Services which allows states to claim 100 percent federal Medicaid assistance percentage for payments made by the state for services rendered to eligible American Indians and Native Alaskans. The department may, at its discretion, choose to reimburse these providers at the Medicaid fee-for-service rates if CMS discontinues the terms of the Memorandum of Agreement with the Indian Health Services.

2. All other providers, including federally qualified health centers and rural health clinics, will be reimbursed at the Medicaid fee-for-service rates.

B. Any portion of services covered under a recipient's private health insurance plan will not be covered by the Family Planning Waiver Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Implementation of this proposed Rule is subject to approval by the United States Department of Health and

Human Services, Centers for Medicare and Medicaid Services.

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#057

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for the Mentally Retarded
Community Homes Licensing—Emergency Preparedness
(LAC 48:I.51188)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 48:I.51188 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. 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 governing licensing requirements for community homes for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 13, Number 4). The April 20, 1987 Rule was amended by Emergency Rule to adopt provisions governing emergency preparedness requirements for community homes, also known as intermediate care facilities for the mentally retarded (ICFs/MR) (*Louisiana Register*, Volume 31, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 18, 2005 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of community homes that have been evacuated as a result of declared disasters or other emergencies.

Effective June 17, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing emergency preparedness requirements for community homes.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 51. Licensing Requirements for Community Homes

§51188. Emergency Preparedness

A. The community home, also known as an intermediate care facility for the mentally retarded (ICF/MR), shall have an emergency preparedness plan which conforms to the

Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of declared disasters or other emergencies that disrupt the community home's ability to provide care and treatment or threatens the lives or safety of the community home residents. The community home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

B. At a minimum, the community home shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the community home or to another location;

2. the delivery of essential care and services to community home residents, whether the residents are housed off-site or when additional residents are housed in the community home during an emergency;

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the community home or at another location;

4. a plan for coordinating transportation services required for evacuating residents to another location; and

5. the procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

C. The community home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The community home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the community home's performance during the planned drill.

D. The community home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F.1. In the event that a community home evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding or power outages longer than 48 hours, the community home shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

a. The purpose of these surveys is to assure that the community home is in compliance with the licensing standards including, but not limited to, the areas of the structural soundness of the building, the sanitation code, and staffing requirements.

b. The Health Standards Section will determine the facility's access to the community service infrastructure, such as hospitals, transportation, physicians, professional services and necessary supplies.

2. If a community home evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the community home may be reopened.

G.1. Before reopening at its licensed location, the community home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must 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 injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before reopening, the community home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening, subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

H. If it is necessary for a community home to temporarily relocate beds and/or increase the number of beds in the home as a result of a declared disaster, the community home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed 90 days in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in Paragraphs I.1-2.

I. The permanent relocation of community home beds as a result of a declared disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

1. the new location has either the same number or fewer of the previously licensed beds; and

2. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

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 copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#058

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for the Mentally Retarded
Group Homes Licensing—Emergency Preparedness
(LAC 48:I.63188)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts LAC 48:I.63188 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. 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 governing licensing requirements for group homes for inclusion in the Louisiana Administrative Code (*Louisiana Register*, Volume 13, Number 4). The April 20, 1987 Rule was amended by Emergency Rule to adopt provisions governing emergency preparedness requirements for group homes, also known as intermediate care facilities for the mentally retarded (ICFs/MR) (*Louisiana Register*, Volume 31, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 18, 2005 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of group homes that have been evacuated as a result of declared disasters or other emergencies.

Effective June 17, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing emergency preparedness requirements for group homes.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 63. Licensing Requirements for Group Homes

§63188. Emergency Preparedness

A. The group home, also known as an intermediate care facility for the mentally retarded (ICF/MR), shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of declared disasters or other emergencies that disrupt the group home's ability to

provide care and treatment or threatens the lives or safety of the group home residents. The group home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

B. At a minimum, the group home shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the group home or to another location;

2. the delivery of essential care and services to residents, whether the residents are housed off-site or when additional residents are housed in the group home during an emergency;

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the group home or at another location;

4. a plan for coordinating transportation services required for evacuating residents to another location; and

5. the procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

C. The group home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The group home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the group home's performance during the planned drill.

D. The group home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F.1. In the event that a group home evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding or power outages longer than 48 hours, the group home shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

a. The purpose of these surveys is to assure that the group home is in compliance with the licensing standards in the areas of the structural soundness of the building, the sanitation code and staffing requirements.

b. The Health Standards Section will determine the facility's access to the community service infrastructure, such as hospitals, transportation, physicians, professional services, and necessary supplies.

2. If a group home evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the group home may be reopened.

G.1. Before reopening at its licensed location, the group home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's

approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must 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 injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before reopening, the group home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening, subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

H. If it is necessary for a group home to temporarily relocate beds and/or increase in the number of beds in the home as a result of a declared disaster, the group home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed 90 days in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in Paragraphs I.1-2.

I. The permanent relocation of group home beds as a result of a declared disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

1. the new location has either the same number or fewer of the previously licensed beds; and
2. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

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

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#059

DECLARATION OF EMERGENCY

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

Intermediate Care Facilities for the Mentally Retarded
Residential Homes Licensing—Emergency Preparedness
(LAC 48:I.7927)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby amends LAC 48:I.7927 as authorized by R.S. 36:254 and R.S. 40:2180-2180.5. 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 governing licensing requirements for residential homes for inclusion in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 13, Number 4). The April 20, 1987 Rule was amended by Emergency Rule to adopt provisions governing emergency preparedness requirements for residential homes, also known as intermediate care facilities for the mentally retarded (ICFs/MR) (*Louisiana Register*, Volume 31, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 18, 2005 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who reside in residential homes that have been evacuated as a result of declared disasters or other emergencies.

Effective June 17, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services adopts the following amendments governing emergency preparedness requirements for residential homes.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 79. Licensing Requirements for Residential Homes

§7927. Core Requirements

A. - G.6. ...

H. Emergency Preparedness

1. The residential home, also known as an intermediate care facility for the mentally retarded (ICFs-MR), shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of

declared disasters or other emergencies that disrupt the residential home's ability to provide care and treatment or threatens the lives or safety of the residential home residents. The residential home shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

2. At a minimum, the residential home shall have a written plan that describes:

a. the evacuation of residents to a safe place either within the residential home or to another location;

b. the delivery of essential care and services to residential home residents, whether the residents are housed off-site or when additional residents are housed in the residential home during an emergency;

c. provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the residential home or at another location;

d. a plan for coordinating transportation services required for evacuating residents to another location; and

e. procedures to notify the resident's family, guardian or primary correspondent if the resident is evacuated to another location.

3. The residential home's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The residential home's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the residential home's performance during the planned drill.

4. The residential home's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

5. The plan shall be available to representatives of the Office of the State Fire Marshal.

6.a. In the event a residential home evacuates, temporarily relocates, or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding, or power outages longer than 48 hours, the residential home shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

i. The purpose of these surveys is to assure that the residential home is in compliance with the licensing standards including, but not limited to, the areas of the structural soundness of the building, the sanitation code, and staffing requirements.

ii. The Health Standards Section will determine the facility's access to the community service infrastructure such as hospitals, transportation, physicians, professional services, and necessary supplies.

b. If a residential home evacuates, temporarily relocates, or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the residential home may be reopened.

7. Before reopening at its licensed location, the residential home must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the

facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must 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 injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

8. Before reopening, the residential home must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

9. If it is necessary for a residential home to temporarily relocate beds and/or increase in the number of beds in the home as a result of a declared disaster, the residential home may request a waiver from the licensing agency to operate outside of its licensed location for a time period not to exceed 90 days in order to provide needed services to its clients. Extension requests will be considered on a case-by-case basis and must include a plan of action which specifies timelines in which the beds will either be moved back to the original licensed location or permanently relocated as specified in Subparagraphs 10.a.-b.

10. The permanent relocation of residential home beds as a result of a declared disaster or other emergency must be approved by the Office for Citizens with Developmental Disabilities and the Bureau of Health Services Financing, Health Standards Section in order to assure that:

a. the new location has either the same number or fewer of the previously licensed beds; and

b. the location of the residents' family members is taken into consideration in the selection of the new site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2180-2180.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

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 Emergency Rule. A copy of this

Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#061

DECLARATION OF EMERGENCY

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

Mental Health Rehabilitation Program
(LAC 50:XV.Chapters 1-7)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.Chapters 1-7 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the revised provisions governing the administration of the Mental Health Rehabilitation (MHR) Program (*Louisiana Register*, Volume 31, Number 5). The bureau subsequently promulgated an Emergency Rule to delay the implementation of the provisions contained in the May 20, 2005 Rule and rescinded the language prohibiting the provision of certain mental health rehabilitation services to children and adolescents in the custody of the Office of Community Services or the Office of Youth Services (*Louisiana Register*, Volume 31, Number 6). The May 20, 2005 Rule was further amended to adopt revised medical necessity criteria for mental health rehabilitation services and to clarify Medicaid policy governing provision of services in off-site locations and staffing requirements (*Louisiana Register*, Volume 31, Number 8). This Emergency Rule is being promulgated to continue provisions contained in the June 1, 2005 and August 1, 2005 Emergency Rules. This action is being taken to promote the health and well being of Medicaid recipients who are receiving mental health rehabilitation services by assuring continuity of services during the transition period to the restructured Mental Health Rehabilitation Program.

Effective May 29, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions contained in the May 20, 2005 Rule to adopt revised medical necessity criteria for mental health rehabilitation services, to clarify Medicaid policy governing provision of services in off-site locations and staffing requirements and rescinds the language prohibiting the provision of certain mental health rehabilitation services to children and adolescents in the custody of the Office of Community Services or the Office of Youth Services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Mental Health Rehabilitation

Chapter 1. General Provisions

§101. Introduction

A. - C. ...

D. Mental health rehabilitation services shall be covered and reimbursed for any eligible Medicaid recipient who meets the medical necessity criteria for services. The department will not reimburse claims determined through the prior authorization or monitoring process to be a duplicated service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1082 (May 2005), amended LR 32:

§103. Definitions and Acronyms

* * *

Off-Site Service Delivery Location—locations of service that are publicly available for, and commonly used by, members of the community other than the MHR provider and site or locations that are directly related to the recipient's usual environment, or those sites or locations that are utilized in a non-routine manner. This can also include a location used solely for the provision of allowable off-site service delivery by a certified MHR provider.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1082 (May 2005), amended LR 32:

§105. Prior Authorization

A. Every mental health rehabilitation service shall be prior authorized by the bureau or its designee. Services provided without prior authorization will not be considered for reimbursement. There shall be no exceptions to the prior authorization requirement.

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:

Chapter 3. Covered Services and Staffing Requirements

Subchapter A. Service Delivery

§301. Introduction

A. - B. ...

C. Children's Services. There shall be family and/or legal guardian involvement throughout the planning and delivery of MHR services for children and adolescents. The agency or individual who has the decision making authority for children and adolescents in state custody must request and approve the provision of MHR services to the recipient. The case manager or person legally authorized to consent to medical care must be involved throughout the planning and delivery of all MHR services and such involvement must be documented in the recipient's record maintained by the MHR agency.

1. The child or adolescent shall be served within the context of the family and not as an isolated unit. Services shall be appropriate for:

- a. age;
- b. development;
- c. education; and
- d. culture.

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:

Subchapter B. Mandatory Services

§311. Assessment

A. - B.1. ...

2. A licensed mental health professional (LMHP) shall:

- a. have a face-to-face contact with the recipient for the purpose of completing the assessment;
- b. score the LOCUS/CALOCUS if he/she has been approved to be a clinical evaluator by Office of Mental Health (OMH); and
- c. sign and date the assessment.

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:

§317. Community Support

A. Community support services is the provision of mental health rehabilitation services and supports necessary to assist the recipient in achieving and maintaining rehabilitative, resiliency and recovery goals. The service is designed to meet the educational, vocational, residential, mental health treatment, financial, social and other treatment support needs of the recipient. Community support is the foundation of the recovery-oriented Individualized Service Recovery Plan (ISRP) and is essential to all MHR recipients. Its goal is to increase and maintain competence in normal life activities and to gain the skills necessary to allow recipients to remain in or return to naturally occurring supports. This service includes the following specific goals:

1. achieving the restoration, reinforcement, and enhancement of skills and/or knowledge necessary for the recipient to achieve maximum reduction of his/her psychiatric symptoms;
2. minimizing the effect of mental illness;
3. maximizing the recipient's strengths with regard to the mental illness;
4. increasing the level of the recipient's age-appropriate behavior;
5. increasing the recipient's independent functioning to an appropriate level;
6. enhancing social skills;
7. increasing adaptive behaviors in family, peer relations, school and community settings;
8. maximizing linkage and engagement with other community services, including natural supports and resources;
9. applying decision-making methods in a variety of skill building applications; and

10. training caregivers to address the needs identified in the ISRP using preventive, developmental and therapeutic interventions designed for direct individual activities.

B. - B.3. ...

C. Service Exclusions. This service may not be combined on an ISRP with Parent/Family Intervention (Intensive). Community support is an individualized service and is not billable if delivered in a group setting or with more than one recipient per staff per contact.

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:

§319. Group Counseling

A. Group counseling is a treatment modality using face-to-face verbal interaction between two to eight recipients. It is a professional therapeutic intervention utilizing psychotherapy theory and techniques. The service is directed to the goals on the approved ISRP.

B.1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31: 1084 (May 2005), amended LR 32:

§321. Individual Intervention/Supportive Counseling

A. Individual intervention and supportive counseling are verbal interactions between the counselor therapist and the recipient receiving services that are brief, face-to-face, and structured. Individual intervention (child) and supportive counseling (adult) are services provided to eliminate the psychosocial barriers that impede the skills necessary to function in the community.

A.1. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:

§323. Parent/Family Intervention (Counseling)

A. - C.4. ...

D. Service Exclusion. This service may not be combined on a service agreement with Parent/Family Intervention (Intensive).

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1084 (May 2005), amended LR 32:

§325. Psychosocial Skills Training—Group (Youth)

A. Psychosocial Skills Training—Group (Youth) is a therapeutic, rehabilitative, skill building service for children and adolescents to increase and maintain competence in normal life activities and to gain skills necessary to allow them to remain in or return to their community. It is an organized service based on models incorporating psychosocial interventions.

B. - B.2. ...

C. Service Exclusions. This service may not be combined on a service agreement with the following services:

1. Parent/Family Intervention (Intensive); or
2. Psychosocial Skills Training-Group (Adult).

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

Subchapter C. Optional Services

§335. Parent/Family Intervention (Intensive)

A. Parent/Family Intervention (Intensive) is a structured service involving the recipient and one or more of his/her family members. It is an intensive family preservation intervention intended to stabilize the living arrangement, promote reunification, or prevent utilization of out of home therapeutic placement (i.e., psychiatric hospitalization, therapeutic foster care) for the recipient. These services focus on the family and are delivered to children and adolescents primarily in their homes. This service is comprehensive and inclusive of certain other rehabilitative services as noted in the "Services Exclusions" sections of those services.

B. - B.3. ...

C. Service Exclusions. This service may not be combined on a service agreement with the following services:

1. Community Support;
2. Psychosocial Skills Training-Group (Adult);
3. Psychosocial Skills Training-Group (Youth);
4. Individual Intervention/Supportive Counseling:
 - a. an exception may be considered for a recipient

with unique needs;

5. Group Counseling; or
6. Parent/Family Intervention (Counseling).

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

§337. Psychosocial Skills Training-Group (Adult)

A. Psychosocial Skills Training-Group (Adult) is a therapeutic, rehabilitative, skill building service for individuals to increase and maintain competence in normal life activities and gain the skills necessary to allow them to remain in or return to their community. It is designed to increase the recipient's independent functioning in his/her living environment through the integration of recovery and rehabilitation principles into the daily activities of the recipient. It is an organized program based on a psychosocial rehabilitation philosophy to assist persons with significant psychiatric disabilities, to increase their functioning to live successfully in the natural environments of their choice.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 31:1085 (May 2005), amended LR 32:

Chapter 5. Medical Necessity Criteria

§501. General Provisions

A. When a recipient requests MHR services, an initial screening must be completed to determine whether the recipient potentially meets the medical necessity criteria for MHR services. If it determined that the recipient potentially meets the criteria for services, an initial assessment shall be completed and fully documented in the recipient's record no later than 30 days after the request for services. Information in an assessment shall be based on current circumstances (within 30 days) and face-to-face interviews with the recipient. If the recipient is a minor, the information shall be obtained from a parent, legal guardian or other person legally authorized to consent to medical care.

B. If it is determined at the initial screening or assessment that a recipient does not meet the medical necessity criteria for services, the provider shall refer the recipient to his/her primary care physician, the nearest community mental health clinic, or other appropriate services with copies of all available medical and social information.

C. In order to qualify for MHR services, a recipient must meet the medical necessity criteria for services outlined in §503 or §505. These medical necessity criteria shall be utilized for authorization and reauthorization requests received on or after August 1, 2005.

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 30-day intervals, 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. For authorization and reauthorization requests received on or after August 1, 2005, lengths of stay in the MHR Program beyond 270 days (nine months) shall be independently reviewed by the bureau or its designee for reconsideration of appropriateness, efficacy, and medical necessity for continuation of MHR services.

F. The bureau or its designee reserves the right to require a second opinion evaluation by a licensed mental health professional that is not associated with the MHR provider that is seeking authorization or reauthorization 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 31:1086 (May 2005), amended LR 32:

§503. Adult Criteria for Services

A. In order to qualify for MHR services, Medicaid recipients age 18 or older must meet all the following criteria.

1. Diagnosis. The recipient must currently have or, at any time during the past year, had a diagnosable mental behavioral or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR)* or the *International Classification of Diseases*, Ninth Revision,

Clinical Modification (ICD-9-CM) or subsequent revisions of these documents. The diagnostic criteria specified under DSM-IV-TR "V" codes for substance use disorders and developmental disorders are excluded unless these disorders co-occur with another diagnosable serious mental illness.

2. Disability. In order to meet the criteria for disability, the recipient must exhibit emotional, cognitive or behavioral functioning which is so impaired, as a result of mental illness, as to substantially interfere with role, occupational and social functioning as indicated by a score within levels four or five on the LOCUS that can be verified by the bureau or its designee.

3. Duration. The recipient must have a documented history of severe psychiatric disability which is expected to persist for at least a year and requires intensive mental health services, as indicated by one of the following:

- a. psychiatric hospitalizations of at least six months duration in the last five years (cumulative total); or
- b. two or more hospitalizations for mental disorders in the last 12-month period; or
- c. structured residential care, other than hospitalization, for a duration of at least six months in the last five years; or
- d. documentation indicating a previous history of severe psychiatric disability of at least six months duration in the past year.

NOTE: Recipients who are age 18 and up to 21 and who have been determined not to meet the adult medical necessity criteria for MHR services, initial or continued care, shall be reassessed by the bureau or its designee using the children/adolescent medical necessity criteria for 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 32:

§505. Child/Adolescent Criteria for Services

A. In order to qualify for MHR services, Medicaid recipients age 17 or younger must meet all of the following criteria.

1. Diagnosis. The recipient must currently have or, at any time during the past year, had a diagnosable mental, behavioral or emotional disorder of sufficient duration to meet the diagnostic criteria specified within the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) or the *International Classification of Diseases*, Ninth Revision, Clinical Modification (ICD-9-CM), or subsequent revisions of these documents. The diagnostic criteria specified under DSM-IV-TR "V" codes for substance use disorders and developmental disorders are excluded unless these disorders co-occur with another diagnosable serious mental illness.

2. Disability. In order to meet the criteria for disability, the recipient must exhibit emotional, cognitive or behavioral functioning which is so impaired, as a result of mental illness, as to substantially interfere with role, educational, and social functioning as indicated by a score within levels four or five on the CALOCUS that can be verified by the bureau or its designee.

NOTE: Youth returning to community living from structured residential settings or group homes under the authority of the Office of Community Services or the Office of Youth Services may be considered to meet the disability criteria for admission with a level three on the LOCUS or CALOCUS.

3. Duration. The recipient must have a documented history of severe psychiatric disability that is expected to persist for at least a year and requires intensive mental health services, as indicated by at least one of the following:

- a. past psychiatric hospitalization(s);
- b. past supported residential care for emotional/behavioral disorder;
- c. past structured day program treatment for emotional/behavioral disorder; or
- d. documentation indicating that an impairment or pattern of inappropriate behaviors has persisted for at least three months and is expected to persist for at least six months.

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 32:

§507. Exclusionary Criteria

A. Mental health rehabilitation services are not considered to be appropriate for recipients whose diagnosis is mental retardation, developmental disability or substance abuse unless they have a co-occurring diagnosis of severe mental illness or emotional/behavioral disorder as specified within DSM-IV-TR or ICD-9-CM, or its subsequent revisions of these documents.

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 32:

§509. Discharge Criteria

A. Discharge planning must be initiated and documented for all recipients at time of admission to MHR services. For those recipients who are receiving MHR services as of July 31, 2005, discharge planning must be initiated and documented prior to the end of the then current 90 day service plan. Discharge from mental health rehabilitation services for current and new recipients shall be initiated if at least one of the following situations occurs:

1. the recipient's treatment plan/ISRP goals and objectives have been substantially met;
2. the recipient meets criteria for higher level of treatment, care, or services;
3. the recipient, family, guardian, and/or custodian are not engaging in treatment or not following program rules despite attempts to address barriers to treatment;
4. consent for treatment has been withdrawn;
5. supportive systems that allow the recipient to be maintained in a less restrictive treatment environment have been arranged; or
6. the recipient receives three successive scores within level three or less on the CALOCUS/LOCUS. If this situation occurs, the provider shall implement a written discharge plan which includes a plan for the arrangement of services required to transition the recipient to a lower level of care within the community.

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 32:

Chapter 7. Provider Participation Requirements

Subchapter A. Certification and Enrollment

§701. Provider Enrollment Moratorium

A. ...

B. Exception. MHR providers may be allowed to enroll and obtain a new Medicaid provider number for existing satellite offices. In order to obtain a provider number for a satellite office, the MHR provider must have disclosed the satellite office to DHH before August 20, 2004. The MHR provider must provide clear and convincing proof, in the discretion of the department, that any listed satellite office or off-site location was operational prior to the moratorium.

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 31:668 (March 2005), amended LR 32:

§703. Application

A. To be certified or recertified as a mental health rehabilitation provider requires that the provisions of this Subpart 1, the provider manual, and the appropriate statutes are met. A prospective provider who elects to provide MHR services shall apply to the Bureau of Health Service Financing or its designee for certification. The prospective provider shall create and maintain documents to substantiate that the provider meets all prerequisites in order to qualify as a Medicaid provider of MHR services.

B.1 - 10. ...

11. proof of an adult day care license issued by the Department of Social Services or its successor when psychosocial skills training for adults is offered by the MHR provider. All licenses and certificates shall be in the name of the MHR provider and shall contain the provider's correct name and address;

B.12. - 14. ...

C. 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. Satellite offices or off-site locations must have been operational before August 20, 2004 or they will not be allowed to provide MHR services after August 1, 2005.

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:

§705. Application and Site Reviews

A. A prospective MHR provider shall undergo one or more reviews by BHSF or its designee before certification:

1. an application review;
2. a first site review; and if necessary
3. a second site review.

B. BHSF or its designee will conduct a review of all application documents for compliance with MHR requirements. If the documentation is approved, the applicant will be notified and an appointment will be scheduled for a first site review of the prospective MHR provider's physical location. If the first site review is successful, the certification request will be approved and forwarded to Provider Enrollment for further processing.

C. If the application documentation furnished by the prospective MHR provider is not acceptable, a meeting will be scheduled to discuss the deficiencies. The applicant has 30 days to correct the documentation deficiencies and to request a site visit at their physical location.

1. If the prospective MHR provider requests a site visit in a timely manner, a site review of their physical location will be scheduled. At the onsite review, BHSF or its designee will review the corrected documents and make an assessment of the physical location. If the prospective provider has corrected the application document deficiencies and the physical location is deemed acceptable and sufficient to operate as a mental health rehabilitation provider, BHSF or its designee will approve the certification request and forward the necessary paperwork to provider enrollment for further processing.

C.2. - 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 30:802 (April 2004), amended LR 31:1087 (May 2005), LR 32:

Subchapter C. Provider Responsibilities

§731. General Provisions

A. - A.1. ...

B. The MHR provider shall immediately report any suspected or known violations of any state or federal criminal law to the bureau.

C. Each MHR provider shall maintain written procedures and implement all required policies and procedures immediately upon acceptance of recipients for services.

D. The MHR provider shall develop a policy and procedure for hospitalization that is in conformity with the single point of entry (SPOE) policy and procedure.

E. The MHR provider shall request an expedited prior authorization review for any recipient whose discharge from a 24-hour care facility is dependent on follow-up mental health services.

F. The MHR provider shall develop a quality improvement procedure (QIP) plan as outlined in the current MHR provider manual. It should address all aspects of the MHR provider operation.

G. If, as a result of a monitoring review, a written notice of deficiencies is given to the MHR provider, the provider shall submit a written corrective action plan to the bureau within 10 days of receipt of the notice from the department. If the MHR provider fails to submit a corrective action plan within 10 days from the receipt of the notice, sanctions may be imposed against the MHR provider.

H. The MHR provider must establish regular business office hours for all enrolled office locations. Business office locations must be fully operational at least eight hours a day, five days a week between the hours of 7 a.m. and 7 p.m. This requirement does not apply to off-site service delivery locations. Each office shall contain office equipment and furnishings requisite to providing MHR services including, but not limited to, computers, facsimile machines, telephones and lockable file cabinets. Offices shall be located in a separate building from the residence of the MHR provider's owner.

1. An office location is fully operational when the provider:

- a. has met all the requirements for and becomes certified to offer mental health rehabilitation services;
- b. has at least five active recipients at the time of any monitoring review, other than the initial application review;
- c. is capable of accepting referrals at any time during regular business hours;
- d. retains adequate staff to assess, process and manage the needs of current recipients;
- e. has the required designated staff on site (at each location) during business hours; and
- f. is immediately available to its recipients and BHSF by telecommunications 24 hours per day.

2. MHR services may be delivered in off site service delivery locations that are:

- a. publicly available for and commonly used by members of the community other than the provider (e.g., libraries, community centers, YMCA, church meeting rooms, etc.);
- b. directly related to the recipient's usual environment (e.g., home, place of work, school); or
- c. utilized in a non-routine manner (e.g., hospital emergency rooms or any other location in which a crisis intervention service is provided during the course of the crisis).

NOTE: Services may not be provided in the home(s) of the MHR provider's owner, employees or agents. Group counseling and psychosocial skills training (adult and youth) services may not be provided in a recipient's home or place of residence. Services may not be provided in the professional practitioner's private office.

3. Every location where services are provided shall be established with the intent to promote growth and development, client confidentiality, and safety.

4. The MHR provider accepts full responsibility to ensure that its office locations meet all applicable federal, state and local licensing requirements. The transferring of licenses and certifications to new locations is strictly prohibited. It is also the responsibility of the MHR provider to immediately notify the bureau of any office relocation or change of address and to obtain a new certification and license (if applicable).

I. As part of the service planning process, when it is determined that MHR discharge criteria has been met, the MHR provider shall refer the recipient to his/her primary care physician or to the appropriate medically necessary services, and document the referral.

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:

§735. Orientation and Training

A. Orientation and training shall be provided to all employees, volunteers, interns and student workers. This orientation should be comprised of no less than five face-to-face hours and may be considered as part of the overall requirement of 16 hours orientation.

1. - 5. ...

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:

§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. 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 Drug Enforcement Administration (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.

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. Registered Nurse—a nurse who is licensed as a registered nurse or an advanced practice registered nurse in the state of Louisiana by the Board of Nursing. An advanced practice registered nurse, who is a clinical nurse specialist in psychiatry, must operate under an OMH approved collaborative practice agreement with an OMH approved board-certified psychiatrist. A registered nurse must:

i. be a graduate of an accredited program in psychiatric nursing and have two years of post-master's supervised experience in the delivery of mental health services; or

ii. have a master's degree in nursing or a master's degree in a mental health-related field and two years of supervised post master's experience in the delivery of mental health services; and

NOTE: Supervised experience is experience in mental health services delivery acquired while working under the formal supervision of a LMHP.

iii. six continuing education units (CEUs) regarding the use of psychotropic medications, including atypicals, prior to provision of direct service to MHR recipients.

NOTE: Every registered nurse providing MHR services shall have documented evidence of five CEUs annually that are specifically related to behavioral health and medication management issues.

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 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:

Subchapter D. Records

§757. Personnel Records

A. A complete personnel records creation and retention policy shall be developed, implemented and maintained by the MHR provider. The MHR provider shall maintain documentation and verification of all relevant information necessary to assess qualifications for all staff, volunteers and consultants. All required licenses as well as professional, educational and work experience must be verified and documented in the employee's or agent's personnel record prior to the individual providing billable Medicaid services. The MHR provider's personnel records shall include the following documentation.

1. Employment Verification. Verification of previous employment shall be obtained and maintained in accordance with the criteria specified in the MHR Provider Manual.

2. Educational Verification. Educational documents, including diplomas, degrees and certified transcripts shall be maintained in the records. Résumés and documentation of qualifications for the psychiatrist and LMHPs, including verification of current licensure and malpractice insurance, must also be maintained in the records.

3. Criminal Background Checks. There shall be documentation verifying that a criminal background check was conducted on all employees prior to employment. If the MHR provider offers services to children and adolescents, it shall have background checks performed as required by R.S. 15:587.1 and R.S. 15:587.3. The MHR provider shall not hire an individual with a record as a sex offender or permit these individuals to work for the provider.

4. Drug Testing. All prospective employees who apply to work shall be subject to a drug test for illegal drug use. The drug test shall be administered after the date of the employment interview and before an offer of employment is made. If a prospective employee tests positive for illegal drug use, the MHR provider shall not hire the individual. The MHR provider shall have a drug testing policy that provides for the random drug testing of employees and a

written plan to handle employees who test positive for illegal drug use, whether the usage occurs at work or during off duty hours. This documentation shall be readily retrievable upon request by the bureau or its designee.

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 31:1090 (May 2005), amended LR 32:

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, 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 copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#062

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 hereby 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). The January 20, 1998 Rule was amended by Emergency Rule to revise the provisions governing emergency preparedness requirements for nursing facilities (*Louisiana Register*, Volume 31, Number 11). This Emergency Rule is being promulgated to continue the provisions of the October 18, 2005 Emergency Rule. This action is being taken to prevent imminent peril to the health and well-being of Louisiana citizens who are residents of nursing facilities that have been evacuated as a result of declared disasters or other emergencies.

Effective June 17, 2006, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions contained in the January 20, 1998 Rule 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 Office of Emergency Preparedness (OEP) model plan designed to manage the consequences of 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 approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

B. As a minimum, the nursing facility shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the nursing facility or to another location;

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

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing facility or at another location;

4. a plan for coordinating transportation services required for evacuating residents to another location; and

5. the procedures to notify the resident's family or responsible representative if the resident is evacuated to another location.

C. The nursing facility's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The nursing facility's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if indicated by the nursing facility's performance during the planned drill.

D. The nursing facility's plan shall be reviewed and approved by the parish OEP, utilizing appropriate community-wide resources.

E. The plan shall be available to representatives of the Office of the State Fire Marshal.

F.1. In the event that a nursing facility evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and sustains damages due to wind, flooding or power outages longer than 48 hours, the nursing facility shall not be reopened to accept returning evacuated residents or new admissions until surveys have been conducted by the Office of the State Fire Marshal, the Office of Public Health and the Bureau of Health Services Financing, Health Standards Section.

a. The purpose of these surveys is to assure that the facility is in compliance with the licensing standards in the areas of the structural soundness of the building, the sanitation code and staffing requirements.

b. The Health Standards Section will determine the facility's access to the community service infrastructure,

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

2. If a nursing facility evacuates, temporarily relocates or temporarily ceases operation at its licensed location as a result of an evacuation order issued by the parish OEP and does not sustain damages due to wind, flooding or power outages longer than 48 hours, the nursing facility may be reopened.

G.1. Before reopening at its licensed location, the nursing facility must submit a detailed summary to the licensing agency attesting how the facility's emergency preparedness plan was followed and executed. A copy of the facility's approved emergency preparedness plan must be attached to the detailed summary. The detailed summary must 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 injuries and/or deaths of residents that occurred during the execution of the plan, evacuation and temporary relocation.

2. Before reopening, the nursing facility must receive approval from the licensing agency that the facility was in substantial compliance with the emergency preparedness plan. The licensing agency will review the facility's plan and the detailed summary submitted.

a. If the licensing agency determines from these documents that the facility was in substantial compliance with the plan, the licensing agency will issue approval to the facility for reopening, subject to the facility's compliance with any other applicable rules.

b. If the licensing agency is unable to determine substantial compliance with the plan from these documents, the licensing agency may conduct an on-site survey or investigation to determine whether the facility substantially complied with the plan.

c. If the licensing agency determines that the facility failed to comply with the provisions of its plan, the facility shall not be allowed to reopen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 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:

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 copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

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DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage (LAC 37:XI.Chapter 41)

The Department of Insurance (department) hereby states that the following circumstances continue to constitute an immediate danger to the public health, safety, or welfare: The 2005 hurricane season was particularly destructive for Louisiana. Hurricane Katrina caused catastrophic damage in southeast and central Louisiana; particularly hard were Plaquemines, St. Bernard and Orleans parishes. Katrina caused widespread major damage to homes, loss of personal belongings and corresponding temporary loss of employment.

On September 24, 2005, Hurricane Rita hit the Cameron Parish area of Louisiana's southwest coast causing extensive and wide spread damage. The Governor of Louisiana declared a state of emergency (Proclamation No. 48 KKB 2005 and Proclamation No. 53 KKB 2005) due to the effects of Hurricanes Katrina and Rita, respectively. The President of the United States declared designated parishes of Louisiana a federal disaster area by issuing FEMA-1603-DR and FEMA-1607-DR for Katrina and Rita, respectively.

The total cost of property losses resulting from the combination of storms has been estimated to be in the tens of billions of dollars. The initial issuance of this Emergency Rule, in January 2006 (*Louisiana Register*, January 2006, Volume 32, page 60) complied with Code Title XIX—Alternative Dispute Resolution, particularly Chapter 1, The Louisiana Mediation Act, R.S. 9:4101 et seq., and implemented a non-adversarial alternative dispute resolution procedure. The facilitated claim resolution conference was prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damage to residential property caused by these two hurricanes.

Since the program's inception more than 3,500 Louisiana homeowners have requested to have their property claim mediated. Despite this success, now eight months after the hurricanes it is estimated that hundreds of thousands of residential property claims remain unresolved and repairs to damaged property has not been completed. Many of these claims remain unresolved as a result of disputes regarding costs of labor and materials needed to effectuate repairs. Due to the unprecedented extent of damage, in many instances materials and labor necessary to effectuate repairs have not been readily available and there have been disparities between the estimates of insurers and repair contractors.

Insureds with unresolved claims and un-repaired residences continue to be exposed to emotional, physical and economic hardship and remain at risk. Insureds are at risk of receiving sub-quality work, or being faced with a substantial disparity between repair estimates and customary costs in

the area. This condition erodes the ability of insureds to realize the benefit of their insurance coverage. This Rule establishes a procedure to determine a construction pricing guideline to be used in mediation proceedings to determine reasonable payments for repair and replacement costs arising from damage caused by hurricanes Katrina and Rita.

Further, the apparent one year prescriptive period for claims of these types (R.S. 22: 691) is fast approaching. Continuation of the program at this time will allow homeowners the ability to resolve claims without having to file suit.

Based upon the forgoing, the department has determined that an emergency continues to exist and continuation of the claims mediation program and the availability of guidelines for construction pricing are essential to the resolution of insurance claims and the effectuation of repairs of damage covered by insurance policies.

Summary of the Rule: This Emergency Rule establishes a special mediation program for personal lines residential insurance claims resulting from Hurricanes Katrina and Rita. The rule creates procedures for notice of the right to mediation, request for mediation, assignment of mediators, payment for mediation, conduct of mediation, and guidelines for the quality repair of residential property damage.

The person to be contacted regarding the Emergency Rule is Barry E. Ward, Senior Attorney, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9412; 225-219-4750.

Title 37
INSURANCE
Part XI. Rules

Chapter 41. Rule 22—Alternative Procedures for the Resolution of Disputed Residential Insurance Claims Arising from Hurricane Damage: Specific Reasons for Finding an Immediate Danger to the Public Health, Safety or Welfare

§4101. Authority

A. This Emergency Rule is promulgated by the Commissioner of Insurance pursuant to authority granted under the Louisiana Insurance Code, Title 22; R.S. 22:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4103. Purpose and Scope

A. This Emergency Rule in compliance with the Louisiana Mediation Act, R.S. 9:4101 et seq., sets forth a non-adversarial alternative dispute resolution procedure for a facilitated claim resolution conference prompted by the critical need for effective, fair, and timely handling of personal lines insurance claims arising out of damages to residential property caused by hurricanes Katrina and Rita.

B. This Emergency Rule also addresses guidelines for the quality repair of residential property damaged by Hurricanes Katrina and Rita at reasonable and fair prices.

C. Before resorting to these procedures, insureds and insurers are encouraged to resolve claims as quickly and fairly as possible.

D. The procedure established by this Emergency Rule is available to all first party claimants who have personal lines claims resulting from damage to residential property

occurring in the state of Louisiana. This rule does not apply to commercial insurance, private passenger motor vehicle insurance or to liability coverage contained in property insurance policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4105. Definitions

A. The following definitions apply to the terms of this rule as used herein.

Administrator—the department or its designee (American Arbitration Association) and the term is used interchangeably with regard to the department's duties under this rule.

Claim—any matter on which there is a dispute or for which the insurer has denied payment pursuant to claims arising from Hurricanes Katrina and Rita only. Unless the parties agree to mediate a claim involving a lesser amount, a "claim" involves the insured requesting \$500 or more to settle the dispute, or the difference between the positions of the parties is \$500 or more. "Claim" does not include a dispute with respect to which the insurer has reported allegations of fraud, based on an investigation by the insurer's special investigative unit, to the department's Division of Insurance Fraud.

Department—the Department of Insurance or its designee. Reporting to the department shall be directed to: Department of Insurance, Mediation Section, P.O. Box 94214, Baton Rouge, LA, 70804-9214; or by facsimile to (225) 342-1632.

Mediator—an individual approved by the administrator to mediate disputes pursuant to this rule. In order to be approved, mediators must appear on the "approved register" of mediators maintained by the Alternative Dispute Resolution (ADR) section of the Louisiana State Bar Association pursuant to R.S. 9:4105, or provide sufficient evidence of having completed the mandatory qualifications set forth in R.S. 9:4106.

Party or Parties—the insured and his or her insurer, including Citizens Property Insurance Corporation, when applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4107. Notification of Right to Mediate

A. Insurers shall notify each of their insureds in this state, who has claimed damage to their residential property as a result of either Hurricane Katrina or Hurricane Rita, of their right to mediate the claim settlement. This requirement applies to all claims including any and all instances where checks have been issued by the insurer to the homeowner.

B. The insurer shall mail a notice of the right to mediate disputed claims to the insured within five days of the time the policyholder or the administrator notifies an insurer of a dispute regarding the policyholder's claim. The following shall apply.

1. If the insurer has not been notified of a disputed claim prior to the time an insurer notifies the insured that a claim has been denied in whole or in part, the insurer shall mail a notice of the right to mediate disputed claims to the insured in the same mailing as a notice of denial.

2. The insurer is not required to send a notice of the right to mediate disputed claims if a claim is denied because the amount of the claim is less than the policyholder's deductible.

3. The mailing that contains the notice of the right to mediate may include the department's consumer brochure on mediation.

4. Notification shall be in writing and shall be legible, conspicuous, and printed in at least 12-point type.

5. The first paragraph of the notice shall contain the following statement: "J. Robert Wooley, Commissioner of Insurance for the State of Louisiana, has adopted an Emergency Rule to facilitate fair and timely handling of residential property insurance claims arising out of hurricanes Katrina and Rita that recently devastated so many homes in Louisiana. The Emergency Rule gives you the right to attend a mediation conference with your insurer in order to settle any dispute you have with your insurer about your claim. You can start the mediation process by calling the mediation administrator, the American Arbitration Association (AAA), at 1-800-426-8792. An independent mediator, who has no connection with your insurer, will be in charge of the mediation conference."

C. The notice shall also:

1. include detailed instructions on how the insured is to request mediation, including name, address, and phone and fax numbers for requesting mediation through the administrator;

2. include the insurer's address and phone number for requesting additional information; and

3. state that the administrator will select the mediator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4109. Request for Mediation

A. An insured may request mediation by contacting the insurer or by writing to the American Arbitration Association, Mediation Section, 1100 Poydras Street, Suite 2725, New Orleans, LA 70163; by calling the administrator at 1-800-426-8792; or by faxing a request to the administrator at (504) 561-8041.

B. If an insured requests mediation prior to receipt of the notice of the right to mediation or if the date of the notice cannot be established, the insurer shall be notified by the administrator of the existence of the dispute prior to the administrator processing the insured's request for mediation.

C. If an insurer receives a request for mediation, the insurer shall fax the request to the mediation administrator within three business days of receipt of the request. Should the department receive any requests, it will forward those requests to the administrator within three business days following the receipt. The administrator shall notify the insurer within 48 hours of receipt of requests filed with the department. The insured should provide the following information if known:

1. name, address, and daytime telephone number of the insured and location of the property if different from the address given;

2. the claim and policy number for the insured;

3. a brief description of the nature of the dispute;

4. the name of the insurer and the name, address, and phone number of the contact person for scheduling mediation;

5. information with respect to any other policies of insurance that may provide coverage of the insured property for named perils such as flood or windstorm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4111. Mediation Costs

A. All mediation costs shall be borne by the insurer shall be \$350 regardless of where the property is located.

B. Within five days of receipt of the request for mediation from the insured or receipt of notice of the request from the department or immediately after receipt of notice from the administrator pursuant to §4109 that mediation has been requested, whichever occurs first, the insurer shall pay a non-refundable administrative fee, not to exceed \$100 as determined by the department, to the administrator to defer the expenses of the administrator and the department.

1. The insurer shall pay \$250 to the administrator for the mediator's fee not later than five days prior to the date scheduled for the mediation conference.

2. If the mediation is cancelled for any reason more than 72 hours prior to the scheduled mediation time and date, the insurer shall pay \$75 to the administrator for the mediator's fee instead of \$250.

3. No part of the fee for the mediator shall be refunded to the insurer if the conference is cancelled within 72 hours of the scheduled time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4113. Scheduling of Mediation

A. The administrator will select a mediator and schedule the mediation conference. The administrator will attempt to facilitate reduced travel and expense to the parties and the mediator when selecting a mediator and scheduling the mediation conference. The administrator shall confer with the mediator and all parties prior to scheduling a mediation conference. The administrator shall notify each party in writing of the date, time and place of the mediation conference at least 10 days prior to the date of the conference and concurrently send a copy of the notice to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4115. Conduct of the Mediation Conference

A. R.S. 9:4101.C.(4) provides *mediation* is a procedure in which a mediator facilitates communication between the parties concerning the matters in dispute and explores possible solutions to promote reconciliation, understanding, and settlement. As such, it is not necessary to involve a private attorney and participation by private attorneys is discouraged by the department. However:

1. if the insured elects to have an attorney participate in the conference, the insured shall provide the name of the attorney to the administrator at least six days before the date of the conference;

2. parties and their representatives must conduct themselves in the cooperative spirit of the intent of the law and this rule;

3. parties and their representatives must refrain from turning the conference into an adversarial process;

4. both parties must negotiate in good faith. A decision by an insurer to stand by a coverage determination shall not be considered a failure to negotiate in good faith. A party will be determined to have not negotiated in good faith if the party or a person participating on the party's behalf, continuously disrupts, becomes unduly argumentative or adversarial, or otherwise inhibits the negotiations as determined by the mediator;

5. the mediator shall terminate the conference if the mediator determines that either party is not negotiating in good faith, either party is unable or unwilling to participate meaningfully in the process, or upon mutual agreement of the parties;

6. the party responsible for causing termination shall be responsible for paying the mediator's fee and the administrative fee for any rescheduled mediation.

B. Upon request of the insured or the mediator, an attorney will be available to help insureds prepare for the mediation conferences. A representative of the department will be present at and participate in the conference if requested at least five days prior to the scheduled mediation by a party or the mediator to offer guidance and assistance to the parties. The department will attempt to have a representative at the conference if the request is received less than five days prior to the scheduled mediation. Representatives of the department that participate in the conference will not be there to represent the insured. They shall not assume an advocacy role but shall be available to provide legal and technical insurance information.

C. The representative of the insurer attending the conference must bring a copy of the policy and the entire claims file to the conference.

1. The representative of the insurer attending the conference must know the facts and circumstances of the claim and be knowledgeable of the provisions of the policy.

2. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full amount of the claim or lacks the ability to disburse the settlement amount at the conclusion of the conference.

D. The mediator will be in charge of the conference and will establish and describe the procedures to be followed. Per R.S. 9:4107, mediators shall conduct the conference in accordance with the standards of professional conduct for mediation adopted by the American Arbitration Association, the American Bar Association, and the Society of Professionals in Dispute Resolution.

1. Each party will be given an opportunity to present their side of the controversy. In so doing, parties may utilize any relevant documents and may bring any individuals with knowledge of the issues, such as adjusters, appraisers, or contractors, to address the mediator.

2. The mediator may meet with the parties separately, encourage meaningful communications and negotiations, and otherwise assist the parties to arrive at a settlement.

3. All statements made and documents produced at a settlement conference shall be deemed settlement

negotiations in anticipation of litigation. The provisions of R.S. 9:4112 apply.

E. A party may move to disqualify a mediator for good cause at any time. The request shall be directed to the administrator if the grounds are known prior to the mediation conference. Good cause consists of conflict of interest between a party and the mediator, inability of the mediator to handle the conference competently, or other reasons that would reasonably be expected to impair the conference.

F. If the insured fails to appear, without good cause as determined by the administrator, the insured may have the conference rescheduled only upon the insured's payment of the mediation fees for the rescheduled conference. If the insurer fails to appear at the conference, without good cause as determined by the administrator, the insurer shall pay the insured's actual expenses incurred in attending the conference and shall pay the mediator's fee whether or not good cause exists.

1. Failure of a party to arrive at the mediation conference within 30 minutes of the conference's starting time shall be considered a failure to appear.

2. Good cause shall consist of severe illness, injury, or other emergency which could not be controlled by the insured or the insurer and, with respect to an insurer, could not reasonably be remedied prior to the conference by providing a replacement representative or otherwise.

3. If an insurer fails to appear at conferences with such frequency as to evidence a general business practice of failure to appear, the insurer shall be subject to penalty, including suspension, revocation, or fine for violating R.S. 22:1214(14)(b), (c), (f), et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4117. Guidelines for the Quality Repair of Residential Property at a Reasonable and Fair Price

A. The provisions of insurance policies and applicable statutes require claims payments made by insurers to be sufficient to effectuate required repairs at the property site. Further, misrepresentation by any person regarding the cost of repairs is prohibited.

B. Based upon information provided by the construction industry, the insurance industry and nationally recognized sources, companies such as Simsol, Inc. and Xactware, Inc., compile construction pricing guidelines used in adjusting property losses. These guidelines reflect data from both the construction and insurance industries and the ranges take into consideration price differentials between geographic areas of the state. The parties shall use the current construction pricing guidelines compiled by these or similar reputable sources as the starting point in the dispute resolution process.

C. The guidelines referred to herein do not apply to any portion of repairs necessary to fulfill the insurer's contractual obligation to restore the insured residence to pre-hurricane condition where, as of the effective date of this rule, there is an executed repair contract to effectuate such repairs for an agreed price and the insurer has tendered full payment for the repair contract amount for those repairs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4119. Post Mediation

A. Within five days of the conclusion of the conference the mediator shall file with the administrator a mediator's status report on Form DOI-HM-1 which is entitled *Disposition of Property Insurance Mediation Conference*, indicating whether or not the parties reached a settlement. Form DOI-HM-1 will be available from the administrator and is hereby incorporated in this rule by reference.

1. Mediation is non-binding unless all the parties specifically agree otherwise in writing.

2. If the parties reached a settlement, the mediator shall include a copy of the settlement agreement with the status report.

3. However, if a settlement is reached, the insured shall have three business days within which he or she may rescind any settlement agreement provided that the insured has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the conference.

B. If a settlement agreement is reached and is not rescinded, it shall act as a release of all specific claims that were presented in the conference. Any additional claims under the policy shall be presented a separate claim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4121. Non-Participation in Mediation Program

A. If the insured decides not to participate in this claim resolution process or if the parties are unsuccessful at resolving the claim, the insured may choose to proceed under the appraisal process set forth in the insured's insurance policy, by litigation, or by any other dispute resolution procedure available under Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4123. Departmental Authority to Designate

A. The department is authorized to designate an entity or person as its administrator to carry out any of the department's duties under this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4125. Severability

A. If a court holds any section or portion of a section of this Emergency Rule or the applicability thereof to any person or circumstance invalid, the remainder of the Emergency Rule shall not be affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4127. Applicable Provisions

A. The applicable provisions of Title 49, Louisiana Administrative Procedure Act, shall govern issues relating to mediation that are not addressed in this rule. The provisions of this Emergency Rule shall govern in the event of any

conflict with the provisions of Title 49, Louisiana Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S.22:3, and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

James J. Donelon
Commissioner

0605#008

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Rule 23—Suspension of Right to Cancel or Nonrenew Residential, Commercial Residential or Commercial Property Insurance Due to Hurricane Katrina or Hurricane Rita (LAC 37:XI.Chapter 43)

Under the authority of the Louisiana Insurance Code, R.S. 22:1, et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and specifically R.S. 49:953.(B), the Department of Insurance gives notice that it has promulgated an extension of Emergency Rule 23 to regulate all insurance matters between insureds and insurers affected by Hurricane Katrina or its aftermath, or Hurricane Rita or its aftermath.

The extension of Emergency Rule 23 is issued pursuant to and in furtherance of the plenary authority of the Commissioner of Insurance for the state of Louisiana, including, but not limited to, the following: Proclamation No. 48 KBB 2005 issued on August 26, 2005 by Governor Kathleen Babineaux Blanco declaring a State of Emergency relative to Hurricane Katrina; Proclamation No. 53 KBB 2005 issued on September 20, 2005 by Governor Kathleen Babineaux Blanco declaring a State of Emergency relative to Hurricane Rita; Executive Order No. KBB 2005-70 issued October 24, 2005 by Governor Kathleen Babineaux Blanco transferring authority over any and all insurance matters to Commissioner of Insurance J. Robert Wooley (Commissioner); R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:636; R.S. 22:636.2; R.S. 22:636.4; R.S. 22:636.6; R.S. 22:1214.(12) and (14); R.S. 22:1471; and R.S. 49:950 et seq.

On August 26, 2005, Governor Kathleen Babineaux Blanco declared the existence of a State of Emergency with the state of Louisiana caused by Hurricane Katrina. This State of Emergency has extended from Friday, August 26, 2005 through at least January 23, 2006 as per Proclamation No. 75 KBB 2005. Subsequently, on September 20, 2005, Governor Kathleen Babineaux Blanco declared the existence of a State of Emergency within the state of Louisiana caused by Hurricane Rita. This State of Emergency has extended from Tuesday, September 20, 2005 through at least January 23, 2006 as per Proclamation No. 74 KBB 2005.

Thousands of Louisiana citizens have suffered damage due to Hurricane Katrina and/or Hurricane Rita. The residential property and commercial property of many Louisiana citizens was severely damaged or destroyed. Insurers have been working diligently to adjust and pay

claims. However, due to a shortage of building materials, contractors and construction workers many policyholders who have received, or will soon receive, claim payments from insurers will find that they are unable to repair or reconstruct their residential, commercial residential or commercial property within normal time frames. In many places it could be months or years before residential, commercial residential or commercial property located in Louisiana and damaged by Hurricane Katrina and/or Hurricane Rita can be repaired or reconstructed.

This inordinate time period to repair or reconstruct residential, commercial residential or commercial property continues to affect the ability of Louisiana insureds to maintain or obtain personal residential, commercial residential or commercial property insurance. Hurricane Katrina and Hurricane Rita have created a mass disruption to the normalcy previously enjoyed by Louisianians to maintain or obtain personal residential, commercial residential or commercial property insurance for residential property or commercial property and has created an immediate threat to the public health, safety, and welfare of Louisiana citizens.

Additionally, sufficient time is still needed for the Louisiana Citizens Property Insurance Corporation to prepare and place on the open market insurance products that, in the opinion of the Commissioner, will provide adequate residential property, commercial residential property and commercial property insurance to Louisiana citizens subsequent to Hurricane Katrina and Hurricane Rita.

The commissioner will be hindered in the proper performance of his duties and responsibilities under the Louisiana Insurance Code, as well as his duties and responsibilities regarding the referenced States of Emergency, without the adoption of this extension of Emergency Rule 23 which relates to the cancellation and nonrenewal of all personal residential, commercial residential or commercial property insurance subject to the Louisiana Insurance Code.

In light of the foregoing the extension of Emergency Rule 23 is adopted and shall apply to all insurers, property and casualty insurers, surplus lines insurers and any and all other entities doing business in Louisiana and/or regulated by the commissioner, regarding any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, all surplus lines insurance, and any and all other insurance related entities doing business in Louisiana and/or regulated by the commissioner.

The extension of Emergency Rule 23 is applicable statewide to any insured who had a personal residential, commercial residential or commercial property insurance policy covering a dwelling, residential property or commercial property located in Louisiana if said policy of insurance was in effect as of 12:01 a.m. on August 26, 2005 with regard to a claim filed as a result of any damage caused by Hurricane Katrina or its aftermath, or if said policy of insurance was in effect as of 12:01 a.m. on September 20, 2005 with regard to a claim filed as a result of any damage caused by Hurricane Rita or its aftermath.

The extension of Emergency Rule 23 was adopted and became effective on the 28th day of April, 2006. A copy of the extension of Emergency Rule 23 may be obtained from the Department of Insurance by contacting Warren Byrd, Executive Counsel, in writing c/o the Louisiana Department of Insurance, 1702 N. Third Street, Baton Rouge, LA 70802, or by telephone at (225) 219-7841, or by electronic mail at wbyrd@ldi.state.la.us.

**Title 37
INSURANCE**

Part XI. Rules

Chapter 43. Rule 23—Suspension of Right to Cancel or Nonrenew Residential, Commercial Residential or Commercial Property Insurance Due to Hurricane Katrina or Hurricane Rita

§4301. Benefits, Entitlements and Protections

A. The benefits, entitlements and protections of Emergency Rule 23 shall be applicable to insureds who, as of 12:01 a.m. on August 26, 2005 had a personal residential, commercial residential or commercial property insurance policy for a dwelling, residential property or commercial property located in Louisiana and who filed a claim as a result of any damage caused by Hurricane Katrina or its aftermath. The benefits, entitlements and protections of Emergency Rule 23 shall also be applicable to insureds who, as of 12:01 a.m. on September 20, 2005 had a personal residential, commercial residential or commercial property insurance policy for a dwelling, residential property or commercial property located in Louisiana and who filed a claim as a result of any damage caused by Hurricane Rita or its aftermath.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4303. Application

A. Emergency Rule 23 shall apply to any and all types of personal residential, commercial residential or commercial property insurance covering a dwelling, residential property or commercial property located in Louisiana that sustained damage as a result of Hurricane Katrina or its aftermath, or Hurricane Rita or its aftermath, including, but not limited to, any and all types of homeowners insurance and/or residential property insurance, commercial insurance, fire and extended coverage insurance, credit property and casualty insurance, property and casualty insurance, and any and all other insurance regulated by the commissioner that falls within the intent and purpose of Emergency Rule 23.

B. Any statutory or regulatory provision, or any policy provision contained in any and all policies of insurance set forth in §4303.A above, shall be suspended and shall be unenforceable to the extent that said statutory or regulatory provision, or policy provision, authorizes an insurer to cancel or nonrenew said policy of insurance. The right to cancel or nonrenew said policy of insurance shall be limited to the specific exceptions set forth in Section 4307.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4305. Cancellation or Nonrenewal Suspended

A. The right of any insurer, surplus lines insurer or any other entity regulated by the commissioner to cancel or nonrenew any personal residential, commercial residential or commercial property insurance policy covering a dwelling, residential property or commercial property located in Louisiana that sustained damaged as a result of Hurricane Katrina or its aftermath, or Hurricane Rita or its aftermath, is suspended and shall be prohibited until 60 days after the substantial completion of the repair and/or reconstruction of the dwelling, residential property or commercial property, except for the specific exceptions set forth in §4307, or until Emergency Rule 23 is terminated by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4307. Limited Exceptions for Cancellation or Nonrenewal

A. An insurer or surplus lines insurer or any other entity regulated by the commissioner shall only have the right to cancel or nonrenew an insured for the following limited exceptions:

1. non-payment of the premium after providing the insured with the notice of cancellation in accordance with the applicable statutory time period mandated by the Louisiana Insurance Code for that type of insurance;

2. fraud or material misrepresentation related to the Hurricane Katrina or Hurricane Rita claim, but only after the insurer has provided the insured with a 60-day written notice of cancellation setting forth the specifics with regard to the alleged fraud or material misrepresentation;

3. the insured causes an unreasonable delay in the repair or reconstruction of the dwelling, residential property or commercial property, but only after the insurer has provided the insured with a 60-day written notice of cancellation setting forth the specifics with regard to the insureds unreasonable delay with regard to the repair or reconstruction;

4. the insured has been paid the full policy limits and the insured has evidenced the intent to not repair or reconstruct the dwelling, residential property or commercial property;

5. the insured has not been paid the full policy limits but the insured has evidenced the clear intent to not repair or reconstruct the dwelling, residential property or commercial property;

6. the insured violates a material provision of the policy, including, but not limited to, performing illegal activity or failing, without just cause, to make reasonable efforts to protect the insured dwelling, residential property or commercial property that results in an increased risk to the material detriment of the insurer.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4309. New Policies

A. New policies of insurance issued after January 1, 2006, covering a dwelling, residential property or commercial property located in Louisiana shall not be affected by Emergency Rule 23.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4311. Written Request for Cancellation or Non-Renewal by Insured

A. Nothing contained in Emergency Rule 23 shall prevent or prohibit an insured from voluntarily cancelling or nonrenewing the insured's policy of insurance covering a dwelling, residential property or commercial property located in Louisiana.

B. Nothing contained in Emergency Rule 23 shall prevent or prohibit an insured from voluntarily entering into an agreement with an insurer to modify the coverage, limits, terms, endorsements, exclusions or deductibles with regard to the insured's policy of insurance covering a dwelling, residential property or commercial property located in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4313. Insured's Obligation

A. The insured is obligated to exercise good faith with regard to undertaking the repairs or reconstruction of the dwelling or residential property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4315. Insurer's Obligation

A. The insurer or surplus lines insurer or any other entity regulated by the commissioner is obligated to provide the insured with sufficient time to effectuate the repairs or reconstruction to the dwelling or residential property and to recognize the inordinate conditions that exist in the state of Louisiana with regard to the ability of the insured to engage a contractor, engage construction workers, obtain materials and otherwise undertake to accomplish the necessary repairs or reconstruction of the dwelling, residential property or commercial property.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4317. Commissioner's Jurisdiction over Modifications to Renewal Provisions

A. An insurer may submit to the commissioner, for his approval, a written Modified Renewal Plan that would allow for significant or substantive modifications to an underlying policy of insurance set forth in §4303.A that is subject to Emergency Rule 23.

B. The Modified Renewal Plan submitted by the insurer shall, at a minimum, provide the following information to the commissioner.

1. The reasons why the insurer believes that compliance with Emergency Rule 23 would cause a hardship or create an undue or unreasonable burden on the insurer's ability to operate in Louisiana.

2. A detailed explanation as to how the proposed modifications to the underlying policy would continue to provide appropriate insurance protection to the insured.

3. The anticipated amount of the financial hardship that may be imposed upon the insurer if the insurer were required to comply with Emergency Rule 23.

4. An unequivocal statement to the commissioner as to whether or not the insurer will continue to provide said insurance coverage in Louisiana over the next 24 month period.

C. If the commissioner determines that it would be in the best interests of the insureds of Louisiana to permit the modifications requested by the insurer, the commissioner may approve the insurer's Modified Renewal Plan.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4319. Exemption from Compliance

A. Notwithstanding any other provision contained herein, the commissioner may exempt any insurer from compliance with Emergency Rule 23 upon the written request by the insurer if the commissioner determines that compliance with Emergency Rule 23 may be reasonably expected to result in said insurer being subject to undue hardship, impairment, or insolvency.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4321. Purpose and Intent

A. The provisions of Emergency Rule 23 shall be liberally construed to effectuate the intent and purposes expressed herein and to afford maximum consumer protection for the insureds of Louisiana who desire to maintain or obtain personal residential, commercial residential or commercial property insurance for a dwelling, residential property or commercial property located in Louisiana.

B. The additional purpose and intent of Emergency Rule 23 is to provide sufficient time for the Louisiana Citizens Property Insurance Corporation to prepare and place on the open market insurance products that, in the opinion of the commissioner, will provide adequate residential property, commercial residential property and commercial property insurance to Louisiana citizens subsequent to Hurricane Katrina and Hurricane Rita.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4323. Rule Amendment

A. The commissioner reserves the right to amend, modify, alter or rescind all or any portions of Emergency Rule 23.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4325. Severability Clause

A. If any section or provision of Emergency Rule 23 that is held invalid, such invalidity or determination shall not affect other sections or provisions, or the application of Emergency Rule 23, to any persons or circumstances that can be given effect without the invalid sections or provisions and the application to any person or circumstance shall be severable.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4327. Effective Date

A. Emergency Rule 23 shall become effective on December 30, 2005.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

§4329. Termination Date

A. Emergency Rule 23 shall terminate on the earlier of either:

1. sixty days after the substantial completion the repair or reconstruction of the dwelling, residential property or commercial property covered by a policy of insurance that is the subject of Emergency Rule 23; or

2. December 31, 2006.

AUTHORITY NOTE: Promulgated in accordance with Executive Order No. KBB 05-70; R.S. 29:724; R.S. 29:766; R.S. 22:2; R.S. 22:3; R.S. 22:1214.(7), (12) and (14); R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 32:

James J. Donelon
Commissioner

0605#025

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

FITAP/KCSP/STEP Parenting Skills
Education and Eligibility Factors
(LAC 67:III.1209, 1223, 1225, 1229, 1245, 1291,
5307, 5321, 5323, 5329, 5339, 5341, 5391, and 5711)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III, Subpart 2, Subpart 13, and Subpart 16 effective May 1, 2006. This Rule shall remain in effect for a period of 120 days.

Pursuant to the authority granted to the Department by Louisiana's Temporary Assistance to Needy Families Block Grant, the agency will amend §1209, §1223, §1225, §1229,

§1245, and §1291 in the Family Independence Temporary Assistance Program (FITAP); §5307, §5321, §5323, §5329, §5339, §5341, and §5391 in the Kinship Care Subsidy Program (KCSP) and §5711 in the Strategies to Empower People (STEP) Program. §1209 is amended to align with policy the need for a concurrent notice; §1223 is amended to expand the definition of a qualified alien; §1225 is amended to provide good cause for the requirement of enumeration; §1229 is amended regarding deductions for dependent care; §1245 is amended for consistency with KCSP and the STEP Program regarding Parenting Skills Education; §1291 is amended to clarify and correct procedures regarding failure to cooperate in substance abuse screening, testing, or participation. The Kinship Care Subsidy Program is being amended at: §5307 to send a concurrent notice when a child has been certified for Supplemental Security Income; §5321 to define the age limit for KCSP benefits; §5323 to expand the definition of a qualified alien; §5329 to exempt the receipt of Supplemental Security Income in determining eligibility and to exempt at pretest income for children receiving foster care payments and SSI; §5339 to address the age requirement regarding Parenting Skills Education; §5341 and §5391 are repealed as Drug Screening, Testing, Education, and Rehabilitation and the Substance Abuse Treatment Program do not apply to recipients of KCSP benefits. §5711 in the STEP Program is being amended to address FITAP and KCSP recipients who must participate in Parenting Skills Education and to clarify the scope of Parenting Skills Education.

The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§1209. Notices of Adverse Action

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the client at the time of action in the following situations:

1. - 10. ...
11. Repealed
12. - 16. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B. and R.S. 46:237; Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 26:349 (February 2000), LR 29:2565 (December 2002), LR 30:493 (March 2004), LR 32:

Subchapter B. Conditions of Eligibility

§1223. Citizenship

A. Each FITAP recipient must be a United States Citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or

after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 9. ...

10. an alien who is a victim of a severe form of trafficking in persons, or effective May 1, 2006, an eligible relative of a victim of a severe form of trafficking in persons.

B. - B.8. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., P.L. 106-386, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 26:1342 (June 2000), LR 27:2263 (December 2001), LR 28:1599 (July 2002), LR 32:

§1225. Enumeration

A. Each applicant for, or recipient of, FITAP is required to furnish a Social Security number or to apply for a Social Security number if such a number has not been issued or is not known, unless, effective May 1, 2006, good cause has been established.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.1.B., Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 32:

§1229. Income

A. - B.2. ...

C. Earned Income Deductions. Each individual in the income unit who has earned income is entitled to the following deductions only.

1. Standard Deduction of \$120

2. \$900 Time-Limited Deduction. This deduction is applied for six months when a recipient's earnings exceed the \$120 standard deduction. The months need not be consecutive nor within the same certification periods. The deduction is applicable for a six-month lifetime limit for the individual.

3. Dependent Care Deduction. Recipients may be entitled to a deduction for dependent care for:

- a. an incapacitated adult;
- b. effective May 1, 2006, a child age 13 or older who is not receiving CCAP; or
- c. effective May 1, 2006, the amount charged by a child care provider that exceeds the CCAP maximum for a child in care.

D. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B., R.S. 46:231.2, P.L. 108-447, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 26:2831 (December 2000), LR 31:2956 (November 2005), LR 32:

§1245. Parenting Skills Education

A. Effective May 1, 2006, recipients who are pregnant or have a child under age one shall participate in parenting skills education as outlined in LAC 67:III.Chapter 57, §5711.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.5; Act 58, 2003 Reg. Session. Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 30:494 (March 2004), LR 32:

Subchapter D. Special Initiatives

§1291. Substance Abuse Treatment Program

A. - E.4. ...

5. Failure to Cooperate. Failure or refusal of a recipient to participate in substance abuse screening, testing, or participation in the education and rehabilitation program, without good cause, will result in the following actions effective May 1, 2006.

a. At application, the application is rejected, unless the person is an 18-year-old dependent child. Exclude any 18-year-old dependent child that fails to cooperate until they participate.

b. For certified cases in which the family is not work-eligible, the case will be closed for at least one month and until the client complies with this requirement, whichever is later.

c. For certified cases in which the family is work-eligible, a STEP sanction will be imposed with the appropriate occurrence and reason. The case must remain closed for the duration of the sanction period and until the client complies with this requirement, whichever is later.

d. For certified cases in which an 18-year-old dependent child fails to cooperate, exclude him from the grant until he participates.

6. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:1492 (June 2002), amended LR 32:

Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§5307. Notices of Adverse Action

A. A notice of adverse action shall be sent at least 13 days prior to taking action to terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the client at the time of action in the following situations:

1. - 13. ...

14. effective May 1, 2006, the child has been certified for Supplemental Security Income and that fact has been established.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:351 (February 2000), amended LR 29:2565 (December 2002), LR 32:

Subchapter B. Conditions of Eligibility

§5321. Age Limit

A. Effective May 1, 2006, a dependent child must be under 18 years of age.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B and R.S. 46:237; Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February

2000), amended LR 30:496 (March 2004), LR 31:103 (January 2005), LR 32:

§5323. Citizenship

A. Each KCSP recipient must be a United States citizen, a non-citizen national, or a qualified alien. A non-citizen national is a person born in an outlying possession of the United States (American Samoa or Swain's Island) on or after the date the U.S. acquired the possession, or a person whose parents are U.S. non-citizen nationals. A qualified alien is:

1. - 9. ...

10. an alien who is a victim of a severe form of trafficking in persons, or effective May 1, 2006, an eligible relative of a victim of a severe form of trafficking in persons.

B. - B.8. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, P.L. 106-386, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 27:2264 (December 2001), LR 28:1600 (July 2002), LR 32:

§5329. Income

A. Income is any gain or benefit to a household that has monetary value and is not considered a resource. Count all income in determining pretest eligibility except income from:

1. - 28. ...

29. effective May 1, 2006, Supplemental Security Income (SSI).

B. - B.2.c. ...

3. For purposes of this pretest, income is defined as countable income belonging to any member of the KCSP income unit. Exception effective May 1, 2006: Income for children receiving foster care and Supplemental Security Income is not included in the income test.

C. Income after Pretest. The child is determined eligible for KCSP if the child's countable income is, effective July 1, 2006, less than \$280. If the child's countable income is, effective July 1, 2006, \$280 or more, the child is ineligible.

D. Payment Amount. Payment amount is, effective July 1, 2006, \$280 a month for each eligible child.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq. and 10602(c), R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and P.L. 108-447, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000), LR 31:2958 (November 2005), LR 32:

§5339. Parenting Skill Education

A. As a condition of eligibility for KCSP benefits, effective May 1, 2006, any child under age 18 who is pregnant or the parent of a child under the age of one must attend a parenting skills education program as outlined in LAC 67:III.Chapter 57, §5711. Failure to meet this requirement without good cause shall result in that minor's ineligibility. Ineligibility will continue until the child has complied.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:496 (March 2004), LR 32:

§5341. Drug Screening, Testing, Education, and Rehabilitation Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237; Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:497 (March 2004), repealed LR 32:

Subchapter D. Special Initiatives

§5391. Substance Abuse Treatment Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 36:474 and 46:231; and Act 12, 2001 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:1493 (June 2002), repealed LR 32:

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter B. Participation Requirements

§5711. Parenting Skills Education

A. Effective May 1, 2006, FITAP and KCSP recipients who are pregnant or have a child under age one shall participate in parenting skills education as the primary work activity under the Family Success Agreement. Parenting Skills Education consists of family strengthening, parenting information, and money management information. The lessons provide key parenting practices for parents to learn child nurturance that includes care, safety, and understanding child development. Applicable child care and transportation shall be provided to participants to enable their participation.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session, Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004), amended LR 32:

Ann Silverberg Williamson
Secretary

0605#029

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

TANF Initiatives (LAC 67.III.5511 and 5583)

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 adopt LAC 67:III, Subpart 15, Chapter 55, §5511 Micro-Enterprise Development Program and §5583, Third Party In-Kind Contributions as new TANF Initiatives. This Emergency Rule is effective May 1, 2006, and will remain in effect for a period of 120 days.

As a result of Act 1 of the 2004 Regular Legislative Session, the agency repealed several TANF Initiatives including Micro-Enterprise Development effective September 2004, as funding was no longer available. Pursuant to Act 16 of the 2005 Regular Session of the

Louisiana Legislature, the agency is re-establishing this program as funds have once again been appropriated for this initiative. Additionally, Act 16 permits the agency to establish §5583, Third Party In-Kind Contributions, as a new TANF Initiative to provide a mechanism to capture information on third party in-kind contributions for use as TANF Maintenance of Effort (MOE).

The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5511. Micro-Enterprise Development Program

A. Effective May 1, 2006, the Office of Family Support shall enter into a Memorandum of Understanding with the Department of Economic Development to provide assistance to low-income families who wish to start their own businesses.

B. These services meet the TANF goal to end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage. This goal will be accomplished by providing assistance to low-income families through the development of comprehensive micro-enterprise development opportunities as a strategy for moving parents into self-sufficiency.

C. Eligibility for services is limited to needy families, that is, a family in which any member receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), Free or Reduced School Lunch, or who has earned income at or below 200 percent of the federal poverty level. Only the parent or caretaker relative within the needy family is eligible to participate.

D. Services are considered non-assistance by the agency.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

§5583. Third Party In-Kind Contributions as TANF MOE

A. The Office of Family Support may enter into a Memorandum of Understanding with the American Red Cross and other third-party organizations to collect information on expenditures for services provided to families following a federally-declared disaster for the purpose of claiming eligible expenditures as TANF Maintenance of Effort (MOE). Eligible expenditures include activities and services provided on a congregate basis to the community as a whole, such as sheltering, feeding, bulk distribution of items, but not including any expenses for which the federal government is obligated to reimburse the third party.

B. The third party organization shall determine the total value of the expenses and advise OFS of this value on a periodic basis.

C. OFS shall establish a methodology to estimate the percentage of total expenses that were made on behalf of TANF-eligible families following a federally-declared disaster.

D. These services meet the TANF goal to provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives.

E. Financial eligibility for these services is limited to eligible families. A family consists of a minor child living with a custodial parent or an adult caretaker relative. An eligible family is one with income at or below 200 percent of the federal poverty level.

G. OFS will count eligible third party in kind contributions as TANF Maintenance of Effort (MOE) funds starting September 2005.

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.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Ann Silverberg Williamson
Secretary

0605#028

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Temporary Emergency Disaster Assistance Program (LAC 67.III.5583)

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 §5583, Temporary Emergency Disaster Assistance Program (TEDAP). This Emergency Rule is effective May 10, 2006. This declaration is necessary to extend the original Emergency Rule effective January 10, 2006, since it is effective for a maximum of 120 days and will expire before the final rule takes effect. (The final Rule will be published in the June 2006 issue.)

As a result of Hurricanes Katrina and Rita, there are an estimated 350,000 displaced individuals within the state of Louisiana who have urgent, unmet needs for basic human services as well as for intermediate and long-term assistance in restoring their lives and communities.

Pursuant to the TANF Emergency Response and Recovery Act of 2005, the agency adopted the Temporary Emergency Disaster Assistance Program as a new TANF Initiative effective October 26, 2005. The program provides disaster emergency services to families with dependent children or pregnant women who are displaced because of disasters. A Declaration of Emergency adopting this program was published in the November issue of the *Louisiana Register*. The agency is amending the rule as the information contained in the original Rule did not fully describe the eligibility and verification requirements of the Temporary Emergency Disaster Assistance Program.

The authorization for emergency action in this matter is contained in Act 16 of the 2005 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5583. Temporary Emergency Disaster Assistance Program

A. Effective October 26, 2005, the agency will enter into contracts to provide disaster emergency services to needy families with dependent children or pregnant women who are displaced because of disasters. The program will provide nonrecurring, short-term benefits or services, not to exceed four months.

B. These services meet the TANF goals to end dependence of needy families by promoting job preparation, work, and marriage, and to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to needy families with minor dependent children, or minor dependent children living with caretaker relatives within the fifth degree of relationship or pregnant women:

1. who are displaced citizens of parishes or counties for which a major disaster has been declared under the Robert T. Stafford Disaster Relief and Assistance Act; and

2. whose income is at or below 200 percent of the federal poverty level or who are categorically eligible because a member of the family receives a Family Independence Temporary Assistance Program (FITAP) grant, Kinship Care Subsidy Program (KCSP) grant, Food Stamps, Child Care Assistance Program (CCAP) benefits, Medicaid, Louisiana Children's Health Insurance Program (LaCHIP), Supplemental Security Income (SSI), or Free or Reduced School Lunch.

D. The secretary may establish criteria whereby needy families are deemed to be needy based on their statement, circumstances, or inability to access resources and may also relax verification requirements for other eligibility factors.

E. Services are considered non-assistance by the agency.

F. The program shall be effective for the parishes or counties and time frames as designated by the secretary.

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, TANF Emergency Response and Recovery Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:

Ann Silverberg Williamson
Secretary

0605#069

DECLARATION OF EMERGENCY

Department of Treasury Board of Trustees of the Louisiana State Employees' Retirement System

Self-Directed Plan—Time to Transfer Funds (LAC 58.I.4111)

Under the authority of R.S. 11:515 and in accordance with R.S. 49:951 et seq., the Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement

System ("LASERS") has adopted an Emergency Rule amending LAC 58.I. 4111, which sets out the time in which funds are transferred from LASERS to the third-party administrator of the Self-Directed Plan. It is being amended as a contingency in connection with the impending LASERS system software changeover. The date now scheduled for that changeover makes necessary this emergency amendment. This Rule complies with and is enabled by R.S. 11:515.

The effective date for this Rule is April 11, 2006, and it shall remain in effect through for the maximum number of days allowed or the date this rule becomes effective through the ordinary promulgation process, whichever comes first.

Title 58

RETIREMENT

Part I. Louisiana State Employees' Retirement System

Chapter 41. Self-Directed Plan

§4111. Time to Transfer Funds

A. Except in emergency circumstances as determined by the executive director:

1. LASERS shall forward the entire deposit balance of a participant to the third party administrator within 10 working days from the end of the DROP accumulation period. LASERS may supplement or otherwise correct balances forwarded in those instances where there are errors, missing documents or incomplete reports submitted by agencies reporting earnings for the participant;

2. for participants in the Initial Benefit Option ("IBO") or for those DROP participants whose accumulation period is less than six months, LASERS shall transfer 80 percent of the DROP/IBO balance within 45 days from the date of initial transfer into the SDP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Board of Trustees of the State Employees' Retirement System, LR 30:1307 (June 2004), amended LR 32.

Cindy Rougeou
Executive Director

0605#001

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Shrimp Season—Zones 1 and 3

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 2006 Spring Shrimp Season in Louisiana state waters to open as follows:

Shrimp Management Zone 1, that portion of Louisiana's inside waters from the Mississippi State line to the eastern shore of South Pass of the Mississippi River, to open at 12 noon May 15, 2006, except the open waters of Breton and Chandeleur Sounds as described by the double-rig line (R.S. 56:495.1(A)2) which shall open at 12 noon May 8, 2006; and

Shrimp Management Zone 3, that portion of Louisiana's inside waters from the western shore of Vermilion Bay and Southwest Pass at Marsh Island westward to the Texas State Line, to open at 12 noon May 22, 2006.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to close any portion of the state's inside waters to protect small white shrimp if biological and technical data indicates the need to do so, or enforcement problems develop.

Terry D. Denmon
Chairman

0605#030

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Shrimp Season—Zone 2

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act which allows the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall fix no less than two open seasons each year for all or part of inside waters and shall have the authority to open or close outside waters, the Wildlife and Fisheries Commission does hereby set the 2006 Spring Shrimp Season in Shrimp Management Zone 2 to open as follows:

Shrimp Management Zone 2, that portion of Louisiana's inside waters from the eastern shore of South Pass of the Mississippi River to the western shore of Vermilion Bay and Southwest Pass at Marsh Island, as well as that portion of the state's outside waters south of the Inside/Outside Shrimp Line as described in R.S. 56:495 from the eastern shore of Freshwater Bayou Canal at 92 degrees 18 minutes 33 seconds west longitude to the Atchafalaya River Channel at Eugene Island as delineated by the River Channel Buoy Line, all to open at 12 noon, May 4, 2006.

The commission also hereby grants authority to the Secretary of the Department of Wildlife and Fisheries to close any portion of the state's inside waters to protect small white shrimp if biological and technical data indicate the need to do so, or enforcement problems develop.

Terry D. Denmon
Chairman

0605#011

Rules

RULE

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Advisory Commission on Pesticides

Commercial Applicators Certification (LAC 7:XXIII.125)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, adopts an existing regulation clarifying which commercial applicators may engage in antimicrobial pest control using restricted use pesticides. Confusion has arisen as to whether pest control operators licensed by the Structural Pest Control Commission are commercial applicators who may engage in antimicrobial pest control. The department has determined that these Rules are necessary to alleviate the confusion and to ensure that there are sufficient licensed commercial applicators to help reduce the health risk to the citizens of this state. The presence of adequate numbers of commercial applicators, including pest control operators, licensed by this state will help ensure that citizens requiring antimicrobial pest control will receive such services from reputable persons answerable to a state regulatory body. The presence of licensed commercial applicators will also help reduce the risk of Louisiana citizens being "ripped off" by sham operators, thereby reducing further economic loss to citizens who can least afford further economic loss.

This Rule complies with and are enabled by R.S. 3:3203.

Title 7

AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Advisory Commission on Pesticides

Subchapter F. Certification

§125. Certification of Commercial Applicators

A. - B.2.h.iv. ...

v. Antimicrobial Pest Control (Subcategory 8e).

This subcategory is for commercial applicators, including those in Subcategory 7(a) found at LAC 7:XXIII.125.B.2.g.i, engaged in antimicrobial pest control using restricted use pesticides.

B. 2.i. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:324.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:179 (April 1983), amended LR 10:193 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 18:953 (September 1992), LR 19:735 (June 1993), LR 20:641 (June 1994), LR 21:928 (September 1995), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on

Pesticides, LR 23:193 (February 1997), LR 24:280 (February 1998), LR 28:39 (January 2002), LR 32:794 (May 2006).

Bob Odom
Commissioner

0605#037

RULE

Department of Agriculture and Forestry Office of the Commissioner Soil and Water Commission

Master Farmer Certification Program (LAC 7:XLI.Chapter 3)

The Commissioner of Agriculture and Forestry adopts regulations regarding the Master Farmer Certification Program, in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Louisiana Master Farmer Program focuses on helping agricultural producers voluntarily address the environmental concerns related to the production of agriculture, as well as enhancing their production and resource management skills that will be critical for the continued environmental and economic viability of Louisiana agriculture. This program involves producers becoming more knowledgeable about environmental stewardship, resource-based production, and resource management through a producer certification process. Individuals that complete the program are certified by the Louisiana Department of Agriculture and Forestry as a Master Farmer.

This Rule is enabled by R.S. 3:304.

Title 7

AGRICULTURE AND ANIMALS

Part XLI. Soil and Water Conservation

Chapter 3. Master Farmer Certification

§301. Definitions

Commissioner—the Louisiana Commissioner of Agriculture and Forestry.

Department—the Louisiana Department of Agriculture and Forestry.

Farm—all acreage within a watershed owned, operated or managed by an individual or legal entity if the acreage is used for the commercial production and harvesting of any agronomic, agricultural, aquacultural, floricultural, horticultural, silvicultural, or vitacultural product, including but not limited to, beans, cotton, fruits, grains, livestock, nursery stock, sugarcane, timber, crawfish, catfish, and vegetables.

LSU AgCenter—the Louisiana State University Agricultural Center.

Master Farmer—an individual who has obtained his or her master farmer certification from the commissioner.

NRCS—the Natural Resources Conservation Service of the United States Department of Agriculture.

Resource Management System Plan—an individual comprehensive whole-farm soil and water conservation plan for a farm that incorporates best management practices, meets the standards and specifications of NRCS, the department, and the affected soil and water conservation district, and is approved by the department.

Watershed—an area of land in Louisiana that drains toward a given point and which has been mapped and identified by a name and 11 digit number in accordance with United States Department of Agriculture and United States Geological Survey protocols.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:304.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:794 (May 2006).

§303. Application for Master Farmer Certification

A. The following individuals are eligible to apply to become a master farmer:

1. an individual who owns and operates one or more farms in his own name or through a legal entity in which the individual owns a controlling interest;
2. an individual who operates one or more farms on land leased by him or her;
3. an individual who manages or operates one or more farms for a legal entity in which the individual does not own a controlling interest.

B. An eligible individual may apply to the commissioner for certification as a master farmer if the individual has successfully completed the master farmer curriculum established by the LSU AgCenter, attended a model farm field day sponsored by the LSU AgCenter, and has implemented a resource management system plan for at least one farm.

C. An applicant who manages or operates one or more farms for a legal entity in which the individual does not own a controlling interest will be considered to have implemented a resource management system plan if the owner of the farm implements such a plan.

D. Each application shall be made in writing on a form approved by the commissioner and shall be accompanied by:

1. a document from the LSU AgCenter showing successful completion of the master farmer certification curriculum established by the LSU AgCenter;
2. a document from the LSU AgCenter showing attendance at a model farm field day sponsored by the LSU AgCenter; and
3. a document from NRCS or the department showing that a resource management system plan has been implemented for a farm;
4. a statement by the applicant that he or she agrees to attend at least six hours a year of continuing education approved by the LSU AgCenter or (and) the department during the time he or she holds a master farmer certification;
5. a statement by the applicant that he or she agrees to develop, implement and maintain, in accordance with these regulations, a resource management system plan for all farms the applicant owns, operates, or manages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:304.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:795 (May 2006).

§305. Issuance of Master Farmer Certification

A. The commissioner or his designee shall review each application for a master farmer certification to determine if the applicant successfully meets the requirements established by R.S. 3:304 and these regulations for obtaining a master farmer certification. If the commissioner approves an application the department shall issue a master farmer certification to the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:304.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:795 (May 2006).

§307. Cancellation of Master Farmer Certification

A. A master farmer shall remain certified as a master farmer so long as he or she actively maintains the resource management system plan in accordance with best management practices for each farm owned, operated, or managed by that individual.

B. A master farmer shall be actively maintaining a resource management system plan in accordance with best management practices so long as all of the following requirements are met.

1. The resource management system plan or best management practices incorporated into the plan are utilized and maintained on a consistent basis.

2. The records required by the resource management system plan are maintained as long as the resource management system plan is in effect.

3. Department personnel are allowed to inspect the farm or to review the records as long as the resource management system plan is in effect.

4. A comprehensive review of the resource management system plan with NRCS or the department is completed at least once every five years for the purpose of updating the plan and incorporating new best management practices as may be necessary.

5. Attendance at a minimum of six hours a year of continuing education approved by the LSU AgCenter or (and) the department.

6. The active development, maintenance, and review, in conjunction with NRCS or the department, of a resource management plan for all farms owned, operated, or managed by the individual.

C. The commissioner may cancel an individual's master farmer certification for failing to abide by the requirements established by R. S. 3:304 and these regulations only after an administrative adjudicatory hearing held in accordance with the Louisiana Administrative Procedure Act, or upon the written request or approval of the individual holding the certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:304.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 32:795 (May 2006).

Bob Odom
Commissioner

0605#036

RULE

Department of Agriculture and Forestry Structural Pest Control Commission

Termite Control Licensing
(LAC 7:XXV.101, 107, 113, 115 and 121)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission, adopts regulations combining the license phases of Termite Control and Wood Destroying Insect Report Inspector, creating a phase for certified technicians, definition of terms and adding to the requirements of obtaining a termite control license.

The Department of Agriculture and Forestry deems the implementation of these rules and regulations necessary to insure that those persons with a Termite Control License and certified technicians can properly treat and inspect for termites. This Rule allows the department to better regulate the pest control industry by insuring that they are better trained to conduct wood destroying insect inspections.

This Rule complies with and is enabled by R.S. 3:3203.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§101. Definitions

* * *

License—a document issued by the commission which authorizes the practice and/or supervision of one or more phases of structural pest control work as follows.

1. *General Pest Control*—the application of remedial or preventive measures to control, prevent or eradicate household pests by use of pesticides used as sprays, dusts, aerosols, thermal fogs, barriers, traps and baits. Residential rodent control will be limited to the use of anticoagulant rodenticide and traps.

2. *Commercial Vertebrate Control*—the application of remedial or preventive measures to control, prevent or eradicate vertebrates, including baits, chemicals, barriers, gases and traps, in nonresidential establishments, but not including tarpaulin fumigation.

3. *Termite Control*—the application of remedial or preventive measures for the control, prevention or eradication of termites and other wood-destroying insects and the inspection of structures for wood-destroying insects.

4. *Fumigation*—the use of lethal gases and/or rodenticides in a gaseous form for the control, prevention or eradication of insect pests, rodents, or other pests in a sealed enclosure with or without a tarpaulin.

* * *

Wood Destroying Insect—subterranean termites, drywood termites, powder post beetles, old house borers, carpenter ants, and carpenter bees.

Wood Destroying Insect Report—any document approved by the Structural Pest Control Commission issued by a pest control operator which pertains to wood-destroying insects, but not including a bid, a proposal or a contract for any structural pest control services.

Wood-Destroying Organisms—repealed.

Wood-Infestation Report—repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3362 and R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:323 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission LR 15:954 (November 1989), 17:251 (March 1991), LR 23:855 (July 1997), LR 30:1143 (June 2004), LR 31:26 (January 2005), LR 32:796 (May 2006).

§107. License to Engage in Structural Pest Control Work Required; Qualifications of Applicant; Requirements for Licensure; Phases of Structural Pest Control License; Conditions of the License

A. No person may perform structural pest control work of any kind, or advertise to provide structural pest control services, until licensed to do so by the commission.

B. Each applicant for license must possess one of the following qualifications in order to take the examination(s).

1. General Pest Control, Commercial Vertebrate Control and Fumigation:

a. a degree from an accredited four-year college or university with a major in entomology; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination; or

c. four years of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination; or

d. four years of experience as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations. Experience with an out-of-state structural pest control operator shall be substantiated by evidence acceptable to the commission.

2. Termite Control:

a. a degree from an accredited four-year college or university with a major in entomology and complete a commission approved comprehensive termite program; or

b. a degree from an accredited four-year college or university with at least 12 semester hours or the equivalent in quarter hours of course work in entomology and at least one year of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination and complete a Commission approved comprehensive termite program; or

c. four years of experience as a registered technician under the supervision of a licensee in the licensee phase for which the applicant desires to take the examination and complete a commission approved comprehensive termite program; or

d. four years of experience as a technician under the supervision of a structural pest control operator in another state in the licensee phase for which the individual desires to take the examinations and complete a commission approved comprehensive termite program. Experience with an out-of-

state structural pest control operator shall be substantiated by evidence acceptable to the commission.

C. - H. ...

I. All applicants who are approved by the commission will, upon successfully completing the examination for licensure as set forth in §109 hereof, receive a single license to engage in structural pest control work, which license shall specify on the face thereof the specific phase or phases of structural pest control work for which the license is issued, as follows:

1. general pest control;
2. commercial vertebrate control;
3. termite control;
4. structural fumigation;
5. ship fumigation;
6. commodity fumigation.

J. - R. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3308 and R.S. 3:3306 (redesignated R.S. 3:3366 and 3:3368).

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:326 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:955 (November 1989), LR 19:1009 (August 1993), LR 23:855 (July 1997), LR 23:1493 (November 1997), LR 32:796 (May 2006).

§113. Registration of Employees; Duties of Licensee and Registered Employee with Respect to Registration

A. Each licensee must register every employee under his supervision with the commission within 30 days after the commencement of the employee's employment and shall test as required by R.S. 3:3369.H.

B. - Q.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 32:797 (May 2006).

§115. Certified WDIR Technician

A. Requirements of a Certified WDIR technician, prior to conducting WDIR inspections, are as follows:

1. shall be registered as a termite technician, and
2. complete department approved WDIR training, and
3. pass WDIR technician test with a score of 70 or greater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:855 (July 1997), amended LR 32:797 (May 2006).

§121. Wood Destroying Insect Report

A. A wood infestation report approved by the Structural Pest Control Commission shall be issued when any inspection is made to determine the presence of wood destroying insects, specifically for acts of sale of structures, but not limited for this purpose.

B. Any wood infestation report or written instrument issued for the transfer of real property shall be issued by a person who is licensed by the Structural Pest Control Commission in Termite Control or certified WDIR technician, and is working under the supervision of a person who is licensed by the Structural Pest Control Commission

in Termite Control. This instrument shall carry a guarantee that the property will be treated without charge should live wood destroying insects with the exception, the presence of frass will be acceptable as evidence of a live infestation of Power Post Beetles; however, frass must be exuding or streaming from the holes on the outside of the wood, covered by this report, and be found within 90 days from date of inspection.

B.1. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:856 (July 1997), LR 24:631 (April 1998), LR 25:235 (February 1999), LR 25:829 (May 1999), LR 31:26 (January 2005), LR 32:797 (May 2006).

Bob Odom
Commissioner

0605#035

RULE

Board of Elementary and Secondary Education

Bulletin 121—Students Teaching and Reaching (STAR)
Content Standards Curriculum Framework
(LAC 28:CXXV.101, 301-317)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted *Bulletin 121—Students Teaching and Reaching (STAR) Content Standards Curriculum Framework*. Bulletin 121 will be printed in codified format as Part CXXV of the Louisiana Administrative Code. The addition of STAR replaces a product purchased outside of Louisiana with one developed in Louisiana. This new course is designed to strengthen the link between secondary and postsecondary education while providing students an opportunity to explore teaching as a career, in their home state of Louisiana.

Title 28

EDUCATION

Part CXXV. Bulletin 121—Students Teaching and Reaching (STAR) Content Standards Curriculum Framework

Chapter 1. General Provisions

§101. Introduction

A. In an effort to confront the national teacher shortage, Louisiana has been offering secondary courses in teacher preparation for over 10 years. Through a consolidated effort between the Louisiana Department of Education (LDOE), Northwestern State University (NSU), and the Consortium for Education, Research, and Technology of North Louisiana (CERT), a committee of various educators was formed. This committee has compiled a complete curriculum titled, STAR-Students Teaching and Reaching, to serve as the one teacher preparation course to be used by all secondary teachers in Louisiana.

B. The STAR curriculum is designed to provide a career focus by offering an overview of the teaching profession. STAR students are provided with means and guidance for self-assessment, learning about others, and diversity within

Louisiana classrooms. Students will gain a foundational knowledge of the history of education, both national and statewide. In addition, students will be provided meaningful field experiences, with an emphasis in critical shortage areas, designed to paint a realistic picture of the teaching profession. They will be given tools that help them manage what is one of the most important and ever-changing careers.

C. Mandates

1. The curriculum has "stars" on each lesson plan as well as related information. The "star" in the upper right hand corner of each lesson plan designates the lesson plan number within the curriculum. Those lesson plans that have "Required LP" above the lesson plan number are lesson plans that must be taught as a part of the curriculum. Those that do not have "Required LP" at the top are optional lesson plans to be taught if time permits.

2. Students are required to document their field experience hours on the student weekly and cumulative time sheets (in the Forms Section of the curriculum).

3. STAR students are required to have 20 hours of field experiences. They must observe in preschool/elementary, middle school, high school, and special education classrooms (for a total of no more than five hours total for all observations). The additional 15 hours of field work will be spent in one classroom doing tutorial, one-on-one, small group, and/or large group work. STAR students must teach one lesson under the close supervision of the cooperating teacher to a small group or whole class of students. STAR teachers will be responsible for securing, monitoring, and evaluating field placements for STAR students.

4. STAR students are required to complete a portfolio of their work. Specific documents to be included can be found in the STAR curriculum approved by BESE.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:797 (May 2006).

Chapter 3. Strands, Standards, Benchmarks, and Objectives

§301. Strand—Self-Assessment

A. Focus. Self-Assessment focuses on the STAR student learning about himself/herself as a person and a learner. The STAR student will become excited about gaining knowledge regarding the concept of learning through this strand.

1. Standard 1. STAR students will identify and analyze elements of self and how these relate to others.

a. Benchmark 1A. The student will explain the importance of self-esteem.

1A-1	Define self-esteem
1A-2	Examine factors that raise self-esteem

b. Benchmark 1B. The student will demonstrate techniques to build self-esteem.

1B-1	Create affirming statements for others.
1B-2	Role-play situations that model self-esteem building.

c. Benchmark 1C. The student will recognize how values and needs shape personal choices.

1C-1	Examine personal values as a tolerant community of learners.
1C-2	Explain and analyze Maslow's hierarchy of needs.
1C-3	Compare Maslow's self-actualized individual to students' view of a self-actualized person.

d. Benchmark 1D. The student will assess his/her learning style and personality type as related to student/teacher instructions.

1D-1	Complete a learning style inventory (or more than one) and relate results to personal and/or learning experiences
1D-2	Examine various facets of personality and complete a self-reporting personality inventory.
1D-3	Correlate student/teacher personality combinations to classroom expectation and student work.

e. Benchmark 1E-1. The student will develop interpersonal skills to interact effectively with students, parents, and colleagues.

1E-1	Identify and evaluate effective interpersonal skills vital to working with a variety of groups.
1E-2	Demonstrate effective communication skills in a variety of situations.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:798 (May 2006).

§303. Strand—Human Development

A. Focus. This strand naturally follows that of "Self-Assessment." Once the STAR student has learned about himself/herself as a person and a learner, he/she is ready to become skilled at recognizing the unique characteristics of others.

1. Standard 2. STAR students will characterize stages of human development.

a. Benchmark 2A. The student will explain the influence of prenatal care on human development.

2A-1	Describe prenatal factors that adversely effect children.
2A-2	Recommend ways to minimize or eliminate adverse prenatal factors.

b. Benchmark 2B. The student will trace the stages of physical, moral, social, and cognitive growth.

2B-1	Describe the stages of development in these four domains.
2B-2	Examine how knowledge of development can assist educators in planning and teaching.

c. Benchmark 2C. The student will compare typical and atypical language development and its effect on learning.

2C-1	Examine the stages of atypical language development for children.
2C-2	Recognize atypical language and how it affects learning.

d. Benchmark 2D. The student will discriminate between appropriate and inappropriate materials and activities.

2D-1	List characteristics of appropriate and inappropriate activities and materials used with diverse learners.
2D-2	Evaluate appropriateness of activities and materials according to age and/or development.

e. Benchmark 2E. Students will create materials and learning activities for diverse learners.

2E-1	Create age/developmentally appropriate learning materials.
2E-2	Create age appropriate reading book.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:798 (May 2006).

§305. Strand—Diverse Learners

A. Focus. This strand focuses on the distinctive characteristics of learners and how those characteristics affect teaching and learning.

1. Standard 3. STAR students will recognize the impact of diversity on learning.

a. Benchmark 3A. The student will apply information about brain-based learning to classroom instruction.

3A-1	Contrast the traits of left and right brain learners.
3A-2	Discuss how teachers use brain-based learning to meet needs of learners.

b. Benchmark 3B. The student will develop an understanding of diverse cultures.

3B-1	Explain how a student population can be diverse.
3B-2	Examine methods to infuse diverse cultures into lessons.

c. Benchmark 3C. The student will differentiate between various learning styles and multiple intelligences.

3C-1	Define at least four learning styles.
3C-2	Complete a multiple intelligence inventory and "exercise" a variety of intelligences.
3C-3	Demonstrate how learning styles or intelligences can be accommodated.
3C-4	Create tasks, materials, or activities appropriate for specific learner types.

d. Benchmark 3D. The student will examine the role of special education and the inclusion of learners with exceptionalities into the mainstream environment.

3D-1	Describe areas of special education and categories of students with exceptionalities.
3D-2	Define basic terminology used in special education (i.e., inclusion, least restrictive environment, self-determination).
3D-3	Propose ways to modify lessons to meet the needs of students with exceptionalities (disabilities and gifted) in general education classrooms.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:799 (May 2006).

§307. Strand—Foundations of American Education

A. Focus. Our history of education, including laws, court cases, and important events, provides a framework for understanding the system of education in America. Societal influences are integral to a full understanding of education.

1. Standard 4. STAR students will recognize the evolution of educational systems.

a. Benchmark 4A. The student will review the history of education.

4A-1	Describe individuals who have influenced American education.
4A-2	Discuss events that have influenced American education.

b. Benchmark 4B. The student will recognize effects of past and current laws and court cases.

4B-1	Summarize laws that have formed the foundation of educational practice.
4B-2	Examine benchmark court cases and identify how they have modified our educational system.

c. Benchmark 4C. The student will analyze and interpret current trends and issues effecting future education.

4C-1	Locate and synthesize information on alternatives to traditional public education.
4C-2	Identify future directions for school systems based on current available information.

d. Benchmark 4D. The student will identify functions and duties of federal, state, parish, local, and school educational authorities.

4D-1	Illustrate how educational practice is governed by federal and state entities.
4D-2	Describe the hierarchy and duties of officials on the state, parish, and local level.

e. Benchmark 4E. The student will compare and contrast major schools of educational philosophy.

4E-1	Identify schools of educational philosophy.
4E-2	Correlate schools of philosophy to educational practice.

2. Standard 5. STAR students will describe schools as a microcosm of society at large.

a. Benchmark 5A. The student will recognize the socializing features of educational systems.

5A-1	Identify the ways in which teachers and school settings teach children acceptable and unacceptable social behavior.
5A-2	Show how schools promote social and group relationships.
5A-3	Explain how schools function as centers of social activity.

b. Benchmark 5B. The student will explain the relationship between schools and society.

5B-1	Discuss the role of social conditions on schools and children.
5B-2	Evaluate ways that schools can counter problems in society exhibited in schools themselves (i.e.; violence, racism, drug abuse).

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:799 (May 2006).

§309. Strand—Instructional Design

A. Focus. Once STAR students understand themselves, others, and historical influences, they are ready to embark on learning about the practice of teaching.

1. Standard 6. STAR students will identify and model effective instruction and assessment practices.

a. Benchmark 6A. The student will relate motivation to learner performance.

6A-1	Describe external and intrinsic motivation.
6A-2	Connect teacher action to student motivation.

b. Benchmark 6B. The student will identify the basic elements of a lesson plan.

6B-1	Explain basic parts of lesson plans (i.e., anticipatory set, modeling, guided practice, independent practice, evaluation, closure).
6B-2	Explain how sequencing of activities can enhance learning.
6B-3	Describe how parts of a plan work together to form an effective lesson.

c. Benchmark 6C. The student will describe a variety of teaching practices, methods, and techniques.

6C-1	Examine scientifically-based teaching practices in a variety of content areas.
6C-2	Match teaching practices with diverse student needs.

d. Benchmark 6D. The student will construct lesson plans to meet the diverse needs of all learners.

6D-1	Write a lesson plan that includes all basic elements.
6D-2	Delineate on the lesson plan how diverse needs are met.
6D-3	Reflect on the planning process.

e. Benchmark 6E. The student will apply a variety of teaching practices, methods, and techniques.

6E-1	Utilize appropriate practices in specific settings.
6E-2	Incorporate more than one practice, method, and/or technique in a lesson.

f. Benchmark 6F. The student will construct appropriate assessments.

6F-1	Identify different assessment methods.
6F-2	Create a sample assessment device.
6F-3	Justify how and with whom the device should be used.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:800 (May 2006).

§311. Strand—Management

A. Focus. This strand focuses on the crucial role of management in effective teaching and learning. This management focus includes time management, classroom/school management, and stress as it affects teaching and learning.

1. Standard 7. STAR students will explain the role management plays in the classroom and school.

a. Benchmark 7A. The student will assess the impact of school climate and organization on learning.

7A-1	Define classroom management.
7A-2	Define time management and discuss its relationship to learning.
7A-3	Provide examples of an "inviting" an "uninviting" classroom and/or school.
7A-4	Examine how the physical arrangement of a classroom impacts learning.

b. Benchmark 7B. The student will recognize various behavior management strategies.

7B-1	Identify behavior management strategies that are proactive (i.e., assertive discipline, student generated rules, token economy).
7B-2	Examine various methods for decreasing conflict (i.e., peer mediation, conflict resolution, etc.).

c. Benchmark 7C. The student will examine stress and its effects on learning and teaching.

7C-1	Identify stress factors for both teachers and students.
7C-2	Explain methods of stress management.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:800 (May 2006).

§313. Strand—Technology

NOTE: While technology is treated as a separate strand, it should also be embedded into all of the other strands and should be interwoven through the curriculum.

A. Focus. In order to produce citizens that are able to deal with the rigors of a highly technological world, STAR students must be well versed in a variety of technologies and be able to impart this knowledge to learners.

1. Standard 8. STAR students will utilize technology to enhance planning and learning.

a. Benchmark 8A. The student will use appropriate technology to locate, evaluate, and collect information from a variety of sources (K-12 Tech Standards).

8A-1	Examine how and where to find technology to meet a variety of needs.
8A-2	Utilize a variety of technological sources to meet diverse needs in and out of the classroom.

b. Benchmark 8B. The student will use available technology to produce a variety of works.

8B-1	Create lesson plans using technology.
8B-2	Create teaching materials using technology.

c. Benchmark 8C: The student will collaborate with peers, experts, and others to compile, synthesize, and disseminate information, models, and other creative works (K-12 Tech Performance Indicators).

8C-1	Assemble information with peers through technological means.
8C-2	Publish materials utilizing technology.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:800 (May 2006).

§315. Strand—Field Experiences

A. Focus. The focus of this strand is to immerse STAR students in a variety of field experiences. Through observations in a myriad of settings and situations, STAR students will be able to make informed choices regarding their goals for the future.

1. Standard 9. STAR students will participate in a variety of field experiences.

a. Benchmark 9A. The student will observe in a variety of educational settings.

9A-1	Job shadow school personnel.
9A-2	Observe at all levels: pre-school, elementary, middle, high school, and special education programs.
9A-3	Observe a school board meeting.
9A-4	Visit an education facility/site apart from a traditional school.

b. Benchmark 9B. The student will participate in educational activities at their assigned school(s).

9B-1	Provide community service as a volunteer.
9B-2	Teach/tutor students in the classroom setting.
9B-3	Discuss classroom issues with the participating teacher.
9B-4	Reflect on field experiences in oral and written form.
9B-5	Create a portfolio documenting classroom and field experiences.

c. Benchmark 9C. The student will plan and teach a lesson.

9C-1	Develop a lesson plan containing essential elements of lesson design.
9C-2	Teach a lesson targeted for an age/developmentally appropriate audience.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:801 (May 2006).

§317. Strand 10—Professionalism

A. Focus. STAR students must have knowledge about how to become effective teachers, how to remain teachers, and the professional attributes necessary for success in the profession.

1. Standard 10. STAR students will examine qualifications and attributes of effective educators.

a. Benchmark 10A. The student will identify elements necessary for licensure.

10A-1	Describe college requirements for obtaining an education degree.
10A-2	Trace steps necessary for obtaining a teaching license.
10A-3	List and describe the basic concepts underlying LaTAAP.

b. Benchmark 10B. The student will describe job opportunities in education.

10B-1	Identify occupations that relate to or support classroom teaching.
10B-2	Determine critical need area in Louisiana and local school district.

c. Benchmark 10C. The student will compare and contrast professional organizations.

10C-1	Examine the purpose behind various professional organizations.
10C-2	Describe standards developed by content specific organization.

d. Benchmark 10D. The student will examine professional ethics for teachers.

10D-1	Define ethics.
10D-2	Describe ethical behavior for teachers.
10D-3	Identify legal responsibilities of teachers.

e. Benchmark 10E. The student will describe professional responsibilities of teachers.

10E-1	Explain those attributes individuals must possess to be professionals (timeliness, dress, attitude, compassion, cooperation, etc).
10E-2	Discuss the importance of professional development.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:801 (May 2006).

Weegie Peabody
Executive Director

0605#010

RULE

Board of Elementary and Secondary Education

Bulletin 1196—Louisiana Food and Nutrition Programs—Policies of Operation (LAC 28:XLIX.Chapter 7)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revisions to *Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation* (LAC 28:XLIX). *Bulletin 1196* is the policy manual designed to provide useful guidance and information for the purpose of improving regulatory compliance and to enhance the understanding and operation of the Child Nutrition Programs in Louisiana. This bulletin was developed as a result of the necessity to incorporate all state policy changes, which have already been implemented by the sponsors. These revisions update state policies.

**Title 28
EDUCATION**

**Part XLIX. Bulletin 1196—Louisiana Food and
Nutrition Programs, Policies of Operation**

**Chapter 7. Meal Planning and Service
§701. General**

A. The USDA School Meals Initiative for Healthy Children underscores our national health responsibility to provide healthy school meals that are consistent with the recommended Dietary Allowances (RDA), age appropriate caloric goals and the Dietary Guidelines for Americans. Every School Food Authority (SFA) should strive to serve meals that are nutritionally adequate, attractive, and moderately priced.

B. SFAs shall ensure that schools provide to children meals that meet the USDA School Meals Initiative for Healthy Children's nutrition goals. The nutritional goal of school lunches, when averaged over one week, is to provide one-third of the RDA for protein, calcium, iron, vitamin A, and vitamin C in the applicable age or grade groups as well as the energy allowances based on the appropriate age or grade groups and meal patterns listed in Appendices A, B and C of this Chapter. Breakfast should provide one-fourth of students' RDA for protein, calcium, iron, vitamin A, and vitamin C in the applicable age or grade groups as well as the energy allowances based on the appropriate age or grade groups and meal patterns listed in Appendices A, B, and C of this chapter. Lastly, school lunches shall follow the recommendations of the most recent Dietary Guidelines for Americans with emphasis on limiting total fat to 30 percent based on the actual number of calories offered, limiting saturated fat to 10 percent based on the actual number of calories offered, reducing the levels of sodium and cholesterol and increasing the level of dietary fiber.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2135 (December 2001), amended LR 29:2026 (October 2003), LR 32:802 (May 2006).

§711. Meal Planning Options

A. - D.1.b.i. ...

c. Breakfast menus must be planned to meet daily meal pattern requirements. Students must be offered four food items at breakfast. The food items must be offered in one of the three combinations listed below.

i. Breakfast Combinations Containing Required Components

Combination 1	Or Combination 2	Or Combination 3
1 Serving Milk	1 Serving Milk	1 Serving Milk
1 Juice/Fruit/Vegetable	1 Juice/Fruit/Vegetable	1 Juice/Fruit/Vegetable
2 Grains/Bread	2 Meat/Meat Alternates	1 Grains/Breads 1 Meat/Meat Alternate
Sample Breakfast		
Combination 1	Combination 2	Combination 3
Chocolate Milk	Lowfat Unflavored Milk	Whole Milk
Hash Brown Potatoes	Orange Juice	Fresh Strawberries
Large Biscuit (2 oz.)	Scrambled Egg	Cheese Toast
Orange Juice	Sausage Link	

d. Fluid milk and a food item selected from the Juice/Fruit/Vegetable component must always be offered. The fluid milk may be served as a beverage or on cereal or both. Schools must offer fluid milk in a variety of fat contents and may offer flavored, or unflavored milk and lactose-free milk. Shelf-stable milk may be used only to provide a milk option when milk requiring refrigeration may not be the best choice for service. Acceptable uses for shelf-stable milk include summer food service, satellite meal service, field trips, breakfast in the classroom and other grab and go type food service, before/after extended vacation times or other school calendar breaks or unexpected closures (hurricanes or snow days), expanding flavor choices to include flavors not available from the local dairy or regular milk provider, and special promotional or theme days. The state agency may conduct unannounced visits when reports of noncompliance are received. Failure to provide corrective action may result in withholding of funds.

e. - e.i.(a).(viii).[2].[e].[iii]. ...

(b). Vegetable/Fruit

(i). Two or more servings of different vegetables and/or fruits must be offered to meet the vegetable/fruit requirement at lunch. Menu items such as fruit cocktail or mixed vegetables are considered as only one serving. However, large combination vegetable/fruit salads served as an entree that contains at least the minimum daily requirement of vegetables/fruits in combination with a meat/meat alternate, such as a chef's salad or a fruit plate with cottage cheese, are considered as two (or more) servings of vegetable/fruit and will meet the full requirement.

(ii). Full-strength vegetable or fruit juice may not be used to meet more than one-half of the total vegetable/fruit requirement at lunch. Any product, liquid or frozen, labeled as "juice," "full-strength juice," "single-strength juice," or "reconstituted juice" is considered full strength. Liquid or frozen "juice drinks" may contain only a small amount of full-strength juice. If used to meet a part of the vegetable/fruit requirement for lunch, the product must contain a minimum of 50 percent full-strength juice. Only the full-strength juice portion may be counted toward meeting the vegetable/fruit component requirement. At breakfast, only full-strength juice may be served to meet the vegetable/fruit requirement.

(iii). Cooked dry beans or peas may be used as a meat alternate or as a vegetable, but not as both food components in the same meal. Potato chips, corn chips, and other similar chips may not be counted as a vegetable/fruit. Small amounts (less than 1/8 cup) of vegetables/fruits used for flavoring or as a garnish, may not be counted toward the vegetable/fruit requirement.

(iv). Generally, most vegetables and fruits that are to be used are listed in the USDA Food Buying Guide. In some situations, the main dish may have a CN label that documents the fruit/vegetable contribution. In situations when neither is the case, a certified product formulation statement on the product from the manufacturer containing yield information on the product must be maintained on file in the SFA to indicate the contribution toward the meal requirements.

(c). - (c).(vi). [3]. ...

(d). Milk

(i). Schools are required to offer fluid milk at breakfast and lunch. All milk served shall be pasteurized fluid types of milk that meet state and local standards. Fluid milk in a variety of fat contents should be offered. Milk can be flavored or unflavored and lactose-free. For use of shelf-stable milk refer to §711.D.1.d.

(ii). Each student must be allowed to select his/her choice from the milk varieties available. If a milkshake is offered as part of the reimbursable lunch, it must contain, at a minimum, 8 ounces of fluid milk.

(iii). No other beverage may ever be offered as a choice against milk. A school may offer another beverage in addition to milk as long as students can take both at no extra charge. A student who accepts milk shall not be charged an additional amount for juice or bottled water if these items are given away at no charge to those students who refuse milk. The student's decision to accept or decline milk cannot be used to determine whether the school will charge that student for another beverage.

(e). Other Foods

(i). Other foods refers to food items that do not meet the requirements for any component in the meal patterns. They are frequently used as condiments and seasonings, to improve meal acceptability, and to satisfy the students' appetites. Other foods supply calories that help to meet the energy needs of growing children and contribute varying amounts of protein, vitamins, and minerals essential to good nutrition. Since many of these foods are high in salt, sugar, or fat, the amount and frequency of use should be limited. Other foods must be included as part of the nutrient analysis conducted.

f. - f.ii.(b).(i). ...

(ii). Three food items from at least two different food components are required for a reimbursable breakfast. To count as a component, the student must take a full serving of that component. The full serving may be one food item or may be split among two or more food items of the same component (i.e., grains/breads or meat/meat alternate), as long as the combined total quantity served is equal to a full serving of that component: for example, one full serving equals 1/2 slice toast and 1/2 oz. whole grain or enriched cereal or 1/2 oz. lean meat and 1/2 oz. cheese.

1.f.ii.(b).(iii). - 2.b.i....

c. Breakfast menus must be planned to meet daily meal pattern requirements. Students must be offered four food items at breakfast. The food items must be offered in one of the three combinations listed below.

i. Breakfast Combinations Containing Required Components

Combination 1	Or Combination 2	Or Combination 3
1 Serving Milk	1 Serving Milk	1 Serving Milk
1 Juice/Fruit/Vegetable	1 Juice/Fruit/Vegetable	1 Juice/Fruit/Vegetable
2 Grains/Breads	2 Meat/Meat Alternates	1 Grains/Breads
		1 Meat/Meat Alternate
Sample Breakfast		
Combination 1	Combination 2	Combination 3
Chocolate Milk	Lowfat Unflavored Milk	Whole Milk
Hash Brown Potatoes	Orange Juice	Fresh Strawberries
Large Biscuit (2 oz.)	Scrambled Egg	Cheese Toast
Orange juice	Sausage Link	

d. Fluid milk and a food item selected from the Juice/Fruit/Vegetable component must always be offered. The fluid milk may be served as a beverage or on cereal or both. Schools must offer fluid milk in a variety of fat contents and may offer flavored, unflavored, and lactose-free milk. For use of shelf-stable milk refer to §711.D.1.d.

e. Menu Components

i. To meet the requirements of the National School Lunch/School Breakfast Programs, school meals must contain a specified quantity of each of the food components as described below. The quantities or serving sizes for these components vary according to the age/grade group of the students being served. (Refer to the Enhanced School Lunch/Breakfast Pattern charts found in §755.K and L. Note that the charts specify required minimum quantities for different age/grade groups.) Schools are encouraged, but not required, to vary portion sizes by grade groups; however, if a school chooses not to vary portion sizes, each group must receive at least the minimum quantities required for that group. In other words, for a given group of students, the school may serve more than the minimum quantity, but not less. In addition to the required food components, larger servings and other foods may need to be served to increase the nutritional quality and acceptability of the meal.

(a). Meat/Meat Alternate

(i). Any food item used to meet the meat/meat alternate requirement must be listed in the USDA Food Buying Guide or must have a Child Nutrition (CN) label or a certified product formulation statement. Foods that may be counted as a meat/meat alternate include lean meat, poultry or fish; cheese; egg; cooked dry beans or peas; peanut butter or other nut or seed butters; yogurt; peanuts, soynuts, tree nuts, or seeds. Alternate protein products, as outlined in this Section, may also be used as meat alternates. If schools do not offer choices of meat/meat alternates each day, it is recommended that no one meat alternate or form of meat (e.g., ground, diced, pieces) be served more than three times in a single week.

2.e.i.(a).(ii). - 2.e.i.(b).(iv). ...

(v). Generally, most vegetables and fruits that are to be used are listed in the USDA Food Buying Guide. In some situations, the main dish may have a CN label that documents the Fruit/Vegetable contribution. In situations where neither is the case, a certified product formation statement on the product from the manufacturer providing yield information on the product must be maintained on file by the SFA to indicate the contribution toward the meal requirements.

(c). - (c).(i).[3]. ...

(d). Milk

(i). Schools are required to offer milk as a beverage. All milk served shall be pasteurized fluid types of milk that meet state and local standards. Fluid milk in a variety of fat contents must be offered. Flavored, unflavored, and lactose-free milk may be offered. For use of shelf-stable milk refer to §711. D.1.d.

(ii). Each student must be allowed to select his/her choice from the milk varieties available. If a milkshake is offered as part of the reimbursable lunch, it must contain, at a minimum, 8 ounces of fluid milk.

(iii). Milk can never be offered as a choice against another beverage. A school may offer another

beverage in addition to milk as long as students can take both at no extra charge. A student who accepts milk shall not be charged an additional amount for juice or bottled water if these items are given away at no charge to those students who refuse milk. The student's decision to accept or decline milk cannot be used to determine whether the school will charge that student for another beverage.

(iv). The school meal patterns specify fluid milk as a component; the only substitutions allowed are for documented medical reasons on a case by case basis. (Refer to §727.Meal Substitutions for Medical or Dietary Reasons). Ethnic or religious reasons may also permit substitutions. (Contact the state agency for specific information.)

e.i.(e). - f.ii.(a).(vi). ...

(b). Breakfast

(i). Students must be offered all four-food items as listed in the Enhanced School Breakfast Pattern chart in §755.N. SFAs are allowed, but not required to implement Offer versus Serve at breakfast. Under this provision, students may decline one food item. The decision as to which food item to decline rests solely with the student. In schools not implementing Offer versus Serve, a student must take full portions of all food items offered.

f.ii.(b).(ii). - h.i. ...

3. Nutrient Standard Menu Planning (NSMP)

a. Nutrient Standard Menu Planning (NSMP) requires that meals are planned to meet the appropriate Nutrient Standards and requires computerized nutrient analysis of school meals using a USDA approved software program. NSMP allows menu planners to break away from the food-based method of planning menus and use a variety of foods to meet the Nutrient Standards without requiring specific food components, with the exception of fluid milk, ~~or~~ and no required amounts, except that Food of Minimal Nutritional Value (FMNV) do not count when served alone.

b. - e. ...

f. Menu Items

i. In NSMP, the menu planner uses menu items instead of food components and food items. A menu item may be a single food or a combination of foods. Whether a food can be counted as one or two menu items is determined by the way the food is served. If two or more foods are grouped together, the food items may be counted as one menu item. If the food items are served separately, they are counted as two menu items: for example, a hamburger patty served on a bun is counted as one menu item, but a hamburger patty served with a bun on the side is counted as two menu items.

(a). Entree

(i). An entree is a menu item that is a combination of foods or a single food that is served as the main dish. The entree may be any food (i.e., meat, grain, bread, fruit, vegetable, etc.) except fluid milk, condiments, or a food of minimal nutritional value. There is no entree requirement at breakfast. (Refer to 1196 Supplement Guidance and Forms for a listing of foods of minimal nutritional value.)

(b). Side Dish(es)

(i). Any menu item offered other than the entree and milk is considered a side dish. The side dish may be any food except condiments or those foods of minimal

nutritional value or have foods of minimal nutritional value as the main ingredient.

(c). Milk

(i). Schools are required to offer fluid milk as a beverage at lunch or as a beverage or on cereal at breakfast. All milk served shall be pasteurized fluid types of milk that meet state and local standards. Fluid milk in a variety of fat contents must be offered. Milk may be flavored or unflavored and lactose-free. For use of shelf-stable milk refer to §711.D.1.d.

(ii). Each student must be allowed to select his/her choice from the milk varieties available.

(iii). No other beverage may ever be offered as a choice against milk. A school may offer another beverage in addition to milk as long as students can take both at no extra charge. A student who accepts milk shall not be charged an additional amount for juice or bottled water if these items are given away at no charge to those students who refuse milk. The student's decision to accept or decline milk cannot be used to determine whether the school will charge that student for another beverage.

(d). Other Menu Items

(i). The category, other menu items, refers to any food other than the entree, fluid milk and foods of minimal nutritional value. (Refer to 1196 Supplement Guidance and Forms for a listing of foods of minimal nutritional value.) The menu planner may consider the "other menu items" category to be side dishes. Condiments such as relishes, catsup, mustard, mayonnaise, jelly, syrup, gravy, etc. may not be counted as other menu items.

g. - l.i. ...

4. Assisted Nutrient Standard Menu Planning

a. Assisted Nutrient Standard Menu Planning (ANSMP) is designed for SFAs that lack the technical resources to implement Nutrient Standard Menu Planning but would like to take advantage of its features. This option allows SFAs to use the expertise of outside entities, such as other SFAs, the state agency, or a consultant, to develop a cycle menu, recipes, procurement specifications and production schedules that will allow school meals to meet the nutrient standards. These menus, recipes, etc. must be followed precisely. The SFA must have state agency approval of initial menu cycle along with nutrient analysis, recipes, product specifications, and any other documentation requested by the state agency. (For specific requirements, refer to §711, Nutrient Standard Menu Planning., and Summary of Required Documents §709.A.5)

5. Any Reasonable Approach

a. On May 29, 1996, President Clinton signed Public Law 104-149, the Healthy Meals for Children Act, which provides that schools may use any reasonable approach to menu planning that will achieve compliance with the nutrition standards as long as the approach conforms to guidelines issued by the Department of Agriculture. SFAs must obtain state agency approval prior to implementation. (Contact your state agency for guidelines.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2137 (December 2001), amended LR 29:2027 (October 2003), LR 32:802 (May 2006).

§713. Infant Meal Patterns

A. - B.2.a. ...

3. Reimbursement for Infant Meals

a. A SFA may claim reimbursement for meals that are served to infants younger than four months of age and that contain only breast milk and no other items for four to eight months when breast milk or breast milk and one other item is provided. This regulation applies only to meals for which milk is the only required item and for which breast milk is served. If iron-fortified infant formula is served and is provided by the parent or an agency other than the SFA, reimbursement may not be claimed.

b. Meals served to infants eight months of age or older that require breast milk and at least one additional item cannot be claimed for reimbursement unless the SFA provides at least one item. Also, if the parent supplies the formula, the meal cannot be claimed. A reimbursable breakfast or lunch has three components.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2148 (December 2001), amended LR 29:2028 (October 2003), LR 32:805 (May 2006).

§727. Meal Substitutions for Medical or Dietary Reasons

A. ...

B. Any changes to the regular school meal for medical or special dietary reasons must be appropriately documented. Changes to existing diet orders must also be documented. This documentation is required to justify that the modified meal is reimbursable and to ensure that any meal modifications meet nutrition standards that are medically appropriate for the specific child. When special meals or modifications are requested, a form that includes required information should be given to the parent or guardian so that the student's physician may correctly assess the condition and identify meal changes. (Refer to the sample in 1196 Supplement Guidance and Forms) Although the form itself is not required, either a physician's statement or a diet prescription that includes the same information is required and must be kept on file in the school.

C. - C.1.f. ...

2. Students without Disabilities but with Special Dietary Needs

a. Schools may, at their discretion, make substitutions for individual children who do not have a disability as defined under 7 CFR 15b.3, but who are medically certified as having a special medical or dietary need. Such determinations must be supported by a diet prescription that specifies the need for substitution and that is signed by a recognized medical authority. The state agency currently accepts the following professionals as recognized medical authorities: physicians, physician assistants, nurse practitioners, and licensed or registered dietitians. A diet prescription submitted by a registered nurse is acceptable only when co-signed by a physician. The diet prescription must include the information provided below:

- i. an identification of the medical or other special dietary need that restricts the child's diet; and
- ii. the food or foods to be omitted from the child's diet and the food or choice of foods to be substituted.

b. Schools are not required to make substitutions for students whose conditions do not meet the definition of "children with disabilities." The special dietary needs of students that do not have a disability may frequently be managed within the regular meal service when a well-planned variety of nutritious foods is available and when Offer versus Serve is implemented.

c. For students who cannot consume fluid milk because of a medical or other special dietary need other than a disability, the SFA may choose to implement an acceptable milk substitute. The standards for the milk substitute include a nondairy beverage that is nutritionally equivalent to fluid milk, meeting all nutrition standards (established by the secretary) to levels found in cow's milk.

i. The substitutions may be made if the school/SFA notifies the state agency that the school is implementing this variation. A written statement requesting a substitute is required from a medical authority, or by a student's parent or legal guardian. Using this substitute variation, the school shall not be required to provide beverages other than beverages the school has identified as acceptable substitutes. Expenses incurred in providing these substitutions that are in excess of expenses covered by reimbursements under this Act shall be paid by the SFA.

d. If the authorized substitute foods are not normally kept in inventory or are not generally available in local markets, the parent or guardian should provide the substitute food item prescribed by the recognized medical authority.

3. Ethnic and Religious Variations

a. The Food and Nutrition Services of the USDA may approve variations in the food/menu items required for lunch and breakfast in any school where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic or religious needs. (Contact the state agency for additional information.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2149 (December 2001), amended LR 29:2028 (October 2003), LR 32:805 (May 2006).

§729. Nonstudent Meals

A. - A.2.a. ...

3. Contract Meals

a. SFAs may contract meal service to nonschool programs such as Head Start, day care programs, and elderly feeding programs. There must be an annual contract between the two agencies stipulating the necessary terms. Contracts should protect both parties and be reviewed by an attorney. (Refer to sample in 1196 Supplement Guidance and Forms.) Copies of new and renewed contracts must be submitted to the state agency. Contracts will become part of the SFAs permanent agreement with the state agency. (Refer to §337.A.1.f, Costing of Contract Meals, for additional information.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2150 (December 2001), amended LR 29:2029 (October 2003), LR 32:805 (May 2006).

§737. Extra Sales

A. Extra items may be sold only to those who have received a complete meal. The purchase of extras must occur at the time the meal is received unless the SFA has a procedure in place to determine that a student has received a complete meal. À-la-carte meal service is prohibited. Extra sale items must meet component requirements as defined by Enhanced Food-Based Menu regulations for the Child Nutrition Programs or must be an item offered on the menu that day. The only exceptions are that milkshakes, yogurt, frozen yogurt, ice cream, and ice milk (as defined by the Louisiana Sanitary Code) may be sold as extras. Full-strength juice, and milk, and bottled water (unflavored with no additives) may be sold at any time during the day to students and adults whether or not they have purchased a meal.

B. Schools must maintain proper accountability for extra sale items and must recover the full cost of producing the extra items plus a profit. At a minimum, these costs shall include food, labor (wages plus benefits), paper and nonfood supplies, transportation and utilities. (Refer to §337.A.1.i: Pricing for Extra Sales Items, for specific information concerning pricing procedures.) All monies earned or received must accrue to the school food service account.

C. Adults must be charged for all second servings. If extra sales are available at the school, each item would be sold to the adult at the appropriate price. If extra sales are not available, the adult must pay the at cost price of the meal regardless of the number of menu items served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2151 (December 2001), amended LR 29:2029 (October 2003), LR 31:1973 (August 2005), LR 32:806 (May 2006).

§741. Competitive Foods

A. Act 331 of the 2005 regular Louisiana legislative session establishes healthy standards for foods and beverages sold on school grounds within the times of 30 minutes prior to the normal school day through 30 minutes after the end of the normal school day. When food and beverage items are sold through vending, concessions or other such sales on school grounds, outside the National School Lunch Program (NSLP) and School Breakfast Program (SBP), during the times mentioned, elementary and middle school children can be offered only those products that meet or exceed the content and nutritional standards established in Act 331. When food and beverages are offered to high school students on school grounds during the times mentioned, at least 50 percent of the items offered must meet the content and nutritional standards established in Act 331. Schools must use the approved list of snacks that meet the nutritional standards established in Act 331. The snack list has been approved by Pennington Biomedical Research Center. Pennington Biomedical Research Center may recommend additional nutritional restrictions for certain nutrients based on nutritional research. Fresh pastries as defined by Pennington Biomedical Research Center will not be allowed for sale, without exception, within the times of 30 minutes prior to the normal school day through 30 minutes after the end of the normal school day.

B. A high school shall mean any school whose grade structure falls within the 6 through 12 range and includes grades in the 10 to 12 range or any school that contains only grade 9 as defined in Act 331.

C. Beverages that may be sold at any time beginning 1/2 hour before the start of the school day and ending 1/2 hour after the end of the school day for elementary and secondary schools include the following:

1. 100 percent fruit juices or vegetable juice that do not contain added natural or artificial sweeteners (no more than 16 ounces);

2. unsweetened flavored drinking water or unflavored drinking water (any size);

3. low-fat milk, skim milk, flavored milk and non-dairy milk (any size).

D. Food items which may not be sold to elementary and secondary students at any time beginning 1/2 hour before the start of the school day and ending 1/2 hour after the end of the school day are listed below:

1. foods of minimal nutritional value as defined in Section 220.2 of Title 7 of the Code of Federal Regulations;

2. snacks or desserts that exceed 150 calories per serving, have more than 35 percent of their calories from fat, or have more than 30 grams of sugar per serving, except for unsweetened or uncoated seeds or nuts.

E. Elementary Schools

1. After the end of the last lunch period, the only items that may be sold include the following:

a. Snacks or desserts that have:

i. 150 calories or less per serving;

ii. 35 percent or less of their calories from fat; and

iii. 30 grams or less of sugar per serving, (except unsweetened or uncoated seeds or nuts).

2. Reimbursement for lunch, special milk, and/or breakfast may be withheld from schools if concessions, canteens, snack bars, or vending machines are operated on a profit basis outside of the nutritional standards as established by Act 331 before the end of the last lunch period. The official school schedule shall indicate the time for each lunch period and should allow sufficient time for each student to receive and consume a meal. Such services are operated for profit if the income is not deposited to the nonprofit school food service program account and expended only for Child Nutrition Program purposes.

F. Secondary Schools (High Schools)

1.a. Beginning the last 10 minutes of each lunch period, high schools may choose to offer food and beverages of their choosing to students, so long as at least 50 percent of such items are healthy snacks. Healthy snacks are defined as having the following:

i. 150 calories or less per serving;

ii. 35 percent or less of their calories from fat; and

iii. 30 grams or less of sugar per serving, (except unsweetened or uncoated seeds or nuts).

b. The approved list of snack items can be found on the Louisiana Department of Education (LDOE) website at <http://www.louisianaschools.net>. If an item is approved for inclusion on the list of allowable food items for sale on school grounds per Act 331 and SBESE Bulletin 1196, the list is only valid for the item as submitted with nutritional information to the Louisiana Department of Education. It is

the responsibility of any school district/school, that chooses to sell such food/items, to ensure that products sold on school grounds meet the minimum standards required by Act 331 and SBESE Bulletin 1196.

2. Reimbursement for Child Nutrition Program meals may be withheld from schools if concessions, canteens, snack bars, vending machines or other food sales are operated on a profit basis before the last 10 minutes of each lunch period. The official school schedule shall indicate the time for each lunch period and should allow sufficient time for each student to receive and consume a meal. Such services are operated for profit if the income is not deposited to the nonprofit school food service program account, and expended only for the purpose of the Child Nutrition Program(s).

3. The SFA shall be required to reimburse the school food service account for any funds withheld for violation(s) of the Competitive Foods Policy. Under no circumstances can foods in competition be sold to children in food service areas during the lunch period(s).

4. School systems must establish local rules or regulations as are necessary to control the sale of foods in competition with meals served under the National School Lunch and Breakfast Programs. The state's competitive foods policy will be managed and monitored by both local and state personnel as follows.

a. Local school food service supervisors will provide principals and superintendents with information concerning the Competitive Foods Policy and regulations in regard to enforcement by the Louisiana DOE. The SFA will maintain documents that indicate each school's official schedule that includes designated times for lunch and concessions, if offered.

5. The SBESE recommends that all schools provide a minimum of 30 minutes per lunch period.

6. All complaints received by state DNA personnel regarding competitive foods violations, regardless of the source, will be forwarded to the local school food service supervisor for initial investigation.

7. Monitoring of competitive foods/concessions shall be conducted in the following manner.

a. Local school food service supervisors will have the responsibility to report to their superintendent/immediate supervisor and the principal in writing any competitive foods violations noted in the school. A written corrective action plan will be required from the principal to the superintendent with a copy to the school food service supervisor to ensure compliance.

b. The state or local SFA will make unannounced visits when notifications of violations are received. The school, organization, or individual(s) violating the competitive foods policy shall reimburse the school food service account for any funds withheld from the school food service program.

8. State DNA personnel will monitor competitive foods operations at local school systems on all state reviews or visits and shall have the responsibility and authority to assess fiscal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2151 (December 2001), amended LR 29:2029 (October 2003), LR 32:806 (May 2006).

§755. Appendices

A. - L. ...

M. Infant Breakfast and Lunch Meal Pattern

Appendix A. - Appendix L. ...

Appendix M. Infant Breakfast and Lunch Meal Pattern

Infant Breakfast Pattern			
	0-3 Months	4-7 Months	8-11 Months
Iron Fortified Formula ¹ or Breast Milk ^{2 3}	4-6 Fluid Ounces	4-8 Fluid Ounces	6-8 Fluid Ounces and
Iron Fortified Dry Infant Cereal ^{1 4}		0-3 Tablespoons (Optional)	2-4 Tablespoons and
Fruit and/or Vegetable ⁴			1-4 Tablespoons

Infant Lunch Pattern			
	0-3 Months	4-7 Months	8-11 Months
Iron Fortified Formula ¹ or Breast Milk ^{2 3}	4-6 Fluid Ounces	4-8 Fluid Ounces	6-8 Fluid Ounces and
Iron Fortified Dry Infant Cereal ^{1 4}		0-3 Tablespoons (Optional)	2-4 Tablespoons and/or 1-4 Tablespoons Meat/Alternate* and
Fruit and/Or Vegetable ⁴		0-3 Tablespoons (Optional)	1-4 Tablespoons

¹Infant formula and dry infant cereal shall be iron-fortified.

²It is recommended that breast milk be served in place of formula for infants from birth through 11 months.

³For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.

⁴A serving of this component is required only when the infant is developmentally ready to accept it.

*One to four tablespoons meat, fish, poultry, egg yolk, cooked dry beans, or peas or 1/2-2 ounces cheese or 1-4 tablespoons cottage cheese, cheese food, or cheese spread.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:191-199.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:2153 (December 2001), amended LR 29:2030 (October 2003), LR 32:807 (May 2006).

Weegie Peabody
Executive Director

0605#009

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

2005 Incorporation by Reference—Air Quality
(LAC 33:III.111, 507, 1432, 2160, 3003,
5116, 5122, 5311, and 5901)(AQ258ft)

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.111, 507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ258ft).

This rule is identical to federal regulations found in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 70.6(a), and 93, Subpart A, July 1, 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; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference (IBR) the corresponding federal regulations in 40 CFR Parts 51 (Appendix M), 60, 61, 63, 68, 70.6(a), and 93, Subpart A, July 1, 2005, into the Air Quality regulations. Exceptions to the IBR are explicitly provided in the regulations. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be incorporated by reference into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by the EPA. The basis and rationale for this rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33 ENVIRONMENTAL QUALITY

Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

* * *

Volatile Organic Compound (effective March 1, 1990)—any organic compound that participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator of the U.S. Environmental Protection Agency designates as having negligible photochemical reactivity. VOC may be measured by a reference method, an equivalent method, or an alternative method. A reference method, an equivalent method, or an alternative method, however, may also measure nonreactive organic compounds. In such cases, an

owner or operator may exclude the nonreactive organic compounds when determining compliance with a standard.

* * *

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006).

Chapter 5. Permit Procedures

§507. Part 70 Operating Permits Program

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2005. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006).

Chapter 14. Conformity

Subchapter B. Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved under Title 23 U.S.C. or the Federal Transit Act

§1432. Incorporation by Reference

A. 40 CFR Part 93, Subpart A, July 1, 2005, is hereby incorporated by reference with the exclusion of Section 105.

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 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:697 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:640 (March 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006).

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43—Capture Efficiency Test Procedures

[Editor's Note: This Subchapter was moved and renumbered from Chapter 61 (December 1996).]

§2160. Procedures

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2005, are hereby incorporated by reference.

B. - C.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:809 (May 2006).

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2005, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are Subpart EEEE, "Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006," and Subpart FFFF, "Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004," promulgated on December 16, 2005, in the *Federal Register*, 70 FR 74870-74924.

B. - B.6. ...

7. The department's emission guideline plan, required by Section 111(d) of the Clean Air Act, for Other Solid Waste Incinerator Units includes 40 CFR 60.2980-60.3078 and Tables 1-5 (70 FR 74870-74924, December 16, 2005). Until the department has a mechanism to approve training programs in compliance with 40 CFR 60.3014, the department shall accept accreditation approved by other states complying with 40 CFR 60.3014.

8. 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities, and 40 CFR Part 60, Subpart C, Emission Guidelines and Compliance Times, are not included in this incorporation by reference.

9. The minimum standards of the following emission guidelines of 40 CFR Part 60, and amendments to 40 CFR Part 60, that are incorporated by reference shall be applied to applicable units in the state.

40 CFR Part 60	Subpart Heading
	* * *
	[See Prior Text In Subparts Cb – DDDD]
Subpart FFFF	Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004 (70 FR 74870-74924, December 16, 2005)

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006).

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2005, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR Part 61	Subpart/Appendix Heading
	* * *
	[See Prior Text]

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1797 (October 1999), LR 26:2271 (October 2000), LR 27:2230

(December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2448 (October 2005), LR 32:809 (May 2006).

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Major Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2005, are hereby incorporated by reference as they apply to major sources in the state of Louisiana. Also incorporated by reference are amendments to the EPA rule entitled, "National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (Phase I Final Replacement Standards and Phase II)," promulgated on October 12, 2005, in the *Federal Register*, 70 FR 59402-59579.

B. - C.2. ...

3. 40 CFR Part 63, Subpart D, Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants; Subpart E, Approval of State Programs and Delegation of Federal Authorities; and Subpart J, National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production, are not included in this incorporation by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 25:1798 (October 1999), LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:1010 (May 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2449 (October 2005), LR 31:3115 (December 2005), LR 32:810 (May 2006).

Chapter 53. Area Sources of Toxic Air Pollutants
Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as It Applies to Area Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2005, and specifically listed in the following table, are hereby

incorporated by reference as they apply to area sources in the state of Louisiana.

40 CFR Part 63	Subpart/Appendix Heading
	* * *
	[See Prior Text]

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1464 (August 1999), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 31:1569 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2451 (October 2005), LR 32:810 (May 2006).

Chapter 59. Chemical Accident Prevention and Minimization of Consequences

Subchapter A. General Provisions

§5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2005.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:1010 (May 2004), amended by the Office of Environmental Assessment, LR 30:2463 (November 2004), LR 31:1570 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:810 (May 2006).

Herman Robinson, CPM
 Executive Counsel

0605#017

RULE

**Department of Environmental Quality
 Office of the Secretary
 Legal Affairs Division**

Compatibility and Health and Safety Requirements (LAC 33:XV.102, 322, 421, 442, 703, 706, 723, 728, 736, 737, 741, 742, 743, 755, 757, 763, and 804)(RP041ft)

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, 322, 421, 442, 703, 706, 723, 728, 736, 737, 741, 742, 743, 755, 757, 763, and 804 (Log #RP041ft).

This rule is identical to federal regulations found in 10 CFR Parts 20, 31, 35, and 39, 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; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

Louisiana's radiation regulations are being updated in order to maintain equivalency with NRC regulations for purposes of compatibility and health and safety significance. These changes are required under the Agreement State Program. Agreement states must periodically review and update their state regulations in order to remain current with federal regulations. In addition to the compatibility issues, a typographical error is being corrected in LAC 33:XV.804. The basis and rationale for this rule are to preserve compatibility of Louisiana's radiation regulations with equivalent NRC 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. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

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.

* * *

Radiation Safety Officer—one who has the knowledge and responsibility to apply appropriate radiation protection principles and regulations to control exposure to individuals and the environment. A *radiation safety officer* shall be identified on:

1. a specific medical use license issued by the agreement state or Nuclear Regulatory Commission; or
2. a medical use permit issued by a Nuclear Regulatory Commission master material licensee.

* * *

Sealed Source—any radioactive material that has been encased in a capsule constructed in such a manner as to prevent leakage or escape of any radioactive material.

* * *

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).

Chapter 3. Licensing of Radioactive Material

Subchapter C. General Licenses

§322. General Licenses: Radioactive Material Other Than Source Material

A. - D.3.c.ii. ...

d. maintain records showing compliance with the requirements of Subparagraphs D.3.b and c of this Section. The records shall show the results of tests. The records also shall show the dates of performance of, and the names of persons performing, testing, installation, servicing, and removal from installation of the radioactive material, its shielding, or containment. Records of tests for leakage of radioactive material required by Subparagraph D.3.b of this Section shall be maintained until the sealed source is transferred or disposed. Records of tests of the on-off mechanism and indicator required by Subparagraph D.3.b of this Section shall be maintained for one year after the next required test of the on-off mechanism and indicator is performed or until the sealed source is transferred or disposed. Records required by Subparagraph D.3.c of this Section shall be maintained for a period of three years from the date of the recorded event or until the device is transferred or disposed;

e. - g. ...

h. transfer the device to another general licensee only:

i. where the device remains in use at a particular location. In such case the transferor shall give the transferee a copy of this regulation and any safety documents identified in the label on the device and, within 30 days of the transfer, report to the Office of Environmental Compliance, Emergency and Radiological Services Division, the manufacturer's name and the model number of the device transferred, the name and address of the transferee, and the name and/or position of an individual who may constitute a point of contact between the department and the transferee; or

ii. where the device is held in storage by an intermediate person in the original shipping container at its intended location of use prior to initial use by a general licensee;

D.3.i. - J.4. ...

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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2567 (November 2000), LR 27:1226 (August 2001), LR 30:1663 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2524 (October 2005), LR 32:811 (May 2006).

Chapter 4. Standards for Protection against Radiation

Subchapter B. Radiation Protection Programs

§421. Radiation Dose Limits for Individual Members of the Public

A. - A.3. ...

B. If the licensee or registrant permits members of the public to have access to controlled areas, the radiation dose

limits for members of the public continue to apply to those individuals.

C. - E. ...

F. Each licensee or registrant shall conduct operations so that, notwithstanding Paragraph A.1 of this Section, a licensee or registrant may permit a visitor to an individual who cannot be released, under LAC 33:XV.725, to receive a radiation dose greater than 0.1 rem (1 mSv) if:

1. the radiation dose received does not exceed 0.5 rem (5 mSv); and

2. the *authorized user*, as defined in LAC 33:XV.102, has determined before the visit that it is appropriate.

³Retrofit shall not be required for locations within facilities where only radiation machines existed prior to January 1, 1994, and met the previous requirements of 5 mSv (0.5 rem) in a year.

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), LR 22:970 (October 1996), LR 24:2095 (November 1998), repromulgated LR 24:2243 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2576 (November 2000), amended by the Office of Environmental Assessment, LR 31:48 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:811 (May 2006).

Subchapter E. Respiratory Protection and Controls to Restrict Internal Exposure in Restricted Areas

§442. Use of Individual Respiratory Protection Equipment

A. If the licensee or registrant assigns or permits the use of respiratory protection equipment to limit intakes in accordance with LAC 33:XV.441:

1. - 3. ...

a. air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses;

b. ...

c. tests of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

d. - e. ...

f. written procedures regarding:

i. monitoring, including air sampling and bioassays;

ii. supervision and training of respirator users;

iii. fit testing;

iv. respirator selection;

v. breathing air quality;

vi. inventory and control;

vii. storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

viii. recordkeeping; and

ix. limitations on periods of respirator use and relief from respirator use;

g. determination by a physician prior to the initial fitting of a respirator, prior to the first field use of a non-face sealing respirator, and at least every 12 months thereafter, or periodically at a frequency determined by a physician, that

the individual user is medically fit to use the respiratory protection equipment;

4. - 4.a....

b. the routine, nonroutine, and emergency use of respirators; and

c. ...

5. the licensee or registrant shall make available sufficient standby rescue persons to assist all respirator users and to provide effective emergency rescue if needed, and shall provide for the availability of standby rescue persons who:

a. are required to be present in situations whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual would have difficulty extricating himself or herself;

b. must be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards; and

c. shall observe or otherwise maintain continuous communication with the workers (by visual, voice, signal line, telephone, radio, or other suitable means) and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress;

6. the licensee or registrant shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief; and

7. the licensee or registrant shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide proper visual, communication, and other special capabilities, such as adequate skin protection, when needed.

B. - D. ...

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), LR 22:972 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2577 (November 2000), LR 29:1469 (August 2003), LR 30:1666 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2529 (October 2005), LR 32:812 (May 2006).

Chapter 7. Use of Radionuclides in the Healing Arts §703. License Amendments and Provisions for Research Involving Human Subjects

A. - A.6. ...

B. A licensee may conduct research involving human subjects using radioactive material, provided that the research is conducted, funded, supported, or regulated by a federal agency that has implemented the Federal Policy for the Protection of Human Subjects. The licensee shall, before conducting such research:

1. obtain review and approval of the research from an *Institutional Review Board*, as defined and described in the Federal Policy; and

2. obtain *informed consent*, as defined and described in the Federal Policy, from the human research subject.

C. - D. ...

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 24:2101 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2587 (November 2000), LR 30:1173 (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 32:812 (May 2006).

§706. Radiation Safety Officer

A. A licensee shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation safety program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's radioactive material program.

B. - B.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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2588 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:813 (May 2006).

§723. Vial and Vial Shield Labels

A. Each vial that contains a radiopharmaceutical must be labeled to identify the radioactive drug. Each syringe shield and vial shield must also be labeled unless the label on the syringe or vial is visible when shielded.

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 by the Office of the Secretary, Legal Affairs Division, LR 32:813 (May 2006).

§728. Decay-in-Storage

A. A licensee shall hold radioactive material with a physical half-life of less than 120 days for decay-in-storage before disposal in ordinary trash and is exempt from the requirements of LAC 33:XV.460 of these regulations if the licensee:

1. ...

2. monitors radioactive material at the container surface before disposal as ordinary trash and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey instrument set on its most sensitive scale and with no interposed shielding;

A.3. - B. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1238 (August 2001), LR 30:1177 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:813 (May 2006).

§736. Safety Instruction

A. - B.4. ...

5. notification of the radiation safety officer, or his or her designee, and an authorized user, in the case of the patient's or human research subject's death or medical emergency; and

B.6. - C. ...

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 24:2105 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2589 (November 2000), LR 30:1178 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:813 (May 2006).

§737. Safety Precautions

A. - A.7. ...

B. A licensee shall notify the radiation safety officer, or his or her designee, and an authorized user immediately if the patient or human research subject dies or has a medical emergency.

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 24:2105 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2589 (November 2000), LR 30:1178 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2533 (October 2005), LR 32:813 (May 2006).

§741. Use of Sources for Brachytherapy

A. - A.5. ...

B. A licensee shall use only brachytherapy sources for therapeutic medical uses:

1. - 2. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1178 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:813 (May 2006).

§742. Safety Instructions

A. - B.4.b. ...

5. procedures for notification of the radiation safety officer, or his or her designee, and an authorized user if the patient or human research subject dies or has a medical emergency; and

B.6. - C. ...

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 24:2105 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1179 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:813 (May 2006).

§743. Safety Precautions

A. - B.2. ...

C. A licensee shall notify the radiation safety officer, or his or her designee, and an authorized user immediately if the patient or human research subject dies or has a medical emergency.

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 24:2105 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1179 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006).

§755. Dosimetry Equipment and Therapy-Related Computer Systems

A. - A.1 ...

2. The system shall have been calibrated within the previous 4 years; 18 to 30 months after that calibration, the system shall have been intercompared at an intercomparison meeting with another dosimetry system that was calibrated within the past 24 months by the National Institute of Standards and Technology or by a calibration laboratory accredited by the American Association of Physicists in Medicine. The results of the intercomparison meeting shall have indicated that the calibration factor of the licensee's system had not changed by more than 2 percent. The licensee shall not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

B. - D.5. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 30:1181 (June 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006).

§757. Periodic Spot-Checks

A. - A.2. ...

a. timer accuracy and timer linearity over the range of use;

2.b. - 9. ...

10. A licensee shall maintain a record of each spot-check required by Paragraphs A.1 and 6 of this Section for two years. The record shall include the date of the spot-check; the manufacturer's name, model number, and serial number for both the teletherapy unit and source; the manufacturer's name, model number, and serial number of the instrument used to measure the output of the teletherapy

unit; the timer accuracy and linearity; the calculated "on-off" error; a determination of the coincidence of the radiation field and the field indicated by the light beam localizing device; the timer accuracy and linearity for a typical treatment time; the calculated "on-off" error; the estimated accuracy of each distance-measuring or localization device; the difference between the anticipated output and the measured output; notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each beam condition indicator light, the viewing system, and doors; and the signature of the individual who performed the periodic spot-check.

B. - D.5.e. ...

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2590 (November 2000), LR 30:1183 (June 2004), amended by the Office of Environmental Assessment, LR 31:54 (January 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006).

§763. Training

A. - N. ...

O. Recentness of Training. The training and experience specified in Subsections A-L 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).

Chapter 8. Radiation Safety Requirements for Analytical X-Ray Equipment

§804. Area Requirements

A. ...

B. Surveys

1. Radiation surveys, as required by LAC 33:XV.430, of all analytical X-ray systems sufficient to show compliance with Subsection A of this Section shall be performed:

B.1.a. - 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 Environmental Assessment, Environmental Planning Division, LR 26:2591 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:814 (May 2006).

Herman Robinson, CPM
Executive Counsel

0605#019

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Designated Uses and Criteria for Luling Wetland,
Subsegment 020303-001
(LAC 33:IX.1123)(WQ062)

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 Water Quality regulations, LAC 33:IX.1123.Table 3 (Log #WQ062).

The rule establishes Luling Wetland as subsegment 020303-001, located west of St. Martinville. Site-specific criteria and designated uses have been established for Luling Wetland based on a scientific study conducted from August 2001 to May 2005. Results of the study are summarized in a Use Attainability Analysis (UAA) report entitled "Luling Wetland Wastewater Assimilation Use Attainability Analysis." LAC 33:IX.1123 contains numerical criteria and designated uses of water bodies and is being revised to include Luling Wetland, subsegment 020303-001. A UAA with supportive technical rationale has been developed that supports the implementation of a wastewater discharge and assimilation in Luling Wetland. This action is required to establish site-specific criteria and designated uses for Luling Wetland in the Water Quality Standards.

The UAA characterized the chemical, physical, and biological factors of Luling Wetland. Also included in the UAA are water quality analysis, sediment characterization, vegetation composition, hydrology, and productivity analysis. This data establishes base conditions and criteria to support water uses in the Luling Wetland. The UAA is located in the Standards, Assessment, and Nonpoint Source files in the Water Quality Assessment Division. According to

the regulations, a UAA is defined as "a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body." (See 40 CFR 131.3(g) and LAC 33:IX.1105.) The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The basis and rationale for this rule are to establish numerical criteria for the new Luling Wetland, subsegment 020303-001, based on the Use Attainability Analysis.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 11. Surface Water Quality Standards

§1123. Numerical Criteria and Designated Uses

A. - C.2. ...

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

- A—Primary Contact Recreation
- B—Secondary Contact Recreation
- C—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

4. Endnotes. Numbers in brackets, e.g. [1], in Table 3 refer to endnotes listed at the end of the table.

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
*** [See Prior Text in 010101 – 010901]									
Barataria Basin (02)									
*** [See Prior Text in 020101 – 020303]									
020303-001	Luling Wetland—Forested wetland located 1.8 miles south of U.S. Hwy. 90 at Luling, east of the Luling wastewater treatment pond, bordered by Cousin Canal to the west and Louisiana Cypress Lumber Canal to the south	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
*** [See Prior Text in 020304 – 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 (May 2006).

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0605#022

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Designated Uses and Criteria for South Slough Wetland, Subsegment 040604-001 (LAC 33:IX.1123)(WQ063)

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 Water Quality regulations, LAC 33:IX.1123.Table 3 (Log #WQ063).

The rule establishes South Slough Wetland as subsegment 040604-001, located southeast of Hammond. Site-specific criteria and designated uses have been established for South Slough Wetland based on a scientific study conducted from March 2003 to April 2005. Results of the study are summarized in a Use Attainability Analysis (UAA) report entitled "Hammond Wetland Wastewater Assimilation Use Attainability Analysis." LAC 33:IX.1123 contains numerical criteria and designated uses of water bodies and is being revised to include South Slough Wetland, subsegment 040604-001. A UAA with supportive technical rationale has been developed that supports the implementation of a wastewater discharge and assimilation in South Slough Wetland. This action is required to establish site-specific criteria and designated uses for South Slough Wetland in the Water Quality Standards.

The UAA characterized the chemical, physical, and biological factors of South Slough Wetland. Also included in the UAA are water quality analysis, sediment characterization, vegetation composition, hydrology, and

productivity analysis. This data establishes base conditions and criteria to support water uses in the South Slough Wetland. The UAA is located in the Standards, Assessment, and Nonpoint Source files in the Water Quality Assessment Division. According to the regulations, a UAA is defined as "a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body." (See 40 CFR 131.3(g) and LAC 33:IX.1105.) The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The basis and rationale for this rule are to establish numerical criteria for the new South Slough Wetland, subsegment 040604-001, based on the Use Attainability Analysis.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 11. Surface Water Quality Standards

§1123. Numerical Criteria and Designated Uses

A. - C.2. ...

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

- A—Primary Contact Recreation
- B—Secondary Contact Recreation
- C—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

4. Endnotes. Numbers in brackets, e.g. [1], in Table 3 refer to endnotes listed at the end of the table.

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
* * *									
[See Prior Text in 010101 – 031201]									
Lake Pontchartrain Basin (04)									
* * *									
[See Prior Text in 040101 – 040604]									
040604-001	South Slough Wetland—Forested freshwater and brackish marsh located 1.4 miles south of the City of Ponchatoula, directly east of I-55, extending to North Pass to the south and the Tangipahoa River to the east	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
* * *									
[See Prior Text in 040605 – 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 32:816 (May 2006).

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0605#023

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Designated Uses and Criteria for Cote
Gelee Wetland, Subsegment 060801-001
(LAC 33:IX.1123)(WQ064)

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 Water Quality regulations, LAC 33:IX.1123.Table 3 (Log #WQ064).

The rule establishes Cote Gelee Wetland as subsegment 060801-001, located east of Broussard. Site-specific criteria and designated uses have been established for Cote Gelee Wetland based on a scientific study conducted from February 2003 to August 2004. Results of the study are summarized in a Use Attainability Analysis (UAA) report entitled "Broussard Wetland Wastewater Assimilation Use Attainability Analysis." LAC 33:IX.1123 contains numerical criteria and designated uses of water bodies and is being revised to include Cote Gelee Wetland, subsegment 060801-001. A UAA with supportive technical rationale has been developed that supports the implementation of a wastewater discharge and assimilation in Cote Gelee Wetland. This action is required to establish site-specific criteria and

designated uses for Cote Gelee Wetland in the Water Quality Standards.

The UAA characterized the chemical, physical, and biological factors of Cote Gelee Wetland. Also included in the UAA are water quality analysis, sediment characterization, vegetation composition, hydrology, and productivity analysis. This data establishes base conditions and criteria to support water uses in the Cote Gelee Wetland. The UAA is located in the Standards, Assessment, and Nonpoint Source files in the Water Quality Assessment Division. According to the regulations, a UAA is defined as "a structured scientific assessment of the factors (chemical, physical, biological, and economic) affecting the attainment of designated uses in a water body." (See 40 CFR 131.3(g) and LAC 33:IX.1105.) The UAA process is described in 40 CFR 131.10 and LAC 33:IX.1109.B.3. It entails the methodical collection of data that is then scientifically analyzed and summarized and used to establish site-specific uses and criteria. The basis and rationale for this rule are to establish numerical criteria for the new Cote Gelee Wetland, subsegment 060801-001, based on the Use Attainability Analysis.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 11. Surface Water Quality Standards

§1123. Numerical Criteria and Designated Uses

A. - C.2. ...

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

- A—Primary Contact Recreation
- B—Secondary Contact Recreation
- C—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

4. Endnotes. Numbers in brackets, e.g. [1], in Table 3 refer to endnotes listed at the end of the table.

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
* * *									
[See Prior Text in 010101 – 050901]									
Vermilion-Teche River Basin (06)									
* * *									
[See Prior Text in 060101 – 060801]									
060801-001	Cote Gelee Wetland—Forested wetland located in Lafayette Parish, 2 miles east of Broussard, 2 miles northeast of U.S. Hwy. 90, and west of Bayou Tortue	B C	[23]	[23]	[23]	[23]	2	[23]	[23]
* * *									
[See Prior Text in 060802 – 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 32:817 (May 2006).

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0605#024

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

**Extension of Compliance Deadlines for CAFO Permits
(LAC 33:IX.2501, 2505, 2703, and 4903)(WQ066ft)**

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 Water Quality regulations, LAC 33:IX.2501, 2505, 2703, and 4903 (Log #WQ066ft).

This rule is identical to federal regulations found in 40 CFR 122.21, 23, and 42 and 412.31 and 43, as amended at 71 FR 6978 - 6984 (2/10/06), 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; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule implements the February 10, 2006, EPA rule (71 FR 6978-6984) that postpones dates established in the 2003 Concentrated Animal Feeding Operations (CAFOs) rule issued on February 12, 2003, by which facilities newly defined as CAFOs were required to seek permit coverage and by which all CAFOs were required to have nutrient management plans (NMPs) developed and implemented. EPA extended the date by which operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from February 13, 2006 to July 31, 2007. EPA also amended the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them CAFOs prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from April 13, 2006 to July 31, 2007. Finally, EPA extended the deadline by which CAFOs are required to develop and implement NMPs, from December 31, 2006 to July 31, 2007.

Under authority of the CWA which restores and maintains the chemical, physical, and biological integrity of the nation's waters, one of the core provisions of that Act is to authorize and regulate the discharge of pollutants from point sources to waters of the United States. Section 502(14) of the CWA specifically includes CAFOs in the definition of the term "point source." The Department of Environmental Quality, Office of Environmental Services, became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996. This rule is necessary in order to comply with federal regulations that require the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the EPA NPDES program. The basis and rationale for this rule are to mirror the federal regulations. This Rule promulgates Emergency Rule WQ066E that was effective on February 24, 2006, and published in the *Louisiana Register* on March 20, 2006.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality
Subpart 2. The Louisiana Pollutant Discharge
Elimination System (LPDES) Program
Chapter 25. Permit Application and Special LPDES
Program Requirements

§2501. Application for a Permit

A. - I.1.i. ...

j. for CAFOs that must seek coverage under a permit after July 31, 2007, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

I.2. - 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).

§2505. Concentrated Animal Feeding Operations

A. - G.1. ...

2. Operations Defined as CAFOs as of April 14, 2003, Which Were Not Defined as CAFOs Prior to That Date. For all such CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an LPDES permit by a date specified by the state administrative authority, but no later than July 31, 2007.

3.- 3.b. ...

c. if an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until July 31, 2007, or 90 days after becoming defined as a CAFO, whichever is later.

G.4. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:1463 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:819 (May 2006).

Chapter 27. LPDES Permit Conditions

§2703. Additional Conditions Applicable to Specified Categories of LPDES Permits

The following conditions, in addition to those set forth in LAC 33:IX.2701, apply to all LPDES permits within the categories specified below.

A. - E. ...

1. Requirements to Develop and Implement a Nutrient Management Plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and

standards. Permitted CAFOs must have their nutrient management plans developed and implemented by July 31, 2007. CAFOs that seek to obtain coverage under a permit after July 31, 2007, must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

I.a. - 4.g. ...

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 Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 32:819 (May 2006).

Chapter 49. Incorporation by Reference
§4903. 40 CFR Chapter I, Subchapter N

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2005, and amendments to 40 CFR 412.31 and 412.43 in 71 FR 6978-6984, February 10, 2006, are hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division LR 32:604 (April 2006), LR 32:819 (May 2006).

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RULE

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Financial Assurance Correction
(LAC 33:XV.399)(RP042ft)

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.399.Appendix A (Log #RP042ft).

This rule is identical to federal regulations found in 10 CFR 30.35, 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; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

Appendix A in LAC 33:XV.399, showing financial assurance arrangements, is being updated to reflect the financial assurance amendments made in state rule activity RP039ft, finalized in the *Louisiana Register* on July 20, 2005, to mirror the federal regulations for financial assurance requirements. In LAC 33:XV.325.D, the amounts of financial assurance required for decommissioning by licensees were increased to mirror the federal regulations. The updates to the amounts in the appendix were overlooked in the rulemaking at that time. This rule corrects the mistake in order to make the financial assurance requirements consistent throughout the radiation regulations and to mirror the federal regulations. The basis and rationale for this rule are to keep financial assurance requirements consistent throughout the radiation regulations and to be equivalent with the federal regulations. This Rule promulgates Emergency Rule RP042E that was effective on February 20,

2006, and published in the *Louisiana Register* on March 20, 2006.

This rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection
Chapter 3. Licensing of Radioactive Material
Subchapter Z. Appendices
§399. Schedules A and B, and Appendices A, B, C, D, E, and F
Schedule A. - Schedule B. ...

Appendix A			
Financial Assurance Arrangements			
Recommended Amounts for Mitigation, Liability, and Decommissioning			
By Title	Clean Up	Third Party &/or Off-Site Damages	Decommissioning
A. Licensees 1. Manufacturing & Distribution 2. Radiography 3. Gauges 4. Well Logging 5. Nuclear Medicine 6. Rad. Therp. 7. Acad. 8. R & D 9. Instru. Calib. 10. Irradiators 11. Ind. other than gauges 12. Consultants 13. General Lic. 14. Others not listed in category A	As determined by the chosen method	As determined by the chosen method	For Category A as a whole by quantity of material (Q): 1. $Q > 10^{10}$ x LAC 33:XV.399.Appendix D, as sealed sources = \$113,000. 2. $(10^4 \times \text{LAC 33:XV.399.Appendix D, unsealed sources}) \geq Q > (10^3 \times \text{LAC 33:XV.399.Appendix D, unsealed sources})$, or 10-100 mCi source materials, dispersible form = \$225,000. 3. $(10^5 \times \text{LAC 33:XV.399.Appendix D, unsealed sources}) \geq Q > (10^4 \times \text{LAC 33:XV.399.Appendix D, unsealed sources}) =$ \$1,125,000.
B. Low Quantity 1. In Vitro 2. Gas Chromatograph 3. Greater than or Equal to 100 x to 1000 x Exempt Quantity 4. Unsealed, discrete alpha emitters, 10 μ Ci total 5. Check sources of sufficient quantity to require leak testing	As determined by the chosen method	As determined by the chosen method	NA for this category.

Appendix B. - Appendix F. ...
 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 20:180 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning

Division, LR 26:2574 (November 2000), LR 27:1228 (August 2001), amended by the Office of Environmental Assessment, LR 31:46 (January 2005), LR 31:1580 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2528 (October 2005), LR 32:820 (May 2006).

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0605#020

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs Division

RCRA XV Package

(LAC 33:V.105, 109, 901, 905, 907, 909, 911, 921, 923, 1101, 1107, 1108, 1109, 1113, 1119, 1123, 1301, 1307, 1309, 1516, 1529, 2205, 2208, 2299, 3105, 4145, 4351, 4353, 4355, 4356, and 4901)(HW090ft)

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.105, 109, 901, 905, 907, 909, 911, 921, 923, 1101, 1107, 1108, 1109, 1113, 1119, 1123, 1301, 1307, 1309, 1516, 1529, 2205, 2208, 2299. Tables 2 and 7, 3105, 4145, 4351, 4353, 4355, 4356, and 4901 (Log #HW090ft).

This rule is identical to federal regulations found in 40 CFR 261.4, 261.32, 261. Appendices VII and VIII, 268.20, 268.40, Treatment Std. Tbl. (2/24/05); 40 CFR 260.10, 261.7, 262.20-22, 32-34, 54, 60, and Appendix, 263.20-21, 264.70-72 and 76, 265.70-72 and 76 (3/4/05); 40 CFR 260.10, 268.40, and 268.50(e) (7/1/05), 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; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule adds hazardous nonwastewaters generated from the production of certain dyes, pigments, and food, drug, and cosmetic colorants (K181) to the list of hazardous wastes. It also revises the Uniform Hazardous Waste Manifest regulations and the manifest and continuation sheet forms used to track hazardous waste from a generator's site to the site of disposition. As of September 5, 2006, the department will no longer have authorization to require hazardous waste handlers to acquire and use the Louisiana Uniform Hazardous Waste Manifest. As of that date, Uniform Hazardous Waste Manifest forms must be obtained only from EPA-registered and approved sources as identified by the Manifest Registry. These forms will be available from a greater number of sources. New procedures are adopted for tracking certain types of waste shipments with the manifest. The manifest regulations in LAC 33:V.Chapter 9 are being repealed from that location and moved to Chapters 11 and 15. This rule will make the regulations equivalent to the federal regulations in order for the state to request authorization for the RCRA Cluster XV program and maintain delegation of the hazardous waste program. This rule also corrects citations that direct the reader to sections that no longer exist, deletes LAC 33:V.1119 that creates a redundancy, and corrects a citation in the definition of "aboveground tank" that is a typographical error. The sections referenced by the incorrect citations were repealed, as required by federal regulations, in previous rulemaking. The citation corrections were overlooked in the rulemaking at that time. This rule corrects the mistakes and makes the regulations equivalent to federal language as required by the state RCRA authorization program. The basis and rationale

for this rule are to mirror the federal regulations and to maintain delegation of the hazardous waste 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. This rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions §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.g.iii. ...

iv. sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearing;

g.v. - o. ...

p. leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

i. the solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

ii. - iv. ...

v. as of February 13, 2001, the leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After November 21, 2003, leachate or gas condensate derived from K176, K177, and K178 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this Clause after the emergency ends.

D.3. - O.2.c.vi. ...

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

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

Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217, 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).

§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.

Aboveground Tank—a device meeting the definition of *tank* in this Section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

* * *

Designated Facility—

1. A *designated facility* is a hazardous waste treatment, storage, or disposal facility that:

a. has received a permit (or interim status) in accordance with the requirements of LAC 33:V.Chapters 1, 3, 5, 7, 27, 31, and 43;

b. has received a permit (or interim status) from a state authorized in accordance with 40 CFR 271; or

c. is regulated under the applicable Sections of 40 CFR 266, LAC 33:V.Chapter 41, or equivalent regulation of other states; and

d. has been designated on the manifest by the generator in accordance with LAC 33:V.105.H.

2. *Designated facility* also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with LAC 33:V.1516.C.

3. If a waste is destined for a facility in an authorized state that has not yet obtained authorization to regulate that particular waste as hazardous, then the *designated facility* must be a facility allowed by the receiving state to accept such waste.

* * *

Empty Container—

1.a. - 2.a.i.(b). ...

ii.(a). no more than 3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size; or

(b). no more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size;

2.b. - 2.c.iii. ...

* * *

Manifest—the shipping document EPA Form 8700-22 (including, if necessary, EPA Form 8700-22A), originated and signed by the generator or offeror in accordance with the instructions in the Appendix to 40 CFR Part 262 and the applicable requirements of 40 CFR Parts 262-265.

Manifest Document Number—repealed.

Manifest Tracking Number—the alphanumeric identification number that is pre-printed in Item 4 of the manifest.

* * *

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).

Chapter 9. Manifest System for TSD Facilities—Repealed

(Editor's Note: Chapter 9 is hereby repealed as of May 20, 2006. §901 moved to §1516.A; §905 moved to §1516.B; §907 moved to §1516.C; §909 moved to §1516.D; §911 requirements exist in Chapter 11; §921 requirements exist in Chapter 11; and §923 moved to §1107.E.)

**Chapter 11. Generators
Subchapter A. General**

§1101. Applicability

A. A generator who treats, stores, or disposes of hazardous waste on-site is not required to comply with the requirements of this Chapter except for the following with respect to that waste: LAC 33:V.1101.C, 1103, 1105, 1109.E, 1111.A.3 and 4, 1111.D, and 1121.

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 10:200 (March 1984), amended LR 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:660 (April 1998), LR 24:1106 (June 1998), LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:822 (May 2006).

§1107. The Manifest System

A. General Requirements. The revised manifest form and procedures in 40 CFR Part 262 and the Appendix to Part 262 shall be effective as of September 5, 2006. As of September 5, 2006, Uniform Hazardous Waste Manifest forms must be obtained only from EPA-registered and approved sources as identified by the Manifest Registry. Contact the Office of Environmental Services, Environmental Assistance Division, or access the U.S. Environmental Protection Agency's website to obtain information on EPA-registered and approved sources.

1. A generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility that offers for transport a rejected hazardous waste load, shall prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22 and, if necessary, EPA Form 8700-22A, according to the instructions included in the Appendix to 40 CFR Part 262.

2. A generator shall designate on the manifest one facility that is permitted to handle the waste described on the manifest. A generator may also designate on the manifest one alternate facility that is permitted to handle the waste in the event an emergency prevents delivery of the waste to the primary designated facility.

3. If the transporter is unable to deliver the hazardous waste to the designated facility or the alternate facility, the generator shall either designate another facility or instruct the transporter to return the waste.

A.4. - D.6. ...

E. Special Manifest Provisions

1. Scope. These provisions will apply to material in containers meeting the provisions of lab packs except that the outer container, excluding overpacking, shall not exceed 5 gallons (20 liters) in total liquid capacity prior to addition of the absorbent. The container and overpacking shall comply with applicable requirements of the Louisiana Department of Public Safety and Corrections or its successor agency. Except as otherwise provided herein, the requirements of LAC 33:V.2519 shall be met.

2. Reporting and Recordkeeping. Both the generator and disposer shall maintain copies of the manifests and other records as required elsewhere in LAC 33:V.Subpart 1. The generator and disposer shall include all such wastes in the annual report as provided in LAC 33:V.1111.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 12:319 (May 1986), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:1256 (November 1992), LR 20:1109 (October 1994), LR 21:266, 267 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September

1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006).

§1108. Manifest Tracking Numbers, Manifest Printing, and Obtaining Manifests

A. 40 CFR 262.21 and the associated appendix, July 1, 2005, are hereby incorporated by reference. 40 CFR 262.21 establishes standards and procedures for registrants who apply early to, and obtain approval from, the Director, Office of Solid Waste, US EPA, to print and distribute hazardous waste manifest forms.

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 18:1256 (November 1992), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006).

§1109. Pre-Transport Requirements

A. - B. ...

C. Marking. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must mark each container of 119 gallons or less used in such transportation with the following words and information displayed in accordance with the Department of Public Safety regulations (see Department of Public Safety regulation LAC 33:V.Subpart 2.Chapter 105).

Hazardous Waste: Federal and state law prohibits improper disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.

Generator's Name and Address _____

Generator's EPA ID Number _____

Manifest Tracking Number _____

D. Placarding. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Public Safety regulations for hazardous materials under LAC 33:V.Subpart 2.Chapter 105. If placards are not required, a generator must mark each motor vehicle according to 49 CFR 171.3(b)(1).

E. - E.1.d. ...

e. the generator complies with the requirements for owners or operators in LAC 33:V.2245, 4319, and Chapter 43.Subchapters B and C.

2. ...

3. Reserved.

4. - 12. ...

13. A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste, and who later receives that shipment back as a rejected load or residue, may accumulate the returned waste on-site depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator shall:

a. sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

b. sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

F. Waste Minimization Certification. A generator who initiates a shipment of hazardous waste must certify to one of the following statements in Item 15 of the Uniform Hazardous Waste Manifest.

1. "I am a large quantity generator. I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of treatment, storage, or disposal currently available to me that minimizes the present and future threat to human health and the environment."

2. "I am a small quantity generator. I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709, 716 (May 2001), LR 27:1014 (July 2001), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005); amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006).

§1113. Exports of Hazardous Waste

A. - E.2. ...

3. In the International Shipments block, the primary exporter shall check the export box and enter the point of exit (city and state) from the United States.

4. ...

5. The primary exporter shall obtain the manifest form from any source that is registered with the US EPA as a supplier of manifests.

E.6. - I.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006).

§1119. Personnel Training

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, LR 10:200 (March 1984), repealed by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006).

§1123. Imports of Foreign Hazardous Waste

A. - B.4. ...

C. A person who imports hazardous waste shall obtain a manifest form from any source that is registered with the US EPA as a supplier of manifests.

1. In the International Shipments block, the importer shall check the import box and enter the point of entry (city and state) into the United States.

2. The importer shall provide the transporter with an additional copy of the manifest to be submitted by the receiving facility to the US EPA.

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 22:20 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006).

Chapter 13. Transporters

§1301. Applicability

A. The revised manifest form and procedures in 40 CFR Part 262 and the Appendix to Part 262 shall be effective as of September 5, 2006. This Chapter establishes standards that apply to persons transporting hazardous waste within the state of Louisiana if the transportation requires a manifest under LAC 33:V.1516.

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 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), LR 24:1694 (September 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006).

§1307. The Manifest System

A. A transporter may not accept hazardous waste from a generator or another transporter unless it is accompanied by a manifest, signed by the generator in accordance with the provisions of LAC 33:V.1107. The transportation of any hazardous wastes without a manifest shall be deemed a violation of these regulations and the Act. In the case of exports other than those subject to LAC 33:V.1125, a transporter may not accept such waste from a primary exporter or other person:

1. if he knows the shipment does not conform to the EPA Acknowledgment of Consent; and

2. unless, in addition to a manifest signed by the generator, such waste is also accompanied by an EPA Acknowledgment of Consent that is attached to the manifest. For exports of hazardous waste subject to the requirements of LAC 33:V.1125, a transporter may not accept hazardous waste without a tracking document that includes all information required by LAC 33:V.1127.D.

B. - G. ...

1. sign and date the manifest in the International Shipments block to indicate the date that the shipment left the United States;

2. retain one copy in accordance with LAC 33:V.1311.D;

G.3. - H.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 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1109 (October 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006).

§1309. Compliance with the Manifest

A. - A.4. ...

[NOTE: No person may deliver a hazardous waste to a place other than the permitted facility shown on the manifest.]

B. If the hazardous waste cannot be delivered in accordance with Subsection A of this Section, the transporter shall contact the generator for further directions and shall revise the manifest according to the generator's instructions. If the hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

1. for a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the date and the facility's signature, the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the Discrepancy block of the original manifest. The transporter shall retain a copy of this manifest and give remaining copies of the original to the rejecting facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter shall obtain a new manifest to accompany the shipment, and the new manifest must include all of the required information;

2. for a full load rejection that will be taken back by the transporter, a copy of the original manifest which includes the date and the rejecting facility's signature and that attests to the rejection, the description of the rejection in the Discrepancy block, and the name, address, phone number, and ID number for the alternate facility to which the shipment must be delivered. The transporter shall retain a copy of the manifest and give a copy to the rejecting facility. If the original manifest is not used, the transporter must obtain a new manifest for shipment.

C. - 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 Environmental Assessment, Environmental Planning Division, LR 26:2472 (November 2000), LR 27:44 (January 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006).

Chapter 15. Treatment, Storage, and Disposal Facilities

§1516. Manifest System for Treatment, Storage, and Disposal (TSD) Facilities

A. Applicability

1. The regulations in this Section apply to owners and operators of both on-site and off-site TSD facilities, except as LAC 33:V.1501 provides. Subsections B, C, and D of this Section do not apply to owners and operators that do not receive any hazardous waste from off-site sources, or to off-site facilities with respect to military munitions exempt from requirements. Paragraph C.3 of this Section only applies to permittees who treat, store, or dispose of hazardous wastes on-site where such wastes were generated.

2. The revised manifest form and procedures in 40 CFR Part 262 and the Appendix to Part 262 shall be effective as of September 5, 2006. As of September 5, 2006, Uniform Hazardous Waste Manifest forms must be obtained only from EPA-registered and approved sources as identified by the Manifest Registry. Contact the Office of Environmental Services, Environmental Assistance Division, or access the U.S. Environmental Protection Agency's website to obtain information on EPA-registered and approved sources.

B. Use of the Manifest System

1. If a facility receives a hazardous waste accompanied by a manifest, the owner or operator, or his or her agent, shall:

a. sign and date each copy of the manifest to certify that the hazardous waste covered by the manifest was received, the waste was received except as noted in the Discrepancy block, or the waste was rejected;

b. note any significant discrepancies in the manifest (as defined in Paragraph C.1 of this Section) on each copy of the manifest. The administrative authority does not intend that the owner or operator of a facility whose procedures under LAC 33:V.1519.C include waste analysis must perform that analysis before signing the manifest and giving it to the transporter. Paragraph C.3 of this Section, however, requires reporting an unreconciled discrepancy discovered during later analysis;

c. immediately give the transporter at least one copy of the signed manifest;

d. within 30 working days after the delivery, send a signed copy of the manifest to the generator; and

e. retain at the facility a copy of each manifest for at least three years from the date of delivery.

2. If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste that is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator, or his agent, shall:

a. sign and date each copy of the manifest, or the shipping paper if the manifest has not been received, to certify that the hazardous waste covered by the manifest or shipping paper was received;

b. note any significant discrepancies (as defined in Paragraph C.1 of this Section) in the manifest, or the shipping paper if the manifest has not been received, on each copy of the manifest or shipping paper. The administrative authority does not intend that the owner or operator of a facility whose procedures under LAC 33:V.1519.C include waste analysis must perform that analysis before signing the shipping paper and giving it to the transporter. Paragraph C.3 of this Section, however, requires reporting an unreconciled discrepancy discovered during later analysis;

c. immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest, or the shipping paper if the manifest has not been received;

d. within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper, signed and dated, to the generator. LAC 33:V.1107.D.3 requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by water (bulk shipment); and

e. retain at the facility a copy of the manifest, and the shipping paper if signed in lieu of the manifest at the time of delivery, for at least three years from the date of delivery.

3. Whenever a shipment of hazardous waste is initiated from a facility, the owner or operator of that facility must comply with the requirements of LAC 33:V.1107.

4. Within three working days of the receipt of a shipment subject to LAC 33:V.Chapter 11.Subchapter B, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 1200 Pennsylvania Ave, NW, Washington, DC 20460, and to competent authorities of all other concerned countries. A copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

5. If a facility receives hazardous waste from a foreign source, the facility shall mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW (2221A), Washington, D.C. 20460-0001. In addition, the facility must, within 30 days:

a. send a copy of the signed and dated manifest or shipping paper to the generator; and

b. determine whether the consignment state or the generator state regulates any additional wastes or requires submission of any copies of the manifest to that state.

C. Manifest Discrepancies

1. Manifest discrepancies are:

a. significant differences between the quantity or type of waste designated on the manifest and the quantity or type of waste a facility actually receives;

b. rejected wastes, either full or partial shipment, the TSD facility cannot accept; or

c. container residues exceeding the quantity for *empty containers*, as defined in LAC 33:V.109.

2. Significant discrepancies in quantity are, for bulk waste, greater than 10 percent in weight and, for batch waste, variation in piece count. Discrepancies in type are those discovered through inspection or waste analysis, or toxic constituents not reported on the manifest.

3. Upon discovering a significant discrepancy, the owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator shall immediately submit to the Office of Environmental Services, Environmental Assistance Division, a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

4. Rejected Wastes or Residues

a. Upon rejecting waste or identifying container residue exceeding "empty" limits, the facility shall consult the generator prior to forwarding waste to a facility that can manage it. If it is impossible to locate an alternate facility, the facility may return the rejected waste to the generator. Waste must be sent to an alternate facility or returned to the generator within 60 days of rejection.

b. While the facility is making arrangements for forwarding rejected wastes or residues, it shall ensure that either the delivering transporter retains custody of the waste, or the facility provides custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under Paragraph C.5 or 6 of this Section.

5. Alternate Facility

a. Except as provided in Subparagraph C.5.b of this Section, for rejected wastes or residues to be sent to an alternate facility, the facility is required to prepare a new manifest in accordance with LAC 33:V.1107 and the following instructions.

i. Write the generator's EPA ID number in Item 1 of the new manifest. Write the generator's name and mailing address in Item 5, or if the generator's site address is different, write the site address in Item 5.

ii. Write the name and EPA ID number of the alternate facility in Item 8 of the new manifest.

iii. Copy the manifest tracking number in Item 4 of the old manifest to the Special Handling and Additional Information block of the new manifest, and indicate that the shipment is rejected waste or residue from the previous shipment.

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.

v. Write the DOT description for the rejected waste or residue in Item 9 of the new manifest and enter the container type, quantity, and waste volume.

vi. Sign the generator's/offeror's certification to certify that the waste has been properly packaged, marked, and labeled, and is in condition for transportation.

b. For full load rejections made while the transporter remains at the facility, the facility may forward the rejected shipment to the alternate facility by completing Item 18b of the original manifest and supplying the information in the Alternate Facility block. The facility must retain a copy of this manifest for its records and give the

remaining copies to the transporter. If the original manifest is not used, then the facility must use a new manifest and comply with Clauses C.5.a.i-vi of this Section.

6. Return to Generator

a. Except as provided in Subparagraph C.6.b of this Section, for rejected wastes or residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with LAC 33:V.1107 and the following instructions.

i. Write the facility's EPA ID number in Item 1 of new manifest. Write the generator's name and mailing address in Item 5, unless the generator's site address is different, then write the site address in Item 5.

ii. Write the name and EPA ID number of the initial generator in Item 8 of the new manifest.

iii. Copy the manifest tracking number in Item 4 of the old manifest to the Special Handling and Additional Information block of the new manifest, and indicate that the shipment is rejected waste or residue from the previous shipment.

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.

v. Write the DOT description for the rejected waste or residue in Item 9 of the new manifest and enter the container type, quantity, and waste volume.

vi. Sign the generator's/offeror's certification to certify that the waste has been properly packaged, marked, and labeled, and is in condition for transportation.

b. For full load rejections made while the transporter remains at the facility, the facility may return the rejected shipment to the generator with the original manifest by completing Items 18a and 18b of the original manifest and supplying the generator's information in the Alternate Facility block. The facility must retain a copy of this manifest for its records and give the remaining copies of the manifest to the transporter. If the original manifest is not used, then the facility must use a new manifest and comply with Clauses C.6.a.i-vi of this Section.

7. If a facility rejects waste, or identifies residue that exceeds the limits for *empty containers*, as defined in LAC 33:V.109, after it has signed, dated, and returned a copy of the manifest to the delivering transporter or generator, the facility shall amend its copy of the manifest to indicate the rejected waste or residue in the Discrepancy block of the amended manifest. The facility shall also copy the manifest tracking number in Item 4 of the new manifest to the Discrepancy block of the amended manifest, and shall re-sign and date the manifest to certify that the information is amended. The facility shall retain the amended manifest for at least three years, and shall send a copy of the amended manifest to the transporter and generator that received copies prior to amendment within 30 days.

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

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

1. the EPA identification number, name, and address of the facility;
2. the date the facility received the waste;
3. the EPA identification number, name, and address of the generator and the transporter, if available;
4. a description and the quantity of each unmanifested hazardous waste the facility received;
5. the method of treatment, storage, or disposal for each hazardous waste;
6. the certification signed by the owner or operator of the facility, or his authorized representative; and
7. a brief explanation of why the waste was unmanifested, if known.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 32:825 (May 2006).

§1529. Operating Record and Reporting Requirements

A. - C.3. ...

D. Annual Report. The owner or operator shall prepare and submit a single copy of an annual report to the Office of Environmental Services, Environmental Assistance Division, by March 1 of each year. The report form shall be used for this report. The annual report must cover facility activities during the previous calendar year. Information submitted on a more frequent basis may be included by reference or in synopsis form where it is not pertinent to reporting under LAC 33:V.1516 or monitoring reporting under LAC 33:V.3317. It shall include the following information:

D.1. - 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).

Chapter 22. Prohibitions on Land Disposal

Subchapter A. Land Disposal Restrictions

§2205. Storage of Prohibited Wastes

A. - D. ...

E. The prohibition in Subsection A of this Section does not apply to hazardous wastes that:

1. meet the treatment standards specified under LAC 33:V.2223 or 2227; or

E.2. - H. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:220 (March 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1724 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1799 (October 1999), LR 26:280 (February 2000), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:827 (May 2006).

§2208. Waste-Specific Prohibitions—Dyes and/or Pigments Production Wastes

A. Effective August 23, 2005, the waste specified in 40 CFR Part 261 as EPA Hazardous Waste Number K181, and soil and debris contaminated with this waste, radioactive wastes mixed with this waste, and soil and debris contaminated with radioactive wastes mixed with this waste are prohibited from land disposal.

B. The requirements of Subsection A of this Section do not apply if:

1. the wastes meet the applicable treatment standards specified in LAC 33:V.2223;

2. persons have been granted an exemption from a prohibition pursuant to a petition under LAC 33:V.2241,

with respect to those wastes and units covered by the petition;

3. the wastes meet the applicable treatment standards established pursuant to a petition granted under LAC 33:V.2231;

4. hazardous debris has met the treatment standards in LAC 33:V.2223, or the alternative treatment standards in LAC 33:V.2230; or

5. persons have been granted an extension to the effective date of a prohibition in accordance with LAC 33:V.2239, with respect to those wastes covered by the extension.

C. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether or not the treatment standards are expressed as concentrations in the waste extract of the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable LAC 33:V.2223 levels, the waste is prohibited from land disposal, and all requirements of this Chapter are applicable, except as otherwise specified.

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:32:828 (May 2006).

Subchapter B. Hazardous Waste Injection Restrictions §2299. Appendix—Tables 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

Table 2. Treatment Standards for Hazardous Wastes						
Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters	Non-Wastewaters	
		Common Name	CAS ² Number	Concentration in mg/L ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/L TCLP" or Technology Code ⁴	
*** [See Prior Text in D001 ⁹ – D043 ⁹]						
F001	*** [See Prior Text]	*** [See Prior Text in Acetone - Xylenes-mixed isomers (sum of o-, m, and p-xylene concentrations)]				
F002 F003 F004 F005	F003 and/or F005 solvent wastes that contain any combination of one or more of the following three solvents as the only listed F001-5 solvents: carbon disulfide, cyclohexanone, and/or methanol (see LAC 33:V.2223.F)	Carbon disulfide	75-15-0	3.8	4.8 mg/L TCLP	
		Cyclohexanone	108-94-1	0.36	0.75 mg/L TCLP	
		Methanol	67-56-1	5.6	0.75 mg/L TCLP	
		F005 solvent waste containing 2-Nitropropane as the only listed F001-5 solvent.	2-Nitropropane	79-46-9	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		F005 solvent waste containing 2-Ethoxyethanol as the only listed F001-5 solvent.	2-Ethoxyethanol	110-80-5	BIODG; or CMBST	CMBST
*** [See Prior Text in F006-F038]						
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous	*** [See Prior Text in Acenaphthylene – Aniline]				
		o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66	
*** [See Prior Text in Anthracene – Chrysene]						
		p-Cresidine	120-71-8	0.010	0.66	

Table 2. Treatment Standards for Hazardous Wastes

Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters	Non-Wastewaters
		Common Name	CAS ² Number	Concentration in mg/L ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/L TCLP" or Technology Code ⁴
	under LAC 33:V.Subchapter A. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Wastes retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.)	*** [See Prior Text in o-Cresol - Diethyl phthalate]			
		2,4-Dimethylaniline	95-68-1	0.010	0.66
		*** [See Prior Text in 2,4-Dimethyl phenol – Phenol]			
		1,3-Phenylenediamine	108-45-2	0.010	0.66
		*** [See Prior Text in Phorate – Vanadium]			
	*** [See Prior Text in K001 – K178]				
K181	Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in LAC 33:V.4901.C.2 that are equal to or greater than the corresponding LAC 33:V.4901.C.2 levels, as determined on a calendar year basis.	Aniline	62-53-3	0.81	14
		o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66
		4-Chloroaniline	106-47-8	0.46	16
		p-Cresidine	120-71-8	0.010	0.66
		2,4-Dimethylaniline (2,4-xylydine)	95-68-1	0.010	0.66
		1,2-Phenylenediamine	95-54-5	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN	CMBST; or CHOXD fb (BIODG or CARBN); or BIODG fb CARBN
		1,3-Phenylenediamine	108-45-2	0.010	0.66
	*** [See Prior Text in P001 – U411]				

Footnote 1 - Footnote 12 ...
[Note: NA means Not Applicable.]

Table 3 - Table 6 ...

Table 7. Universal Treatment Standards

Regulated Constituent-Common Name	CAS ¹ Number	Wastewater Standard Concentration in mg/L ²	Nonwastewater Standard Concentration in mg/kg ³ unless noted as "mg/L TCLP"
Organic Constituents			
*** [See Prior Text in Acenaphthylene - Aniline]			
o-Anisidine (2-methoxyaniline)	90-04-0	0.010	0.66
*** [See Prior Text in Anthracene - Chrysene]			
p-Cresidine	120-71-8	0.010	0.66
*** [See Prior Text in o-Cresol - Diethyl phthalate]			
2,4-Dimethylaniline (2,4-xylydine)	95-68-1	0.010	0.66
*** [See Prior Text in 2,4-Dimethyl phenol - Phenol]			
1,3-Phenylenediamine	108-45-2	0.010	0.66
*** [See Prior Text in Phorate - Xylenes-mixed isomers (sum of o-, m-, and p- xylene concentrations)]			
Inorganic Constituents			
*** [See Prior Text in Antimony - Zinc ⁵]			

Footnote 1 – Footnote 8 ...
[Note: NA means Not Applicable]

Table 8 - 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).

Chapter 31. Incinerators
§3105. Applicability

A. - E. ...

Table 1. Hazardous Constituents			
Common Name	Chemical Abstracts Name	Chemical Abstracts Number	Hazardous Waste Number
* * *			
[See Prior Text in A2213 - Aniline]			
o-Anisidine (2-methoxyaniline)	Benzenamine, 2-Methoxy-	90-04-0	
* * *			
[See Prior Text in Antimony - Creosote]			
p-Cresidine	2-Methoxy-5-methylbenzenamine	120-71-8	
* * *			
[See Prior Text in Cresol (cresylic acid) - p-Dimethylaminoazobenzene]			
2,4-Dimethylaniline (2,4-xylydine)	Benzenamine, 2,4-dimethyl-	95-68-1	
* * *			
[See Prior Text in 7,12-Dimethylbenz[a]anthracene - Phenylenediamine]			
1,2-Phenylenediamine	1,2-Benzenediamine	95-54-5	
1,3-Phenylenediamine	1,3-Benzenediamine	108-45-2	
* * *			
[See Prior Text in Phenylmercury acetate - Ziram]			

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).

Chapter 41. Recyclable Materials
Subchapter C. Special Requirements for Group III Recyclable Materials

§4145. Spent Lead-Acid Batteries Being Reclaimed

A. - Table. ...

B. Requirements. The requirements of this Section apply to you if you store spent lead-acid batteries before you reclaim them, but you don't reclaim them through regeneration. The requirements are slightly different depending on your RCRA permit status.

1. For interim status facilities, you must comply with:

a. notification requirements under Section 3010 of RCRA and LAC 33:V.105;

b. all applicable provisions in LAC 33:V.Chapter 43, except LAC 33:V.4313 (waste analysis), and 4353 and 4355 (dealing with the use of the manifest and manifest discrepancies); and

c. all applicable provisions in LAC 33:V.Chapters 3, 5, and 7.

2. For permitted facilities, you must comply with:

a. notification requirements under Section 3010 of RCRA and LAC 33:V.105;

b. all applicable provisions in LAC 33:V.Chapter 15, except LAC 33:V.1519, 1521, 1523, 1525, 1527, 1529, and 1531;

c. all applicable provisions in LAC 33:V.1516, except Subsections B and C (dealing with the use of the manifest and manifest discrepancies); and

d. all applicable provisions in LAC 33:V.Chapters 3, 5, 7, 19, 21, 23, 29, 33, 35, and 37.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 13:237 (April 1987), LR 23:579 (May 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:287 (February 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:611 (April 2006), LR 32:830 (May 2006).

Chapter 43. Interim Status
Subchapter D. Manifest System, Recordkeeping, and Reporting

§4351. Applicability

A. The regulations in this Subchapter apply to owners and operators of both on-site and off-site facilities, except as LAC 33:V.4307 provides otherwise. LAC 33:V.4353, 4355, and 4363 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources, nor to owners and operators of off-site facilities with respect to military munitions waste.

B. The revised manifest form and procedures in 40 CFR 260.10, 261.7, 265.70, 265.71, 265.72, and 265.76 shall be effective as of September 5, 2006. The manifest form and procedures in the July 1, 2004 CFR shall be applicable until September 5, 2006.

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 24:1109 (June 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 32:830 (May 2006).

§4353. Use of the Manifest System

A. Interim status facilities must comply with LAC 33:V.1516.

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 17:367 (April 1991), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006).

§4355. Manifest Discrepancies

A. Interim status facilities must comply with LAC 33:V.1516.

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 17:367 (April 1991), amended by the Office of the Secretary, Legal Affairs Division, LR 32:831 (May 2006).

§4356. Unmanifested Waste Report

A. Interim status facilities must comply with LAC 33:V.1516.

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 32:831 (May 2006).

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.c.xii., certification. ...

C. Hazardous wastes from specific sources are listed in Table 2 of this Section.

Table 2. Hazardous Wastes from Specific Sources		
Industry and EPA Hazardous Waste Number	Hazard Code	Hazardous Waste

[See Prior Text in Wood Preservation, K001 – Inorganic Pigments, K008]		
Organic Chemicals		

[See Prior Text in K009 – K175]		
K181	(T)	Nonwastewaters from the production of dyes and/or pigments (including nonwastewaters commingled at the point of generation with nonwastewaters from other processes) that, at the point of generation, contain mass loadings of any of the constituents identified in LAC 33:V.4901.C.2 that are equal to or greater than the corresponding LAC 33:V.4901.C.2 levels, as determined on a calendar year basis. These wastes will not be hazardous if the nonwastewaters are: (i) disposed in a Subtitle D landfill unit subject to the design criteria in 40 CFR 258.40; (ii) disposed in a RCRA Subtitle C landfill unit subject to either 40 CFR 264.301 or 265.301; (iii) disposed in other Subtitle D landfill units that meet the design criteria in 40 CFR 258.40, 264.301, or 265.301; or (iv) treated in a combustion unit that is permitted under RCRA Subtitle C, or an onsite combustion unit that is permitted under the Clean Air Act. For the purposes of this listing, <i>dyes and/or pigments production</i> is defined in LAC 33:V.4901.C.1. LAC 33:V.4901.C.3 describes the process for demonstrating that a facility's nonwastewaters are not K181. This listing does not apply to wastes that are otherwise identified as hazardous under 40 CFR 261.21-24 and 261.31-33 at the point of generation. Also, the listing does not apply to wastes generated before any annual mass loading limit is met.

[See Prior Text in Inorganic Chemicals, K071 – Coking, K148]		

1. Listing-Specific Definitions. For purposes of the K181 listing, the following definition applies.

Dyes and/or Pigments Production—includes manufacture of the following product classes: dyes, pigments, and FDA certified colors that are classified as azo, triarylmethane, perylene, or anthraquinone classes. Azo products include azo, monoazo, diazo, triazo, polyazo, azoic, benzidine, and pyrazolone products. Triarylmethane products include both triarylmethane and triphenylmethane products. Wastes that are not generated at a dyes and/or pigments manufacturing site, such as wastes from the offsite use, formulation, and packaging of dyes and/or pigments, are not included in the K181 listing.

2. K181 Listing Levels. Nonwastewaters containing constituents in amounts equal to or exceeding the following levels during any calendar year are subject to the K181 listing, unless the conditions in the K181 listing are met.

Constituent	Chemical Abstracts No.	Mass Levels (kg/yr)
Aniline	62-53-3	9,300
o-Anisidine	90-04-0	110
4-Chloroaniline	106-47-8	4,800
p-Cresidine	120-71-8	660
2,4-Dimethylaniline	95-68-1	100
1,2-Phenylenediamine	95-54-5	710
1,3-Phenylenediamine	108-45-2	1,200

3. Procedures for Demonstrating That Dyes and/or Pigment Nonwastewaters Are Not K181. The procedures described in Subparagraphs C.3.a-c and e of this Section establish when nonwastewaters from the production of dyes/pigments would not be hazardous (these procedures apply to wastes that are not disposed in landfill units or treated in combustion units as specified in Table 2 of this Subsection). If the nonwastewaters are disposed in landfill units or treated in combustion units, as described in Table 2 of this Subsection, then the nonwastewaters are not hazardous. In order to demonstrate that it is meeting the landfill disposal or combustion conditions contained in the K181 listing description, the generator must maintain documentation as described in Subparagraph C.3.d of this Section.

a. Determination Based on No K181 Constituents. Generators that have knowledge (e.g., knowledge of constituents in wastes based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed) that their wastes contain none of the K181 constituents (see Paragraph C.2 of this Section) can use their knowledge to determine that their waste is not K181. The generator must document the basis for all such determinations on an annual basis and keep each annual documentation for three years.

b. Determination for Generated Quantities of 1,000 MT/yr or Less for Wastes That Contain K181 Constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is 1,000 metric tons or less, the generator can use knowledge of the wastes (e.g., knowledge of constituents in wastes based on prior analytical data and/or information about raw materials used, production processes used, and reaction and degradation products formed) to conclude that annual mass loadings for the K181 constituents are below the listing levels of Paragraph C.2 of this Section. To make this determination, the generator must:

- i. each year document the basis for determining that the annual quantity of nonwastewaters expected to be generated will be less than 1,000 metric tons;
- ii. track the actual quantity of nonwastewaters generated from January 1 through December 31 of each year. If, at any time within the year, the actual waste quantity exceeds 1,000 metric tons, the generator must comply with the requirements of Subparagraph C.3.c of this Section for the remainder of the year;

iii. keep a running total of the K181 constituent mass loadings over the course of the calendar year; and

iv. keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(a) the quantity of dyes and/or pigment nonwastewaters generated;

(b) the relevant process information used; and

(c) the calculations performed to determine annual total mass loadings for each K181 constituent in the nonwastewaters during the year.

c. Determination for Generated Quantities Greater than 1,000 MT/yr for Wastes That Contain K181 Constituents. If the total annual quantity of dyes and/or pigment nonwastewaters generated is greater than 1,000 metric tons, the generator must perform all of the steps described in Clauses C.3.c.i-xi of this Section in order to make a determination that its waste is not K181.

i. Determine which K181 constituents (see Paragraph C.2 of this Section) are reasonably expected to be present in the wastes based on knowledge of the wastes (e.g., based on prior sampling and analysis data and/or information about raw materials used, production processes used, and reaction and degradation products formed).

ii. If 1,2-phenylenediamine is present in the wastes, the generator can use either knowledge or sampling and analysis procedures to determine the level of this constituent in the wastes. For determinations based on use of knowledge, the generator must comply with the procedures for using knowledge described in Subparagraph C.3.b of this Section and keep the records described in Clause C.3.b.iv of this Section. For determinations based on sampling and analysis, the generator must comply with the sampling and analysis and recordkeeping requirements described in Clauses C.3.c.iii-xi of this Section.

iii. Develop a waste sampling and analysis plan (or modify an existing plan) to collect and analyze representative waste samples for the K181 constituents reasonably expected to be present in the wastes. At a minimum, the plan must include:

(a) a discussion of the number of samples needed to characterize the wastes fully;

(b) the planned sample collection method to obtain representative waste samples;

(c) a discussion of how the sampling plan accounts for potential temporal and spatial variability of the wastes;

(d) a detailed description of the test methods to be used, including sample preparation, cleanup (if necessary), and determinative methods.

iv. Collect and analyze samples in accordance with the waste sampling and analysis plan.

(a) The sampling and analysis must be unbiased, precise, and representative of the wastes.

(b) The analytical measurements must be sufficiently sensitive, accurate, and precise to support any claim that the constituent mass loadings are below the listing levels of Paragraph C.2 of this Section.

v. Record the analytical results.

vi. Record the waste quantity represented by the sampling and analysis results.

vii. Calculate constituent-specific mass loadings (product of concentrations and waste quantity).

viii. Keep a running total of the K181 constituent mass loadings over the course of the calendar year.

ix. Determine whether the mass of any of the K181 constituents listed in Paragraph C.2 of this Section generated between January 1 and December 31 of any year is below the K181 listing levels.

x. Keep the following records on site for the three most recent calendar years in which the hazardous waste determinations are made:

(a). the sampling and analysis plan;

(b). the sampling and analysis results (including QA/QC data);

(c). the quantity of dyes and/or pigment nonwastewaters generated;

(d). the calculations performed to determine annual mass loadings.

xi. Nonhazardous waste determinations must be conducted annually to verify that the wastes remain nonhazardous.

(a). The annual testing requirements are suspended after three consecutive successful annual demonstrations that the wastes are nonhazardous. The generator can then use knowledge of the wastes to support subsequent annual determinations.

(b). The annual testing requirements are reinstated if the manufacturing or waste treatment processes generating the wastes are significantly altered, resulting in an increase of the potential for the wastes to exceed the listing levels.

(c). If the annual testing requirements are suspended, the generator must keep records of the process knowledge information used to support a nonhazardous determination. If testing is reinstated, a description of the process change must be retained.

d. Recordkeeping for the Landfill Disposal and Combustion Exemptions. For the purposes of meeting the landfill disposal and combustion condition set out in the K181 listing description, the generator must maintain on site for three years documentation demonstrating that each shipment of waste was received by a landfill unit that is subject to or meets the landfill design standards set out in the listing description, or was treated in combustion units as specified in the listing description.

e. Waste Holding and Handling. During the interim period, from the point of generation to completion of the hazardous waste determination, the generator is responsible for storing the wastes appropriately. If the wastes are determined to be hazardous and the generator has not complied with the RCRA Subtitle C requirements during the interim period, the generator could be subject to an enforcement action for improper management.

D. - G. ...

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).

Herman Robinson, CPM
Executive Counsel

0605#018

RULE

**Office of the Governor
Commission on Law Enforcement and
Administration of Criminal Justice**

Peace Officer Training (LAC 22:III.4743)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S. 40:905 et seq., the Administrative Procedure Act, the Peace Officer Standards and Training Council hereby amends its rules and regulations relative to the training of peace officers.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

**Part III. Commission on Law Enforcement and
Administration of Criminal Justice**

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4743. Training Center Records

A. Each accredited training center shall develop and maintain a records management program consistent with state law (R.S. 44:411) and its own department policies, where appropriate.

B. The training center must, as part of its record management program, retain its training records for a minimum period of at least five years so its mandated POST comprehensive performance review can be conducted as required by R.S. 40:2404(5).

C. Record retention and disposal schedules shall be continuously updated as part of the training center's record management program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

Table 6.
Table of Constituents that Serve as a Basis for Listing Hazardous Waste

[See Prior Text in EPA Hazardous Waste Number F001 – EPA Hazardous Waste Number K178]
EPA Hazardous Waste Number K181
Aniline; o-anisidine; 4-chloroaniline; p-cresidine; 2,4-dimethylaniline; 1,2-phenylenediamine; 1,3-phenylenediamine

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 32:833 (May 2006).

Michael A. Ranatza
Executive Director

0605#004

RULE

**Office of the Governor
Division of Administration
Board of Cosmetology**

Examination of Applicants; Transfer Students
(LAC 46:XXXI.309 and 313)

The Louisiana State Board of Cosmetology, under authority of the Louisiana Cosmetology Act, R.S. 37:561-607, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended certain Rules regarding examinations of applicants and transfer of students who attended schools which are unable to provide certification of payment of contractually owed fees due to temporary or permanent closure or due to loss of records.

The revision is necessary to change the requirements for applying for an examination, for a certificate of registration or for a license when the school attended by the applicant is unable to provide certification of payment of contractually owed fees due to temporary or permanent closure or due to loss of records.

There should be no adverse fiscal impact on the state as a result of these revisions. The Louisiana State Board of Cosmetology operates solely on self-generated funds. Further, the Rule has no known impact on family formation, stability or autonomy as described in R.S. 49:972.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XXXI. Cosmetologists

Chapter 3. Schools and Students

§309. Examination of Applicants

A. - B. ...

C. Fees

1. All fees contractually owed by an applicant to a cosmetology school from which they graduated must be paid before applying for an examination, for a certificate of registration or for a license. If the school attended by the applicant is unable to issue a certification due to temporary or permanent closure or loss of records, the applicant shall not be required to provide the certification required by this section in order to apply for an examination, for a certificate of registration or for a license.

2. Any applicant who does not provide the certification required by this Section prior to applying for an examination must provide the certification prior to issuance of a certificate of registration or a license, if the cosmetology school from which they graduated is able to issue the certification prior to issuance of the certificate of registration or license.

3. Any applicant who does not provide the certification required by this section prior to issuance of a certificate of registration or a license, shall provide the

certification required by this subsection prior to renewing the certificate of registration or license, if the cosmetology school from which they graduated is able to issue the certification prior to renewal of the certificate of registration or license.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(4) and 37:586.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003), amended LR 32:834 (May 2006).

§313. Transfer Students

A. ...

B. In-State. When enrolling a transfer student from another school within Louisiana, the school owner must provide the board with the following:

1. ...

2. certification of payment of contractual fees owed to the former school, unless the former school is unable to certify payment of contractual fees owed due to temporary or permanent closure or loss of records; however, any student who transfers without certifying payment of contractual fees owed, shall provide certification of payment of contractual fees owed to the former school prior to applying for an examination, certificate of registration, license or renewal of the certificate of registration or license in accordance with §309.

B.3. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:598(A)(4).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003), amended LR 32:834 (May 2006).

Jackie Burdette
Executive Director

0605#074

RULE

**Office of the Governor
Division of Administration
Board of Cosmetology**

Student Hours; Uniforms; Equipment, Permits, and Licenses
(LAC 46:XXXI.311, 321, 502, 701,
705, 707, 709, 713, 1109, 1111, 1113)

The Louisiana State Board of Cosmetology, under authority of the Louisiana Cosmetology Act, R.S. 37:561-607, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended certain rules regarding responsibilities of schools, students, employment of managers, permits for shampoo assistants, safety and sanitation requirements and special and temporary permits.

These revisions are necessary to clarify the responsibilities of schools, students, the requirements for employing a manager, the requirements for obtaining a special permit as a shampoo assistant, to define the scope of practice for shampoo assistants, to revise rules regarding safety and sanitation and to revise rules regarding the issuance of special permits and temporary permits.

There should be no adverse fiscal impact on the state as a result of these revisions. The Louisiana State Board of

Cosmetology operates solely on self-generated funds. Further, the Rule has no known impact on family formation, stability or autonomy as described in R.S. 49:972.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXI. Cosmetologists

Chapter 3. School and Students

§311. Reporting Student Hours

A. ...

B. Hours. Schools must register each student's hours with the board no later than on the tenth of the month for hours earned by each student in the prior month.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:598.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:327 (March 2003), amended LR 32:835 (May 2006).

§321. Responsibilities of Students

A. - B.

C. School Uniforms. Students attending schools shall maintain a professional image and shall wear clean uniforms.

1. Female students may wear pants or skirts; however, skirt hemlines must not be shorter than just above the knee.

2. Students may wear white lab coats with white shirt and black trousers.

3. Students must wear clean, enclosed shoes with sock and/or hose.

4. Students shall wear a nametag with their name and the word student.

5. The following items may not be worn:

- a. leggings;
- b. capri pants;
- c. tube tops;
- d. jeans;
- e. shorts;
- f. jogging suits;
- g. undershirts;
- h. sandals;
- i. flip flops;
- j. low waist pants;
- k. tank tops;
- l. shirts which expose the midriff;
- m. tops with spaghetti straps;
- n. clothing which is made of see through fabric.

D. Testing. Students taking examinations shall wear school uniforms as required by this Section except no nametag shall be worn while testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:329 (March 2003), amended LR 29:2781 (December 2003), LR 32:835 (May 2006).

Chapter 5. Licensees

§502. Managers

A. For purposes of R.S. 37:589 a shop owner shall not be required to employ a manager, if absent from his shop more than two days per week during periods of vacation or sickness, provided such periods of absence do not exceed 8 weeks annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 32:835 (May 2006).

Chapter 7. Safety and Sanitation Requirements

§701. Sanitation Requirements for Cosmetology Salons and Cosmetology Schools

A. ...

B. Supplies. All beauty shops and salons and cosmetology schools shall have available sterilizers or sanitizers which shall be used in accordance with the manufacturer's instructions. All instruments, including disposable equipment shall be kept clean and sanitized.

C. - Q. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:329 (March 2003), amended LR 29:2781 (December 2003), LR 32:835 (May 2006).

§705. Equipment Required in Salons Offering Hair Dressing Services

A. - A.7. ...

8. sterilizer or sanitizers for each occupied station.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:330 (March 2003), amended LR 32:835 (May 2006).

§707. Equipment Required in Salons Offering Esthetics Services

A. - A.3. ...

4. sanitizers or sterilizer for implements;

A.5. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:330 (March 2003), amended LR 32:835 (May 2006).

§709. Equipment Required in Salons Offering Manicuring Services

A. ...

1. sanitizer or sterilizer for implements;

2. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:330 (March 2003), amended LR 32:835 (May 2006).

§713. Procedures for Manicuring Services

A. - A.2. ...

3. wash all implements with antimicrobial wash prior to sanitization or sterilization;

4. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(A)(9).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:331 (March 2003), amended LR 32:835 (May 2006).

Chapter 11. Special and Temporary Permits

§1109. Special Permit for Shampoo Assistants

A. - C. ...

D. Scope. Shampoo assistants possessing a current special permit may perform the following services at the request of a licensed cosmetologist:

1. cleanse synthetic or natural hair;
2. apply and remove conditioner;
3. apply and rinse perm solution and perm neutralizer;
4. remove hair color, tint or other chemicals applied to natural hair by a cosmetologist; and
5. remove foil or perm rods.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:332 (March 2003), amended LR 29:2781 (December 2003), LR 32:835 (May 2006).

§1111. Special Permit for Make-Up Application

A. - B. ...

C. The 40-hour curriculum for make-up artists shall include a minimum of:

1. two hours of study of composition of facial cosmetics;
2. two hours of study and two hours of practical work in recognition of facial shapes;
3. two hours of study of make-up cosmetics and purpose;
4. three hours of study and 12 hours of practical work in make-up application;
5. three hours of study and 10 hours of practical work in procedure for corrective make-up;
6. one hour of study and two hours of practical work in procedure for evening make-up;
7. one hour of study in safety and sanitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:332 (March 2003), amended LR 32:836 (May 2006).

§1113. Temporary Permits

A. Permits. The board shall issue permits to persons who are licensed to practice cosmetology, esthetics or manicuring in another state.

B. Applications

1. Applications for temporary permits to participate in hair shows, beauty pageants or demonstrations shall be submitted to the board for review not less than 30 days prior to the requested period of the permit.

2. Applications for temporary permits pending application and testing shall be issued to individuals who:

- a. have filed a complete application for licensure;
- b. have provided verification of current licensure in the state of last employment; and
- c. reside in Louisiana and plan to work in Louisiana.

C. An individual who receives a temporary permit issued under Paragraph B.2 shall practice under the supervision of an individual licensed in Louisiana in the discipline for which the temporary permit was issued.

D. Any individual issued a temporary permit under the this Part who violates any of the provisions of the Cosmetology Act or of any rule or regulation promulgated by the board may be denied licensure or testing by the board.

E. Transfer. Hours of study used to obtain any temporary permit authorized by this Chapter shall not be counted

toward the number of hours necessary to receive any other license issued by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:575(B)(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Board of Cosmetology, LR 29:332 (March 2003), amended LR 32:836 (May 2006).

Jackie Burdette
Executive Director

0605#073

RULE

Office of the Governor Indigent Defense Assistance Board

Funding of Expert Witness, Specialized Scientific Testing, and Other Ancillary Services for Indigents Convicted of Capital Crimes (LAC 22:XV.Chapter 2)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and in order to implement R.S. 15:151, et seq., the Louisiana Indigent Defense Assistance Board has adopted rules and regulations relative to funding of expert witnesses, specialized scientific testing and other ancillary services for indigents convicted of capital crimes in Louisiana.

These rules and guidelines are for funding of expert witnesses, specialized scientific testing, and other ancillary services for indigents convicted of capital crimes in Louisiana pursuant to R.S. 15:151 et seq. The purpose of these guidelines is to provide a method of delivery of funds for reasonably necessary services required to provide indigents sentenced to death with representation mandated by the Constitution of the United States and the Constitution and laws of the State of Louisiana. The Louisiana Indigent Defense Assistance Board has adopted this Rule pursuant to R.S. 15:151.2 (E) and (F).

The Louisiana Indigent Defense Assistance Board approved a Rule for the funding of expert witnesses, specialized scientific testing and other ancillary services for indigents convicted of capital crimes at its meeting held December 14, 2005.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XV. Indigent Defense Assistance Board

Chapter 2. Funding of Expert Witness, Specialized Scientific Testing, and Other Ancillary Services for Indigents Convicted of Capital Crimes

§201. Eligibility Criteria

A. To the extent funds are available, funding of expert witnesses, specialized scientific testing and other ancillary services is limited to persons who meet indigency standards pursuant to R.S. 15:147.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Indigent Defense Assistance Board, LR 32:836 (May 2006).

§203. Application

A. Applications on behalf of indigents sentenced to death for funding of reasonably necessary services of expert witnesses, cost of specialized scientific testing and other ancillary services associated with legal representation mandated by the Constitution of the United States and the Constitution and laws of the State of Louisiana shall be in writing and include the following:

1. name of indigent seeking funding;
2. a statement of justification of the need for services of an expert witness, specialized scientific testing, and/or other ancillary services;
3. name of expert witness or entity conducting specialized scientific testing or other ancillary services; and
4. estimated cost of fees for the services requested.

B. Any applications made by private counsel on behalf of a defendant sentenced to death for funding of reasonably necessary services of expert witnesses, cost of specialized scientific testing and other ancillary services based on partial indigency shall make application in accordance with Subsection A above. Additionally, counsel for the applicant must reveal all financial arrangements regarding representation.

C. All information contained in applications for funding that are subject to attorney client privilege shall remain privileged and confidential.

D. All applications are subject to guidelines for compensation of expert witnesses, cost of specialized scientific testing and other ancillary services set by the Louisiana Indigent Defense Assistance Board.

E. All applications made pursuant to this Section are subject to the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Indigent Defense Assistance Board, LR 32:837 (May 2006).

§205. Review of Applications for Funding of Expert Witness and Specialized Scientific Testing

A. The review of applications for funding of expert witnesses specialized scientific testing and/or other ancillary services by indigents sentenced to death will be conducted by a non-profit corporation specializing in the representation of indigents in capital post-conviction proceedings designated by the Louisiana Indigent Defense Assistance Board, hereinafter referred to as Capital Post-Conviction Program. The Capital Post-Conviction Program shall take action upon an application for funding within 30 days of receipt of the application either by approval of the application, denial of the application, or by the request of additional information regarding the application. Should the Capital Post-Conviction Program request additional information from the applicant, the Capital Post-Conviction Program shall take action by approval or denial of the application within 30 days of the receipt of the additional information requested. The Capital Post-Conviction Program will use the *ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (2003) for evaluation of all applications. Final approval of applications under this provision is subject to the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Indigent Defense Assistance Board, LR 32:837 (May 2006).

§207. Appeals Procedure

A. Should an application for funding under §205.A be denied in part or full, the applicant has 30 days from the date of the letter notifying applicant of denial to request in writing that the application be reviewed by the director of the Louisiana Indigent Defense Assistance Board. Decisions of the director are final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:151.2 (C).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Indigent Defense Assistance Board, LR 32:837 (May 2006).

Edward R. Greenlee
Director

0605#072

RULE

**Office of the Governor
Office of Financial Institutions**

Louisiana Community Development Financial Institution
Program (LAC 10:XV.Chapter 17)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and as authorized by R.S. 51:3089, the Commissioner of the Office of Financial Institutions promulgates a Rule to provide for the implementation and administration of Louisiana Community Development Financial Institution Act (R.S. 51:3081 et seq.). The Rule defines relative terms, establishes the application and certification process, establishes the tax credit allocation process, establishes the requirements for continuance of certification and decertification, establishes fees and assessments to cover regulatory costs, as well as other necessary regulations.

Title 10

**FINANCIAL INSTITUTIONS, CONSUMER CREDIT,
INVESTMENT SECURITIES AND UCC**

Part XV. Other Regulated Entities

**Chapter 17. Louisiana Community Development
Financial Institution Program**

§1701. Description of Program

A. These rules implement the Louisiana Community Development Financial Institution (LCDFI) Program pursuant to R.S. 51:3081 et seq. This program was created by Act 491 of the 2005 Louisiana Legislature to further community development, diminish poverty, provide assistance in the formation and expansion of businesses in economically distressed areas, which create jobs in the state by providing for the availability of venture capital financing to entrepreneurs, managers, inventors, and other individuals for the development and operation of Louisiana entrepreneurial businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:837 (May 2006).

§1702. Definitions

A. The following terms shall have the meanings provided herein, unless the context clearly indicates otherwise.

Affiliate and/or Affiliated Company—

- a. the term *affiliate* is defined as follows:
 - i. when used with respect to a specified person or legal entity, *affiliate* means a person or legal entity controlling, controlled by or under common control with, another person or legal entity, directly or indirectly through one or more intermediaries;
 - ii. when used with respect to a Louisiana entrepreneurial business, *affiliate* means a legal entity that directly, or indirectly, through one or more intermediaries, *controls*, is *controlled* by, or is under common control with, a Louisiana entrepreneurial business;

Applicant—a Louisiana corporation organized under an incorporating statute which applies to the commissioner for certification as a LCDFI.

Application—a completed application as determined by the commissioner.

Associate of a LCDFI—

- a. any of the following:
 - i. a person serving a LCDFI, or an entity that directly or indirectly controls a LCDFI, as any of the following: officer, director (including advisory, regional directors and directors emeritus), employee (provided such employee has significant management and policy responsibilities and powers, or is highly compensated in comparison with the other employees), agent, investment or other advisor, manager (in the case of a manager-managed limited liability company), managing member (in the case of a member-managed limited liability company), external accountant, or outside general/special counsel;
 - ii. a person directly or indirectly owning, controlling or holding with the power to vote 10 percent or more of the outstanding voting securities or other ownership interests of the LCDFI;
 - iii. a current or former spouse, parent, child, sibling, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law of any person described in §1702. *Associate of a LCDFI*.a.i or ii;
 - iv. a person individually or collectively controlled by or under common control, directly or indirectly, with any person described in §1702. *Associate of a LCDFI*.a.i, ii or iii;
 - v. a person that invests in the LCDFI and has received an income tax credit reduction under the LCDFI Act;
 - vi. an affiliate of any person described in §1702.

Associate of a LCDFI.a.v; or

vii.(a). a person that, within six months before or at any time after the date that a LCDFI invests in the person, is controlled by a LCDFI or any of its affiliates;

(b). however, even though a LCDFI may not intend to control a business in which it invests, it may obtain short-term (less than one year) control over the Louisiana entrepreneurial business after its initial investment if such control is acquired as a means of protecting the LCDFI's investment resulting from a material breach of any financing

agreement. Such control will not create an associate relationship under §1702. *Associate of a LCDFI*.a.vii.(a);

b. for the purposes of this definition, if any associate relationship described in §1702. *Associate of a LCDFI*.a.i-vi exists between a person and the LCDFI at any time within six months before or at any time after the date that the LCDFI makes its initial investment in such person, that associate relationship is considered to exist on the date of the investment.

Business Plan—a written narrative providing a general description of the proposed Louisiana community development financial institution ("LCDFI") which should include, at a minimum, a description of the LCDFI's organizational structure; its location; the types of lending and financing it intends to offer and to whom; whether it intends to provide management assistance and if so, to what extent and to whom; and whether the LCDFI will operate as a profit or nonprofit corporation.

Capitalization—for purposes of initial certification, pursuant to R.S. 51:3086(B):

a. *Generally Accepted Accounting Principles (GAAP) Capital*—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and any other equivalent ownership interest, all of which shall be exchanged for cash; undivided profits or loss which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; less all organization costs;

b. *LESS*—the following, when any preferred or common stock, partnership interests, or other equivalent ownership interests are subject to redemption or repurchase by the LCDFI: preferred stock, common stock, partnership interests, limited partnership interests, and other equivalent ownership interests shall be multiplied by the following percentage reductions and deducted from capital.

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

c. Notwithstanding the foregoing, there will be no reduction for a withdrawal of capital within five years after certification, provided the withdrawal is contemplated by all governing documents and disclosed to all prospective investors and any such withdrawal is concurrently replaced by an equal amount of cash GAAP capital. Moreover, the amount contemplated to be withdrawn shall not be the basis for any income tax credit reduction.

Change of Control—for purposes of R.S. 51:3087(F) shall mean:

a. a change in beneficial ownership of 50 percent or more of the outstanding voting shares of the LCDFI; or

b. individuals who constitute the voting power of the board of directors, board of managers or other governing board of the LCDFI as of the later of the LCDFI's certification date or the date of the LCDFI's last notification under R.S. 51:3087(F) cease to comprise more than 50 percent of the voting power of such board of directors, board of managers, or other board; or

c. a change in the general partner or manager of the LCDFI or a *change of control* with respect to such general partner or manager; or

d. any merger or consolidation if a *change of control* has occurred based upon the surviving entity being considered to be a continuation of the LCDFI that was the party to the merger or consolidation transaction.

Control—

a. Solely for purposes of determining whether a Louisiana entrepreneurial business *controls*, is *controlled* by, or is under common *control* with another person, or if a person is an associate of a LCDFI, *control* means:

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote, 50 percent or more of the then outstanding voting securities issued by a legal entity, when such control is exercised with respect to a specified person or legal entity.

b. For all other purposes, *control—*

i. the power or authority, whether exercised directly or indirectly, to direct or cause the direction of management and/or policies of a legal entity by contract or otherwise; or

ii. to directly or indirectly own of record or beneficially hold with the power to vote, or hold proxies with discretionary authority to vote 25 percent or more of the then outstanding voting securities issued by a legal entity.

*Date on Which an Investment Pool Transaction Closes—*date that a LCDFI designates, and notifies the commissioner of such designated date, that it has received an investment of certified capital in an investment pool. For purposes of this definition, an investment pool transaction may not close prior to:

a. execution of all required documents and elimination of all material contingencies associated with the consummation of the transaction; and

b. the date that the LCDFI receives a cash investment of certified capital that is available for investment in Louisiana entrepreneurial businesses.

Employees—

a. Full-time and part-time employees and officers, converted to a full-time equivalent basis.

b. The term *employees* shall not include:

i. attorneys, accountants or advisors providing consulting or professional services to a Louisiana entrepreneurial business on a contract basis; or

ii. employees of any business that perform services (contractor) for a Louisiana entrepreneurial business.

For example: a contractor may enter into an agreement to perform services for a Louisiana entrepreneurial business. The contractor's employees that perform services under that agreement would not be employees under this definition.

*Equity Features—*includes [pursuant to R.S. 51:3084(5)(b)] the following:

a. *Royalty Right—*rights to receive a percent of gross or net revenues, either fixed or variable, whether providing for a minimum or maximum dollar amount per

year or in total, for an indefinite or fixed period of time, and may be based upon revenues in excess of a base amount.

b. *Net Profit Interests—*rights to receive a percent of operating or net profits, either fixed or variable, whether providing for a minimum or maximum dollar amount per year or in total, for an indefinite or fixed period of time, and may be based upon operating or net profits in excess of a base amount.

c. *Warrants for Future Ownership—*options on the stock of the Louisiana entrepreneurial business. The Louisiana entrepreneurial business may repurchase a warrant (a "call") or the Louisiana entrepreneurial business may be required to sell a warrant (a "put") at some stated amount or an amount based on a pre-agreed upon formula.

d. *Equity Sale Participation Right—*conversion options of debt, to convert all or a portion of the debt to the corporate stock of the Louisiana entrepreneurial business, then to participate in the sale of the stock of the Louisiana entrepreneurial business.

e. *Equity Rights—*the receipt or creation of a significant equity interest in a Louisiana entrepreneurial business.

f. And such other conceptually similar rights and elements as the OFI may approve.

*Financing Assistance Provided in Cash and The Investment of Cash—*transaction, which in substance and in form, results in a disbursement of cash.

Examples of transactions excluded from this definition are: circular transactions as determined by the commissioner; capitalization of accrued principal, interest, royalty or other income; letters of credit; loan guarantees; prepaid debt; loan collection expenses or legal fees incurred by a LCDFI in protecting its collateral interest in an investment.

*Institution Affiliated Party—*a director, officer, employee, agent, controlling person, and other person participating in the affairs of the LCDFI.

Investment—

a. at all times, in order to perfect the tax credits earned as a result of an investment described in R.S. 51:3084(3) and (9), or R.S. 51:3085(A) and (B), the LCDFI shall have at least 50 percent of the certified capital of each investment pool that is received in cash:

i. available to be invested in *qualified investments*;

ii. invested in qualified investments made subsequent to the date on which the investment pool transaction closes; or

iii. a combination of §1702.*Investment*.a.i and ii.

b.i. an *Investment* furthers economic development within Louisiana if the proceeds from an investment are used in a manner consistent with representations contained in the affidavit required to be obtained from the Louisiana entrepreneurial business prior to an investment in the business and the documented use of such proceeds promote Louisiana economic development. Proceeds shall be determined to promote Louisiana economic development if more than 90 percent of the proceeds derived from the investment are used by the Louisiana entrepreneurial business for two or more of the following purposes:

(a) to hire significantly more Louisiana employees;

(b) to directly purchase or lease furniture, fixtures, land or equipment that will be used in the Louisiana

operations of the business or to construct or expand production or operating facilities located in Louisiana. This does not include the purchase of these assets as part of a company buyout;

(c). to purchase inventory for resale from Louisiana-based operations or outlets;

(d). to capitalize a business in order for the business to secure future debt financing to support the Louisiana operations of the business. Such future debt financing must be obtained within three months of the *qualified investment date*;

(e). to increase or preserve working capital and/or cash flows for Louisiana operations of the business. However, except as allowed in Subclause (d) above, this does not include those *investments* whereby the proceeds of the *investment* will be utilized to refinance existing debt of the business;

(f). to preserve or expand Louisiana corporate headquarters operations. *Preserve* means a company that is in danger of failing or contemplating a move out-of-state;

(g). to support research and development or technological development within Louisiana;

(h). to fund start-up businesses that will operate primarily in Louisiana; or

(i). to provide for an additional economic benefit not otherwise described above. However, before this purpose may be used as a basis for a determination that the *investment* furthers economic development within Louisiana, the LCDFI shall request in writing and the commissioner shall issue a written response to the LCDFI that, based upon relevant facts and circumstances, the proposed *investment* will further Louisiana economic purposes and result in a significant net benefit to the state. The commissioner's letter opinion shall be issued within 30 days of the request by the LCDFI, and shall be part of the annual review required to be performed by the office and billed according to provisions contained in §1710.A.1. However, upon written notification to the LCDFI, the 30-day review period can be extended by the commissioner if he determines that the initial information submitted is insufficient or incomplete for such determination;

ii. an *investment* by a LCDFI in an interim construction project shall not be considered to further economic development within Louisiana unless the same LCDFI also provides the permanent financing.

Net Income—net income as defined under or consistent with Generally Accepted Accounting Principles.

Net Worth—net worth as defined under or consistent with Generally Accepted Accounting Principles.

Office—the Louisiana Office of Financial Institutions (OFI).

Participation Between LCDFIs—are loans or other investments in which one or more LCDFIs have an ownership interest. If a loan or investment is determined to meet the definition of a qualified investment, a LCDFI may only include its participation (ownership interest) as a qualified investment.

Permissible Investments—for purposes of R.S. 51:3087(G), cash deposited with a federally-insured financial institution; certificates of deposit in federally insured financial institutions; investment securities that are

obligations of the United States, its agencies or instrumentalities, or obligations that are guaranteed fully as to principal and interest by the United States; investment-grade instruments (rated in the top four rating categories by a nationally recognized rating organization); obligations of any state, municipality or of any political subdivision thereof; money market mutual funds or mutual funds that only invest in *permissible investments* of a kind and maturity permitted by this definition; or any other *investments* approved in advance and in writing by the commissioner. All *permissible investments* which are included in the calculation under the definition of *Investment* in LAC 10:XV.1702 shall have a maturity of two years or less or the terms of the investment instrument shall provide that the principal is repayable to the LCDFI within 10 days following demand by the LCDFI in connection with funding a qualified investment.

Person—a natural person or legal entity qualified to seek certification as a LCDFI.

Sophisticated Investor—any of the following:

a. an institutional investor such as a bank, savings and loan association or other depository institution insured by the Federal Deposit Insurance Corporation, registered investment company or insurance company;

b. a corporation with total assets in excess of \$5,000,000;

c. a natural person whose individual net worth, or joint net worth with that person's spouse at the time of his purchase, exceeds \$1,000,000; or

d. a natural person with an individual taxable income in excess of \$200,000 in each of two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year.

Total Certified Capital under Management for purposes of investment limits, pursuant to R.S. 51:3087(G):

a. *GAAP Capital*—common stock, preferred stock, general partnership interests, limited partnership interests, surplus and other equivalent ownership interests, all of which shall be exchangeable for cash and which is available for investment in qualified investments; undivided profits or losses which shall be reduced by a fully-funded loan loss reserve; contingency or other capital reserves and minority interests; reduced by all organization costs.

b. PLUS—Qualified Non-GAAP Capital: the portion of debentures, notes or any other quasi-equity/debt instruments with a maturity of not less than five years which is available for investment in qualified investments.

c. LESS—the following, when any GAAP Capital or Qualified Non-GAAP Capital is subject to redemption or repurchase by the LCDFI:

i. The GAAP Capital and Qualified Non-GAAP Capital subject to redemption or repurchase shall be multiplied by the following percentage reductions and deducted from capital.

Within 5 years from redemption or repurchase	20 percent
Within 4 years from redemption or repurchase	40 percent
Within 3 years from redemption or repurchase	60 percent
Within 2 years from redemption or repurchase	80 percent
Within 1 year from redemption or repurchase	100 percent

d. The portion of an investment that is guaranteed by the United States Small Business Administration or the United States Department of Agriculture's Business and Industry Guaranteed Loan Program shall be excluded from the amount of the investment when determining the investment limit pursuant to R.S. 51:3087(G).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:838 (May 2006).

§1703. Applications

A. A company organized and existing under the laws of Louisiana, created for the purpose of making qualified investments, as required in R.S. 51:3081 et seq., shall make written application for certification to the commissioner on application forms provided by the office.

1. An application fee as prescribed by LAC 10:XV.1712 shall be submitted with the application. Checks should be payable to the Office of Financial Institutions.

2. This office reserves the right to return the application to the applicant if the fee submitted is incorrect. The application may be resubmitted with the correct fee. The application will not be considered officially received and accepted until the appropriate fee is submitted. Application fees are nonrefundable.

B. The forms for applying to become a LCDFI may be obtained from the Office of Financial Institutions, Box 94095, Baton Rouge, LA 70804-9095, and shall be filed at the same address. The time and date of filing shall be recorded at the time of filing in the office and shall not be construed to be the date of mailing.

C. Applications and all submissions of additional information reported to the office shall be delivered via United States mail, or private or commercial interstate carrier, properly addressed and postmarked, and signed by a duly authorized officer, manager, member or partner and shall be made pursuant to procedures established by the commissioner.

D. The commissioner shall cause all applications to be reviewed by the office and designate those he determines to be complete. In the event that an application is deemed to be incomplete in any respect, the applicants will be notified within 30 days of receipt. A previously incomplete application may be resubmitted, either in a partial manner or totally, which will establish a new time and date received for that application.

E. The submission of any false or misleading information in the application documents will be grounds for rejection of the application and denial of further consideration, as well as decertification, if such information discovered at a subsequent date would have resulted in the denial of such license. Whoever knowingly submits a false or misleading statement to a LCDFI and/or the office may be subject to civil and/or criminal sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:841 (May 2006).

§1704. Certification Instructions and Guidelines

A. The application shall contain the following specific information:

1. name of applicant;
2. date of application;
3. address of applicant;
4. Louisiana corporate certification number and certified copies of the articles of incorporation and initial report filed with the Louisiana Secretary of State;
5. a federal tax identification number;
6. phone number, address and zip code;
7. a copy of any bylaws executed by the board of directors;
8. the designation of a correspondent, agent or person responsible for responding to questions relating to the application;
9. a resolution of the board of directors of the applicant corporation authorizing, empowering and directing an officer of the applicant corporation to apply for certification as a LCDFI, and to sign said application;
10. current (less than one year) financial statements for all incorporators and initial directors;
11. description of the LCDFI's business plan, in a narrative form, which shall include, at a minimum, the following:
 - a. a description of the LCDFI's statement of purpose and organization;
 - b. types of lending and financing it intends to offer and to whom;
 - c. whether it intends to provide management assistance, and if so, to what extent and to whom;
 - d. whether the LCDFI will be a profit or nonprofit corporation;
 - e. pro forma financial statements for the three consecutive years following the filing of the application, showing future earnings prospects;
 - f. a proposed net worth structure as required by R.S. 51:3086(B);
12. a list of all of current directors, officers and controlling persons;
13. biographical information concerning the proposed directors, officers and controlling persons, including personal information, résumé of each person's education, their employment record and prior associations or position with other LCDFI's and in what capacity in or out of Louisiana;
14. form granting the commissioner authority to obtain information from outside sources;
15. evidence that the applicant entity has been certified as a Community Development Financial Institution by the United States Department of the Treasury; and
16. other pertinent information as may be required by the commissioner in his sole discretion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:841 (May 2006).

§1705. Conditions of Certification

A. All LCDFI's, through an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, shall certify and acknowledge all of the following conditions for certification as a Louisiana Community Development Financial Institution and shall certify and acknowledge that the statement is true and correct.

1. The LCDFI has an initial capitalization of not less than \$500,000. If any capitalization is repurchased or contemplated to be repurchased by the LCDFI within five years after certification, the LCDFI will concurrently replace any repurchased capital with cash capital, as defined under Generally Accepted Accounting Principles. Any contemplated repurchases shall be disclosed in all governing documents to all prospective investors. The amount repurchased shall not be the basis for any income tax credits.

2. At least 30 days prior to the sale or redemption of stock, partnership interests, other equivalent ownership interests or debentures constituting 10 percent or more of the then outstanding shares, partnership interests, other equivalent ownership interests or debentures, the LCDFI will provide a written notification to the office. Information, as determined by the commissioner, shall be submitted with the notification.

3. The board of directors/shareholders will not elect new or replace existing board members or declare dividends without prior written consent of the office during the first two years following certification as a LCDFI.

4. The LCDFI will immediately notify the office in writing when its total certified capital under management is not sufficient to enable the LCDFI to operate as a viable going concern.

5. The LCDFI will not engage in any activity which represents a material difference from the business activity described in its application without first obtaining prior written approval by the office.

6. The LCDFI will comply with the LCDFI Act and all applicable rules, regulations and policies that are currently in effect or enacted after the date of certification.

7. The LCDFI will adopt and follow OFI's valuation guidelines and record retention policies.

8. Any other conditions deemed relevant by the commissioner.

B.1. If a LCDFI contemplates any public or private securities offerings, prior to the certification of any tax benefits resulting from the certified capital raised through such offerings, the LCDFI shall have a securities attorney provide a written opinion that the company is in compliance with Louisiana securities laws, federal securities laws, and the securities laws of any other states where the offerings have closed. Copies of all offering materials to be used in investor solicitations must be submitted to the office at least 30 calendar days prior to investor solicitation.

2. If a LCDFI seeks to certify capital pursuant to R.S. 51:3084(6)(b), the LCDFI shall submit to the commissioner documentation showing the proposed structure in sufficient detail to allow the office to determine that the proposed structure complies with all applicable laws and regulations. This information shall be submitted to the commissioner no later than 30 calendar days prior to a request for certification of capital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:841 (May 2006).

§1706. Requirements for Continuance of Certification and Decertification

A. In calculating the percentage requirements for continued certification of an investment pool under

Subsection A of R.S. 51:3087 and decertification of an investment pool under R.S. 51:3088.

1. The numerator for the investment pool shall be:

a. 100 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are held for a minimum of one year; and

b. 50 percent of the sum of all qualified investments made on or after the investment date of the investment pool that are intended to be held less than one year.

2. For purposes of the calculation of the numerator:

a. no qualified investment may be counted more than once;

b. the date the investment of cash is made determines whether the one-year holding date is achieved. For multiple funding, each funding must be held for one year to receive 100 percent treatment. The calculation of the amount of time an investment is held will begin at the time of the investment of cash. Therefore, for multiple funding situations, only those cash investments that have been or are intended to be held for a minimum of one year are eligible for full credit as a qualified investment. All other advances will receive 50 percent credit.

3. The denominator shall be total certified capital of the investment pool.

B. Compliance with requirements for continuance of certification and voluntary or involuntary decertification (collectively referred to as compliance) of each investment pool will be determined on a first-in, first-out basis: a LCDFI's first investment pool will be evaluated for compliance before any succeeding pools. Only those qualified investments made after the investment date of each investment pool are considered in determining compliance for that particular investment pool. No qualified investments made prior to an investment pool's investment date may be used in determining that particular investment pool's compliance. However, if more than one investment pool operates simultaneously, a LCDFI may allocate its qualified investments to all open investment pools, provided such allocations are reasonable as determined by the commissioner.

C.1. Upon voluntary decertification, any investments which received 100 percent treatment and were counted as part of Subparagraph A.1.a above may not be sold for a minimum of one year from the date of funding provided that this requirement shall not apply to:

a. a sale that is executed in connection with a sale of control of a Louisiana entrepreneurial business; or

b. the sale of any investment that is publicly traded.

2. At the time of voluntary decertification, the LCDFI may deliver to the office a letter of credit in form and substance, and issued by a federally insured bank. The letter of credit:

a. shall be payable to the office as beneficiary;

b. shall be in a face amount equal to the aggregate value of investments required to be held following voluntary decertification in accordance with Paragraph C.1 above;

c. shall provide that the letter of credit is forfeitable in full if the LCDFI fails to comply with the requirements of Paragraph C.1 above; and

d. may provide for reduction of the face amount of the letter of credit as the holding periods of the investments

which are required to be held pursuant to Paragraph C.1 above exceed one year, provided that the face amount of the letter of credit may never be less than the aggregate value of investments counted as part of Subparagraph A.1.a above which have not yet been held by the LCDFI a minimum of one year.

3. If the LCDFI provides a letter of credit in accordance with Paragraph C.2 above, the forfeiture of the letter of credit shall constitute an assessment against the LCDFI as the sole remedy for the failure of the LCDFI to comply with the requirements of Paragraph C.1 above; otherwise, the failure to comply with Paragraph C.1 above shall be considered a violation of R.S. 51:3087(E)(3).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:842 (May 2006).

§1707. Change of Control

A. In the event of a change of control of a LCDFI, the LCDFI shall provide written notification to the commissioner of the proposed transaction at least 30 days prior to the proposed change of control effective date. Unless additional information is required, the commissioner shall review the information submitted and shall issue either an approval or denial of the change of control within 30 days of the receipt of the notification.

B. Information to be included in the notification shall include:

1. a completed biographical and financial statement on each new owner, provided that any transfer to a person or entity who was a shareholder as of the later of the certification date for the LCDFI or the date of the LCDFI's last notification under R.S. 51:3087(F) for whom the Office of Financial Institutions has received a current Biographical and Financial Report and conducted a current background check shall be disregarded;

2. a copy of the proposed business plan of the new owners covering a three year period;

3. a discussion of the previous experience the proposed owner has in the field of venture capital financing;

4. a credit report on each new owner;

5. a listing of any changes to the board of directors and/or of the LCDFI;

6. a copy of any legal documents or agreements relating to the transfer, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:843 (May 2006).

§1708. Information Required from Louisiana Entrepreneurial Businesses

A. Prior to making a qualified investment in a Louisiana entrepreneurial business, a LCDFI shall obtain, from an authorized representative of the business, a signed affidavit, the original of which shall be maintained by the LCDFI in its files. The affidavit shall contain all of the following:

1. full and conclusive legal proof of the representative's authority to act on behalf of the business;

For example: a board resolution or such other appropriate evidence of a grant of necessary authority.

2. a binding waiver of rights and consent agreement sufficient to allow the LCDFI, upon request to the business, full access to all information and documentation of the

business which is in any way related to the LCDFI's investment in the business;

3. completed forms, certifications, powers of attorney, and any other documentation, as determined by the commissioner, sufficient to allow access by the LCDFI of any of the information and/or records of the business in the possession of any other business or entity, including but not limited to, financial institutions and state and federal governmental entities;

4. a statement certifying the intended use of the investment proceeds, and that the business will provide to the LCDFI documentation to support the use of proceeds;

5. a statement certifying that the business meets the qualifications of a "Louisiana Entrepreneurial Business" as defined by R.S. 51:2303(5); and

6. an act under private signature executed by the business, duly acknowledged pursuant to Louisiana law, certifying all of the above and foregoing as being true and correct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:843 (May 2006).

§1709. General Provisions

A. Books and Records

1. A LCDFI shall make and keep its records in conformity with Generally Accepted Accounting Principles.

2. A LCDFI shall make and keep all of its records at its main office as identified in its application for certification or at some other location authorized by prior written approval of the commissioner.

3. All books and records of a LCDFI shall be retained for a period of at least three years following decertification of the LCDFI in accordance with R.S. 51:3088.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:843 (May 2006).

§1710. Directors and Officers

A. Election of Directors or Managers. At least 30 days prior to the election of any person as the director or manager of a LCDFI, such LCDFI and such director or manager shall file with the commissioner a report containing the following information:

1. name, address and occupation of the proposed director or manager;

2. title of any office which the director or manager previously held with the LCDFI;

3. anticipated election date of the director or manager;

4. manner of election of the director or manager (that is, whether by the board or by the shareholders);

5. in case a director or manager is not an incumbent director or executive officer of the LCDFI, the LCDFI shall provide:

- a. a personal financial statement and confidential résumé on a form prescribed by the commissioner, containing the information called for therein, as of a date within 90 days before the filing of the report and signed by the proposed director or manager;

- B. Appointment of Executive Officers. At least 30 days prior to the appointment of any person as an executive officer of a LCDFI, such LCDFI and such executive

officer(s) shall file with the commissioner a report containing the following information:

1. name and address of the executive officer;
2. title of the office to which the executive officer will be appointed;
3. a summary of the duties of the office to which the executive officer will be appointed;
4. title of any office which the executive officer previously held with the LCDFI and title of any office (other than the office to which the executive officer was will be appointed) which the executive officer currently holds with the LCDFI;
5. the LCDFI shall provide a personal financial statement and confidential résumé on the form prescribed by the commissioner, containing the information called for therein, dated as of a date within 90 days before the filing of the report, and signed by the newly appointed executive officer.

C. Notification. Following approval by the Office, each LCDFI shall provide to the commissioner a written notice stating the effective date of the newly elected/appointed director, manager, or executive officer. Said notice must be received by the Office within 30 days of the stated effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:843 (May 2006).

§1711. Income Tax Credits

A. Pursuant to R.S. 51:3084(6), an investment for the purposes of earning income tax credits means a transaction that, in substance and in form, is the investment of cash in exchange for either:

1. common stock, preferred stock, or an equivalent ownership interest in a LCDFI; or
2. a loan receivable or note receivable from a LCDFI which has a stated final maturity date of not less than five years from the origination date of the loan or note and is repaid in a manner which results in the loan or note being fully repaid or otherwise satisfied in equal amounts over the stated maturity of the loan or note.

B. In order to be eligible for any income tax credits, debentures, notes or any other quasi-equity/debt instruments shall have an original maturity date of not less than five years from the date of issuance. If an investment is in the form of stock, partnership interest, or any other equivalent ownership interest, such investment shall not be subject to redemption or repurchase within five years from the date of issuance. Except in the case where a LCDFI voluntarily decertifies and preserves all income tax credits, if debentures, notes or any other quasi-equity/ debt instruments or stock, partnership interests, or other equivalent ownership interests are redeemed or repurchased within five years from issuance, any income tax credits previously taken, to the extent applicable to the investment redeemed or repurchased, shall be repaid to the Department of Revenue and Taxation at the time of redemption, and any remaining tax credits shall be forfeited, pursuant to R.S. 51:3088. Amortization of a note over its stated maturity does not constitute a redemption or repurchase under this Chapter.

1. No LCDFI certified after December first of any year shall be entitled to receive an allocation pursuant to

R.S. 51:3085 for the same calendar year in which it was certified.

2. By December 10th, the commissioner shall review all requests for allocation of income tax credits and notify the LCDFI of the amount of certified capital for which income tax credits are allowed to the investors in such institution. During this 10 day review period, no investor substitutions will be allowed.

3. If a LCDFI does not receive an investment of certified capital equaling the amount of the allocation made pursuant to R.S. 51:3085 within 10 days of its receipt of notice of such allocation, that portion of the allocation will be forfeited and reallocated to the remaining LCDFIs on a pro rata basis.

C. Conditions to Sell or Transfer Income Tax Credits

1. The transfer or sale of income tax credits, pursuant to R.S. 51:3085(A), will be restricted to transfers or sales between affiliates and sophisticated investors, collectively referred to as acquirers. Furthermore, even though a transfer or sale of credits may involve several entities, only one election may be made during any calendar quarter. Therefore, an investor in a LCDFI may only transfer or sell credits once during a calendar quarter and the entity that purchases or acquires the credits may not transfer credits obtained during the calendar quarter of purchase. In any subsequent calendar quarter, the purchaser or acquirer of the credits may make one election per calendar quarter, if needed.

2. Companies and/or individuals shall submit to the Louisiana Department of Revenue and Taxation in writing, a notification of any transfer or sale of income tax credits at least 30 days prior to the transfer or sale of such credits. The notification shall include the original investor's income tax credit balance prior to transfer, the projected remaining balance after transfer, all tax identification numbers for both transferor and acquirer, the date of transfer, and the amount transferred.

3. If income tax credits are transferred between affiliates or sophisticated investors (acquirers), the notification submitted to the Department of Revenue and Taxation must include a worksheet, which the transferor and each acquirer shall also attach to their Louisiana corporate and/or individual income tax returns, which shall contain the following information for each corporation or individual involved:

- a. name of transferor and each acquirer;
- b. the gross Louisiana corporation or individual income tax liability of the transferor and each acquirer; and
- c. credits taken by the transferor and each acquirer under R.S. 51:3085(A) and (B).

4. The transfer or sale of income tax credits, pursuant to R.S. 51:3085(A), shall not affect the time schedule for taking such tax credits, as provided in R.S. 51:3085(A) and (C), respectively. Any income tax credits transferred or sold, which credits are subject to recapture pursuant to R.S. 51:3088, shall be the liability of the taxpayer that actually claimed the credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:844 (May 2006).

§1712. Fees and Assessments

A. Pursuant to the authority granted under R.S. 51:3088(A) and 3089(4), the following fee and assessment structure is hereby established to cover necessary costs associated with the administration of the Louisiana Community Development Financial Institution Act, R.S. 51:3081 et seq.

1. Fees and Assessments

Description	Fee
a. Application for certification as a LCDFI.	\$2,000
b. Annual assessment fee of each LCDFI at a floating rate to be assessed no later than May 15th of each year, to be based on the total certified capital under management, as defined in LAC 10:XV.1702, as of the previous December 31st audited financial statements. Any amounts collected in excess of actual expenditures related to the administration of the Louisiana community development financial institution act by the Office of Financial Institutions shall be credited or refunded on a pro rata basis. Any shortages in assessments to cover actual operating expenses of OFI relating to the administration of the Louisiana community development financial institution act shall be added to the next variable assessment or billed on a pro rata basis.	Variable
c. Late fee for each calendar day that an assessment fee is late pursuant to the requirements of LAC 10:XV.1712.A.1.b.	\$100 per day
d. Fee for request filed on December 1st of each year for certification of capital pursuant to R.S. 51:3085 in order obtain an allocation of certified capital.	\$1,000 Non-refundable
e. Fee for annual review of each LCDFI to determine the company's compliance with statutes and regulations.	\$50 per hour, per examiner, or \$500, whichever is greater.

2. Administration

a. The failure to timely submit a fee with the request for allocation as required in §1712.A.1.d shall result in the denial of an allocation of certified capital.

b. The assessment described in §1712.A.1.b shall be considered timely if received by the office on or before May 31st of each calendar year. If the office receives an assessment after May 31st, it shall not be deemed late if it was postmarked on or before May 31st.

c. Unless annual audited financial statements are submitted to the office by April 30th, annual unaudited financial statements shall be submitted no later than May 1st. These unaudited financial statements shall then be used to determine the assessment amount provided for in §1712.A.1.b. Accompanying these audited or unaudited financial statements shall be a detailed calculation of total certified capital under management as of December 31st.

d. If neither an audited nor unaudited financial statement has been received by this office by May 1st, the late fee described in §1712.A.1.c shall be assessed beginning on June 1st until the assessment has been paid in full.

e. If any of the dates prescribed in §1712.A.2.b and §1712.A.2.c with the exception of the April 30th and the

December 31st due date for audited financial statements, occurs on an official state holiday, a Saturday, or a Sunday, the next business day for the Office of Financial Institutions shall be the applicable due date.

f. The assessment for each Louisiana Community Development Financial Institution, as defined in R.S. 51:3084(9), and described in §1712.A.1.c shall be based on the following formula.

i. The numerator will be the total certified capital under management of the LCDFI as of December 31st of the previous year.

ii. The denominator will be the total certified capital under management for all Louisiana community development financial institutions as of the previous December 31st.

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:3081 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Financial Institutions, LR 32:845 (May 2006).

John Ducrest, CPA
Commissioner

0605#052

RULE

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

Facility Need Review
(LAC 48:I.12501)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amends LAC 48:I.12501 as authorized by R.S. 40:2116 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

§12501. Introduction

A. - G.14. ...

H. Exemptions from the facility need review process shall be made for:

1. a nursing facility which needs to be replaced as a result of destruction by fire or a natural disaster, such as a hurricane; or

2. a nursing facility and/or facility building owned by a government agency which is replaced due to a potential health hazard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#065

RULE

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

Home Health Agencies—Emergency Preparedness
(LAC 48:I.9121)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.9121 as authorized by R.S. 36:254 and R.S. 40:2116.31-40. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 91. Minimum Standards for Home Health Agencies

§9121. Emergency Preparedness

A. The home health agency shall have an emergency preparedness plan which conforms to the current Office of Emergency Preparedness (OEP) model plan and is designed to manage the consequences of declared disasters or other emergencies that disrupt the home health agency's ability to provide care and treatment or threaten the lives or safety of its clients. The home health agency is responsible for obtaining a copy of the current Home Health Emergency Preparedness Model Plan from the Louisiana Office of Emergency Preparedness.

B. At a minimum, the agency shall have a written plan that describes:

1. the evacuation procedures for agency clients who require community assistance as well as for those with available caregivers to another location;
2. the delivery of essential care and services to agency clients whether they are in a shelter or other locations;
3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions;
4. a plan for coordinating transportation services required for evacuating agency clients to another location; and
5. assurance that the agency will notify the client's family or caregiver if the client is evacuated to another location.

C. The home health agency's plan shall be activated at least annually, either in response to an emergency or in a planned drill. The home health agency's performance during the activation of the plan shall be evaluated and documented. The plan shall be revised if the agency's performance during an actual emergency or a planned drill indicates that it is necessary.

D. Any updates or revisions to the plan shall be submitted to the parish Office of Emergency Preparedness for review. The parish Office of Emergency Preparedness shall review the home health agency's plan by utilizing community wide resources.

E. As a result of an evacuation order issued by the parish Office of Emergency Preparedness (OEP), it may be necessary for a home health agency to temporarily relocate outside of its licensed geographic service area. In such a case, the agency may request a waiver to operate outside of its licensed location for a time period not to exceed 90 days in order to provide needed services to its clients and/or other evacuees of the affected areas. The agency must provide documentation as required by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2116.31-40.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 18:57 (January 1992), amended LR 21:177 (February 1995), LR 27:2249(December 2001), LR 32:846 (May 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#067

RULE

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

Medical Assistance—Administration
(LAC 50:I.Chapters 7, 9, and 83)

The following sections have been compiled and are being promulgated to show current codification and placement. The table below shows the DHH rules that were used to compile the chapters being promulgated.

Placement	Promulgated DHH Rules
§701	LR 5:24 (February 1979) LR 6:491 (August 1980)
§901	LR 20:791 (July 1994)
§903	LR 20:791 (July 1994)
§915	LR 20:791 (July 1994)
§917	LR 20:791 (July 1994)
§919	LR 20:791 (July 1994)
§921	LR 20:791 (July 1994)
§941	LR 20:791 (July 1994)
§8301	LR 13:578 (October 1978) LR 17:781 (August 1991)
§8303	LR 13:92 (February 1987)
§8325	LR31:2259 (September 2005)
§8327	LR 31:2259 (September 2005)

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 1. General Provisions

Chapter 7. Out-of-State Services

§701. Out-of-State Medical Care

A. Medicaid coverage is provided to eligible individuals who are absent from the state.

B. Medical claims for out-of-state services are honored when:

1. an emergency arises from an accident or illness;
2. the health of the recipient would be endangered if he undertook travel or if care and services are postponed until he returns to the state;
3. it is general practice for residents of a particular locality to use medical resources in the medical trade areas outside the state; and
4. the medical care and services or needed supplementary resources are not available within the state. Prior authorization is required for out-of-state 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, Bureau of Health Services Financing, LR 32:847 (May 2006).

Chapter 9. Advance Directives

Subchapter A. General Provisions

§901. Definitions

Advance Directive—a written statement of instruction in a form recognized under state law relating to the provision of medical care in the event of incapacity, including the living will and the durable power of attorney for health care.

Durable Power of Attorney for Health Care—a document made in accordance with *Louisiana Civil Code*, Act 2985 et seq., designating a person to act on the executing person's behalf in making medical treatment decisions.

Health Care Provider—any health maintenance organization, home health agency, hospice, hospital, or nursing facility.

Information Concerning Advance Directive—pamphlets on advance directive in Louisiana and preprinted advance directive forms.

Living Will—a written declaration made in accordance with R.S. 40:1299.58.3, in which a person provides instruction regarding the kinds of life-saving or life-sustaining care and treatment that the person does or does not wish to receive in the event of incapacitation or terminal illness, including the suspension of nutrition and hydration.

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 32:847 (May 2006).

§903. Departmental Information Dissemination

A. The department shall supply all health care providers with information concerning advance directives.

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 32:847 (May 2006).

Subchapter B. Provider Responsibilities

§915. Provider Information Dissemination

A. A health care provider shall distribute information concerning advance directives to each person at the time of admission into a facility or upon initiation of services, as follows.

1. A hospital and a nursing facility shall provide the written information at the time the patient/resident is admitted.

2. A hospice program shall provide the written information at the time care commences.

3. A home health agency shall provide the written information before the commencement of home care services.

4. A health maintenance organization or health insuring organization shall provide the written information at the time of enrollment.

B. A health care provider shall have a written policy concerning advance directives which shall be available for inspection.

C. If a health care provider declines to comply with an advance directive or parts thereof, this information shall be included in the written information disseminated by the health care provider under Subsections A and B above. In addition, the health care provider must assist a person whose advance directive would not be honored by that provider to locate another provider who will honor the advance directive. Such assistance may consist of transferring the person to another facility or referring the person to a new provider within the facility who will honor the advance directive.

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 32:847 (May 2006).

§917. Policies and Procedures

A. Each health care provider shall establish and maintain written policies and procedures regarding advance directives. A health care provider shall maintain these policies and procedures for review by the department during a survey. These policies and procedures must include:

1. a written provision relating to individual rights, under federal and state law/regulation to make decisions concerning medical treatment;

2. the right of a patient to formulate advance directives as defined by the federal and state laws/regulations;

3. provisions providing adequate written notice of individual adult patients (at the time of admission, commencement, or enrollment) concerning patient rights;

4. a copy of existing advance directives in the patient's medical records;

5. documentation of information dissemination as required in §915;

6. documentation in the individual's medical record as to whether the individual has executed an advance directive;

7. a plan for participation in community and staff educational campaigns regarding advance directive by newsletters, articles in local newspapers, local news reports, or commercials; and

8. an assurance of compliance with state law with regard to:

- a. informing relevant personnel and networks of health care providers and services;
- b. providing information about advance directives;
- c. ascertaining existence of advance directives;
- d. making reasonable efforts to obtain copies by written request; and
- e. transferring copies of advance directives brought in by individuals seeking provider 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 32:847 (May 2006).

§919. Mentally Incapacitated

A. If a person is mentally incapacitated at the time of admission to or initiation of service by a health care provider, the health care provider shall disseminate information regarding advance directives to the family or legal representative of the person. When the person's incapacity has been alleviated, the health care provider shall provide the information to the person.

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 32:848 (May 2006).

§921. Previously Executed Advance Directives

A. Except as provided by R.S. 40:1299.58.7(B) and (D), when the health care provider is presented with a copy of a patient's advance directive, the health care provider shall comply with the advance directive.

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 32:848 (May 2006).

Subchapter C. Penalties

§941. Noncompliance

A. The department may access provider records to verify documentation of date and time of execution of advance directives. Any inquiry shall be directed to the appropriate staff member. Determination of a violation shall result in a notice of noncompliance.

B. Failure to correct a violation listed in a notice of noncompliance may result in sanctions against the provider imposed by the department and may include exclusion from the Medicare and Medicaid programs.

C. Registration of any complaint shall be processed according to the department's complaint procedure.

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 32:848 (May 2006).

Subpart 9. Recovery

Chapter 83. Third Party Liability

Subchapter A. Claims

§8301. Pay and Chase

A. Definition

Claim—a single document line identifying the service and/or charges for services for a single recipient from a single provider.

B. Medicaid claims for services covered under the State Plan will be cost avoided when there is probable third party liability unless the claim is for one of the following services:

1. prenatal care pregnant women;
2. preventative pediatric services including early and periodic screening diagnosis and treatment of individuals under the age of 21 years;
3. services provided to an individual for whom child support enforcement services are being carried out by the Title IV-D state agency.

C. In processing these claims, the Medicaid agency will pay the claim and seek reimbursement from liable third parties, utilizing the claims method of payment called "pay and chase." When the claim is for a service provided to an individual for whom child support enforcement services are being enforced through the Title IV-D state agency, the provider is not required to bill a liable third party prior to billing the state Medicaid agency. The state elects to process these claims in the same manner as for prenatal care and preventive pediatric services, that is, through the pay and chase process.

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 32:848 (May 2006).

§8303. Crossover Claims

A. The Medical Assistance Program shall provide Medicaid coverage of Medicare Part A and Part B crossover claims for dually eligible recipients with the following limitations:

1. Medicaid coverage of Medicare Part B crossover claims shall be limited to only those services covered under Title XIX (Medicaid); and
2. payment of Medicare Part A and Part B co-insurance and deductibles shall be limited to the total Medicaid allowable cost for each covered service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:848 (May 2006).

Subchapter B. Data Match with Insurance

Carriers—Reserved

Subchapter C. Newborn Notification

§8325. Definitions

Effective Date of Birth—the date of live birth of a newborn child.

Health Insurance Issuer—an insurance company, including a health maintenance organization as defined and licensed to engage in the business of insurance under Part XII of Chapter 2 of Title 22, unless preempted as a qualified employee benefit plan under the Employee Retirement Income Security Act of 1974.

Qualifying Newborn Child—a newborn child who meets the eligibility provisions for the Medicaid Program.

Third Party Liability (TPL) Notification of Newborn Child(ren) Form—the written form developed by the Department of Health and Hospitals that must be completed by the hospital to report the birth and health insurance status of a newborn child.

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 32:848 (May 2006).

§8327. Hospital Requirements

A. A hospital shall complete the Third Party Liability (TPL) Notification of Newborn Child(ren) form to report the birth and health insurance status of a qualifying newborn child either delivered in their facility, delivered under their care, or transferred to their facility after birth. The notification shall only be completed when the hospital reasonably believes that the following entities would consider the child to be a qualified newborn and insurance coverage is available to said child(ren):

1. the health insurance issuer that has issued a policy of health insurance under which the newborn child may be entitled to coverage; and

2. the Department of Health and Hospitals.

B. The TPL Notification of Newborn Child(ren) form shall be completed by the hospital and submitted to any and all applicable health insurance issuers within seven days of the birth of a newborn child. Delivery of the notification form may be established via the U.S. Mail, FAX, or e-mail.

C. The TPL Notification of Newborn Child(ren) form shall be sent to the Department of Health and Hospitals, Bureau of Health Services Financing, Third Party Liability/Medicaid Recovery within seven days of the birth of the child.

D. This notification shall not be altered, in any respect, by the hospital and shall be in addition to any other notification, process or procedure followed by the hospital. The notification shall not be done in lieu of any other required notice, process or procedure established in any other rule, manual, or policy.

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 32:849 (May 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#079

RULE

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

**Third Party Liability—Data Match with Insurance Carriers
(LAC 50:I.8311)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:I.8311 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 44:14 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 I. Administration

Subpart 9. Recovery

Chapter 83. Third Party Liability

Subchapter B. Data Match with Insurance Carriers

§8311. General Provisions

A. All insurance companies authorized to issue a hospital or medical expense policy, a hospital or medical service contract, an employee welfare benefit plan, a health and accident insurance policy, or any other insurance contract of this type in this state shall provide a monthly list of information to the Department of Health and Hospitals on all members who hold a comprehensive health contract.

B. The payor shall submit to DHH an initial, secure, encrypted electronic file of all members who hold comprehensive health contracts with:

1. effective dates as of the date of promulgation of this Subchapter B; and

2. processed dates before that same date.

C. The department shall treat all data in a confidential manner and protect it in accordance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 privacy and security rules. Further, the department shall, in a manner compliant with the HIPAA privacy and security rules, return or destroy all copies of the payor's data immediately following the match process.

D. The department shall provide a standard protocol in accordance with nationally accepted standards, and in a manner compliant with the Health Insurance Portability and Accountability Act of 1996, by which the electronic file shall be transmitted between DHH and the payor.

E. The provisions of this §8311 shall not apply to any insured whose indemnity policy benefits pay less than \$25 a day in hospital or medical benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 44:14, 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 32:849 (May 2006).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0605#066

RULE

**Department of Public Safety and Corrections
Corrections Services**

**Crime Victims Services Bureau
(LAC 22:I.Chapter 23)**

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.), the Department of Public Safety and Corrections, Corrections Services, hereby amends the entire contents of Chapter 23, Crime Victims Services Bureau.

Title 22
CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT
Part I. Corrections

Chapter 23. Crime Victims Services Bureau

§2301. Purpose

A. To establish the primary functions of the Crime Victims Services Bureau, a public service implemented through the Secretary's Office, which enables victims of crime and others directly affected by that crime to register for notification of key events specified in law and policy, facilitates general access to information helpful to crime victims, and supports development of programming responsive to the needs and wishes of crime victims and others injured by the criminal acts of persons under the state's authority.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:409 (March 2001), amended LR 29:2502 (November 2003), LR 32:850 (May 2006).

§2303. Applicability

A. Deputy Secretary, Chief of Operations, Undersecretary, Assistant Secretary, Wardens, Director of Probation and Parole, Board of Parole, and Board of Pardons.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:409 (March 2001), amended LR 29:2502 (November 2003), LR 32:850 (May 2006).

§2305. Definitions

Designated Family Member—a family member or a legal guardian of a minor victim, a homicide victim, or a person who is disabled—such designation usually made by local authorities.

Other Designated Persons—persons not included above who wish to register because of a relationship or other circumstances involving the inmate—e.g., estranged or ex-spouse, previously battered companion, concerned neighbor, arresting officer, prosecuting district attorney.

Victim—a person against whom a felony offense has been committed.

Victim's Family—spouse, parent, child, stepchild, sibling, or legal representative of the victim, except when that person is in custody for an offense or is the defendant.

Victim Notice and Registration Form—a form promulgated by the Louisiana Commission on Law Enforcement (LCLE) and provided by a judicial or law enforcement agency, or a form available from the department (attached), on which a person may indicate a request to be afforded the rights prescribed in law and/or policy for victims, witnesses, and other designated persons. In the context of this regulation, the term also includes letters requesting notification about an inmate's movement through the system and can include victim requests made by telephone or identified in presentence, preparole, or other investigative reports in the department's possession.

Witness—a person who has relevant information about a crime that was committed and who, consequently, could be or has been called as a witness for the prosecution.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:409 (March 2001), amended LR 29:2502 (November 2003), LR 32:850 (May 2006).

§2307. Policy

A. For many years correctional systems focused primarily on the custody, care, and control of the inmates placed under its authority. During the 1990s, victim advocacy groups came forward to remind justice system officials that crime does not injure only or even primarily "the state." Crime injures individual human beings. So, to be truly effective, the justice system must include the fact that a crime has hurt someone and then must develop appropriate ways to respond to and mitigate that injury. This is our challenge. It is the secretary's policy to ensure compliance with all laws governing the rights of victims and witnesses and, through operations of the Crime Victims Services Bureau, to facilitate access to those rights and encourage programming throughout the agency to enhance responsiveness to victims by staff and inmates. This policy will be supported by staff education and will include new programming in the areas of victim impact classes for inmates and victim-initiated victim-offender dialogue.

B. To achieve these ends the department will collaborate with other justice system agencies, victim advocacy groups, and other community-based organizations, and will incorporate responsiveness to the victim's role into the department's offender reentry initiatives.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:410 (March 2001), amended LR 29:2502 (November 2003), LR 32:850 (May 2006).

§2309. General Procedures

A. In the event that an inmate is recommended for a non-medical or medical furlough, medical parole, or work release, the warden shall determine whether there is a victim notice and registration form on file and shall so note when submitting a recommendation to the secretary. The warden should indicate the city or town of residence of any registered victim.

B. The department will maintain a toll-free telephone line to the Crime Victims Services Bureau. The bureau will help callers register for notification and find answers to questions, and will refer callers to other units within the agency, the Board of Parole, the Board of Pardons, the prosecuting district attorney, and/or other crime victim programs and agencies.

C. When a victim notice and registration form is received in any unit of the department, staff will respond timely and in a manner consistent with the requirements of this and other department regulations governing release of information and victims' and witnesses' rights. However, the filing of a victim notice and registration form by an

incarcerated adult shall not enable that individual to receive information about another individual incarcerated under the department's authority.

D. As provided by law, a victim or a designated family member may use the victim notice and registration form promulgated by LCLE to indicate their wish to review and comment on information in the postsentence report relating to the crime against the victim. The Division of Probation and Parole will oversee access to this information.

E. Additional assistance is available to employees who are victimized while on duty or on personal time, as described in Department Regulation No. A-02-024 "Critical Incident Stress Management Program."

F. Persons receiving unsolicited communications by telephone or mail from inmates in state custody may contact the Crime Victims Services Bureau for assistance in having the contacts stopped. The bureau will work with the appropriate warden to see that reasonable and necessary steps are taken to address the situation. This may involve disciplinary action, including loss of good time.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:410 (March 2001), amended LR 29:2503 (November 2003), LR 32:850 (May 2006).

§2311. Confidentiality

A. Both the information contained in a victim notice and registration form and the fact that a notification request has been made are confidential. Pursuant to provisions of R.S. 15:574.12, staff may answer inquiries from judicial and law enforcement agencies. Any other inquiries from outside the department about who is registered or whether a particular inmate has a registered victim should be referred to the Crime Victims Services Bureau.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:410 (March 2001), amended LR 29:2503 (November 2003), LR 32:851 (May 2006).

§2313. Restitution

A. When restitution is required as a condition of probation, parole, or work release, such cash or service shall be monitored and/or collected by the Division of Probation and Parole.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:410 (March 2001), amended LR 29:2503 (November 2003), LR 32:851 (May 2006).

§2315. Parole and Pardon Hearings and Related Matters

A. The Board of Parole and the Board of Pardons will comply with all laws regarding written notification prior to scheduled hearings, including the requirement that notice be given to all persons who file a victim notice and registration form and to the appropriate district attorney. Notifications regarding pending hearings shall be made through action of

the Division of Probation and Parole or the Board of Pardons, as appropriate.

B. As provided in law, when a hearing is scheduled by either board, the victim or victim's family shall be allowed to make written and oral statements concerning the impact of the crime and to rebut statements or evidence introduced by the inmate. The victim or victim's family, a representative of a victim advocacy group, and the district attorney or his representative may appear before the boards in person, via teleconference, or by telephone from the district attorney's office.

C. As provided in law, the Pardon Board will notify the Crime Victims Services Bureau before hearing an applicant.

D. Wherever Parole Board or Pardon Board hearings are held, all reasonable steps will be taken to see that victims and their family members and inmates and their family members do not have direct contact before or after the hearing. This practice should, where possible, begin at the entrance to the hearing site and include provision of a separate waiting area and access to separate restroom facilities. Hearing sites are also encouraged to provide victim access to a staff person who can explain the hearing process and answer other questions.

NOTE: Parole Board and Pardon Board procedures provide detailed information about each board's policies and practices.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:410 (March 2001), amended LR 29:2503 (November 2003), LR 32:851 (May 2006).

§2317. Notifications

A. When a victim notice and registration form is received, it shall become part of the inmate's permanent record. For an incarcerated inmate, the Notes section of the stamp format shall be marked to indicate the existence of a notification request.

B. The Crime Victims Services Bureau will acknowledge receipt of each victim notice and registration form with a letter that includes the possible release dates of the inmate named on the form.

C. When the department receives a victim notice and registration form regarding an inmate sentenced on or after August 15, 1997, the department must provide the inmate's projected release dates to the victim and the sentencing court within 90 days of the inmate's commitment date. If those dates are not available when the bureau receives the registration form, the bureau will flag inmate records staff about the response deadline and will send projected release dates when they are available.

D. Persons who have filed a victim notice and registration form shall be notified by mail of the following events involving the inmate(s) they have registered for: a court appearance that subsequently affects sentence length, approval for furlough of any kind, placement on a Risk Review Panel docket, transfer to work release, and release from prison. Release from prison includes parole, medical parole, diminution of sentence to parole supervision, diminution of sentence, full term, court ordered release (which includes release to another jurisdiction, including parish jail), and death while incarcerated.

1. The notifications included in the paragraph above shall be made by certified mail, except when the notice involves medical parole, consideration for risk review, or transfer to work release.

2. Notice of transfer to work release should be mailed on the day of the inmate's approval or transfer. If the inmate is a sex offender, law requires notice ten days prior to transfer.

3. Notice of furlough and scheduled release from prison should be mailed in time to allow persons requesting notice to receive the notice before the inmate is furloughed or released. If the inmate is a sex offender, law requires notice ten days prior to furlough or release.

4. Notice involving an inmate due for immediate release should be by telephone, followed by a letter confirming release.

E. Responsibility for notifications involving placement on a risk review docket shall be the Risk Review Panel chairman or designee.

F. Responsibility for all other notifications listed in Subsection D shall be as follows:

1. the warden of the state-owned institution where the inmate is assigned;

2. the warden of Elayn Hunt Correctional Center, David Wade Correctional Center, or Louisiana Correctional Institute for Women, as appropriate, if the inmate is assigned to the State Police Barracks, a local jail facility, a correctional institution in another jurisdiction, or a non-secure adult contract work release program;

3. the Chief of Operations or designee if the inmate is in a local jail facility and is transferred to a non-contract (sheriff's) work release program.

G. In the event that an inmate named on a victim notice and registration form escapes from institutional custody, registered persons shall be notified immediately at the most current address or phone number on file by the most reasonable and expedient means possible. When the inmate is recaptured, written notice shall be sent within 48 hours of regaining custody.

1. If a mistaken calculation is discovered after projected release dates have been sent to a victim, the unit that makes the correction will send a letter providing corrected release dates to all registered victims. This provision does not include changes to an inmate's diminution of sentence date resulting from earning or losing good time credits. However, if educational good time is credited after letters have been sent to inform registered victims of an inmate's pending release, a second letter should be sent or a telephone call made to inform victims of the new release date. The second letter need not be certified.

H. When an institution receives an inmate whose file already contains a victim notice and registration form, the institution is encouraged to send an acknowledgment letter to all registered victims in the file.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:411 (March 2001), amended LR 29:2504 (November 2003), LR 32:851 (May 2006).

§2319. CAJUN II Procedures

A. Any addition of or modification to a victim record in CAJUN must be supported by written documentation filed with the Crime Victims Services Bureau and included in the inmate's institutional record or, if the inmate is under supervision when a new form or a revision is received, in the inmate's master record in the supervising district.

B. The unit or office that receives an initial victim notice and registration form or a revision shall be responsible for entering the victim information in CAJUN and sending a copy of the form to the Crime Victims Services Bureau. Forms received first by the Crime Victims Services Bureau or directed there from the Parole Board or the Division of Probation and Parole will be entered by the bureau and copied to other units as needed.

C. Any victim notice and registration form, promulgated by LCLE and received by the bureau, will also be copied by the bureau to the probation and parole district serving the court in which the inmate was sentenced.

D. If a person who has previously filed a victim notice and registration form withdraws his request, he must do so in writing, after which his individual victim record in CAJUN will be modified so that CAJUN will not generate notification letters.

E. When a victim notice and registration form is on record, the following applies.

1. The request will remain active until the inmate's CAJUN file is inactivated. When the file is inactivated, CAJUN will automatically code existing victims "I" (inactive). The inactive flag will prevent CAJUN from generating letters to those victims. If the inmate is sentenced to additional time before his file is inactivated, registered victims will remain active on the record.

2. If an inmate is released before his full term date and subsequently returned to institutional custody, the victim will not be notified of the return but will be notified of subsequent actions as provided in this regulation.

NOTE: A "Y" in the CVNR field on the master inquiry screen indicates that there is a victim who must be notified.

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:411 (March 2001), amended LR 29:2504 (November 2003), LR 32:852 (May 2006).

§2321. Rights of Victim's Family When an Inmate's Sentence is Death

A. At least 10 days prior to an execution, the secretary shall give written notice or verbal notice (followed by written notice placed in the United States mail within five days thereafter) of the time, date, and place of the execution to the victim's parents or guardian, spouse, and any adult children who have indicated they desire notice. A minimum of two representatives of the victim's family shall have the right to be present.

B. A complete explanation of the department's responsibilities in instances where an inmate has been sentenced to death appears in Department Regulation No. C-03-001 "Death Penalty."

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:412 (March 2001), amended LR 29:2505 (November 2003), LR 32:852 (May 2006).

§2327. Louisiana Department of Public Safety and Corrections Victim/Witness Notification Request Form

Louisiana Department of Public Safety and Corrections
Victim/Witness Notification Request Form

As an individual affected by the criminal acts of another person, you have a right to participate in the criminal justice system. If the individual who committed the crime has been sentenced to state custody and you want information about his status or the department's policies and programs or your rights and responsibilities, you may contact the Crime Victims Services Bureau. You may also consult the agency's web site at www.doc.louisiana.gov.

If you would like to register to be notified should the inmate who committed the crime that involved you make a successful court appeal, be furloughed, be released to the community on work release or parole supervision, escape, or be scheduled for a parole or pardon hearing, complete this form and mail it to the address below.

Your request will be kept confidential.

Crime Victims Services Bureau
P.O. Box 94304, Baton Rouge, LA 70804-9304
Telephone Numbers: in Baton Rouge area - 342-6223;
long distance, toll-free - 888-342-6110

To receive notification as agreed, you must maintain a correct address and/or telephone number with the Bureau.

Person requesting notification: _____ Name of direct victim _____
(if not the same)
Address: _____ Telephone No. H (____) _____
W (____) _____

You are (check one): Direct victim of offense Witness to offense
 Parent/Guardian of victim Other (explain): _____
Relationship to inmate (if any): _____
Inmate's name: _____ Inmate's DOC # _____
Inmate's DOB: _____ Offense** _____

** If the offense was a sex offense, was the victim under age 18 at the time the crime was committed?
 No Yes If Yes, give victim's DOB (/ /) & age at the time of the crime: _____
Length of Sentence: _____ Date of Sentencing: _____
Parish of Conviction /Judicial District/and Court Docket No.: _____

Are you or any of your family members employed by the Department of Public Safety and Corrections at a state prison? If yes, please indicate which facility: _____

A 24-hour inmate locator service is available through the Louisiana Automated Victim Notification System (LAVNS). Call toll free 866-528-6748 or go to www.vinelink.com.

----- (for agency use) -----

Date request received in DPS&C: _____ By whom? _____

AUTHORITY NOTE: Promulgated by the Department of Public Safety and Corrections in accordance with R.S. 36, Chapter 9.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 32:852 (May 2006).

Richard L. Stalder
Secretary

0605#007

RULE

**Department of Public Safety and Corrections
Office of State Police**

Towing, Recovery, and Storage (LAC 55:I.Chapter 19)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49.950 et seq.) and R.S. 32:1714, relative to the authority of the Office of State Police to promulgate and enforce Rules, the Office of State Police hereby adopts the following Chapter regarding the regulation of persons and businesses engaged in towing and/or storing of vehicles in Louisiana. This Chapter repeals the current Rules in Chapter 19 and adopts new regulations in their place.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 19. Towing, Recovery, and Storage

Subchapter A. Authority, Exemptions, Definitions, Scope

§1901. Authority

A. The 1989 Legislature passed the Louisiana Towing and Storage Act in order to regulate persons and businesses engaged in towing and/or storing of vehicles in Louisiana. The act provides that the Department of Public Safety and Corrections, Public Safety Services, Office of State Police shall be the regulating agency. The Office of State Police (hereinafter referred to as the department) has authority in the effective regulation of Louisiana towing and storage businesses.

B. These Rules shall apply to any person or entity engaged in the business of towing, recovery or storage of vehicles in Louisiana, either for direct or indirect compensation as defined by law.

C. The deputy secretary, or his designee, may grant, by written order, alternate means of compliance to these rules.

D. These Rules are promulgated in accordance with R.S. 32:1711 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:853 (May 2006).

§1903. Exemptions

A. These Rules shall not apply to:

- 1. car haulers licensed with interstate operating authority capable of carrying five or more vehicles;
- 2. tow trucks owned by a governmental entity and not used for commercial purposes;
- 3. tow trucks registered and domiciled in other states with applicable interstate operating authority, operating solely in interstate commerce;

4. tow trucks transporting vehicles that are currently owned by the same tow company and ownership is supported by possession of a title, bill of sale, registration or other legal document while transported and the tow vehicle is permanently and prominently marked on both side in lettering at least 2 1/2 inches in height and 1/4 inch in width with the company's legal name, city and "NOT FOR HIRE," or

5. tow trucks owned and operated by garages, automotive mechanic shop owners, or other places where vehicles are repaired that solely tow vehicles for the purposes of maintenance or repair at their facility. Such businesses must:

a. maintain insurance coverage as required by this Chapter;

b. license their tow trucks in accordance with this Chapter;

c. not respond to any crash or disabled vehicle scenes, participate in police rotation systems, conduct private property tows nor conduct non consensual tows;

d. not offer towing or tow-related services for direct or indirect compensation or store any vehicles, as defined by law; and

e. insure tow trucks are permanently and prominently marked on both side in lettering at least 2 1/2 inches in height and 1/4 inch in width with the company's legal name, city and "NOT FOR HIRE."

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:853 (May 2006).

§1905. Definitions

A. The definitions found in the Louisiana Highway Regulatory Act, specifically R.S. 32:1 and the Towing and Storage Act, specifically, R.S. 32:1711 et seq., are applicable to these rules and shall have the same meaning indicated unless the context clearly indicates otherwise.

Authorized Agent—a suitable company authorized by the department in accordance with this Chapter to process and exchange the Official Report of Stored Vehicle information.

Automobile Liability Coverage—insurance which covers damage to property and/or personal injury to third parties.

Deputy Secretary—the deputy secretary of the Department of Public Safety and Corrections, Public Safety Services.

Garage Keepers Legal Liability Insurance—insurance which provides coverage to owners of storage facilities, garages, parking lots, body and repair shops, etc., for liability as bailees with respect to damage or loss to vehicles and contents left in their custody for safe keeping or repair.

Garage Liability Insurance—liability insurance covering storage facilities, automobile dealers, garages, repair shops, and service stations against claims of bodily injury and property damage that may arise through operation of such businesses.

Gross Combination Weight Rating (GCWR)—the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GCWR will be

determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

Gross Vehicle Weight Rating (GVWR)—the value specified by the manufacturer as the loaded weight of a single motor vehicle.

License Holder—shall include, but not be limited to, a tow truck operator, towing service, storage facility or other entity requiring licensure pursuant to this Chapter.

Offending Vehicle—the tow truck for which a violation of law, rule or regulation has been cited by the department and an administrative penalty has been assessed.

Offense—shall be synonymous with violation and mean any infraction of law, rule or regulation promulgated in accordance with this Chapter.

On-Hook Coverage—insurance specifically covering tow truck operators when engaged in the recovery, towing or transporting of a vehicle.

Owner—the last registered owner of a vehicle as shown on the records of the Office of Motor Vehicles and/or the holder of any lien on a vehicle as shown on the records of the Office of Motor Vehicles and/or any other person a documented ownership interest in a vehicle.

Place of Business—a permanent structure located within Louisiana used for business, staffed during regular business hours, equipped with phone and utility services, and houses records and other appropriate or required documents.

Responsible Party—the principal person or business that is civilly liable or criminally culpable for the occurrence or commission of a violation of law, rule or regulation.

Storage Area—an approved building, structure, yard, or enclosure used for the purposes of storing vehicles in Louisiana.

Storage Facility—any business or company that receives direct or indirect compensation for storing vehicles in Louisiana.

Tow Truck—a motor vehicle equipped with a boom or booms, winches, slings, tilt beds, wheel lifts, under-reach equipment, and/or similar equipment including, but not limited to, trucks attached to trailers and car carriers designed for the transportation and/or recovery of vehicles and other objects which cannot operate under their own power or for some reason must be transported by means of towing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006).

§1907. Administrative Penalty Assessment; Arbitration; Recovery of Penalties

A. Administrative Penalty Assessment

1. A tow truck owner or operator, an employee or the agent of a tow truck owner or operator, a storage facility owner or operator, an employee or the agent of a storage facility owner or operator, determined by the department to have committed a violation of R.S. 32:1711 et seq., or adopted and promulgated regulations as provided in this Chapter, is subject to legal sanctions being imposed against them. Legal sanctions shall include, but are not limited to, administrative civil penalties, warnings, and suspension of the operator's license, storage inspection license, tow truck license plate or revocation of the tow truck license plate.

2. The department shall issue a citation or inspection report for violations of law, rule or regulation which shall specify the offense committed. The citation or inspection report shall provide for the payment of an administrative penalty to the department in an amount prescribed by the department. The penalty shall be paid within 45 days of issuance and mailing, by first class mail, of the initial notice of violation, unless within that period the person to whom the citation is issued files a written request for an administrative hearing within the 45 days.

3. All assessed and adjudicated administrative penalties and fees shall be paid to the department and deposited in the Towing and Storage Fund.

B. Administrative Hearings

1. A tow truck owner or tow truck operator or a storage facility owner or operator may submit a written request for an administrative hearing within 45 calendar days of the issuance of the initial notice of violation.

2. Hearing requests shall be adjudged in accordance with the Administrative Procedure Act.

3. Failure to submit a written request to the department for an administrative hearing within 45 days from the date of the initial notice of violation; or requesting a hearing, being notified by mail and failing to appear at the scheduled hearing date and location shall constitute a default and the violations shall become finally affirmed.

4. In such cases, on or after the 46th day the department shall inform the responsible party by first class mail of the conviction and that he has 30 days from the date of this notice to pay the penalty or the Office of Motor Vehicles shall suspend his driver's license and/or vehicle registration.

5. For the purpose of this Part, removal from the Louisiana State Police tow truck rotation list shall not constitute a department action subject to review under Subsection B of this Section. Placement on the Louisiana State Police rotation list is a privilege, not a right.

C. Forfeiture of Claims

1. Any person who fails to comply with any provision required by these rules and regulations shall be subject to the forfeiture of all claims for monetary charges relating to towing, recovery and storage of the respective vehicle(s), including, but not limited to, the imposition of administrative penalties.

D. Recovery of Administrative Penalties

1. The department in an attempt to recover administrative penalties, may, at its discretion:

a. order the removal of the offending vehicle's license plate or request the Office of Motor Vehicles (OMV) deny the renewal of the offending vehicle's registration, or both:

i. a tow truck license plate removed pursuant to this Part may only be reinstated upon receipt of payment of fines and fees owed the department;

b. recommend the suspension or deny the renewal of a responsible party's driver license, or both:

i. a driver license suspended pursuant to this Part may only be reinstated upon receipt of payment of fines and fees owed the department;

c. order the vehicles of responsible parties not registered in Louisiana be seized until outstanding fines and fees are paid.

2. These actions are not punitive and used only as a mechanism to garner payment of monies lawfully owed the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:854 (May 2006).

§1909. Relationship to Other Laws and Regulations

A. Every tow truck operator, towing or storage facility, employees or agents of a towing or storage facility, subject to or licensed in accordance with this Chapter shall comply with the laws of Louisiana, Federal Motor Carrier Safety Regulations, Federal Hazardous Materials Regulations, specifically, 49 CFR Parts 100 through 399, if applicable, and rules promulgated herein. None of the Rules contained herein shall exempt a tow truck operator, towing or storage facility, its employees or agents from complying with law, rule or regulation.

B. Each day's failure to comply with these rules shall constitute a separate offense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:855 (May 2006).

§1911. Code of Conduct

A. Adherence to Law, Rule or Regulation

1. A violation of the provisions of the Towing and Storage Act shall also constitute a violation of these Rules.

2. Tow truck operators, towing services, storage facilities, their employees or agents shall comply with applicable federal and state laws, rules and regulations.

B. Dutiful Conduct

1. No tow truck operator, towing service, storage facility, their employees or agents, shall engage in unsuitable conduct or practices as described in this section or shall have a business association with any person which engages in unsuitable practices.

2. For the purposes of this Section, unsuitable conduct or practices shall include the following:

a. overcharging or charging for services not rendered;

b. misrepresentation of any material fact to the department or its officers;

c. obstructing or impeding the lawful activities of the department or its officers acting in their official capacity;

d. false or fictitious statements in any report, application, form or other document presented to the department, including, but not limited to, notarized documents required by this Chapter;

e. conviction of a felony relating to auto theft, vehicle insurance fraud, burglary of a vehicle, and/or possession of stolen vehicles or vehicle parts; and

f. any impairment of an alcoholic beverage, narcotic or controlled dangerous substance when operating a tow truck:

i. impairment shall mean the tow truck operator's blood alcohol concentration is 0.02 percent or more by weight base on grams of alcohol per 100 cubic centimeters of blood or the operator uses or is under the influence of a controlled dangerous substance;

- ii. tow truck operators shall submit to chemical testing when required by an officer of the department; and
- iii. every owner or operator shall insure there is no presence of an alcoholic beverage, narcotic, or controlled dangerous substance within the tow truck.

C. Prohibited Business Practices

1. Stopping at the Scene of a Crash

a. The operator of a tow truck, towing service, employee or agent, shall not stop at the scene of a motor vehicle crash, disabled, or unattended vehicle for the purpose of soliciting business, either directly or indirectly; unless the owner or operator of said vehicle has specifically summoned the tow company or its employees or agents to such scene for towing or recovery purposes, or has been called to the scene by a law enforcement officer or agency pursuant to that agency's official duty and authority. This prohibition shall also include first responders utilizing tow vehicle as transportation to and from the scene of emergencies.

2. Moving a Vehicle Involved in a Crash

a. Tow truck operators and towing services shall not, without the express authorization of the investigating law enforcement agency, move any vehicle from a public highway or street or from any public property when such vehicle is abandoned, stolen, damaged in a crash, or left unattended.

b. Tow truck operators or towing services may, in emergency cases, move a vehicle damaged as the result of a crash, without the express authorization of the investigating law enforcement agency, when the movement of the vehicle is to extract a person from the wreckage or to remove an immediate hazard to life or property. In either event, the movement of the vehicle shall be no more than necessary to accomplish the purpose of the move and the movement shall be reported immediately to the investigating agency.

3. Reception of Police Radio Communications

a. Tow truck operators or towing services shall not use, or permit the use of, any communications devices capable of receiving police radio traffic, except two-way radios equipped with only the agency frequencies currently used and authorized by the head of a law enforcement agency within their jurisdiction.

4. Tow Trucks Shall Not Be Emergency Vehicles

a. Tow trucks, tow truck operators or towing services shall not install, equip, possess or permit the use of sirens, non-amber colored emergency warning lights, emergency flashing headlights or any other warning system customarily equipped on emergency vehicles for the purpose of moving traffic out of the way of an approaching emergency vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:855 (May 2006).

Subchapter B. Tow Truck License Plate; Required Insurance

§1913. Tow Truck License Plate

A. Application

1. Applications shall be made to the Department of Public Safety and Corrections, in writing, upon forms

prescribed and furnished by the department. Applications shall be complete, accurate and contain all required information. A non-refundable or transferable fee of \$150, in addition to other required fees, must be submitted with each Louisiana tow truck license plate application. Fees shall be tendered to the Office of Motor Vehicles, P.O. Box 64886, Baton Rouge, LA 70896.

2. An application for a Louisiana tow truck license plate shall be made in the form of an affidavit containing the vehicle description and at least the following:

a. the name or names of owners or persons holding interest;

b. the trade or business name of the tow truck operator;

c. legal business entities such as corporations, limited liability corporations, partnerships, limited liability partnerships or other such legally recognized entities, whether registered with the office of the Secretary of State or not, should use their legally registered trade name as their business name. Such legally acknowledged entities shall include in the application:

i. the names of corporate officers;

ii. the name and address of the corporation's registered agent for service of process; and

iii. the names of shareholders;

d. a statement made, sworn and subscribed under oath. An example: "Under penalty of perjury, I hereby swear and affirm the information submitted in this application is true and correct to the best of my knowledge and I, as the individual with authority to execute on behalf of the company for which this application is made, hereby agree to abide by the laws and regulations governing towing and storage operations and the tow truck license plate for which this application is made;"

e. application date;

f. notarized signature of the applicant or appropriate corporate officer; and

g. proof of all required insurances overages, amounts, VINs and effective dates.

3. Trade Name; Tow Truck Markings

a. A tow truck owner or operator, prior to application for a tow truck license plate, shall use a trade name approved by the department, except in cases where a tow company is registered with the Secretary of the State.

b. Tow truck owners and tow truck operators shall list, by trade name as defined in this Section of this Chapter, the telephone number and address to their respective business. This listing will be in the official publication of the telephone company that services the area. Any towing service whose business is listed in directory services shall fulfill the intent of this Section.

c. Tow truck operators or owners shall permanently affix and prominently display on both sides of tow trucks the legal trade name of their business, telephone number and city of the vehicle's domicile in lettering at least 2 1/2 inches in height and not less than 1/4 inch in width.

d. The same legal trade name of the business used to mark the tow trucks shall be listed on the tow truck affidavit, registration, insurance certificates, towing and storage invoice and storage inspection license.

B. Issuance, Responsibilities of License Holder

1. Issuance

a. A tow truck license plate will be issued upon affirmation by an applicant that:

- i. the application is made and filed in good faith;
- ii. the information submitted is complete and accurate;
- iii. the applicant's towing equipment meets the requirements set forth in the Towing and Storage Act and these rules.

b. A tow truck owner or operator shall not conduct towing or storage related business until issuance of all required licenses.

c. The holder of a tow truck license plate shall adhere to the requirements of the Towing and Storage Act, rules contained in this Chapter and the laws of this state.

2. Responsibilities

a. Tow truck owners or tow truck operators shall ensure tow trucks owned or controlled by them:

- i. display a valid Louisiana Motor Vehicle Inspection Certificate;
- ii. display a valid Louisiana towing and recovery license plate or a Louisiana apportioned license plate with proof of the towing and recovery endorsement;
- iii. possess either a copy or the original valid registration receipt in the tow truck; and
- iv. possess proof of all required insurance coverages and amounts at all times in the tow truck.

b. The holder of a tow truck license plate must notify the department in writing and within 10 days of any change in the original tow truck license plate application.

c. Tow truck license plate(s) are nontransferable, and can be issued to an individual, sole-proprietorship, corporation, or other legally recognized entities.

d. The holder of a tow truck license plate shall immediately surrender the tow plate to the department when there is a change of ownership.

e. A tow truck license plate shall remain affixed and prominently displayed on the tow truck for which it is assigned.

3. Denial of Applications

a. An application for a tow truck license plate shall be denied if:

- i. a tow truck owner or operator is disqualified under the act;
- ii. a tow truck has a GVWR of 10,000 pounds or less and it shall not be used for towing vehicles for compensation; or
- iii. an application contains false or inaccurate information.

4. Renewal of Tow Truck License Plates

a. Tow truck license plate(s) shall be renewed annually in accordance with the schedule set forth by the Office of Motor Vehicles.

b. Tow truck license plates expire each year on the thirtieth day of June:

i. an administrative penalty shall be assessed for an expired tow truck license plate.

C. Suspension of the Tow Truck License Plate

1. A tow truck license plate may be suspended for failure to:

a. comply with lawful orders of the department, its officers or any court of this state;

b. pay fees or fines owed the Department of Public Safety; or

c. a violation of law, rule or regulation as provided in this Chapter.

D. Revocation of a Tow Truck License

1. A tow truck license plate may be revoked for:

a. violation of "Prohibited Business Practices" as found in §1911.C of this Chapter;

b. operation of a tow truck while under the influence of abused or controlled dangerous substance or alcohol;

c. operation of a tow truck during the commission of a crime;

d. obtaining a tow truck license plate under false pretenses;

e. removal of a vehicle from private property in violation of R.S. 32:1736;

f. monitoring police radio traffic for profiteering purposes;

g. habitual violation of law, rule, or regulation; or

h. disqualification under R.S. 32:1711 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:856 (May 2006).

§1915. Insurance Requirements; Financial Responsibility

A. Required Insurance

1. A tow truck owner or operator shall maintain insurance coverage as prescribed by law. Insurance policies shall be in the name of the tow truck owner or operator, with proper limits of liability and shall remain in effect at all times. The types of required insurance coverage are outlined below:

a. worker's compensation and employer's liability insurance, if applicable;

b. automobile liability coverage in an amount of not less than \$300,000 combined single limits coverage;

c. garage keeper's legal liability insurance in an amount not less than \$50,000;

d. garage liability insurance in an amount of not less than \$50,000;

e. on-hook coverage in an amount of not less than \$25,000.

2. Proof of financial responsibility satisfactory to the Office of Motor Vehicles or certificates of insurance issued by an insurer licensed to do business in the state of Louisiana or a federally authorized insurance group licensed in their state of domicile and attesting to carriage with coverage in the amounts herein below listed shall be submitted with the application (R.S. 32:1717 B).

B. Insurance Certificates

1. Insurance certificates shall contain:

a. all information required by law;

b. all information required by the Commissioner of Insurance of the state of Louisiana;

c. effective and expiration dates, types and amounts of coverage;

d. the Vehicle Identification Numbers (VIN) of vehicles insured;

e. the mailing address and physical address of the tow truck owner or operator.

2. Insurance policies shall not be canceled or materially altered except after providing the department 20 days written notice of such cancellation or alteration.

C. Proof of Required Insurances

1. Insurance certificates containing all required information shall be kept at all times in each tow truck and at the place of business of the towing and storage entity available for inspection by officers of the department.

2. The tow truck, towing facility or storage facility owner or operator shall submit proof of insurance to the department immediately upon demand.

3. Certificates of required insurances as provided by this Chapter shall verify in writing limits of liability coverage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:857 (May 2006).

Subchapter C. Safety

§1917. Driver's License; Required Skills and Knowledge

A. Tow truck operators or towing services shall not operate, or permit the operation of, a tow truck unless the following requirements are satisfied:

1. the operator of a tow truck shall possess a valid Louisiana driver's license;

2. the driver's license shall be a minimum of a Class D, "chauffeurs license," and shall be of an appropriate class as required by law;

3. the operator of a tow truck shall possess proficiency in recovery and transport of vehicles;

4. an operator of a tow truck shall be at least 18 years of age;

5. the operator of a tow truck shall wear a uniform shirt displaying the towing company's and driver's name.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:858 (May 2006).

§1919. Tow Truck Lighting; Equipment

A. Tow truck operators and towing services shall ensure tow trucks are equipped with, and use, required lighting, pursuant to state law and if applicable, CFR Title 49. Auxiliary tow lighting shall be required and used if the rear tail lamps, stop lamps or turn signals on a combination of vehicles are obscured, inoperative, or not visible to the rear by approaching traffic. When auxiliary tow lights are required, they shall include a minimum of two properly functioning tail lamps, stop lamps and turn signals, which may be combined and shall be attached as far apart as practical on the rearmost portion of the towed vehicle and visible to the rear by approaching traffic.

B. Tow trucks shall comply with all equipment requirements found in, or adopted pursuant to Louisiana Revised Statutes Title 32, Chapter 1, Part V (Equipment of Vehicles), 32:1711 et seq. and, if applicable, CFR Title 49.

C. Tow truck shall be equipped with only amber colored flashing warning lights, strobes, light bars or beacons with sufficient strength and mounted in a location to be visible at 360 degrees at a distance of no less than 1,000 feet under normal atmospheric conditions. Each tow truck shall be equipped with at least one amber colored light bar or beacon mounted to the roof or a higher location on a tow truck.

D. Tow truck operators and towing services shall ensure warning lights are operable at all times and shall only be activated after arriving at a disabled vehicle or when towing or recovering a vehicle. Slide back tow trucks solely transporting vehicles on their beds may opt to activate their tow truck's warning lights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:858 (May 2006).

§1921. Required Equipment

A. Tow trucks shall be equipped with the following properly functioning equipment at all times.

1. Oil-Absorbing Materials

a. Each tow truck shall be equipped with a minimum of 5 gallons of sand, dirt, or manufactured materials capable of absorbing sufficient quantities of fluids. Materials shall be carried in such a manner as to be free from exposure to the elements.

2. Broom

a. Each tow truck shall be equipped with a standard or push broom of a sufficient size to effectively clear debris.

3. Shovel

a. Each tow truck shall be equipped with a standard shovel of a sufficient size to effectively clear debris.

4. Flashlight or Electric Lantern

a. Each tow truck shall be equipped with an electric lantern or flashlight that provides sufficient lighting to facilitate recovery or towing work.

5. Fire Extinguishers

a. Tow trucks shall be equipped with a mounted fire extinguisher having no less than an Underwriters Laboratory rating of 10 B:C.

6. Emergency Warning Devices

a. Tow trucks shall be equipped with at least three, non-flammable emergency warning devices capable of warning motorists of a hazard in or near a roadway.

7. Steering Wheel Clamps

a. Steering wheel clamps, cable, ropes or their equivalents shall be of sufficient strength to adequately secure and lock the steering mechanism of a towed vehicle in a straight and forward position.

8. Tow Sling or Tow Plate

a. Tow trucks shall be equipped with a tow sling, plate, bar or equivalent that is structurally adequate to sustain the weight drawn. Slings or plates shall be properly and securely mounted to the tow truck without excessive "play" or slack.

b. The tow plates, slings and tow-bars shall be securely affixed to the towed vehicle by means of chains, hooks, straps or their equivalent. These devices shall be of a towing capacity equal to the weight of the towed vehicle requiring use of at least two chains, hooks, straps, etc.

9. Tow truck components including, but not limited to, winches, booms, cables, cable clamps, thimbles, sheaves, guides, controls, blocks, slings, chains, hooks, bed locks, hydraulic components, etc., shall be in good working order and maintained to manufacturer/factory specifications.

B. Securement and Safety Devices; Detached or Shifting Loads

1. Securement and Safety Devices

a. Every vehicle towed by a tow truck shall be joined by at least two safety devices, chains or cables, spaced as far apart as practical to the forward portion of the towed vehicle, with a combined tensile strength equal to or greater than the gross weight of the towed vehicle times 1.3. Safety devices shall be attached in such a way as to prevent vehicle separation upon failure of the towing attachment and shall be anchored to both the tow truck and vehicle being towed with only enough slack to permit free turning of the vehicles.

b. In addition to Subparagraph a above, all towed vehicle placed in a wheel lift device shall be secured to the wheel lift on both sides by straps or chains of an adequate strength and design to safely couple the vehicle to the wheel lift.

c. Acceptable securement devices are chains, cables or synthetic webbing with a combined working load limit equal to or greater than one-half the gross weight of the transported vehicle and customarily used for securing a vehicle or load.

2. Slide-Back Tow Trucks; Trailers

a. A slide-back tow truck or trailer carrying a vehicle on its bed shall secure the vehicle with an acceptable securement device to the frame or other anchor points on the bed with at least one device (tiedown) securing the front and one device securing the rear of the transported vehicle in addition to the winch cable.

b. Transported vehicles over 10,000 pounds shall use a minimum of four acceptable securement devices (tiedowns); two at each end of the transported vehicle.

c. The securement devices shall not contain slack and shall prevent any movement of the transported vehicle and be of structural strength adequate to safely secure the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:858 (May 2006).

§1923. Capacities and Specifications of Tow Equipment

A. Tow trucks shall not be licensed for a weight less than the manufacturer's GVWR.

B. Tow trucks shall be properly licensed to carry the weight of the tow truck and its load or laden weight.

C. A tow truck owner or tow truck operator found exceeding the weight for which the tow truck is licensed shall be assessed an administrative penalty.

D. A tow trucks shall have its factory VIN and GVWR posted on the tow truck in an accessible location.

E. Tow trucks licensed pursuant to this Chapter shall be equipped with only those winches, booms and cranes that have been produced and constructed by a manufacturer who carries product liability and which regularly produces winches and cranes of guaranteed quality.

1. A winch, boom or crane will not be prohibited by this subsection if the tow truck owner submits to the department a certification from a reputable testing laboratory, regularly engaged in the testing of such equipment, indicating that the capacity of the winch, boom or crane as mounted in the tow truck is not less than the weight for which the application has been made and the certification is carried in the truck at all times.

2. All costs of such testing and certification shall be borne by the tow truck owner or operator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:859 (May 2006).

§1925. Tow Truck Load Limitations; Specifications

A. Load Limitations

1. No tow truck operator shall tow or transport another vehicle unless the tow truck is capable of safely towing the vehicle.

2. A tow truck and its load shall not exceed the capabilities of the towing vehicle or hinder its ability to safely accelerate, stop, or maneuver.

B. Specifications

1. At no time shall a slide back tow truck or car carrier, transporting a vehicle on its bed, exceed its manufacturer's GVWR or the manufacturer's rated capacity for the towing assembly.

2. At no time shall any tow truck exceed the manufacturer's rated capacity for the towing assembly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:859 (May 2006).

§1927. Inspections by the Department

A. Investigations

1. The department is responsible for the effective regulation of vehicle towing, recovery and storage businesses in Louisiana. Applicants seeking or issued a tow truck license plate or a storage inspection license shall be subject to background investigations to determine eligibility.

2. The department may require a licensee to submit records, invoices, documents, etc., as necessary to complete an investigation.

3. Tow truck and storage facility owners or operators have a continuing obligation to inform the department in writing of any legal action taken against them that may affect eligibility to possess a tow truck license plate or a storage inspection license.

B. Inspection of Records, Invoices, Documents

1. Place of Business; Tow Trucks; Storage Facilities

a. Anytime during regular or normal business hours or when staffed; a business location, vehicle storage yard or facility and the premises of a tow truck owner or tow truck operator shall be subject to inspection by the department, with or without advance notice, to promote compliance with the provisions of this Chapter.

b. Tow truck operators, towing services, storage facilities, their employees or agents shall render full cooperation and courtesy to department officers.

c. Department officers are authorized to enter upon any property and perform inspections of towing facilities,

storage facilities or tow trucks licensed or subject to licensing pursuant to this Chapter.

2. Records

a. Upon request, a licensee shall make available to the department all required information and records and provide copies, as deemed appropriate by the department.

3. Other Law Enforcement Agencies

a. Law enforcement officers, within their jurisdiction, may inspect towing or storage businesses' records as part of an investigation during normal business hours.

4. Tow Truck Repair and Maintenance

a. Every tow operator or towing service shall systematically inspect, repair and maintain or cause to systematically inspect, repair and maintain all tow trucks and tow equipment subject to their control.

b. A tow truck owner or operator shall not operate, or allow or permit the operation of a tow truck in such a condition as to likely cause a motor vehicle crash, vehicle breakdown or malfunction.

5. Tow Trucks Declared Unsafe for Operation

a. Out-of-Service Criteria

i. Department officers shall declare and mark "out-of-service" any tow truck which, by reason of its mechanical condition or loading, would likely cause a motor vehicle crash or a breakdown.

ii. Department officers may place any tow truck out-of-service when such tow truck is found to be in need of repair to safely operate or an out-of-service violation exists as enumerated in the Commercial Vehicle Safety Alliance, Out-of-Service Criteria, revised January 1, 2004, or as amended hereafter.

iii. Department officers may place any tow truck driver out-of-service when such tow truck driver is found to be unqualified or unfit to drive or an out-of-service violation exists as enumerated in the Commercial Vehicle Safety Alliance, Out-of-Service Criteria, revised January 1, 2004, or as amended hereafter.

iv. A tow truck driver or tow truck that has been placed out-of-service shall remain as such until the required repairs are made and the condition is corrected and no longer exists.

6. Driving after Being Declared Out-of-Service

a. Drivers

i. No tow truck operator who has been declared out of service shall operate a tow truck or commercial vehicle until the driver may lawfully do so.

b. Tow Trucks

i. No tow truck owner or tow truck operator shall require or permit any person to operate nor shall any person operate any tow truck declared out-of-service until all repairs required by the out-of-service notice have been satisfactorily completed.

c. Penalty

i. Any tow truck owner or tow truck operator violating the provisions of Subparagraph B.6.a (Drivers) of this Section shall be fined no less than \$1,000 and no more than \$2,750.

ii. Any tow truck owner violating the provisions of Subparagraph B.6.b (Tow Trucks) of this Section shall be fined \$2,750.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:859 (May 2006).

§1929. Towing Services to Use Due Care

A. The towing service shall determine the method and manner of removing vehicles, and shall exercise due care to limit collateral damage during the towing, recovery or removal operations.

B. Tow truck and/or storage facility owners and operators shall adhere to any lawful orders or direction of a department law enforcement officer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:860 (May 2006).

Subchapter D. Vehicle Storage

§1931. Storage Facility; Licensing, Fees, Inspection, Requirements

A. Storage Facilities

1. Storage facilities, subject to the provisions of R.S. 32:1711 et seq., shall be located within Louisiana and make application to the department for a storage inspection license for each storage location.

2. A valid storage inspection license must be issued by the department before conducting business as a storage facility or a new storage location being utilized.

3. A storage company with a change in name, address or ownership shall reapply and pay fees in accordance with this Section.

4. Storage inspection licenses shall expire annually on the thirtieth day of June and may be renewed 60 days prior to expiration. A company operating as a storage facility shall renew their storage inspection license prior to expiration.

B. Storage Facilities; General Requirements

1. Storage companies failing to comply with the requirements set forth in this Chapter shall be subject to administrative penalties.

2. Storage companies shall apply for and be issued a storage inspection license prior to charging or collecting storage or administrative fees. Any company found in violation of this subchapter shall be subject to administrative and/or criminal penalties and shall forfeit all storage and administrative fees.

3. All licensees and applicants shall be current in the payment of all penalties and fees owed to the Department of Public Safety. Companies failing to comply with this requirement are subject to having their storage inspection license suspended or revoked by the Office of State Police and the business shall not charge or collect storage or administrative fees.

4. Prior to obtaining a storage inspection license, all applicable parish and/or municipal occupational licenses required for a facility to operate within said parish or municipality shall be current and valid.

5. Towing companies and existing qualified businesses applying for a storage inspection license shall apply in the same legal name of their business.

6.a. Storage companies shall comply with the insurance requirements listed in this Chapter, namely:

- i. garage keepers legal liability insurance in an amount not less than \$50,000;
- ii. garage liability insurance in an amount of not less than \$50,000; and
- iii. other applicable insurance requirements set forth in this Chapter.

b. A storage operator shall maintain the policies of insurance and adhere to the requirements set forth in §1915 of this Chapter, except automobile liability coverage and on-hook coverage shall not be required unless a company operates tow trucks.

7. Prior to a towing or storage company going out of business, the company, company owners or agents shall return all stored vehicles to the respective vehicle owners or legally dispose of all stored vehicles by obtaining permits to sell or using other vehicle disposal methods enumerated in the Towing and Storage Act.

C. Fees

1. An applicant for a storage inspection license shall:

a. remit the sum of \$100 per storage location, payable to the Louisiana State Police, Towing and Recovery Unit;

b. mail completed applications to the Louisiana State Police, Towing and Recovery Unit, P.O. Box, 66614, Mail Slip A-26, Baton Rouge, LA 70896.

2. A storage inspection license shall expire on the 30th day of June of each year, is non-prorated, non-transferable and non-refundable.

D. Inspection of a Storage Facility

1. Storage facilities shall make business records available for inspection by department officers during normal business hours, unless exigent circumstances exist which may require access to records after hours and shall provide copies upon request.

2. Storage inspection licenses shall be clearly visible and prominently displayed at each storage location's office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006).

§1933. Requirements for Official Report of Stored Vehicle (ORSV); Filing; Submittal; Option of the Department to Send and Receive ORSV Information

A. Storage Facility Requirements

1. When any vehicle subject to registration in this state has been stored, parked, or left at a garage where fees are charged for storage or parking, the owner of the storage or parking facility shall, unless exempted in R.S. 32:1721 or 32:1722, comply with R.S. 32:1719 and do the following.

a. File an Official Report of Stored Vehicle (ORSV) within three business days of receiving the vehicle in writing addressed to the Department of Public Safety and Corrections, Office of Motor Vehicles, Specialized Plate and Title Unit, P.O. Box 64886, Baton Rouge, LA 70896, or the department's authorized agent. If the vehicle is released to the vehicle owner within three business days of towing or receiving the vehicle, a storage/towing company shall not be required to submit the ORSV notification and if the ORSV notification is not made, there shall be no charge for related administrative fees.

b. Ensure that the ORSV contains make, model, VIN, license plate number, state of issuance and expiration date, vehicle storage date, adjusted storage date, stored vehicle's actual location, storage company's actual mailing address and State Police storage inspection license number.

2. The department may charge an administrative fee of \$9.50 to process the information exchange required in the ORSV notification; which fees shall be deposited in accordance with R.S. 32:1731.

3. The department or the department's authorized agent, shall provide directly and in writing to the owner of the storage or parking facility, the most current owner information available on the stored vehicle and indicate if the vehicle is reported stolen. If the department reports that a stored vehicle is or has been registered in another state, that report shall indicate that the department has used due diligence in obtaining information from nationwide databases available to the department.

4. If a storage company has not complied with the storage inspection licensing requirements provided in this Chapter; the department, its authorized agent, or the office of motor vehicles shall:

a. provide the owner information requested on the ORSV to the storage/towing company; and

b. forward a copy of the ORSV to the Office of State Police, Towing and Recovery Unit, within three business days of receipt of the ORSV.

B. Procedures for Transmission and Receipt of ORSV Information

1. The department may, as it deems appropriate, establish procedures for the collection of stored vehicle information as listed in this Subsection, including, but not limited to:

a. requirements that ORSV information be forwarded through electronic means from licensed storage companies the department;

b. requirements that ORSV registrant information and vehicle owner information be forwarded to licensed storage facilities using electronic notifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006).

§1935. Owner Notification of a Stored Vehicle

A. Owners, employees and agents of storage facilities or business subject to licensing as storage facilities shall comply with the notification requirements found in R.S. 32:1720, 32:1720.1 and 32:1722.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006).

§1937. Administrative Fees

A. Administrative fees for storage of vehicles shall not be charged or otherwise collected without possession of a valid storage inspection license, and the timely filing of an ORSV or other notification requirements in the Towing and Storage Act.

B. Licensed storage companies may charge the vehicle owner/lien holder those administrative costs incurred by

filing an ORSV along with any postal charges related to the mailing of the ORSV notices and certificate of mailing letters sent to the vehicle owner and any lien holder.

C. The maximum administrative fee that may be charged by a storage company for filing of the Official Report of Stored Vehicle notice shall be \$25 for in-state notifications and \$30 for out-of-state notifications. The maximum administrative fee that may be charged for mailing certificate of mailing letters to the vehicle owner and lien holder shall be no more than the rate for US Postal Service plus \$4 per required letter.

D. All costs must be documented with receipts, which shall be made available to the department, vehicle owner and lien holder upon demand. Companies found in violation of this part shall be subject to criminal or administrative penalties prescribed in this Chapter, including forfeiture of storage and administrative fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:861 (May 2006).

§1939. Permits to Sell and Permits to Dismantle

A. Any business that stores vehicles pursuant to this Chapter, prior to filing for a permit to sell or for a permit to dismantle, shall have obtained a current Louisiana Storage Inspection License.

B. Any business that stores vehicles pursuant to this Chapter shall include with each permit to sell or permit to dismantle filing, a legible photocopy of their storage inspection license.

1. Applications for permits to dismantle or permits to sell without photocopies of the storage inspection license shall be rejected.

2. Any business that stores vehicles pursuant to this Chapter and provides the department a fictitious or fraudulent storage inspection license photocopy, or uses, or allows the use of, a storage inspection license of another business shall be subject to criminal and administrative penalties prescribed by law, including the revocation of the storage inspection license.

C. The department, or its authorized agents, shall not issue permits to sell or permits to dismantle, to a person or business failing to comply with the notification and storage inspection licensing requirements.

D. Storage facilities shall make notifications required in R.S. 32:1719 and 32:1720, unless R.S. 32:1722 is applicable, and shall comply with the requirements found in R.S. 32:1711 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:862 (May 2006).

§1941. Storage and Towing Facilities; General Requirements; Procedures

A. A facility may only store and charge storage on vehicles that are in the facility's actual possession, located within the licensed storage facility and meets the requirements of this Chapter.

B. Vehicles shall be released immediately to the vehicle owner or lien holder, once payment is made, any applicable lien holder requirements (R.S. 32:1720.1) are met, and any applicable documented law enforcement or department hold orders are released.

C. Storage and towing facilities shall provide for the security and safety of vehicles stored in accordance with this Chapter. Storage areas shall have security barriers or safety apparatus suitable to insure the security of the property contained therein. Outside storage areas shall be enclosed by at least a six foot high chain link fence, or fence of similar strength or solid wall sufficient to protect against loss, trespass or vandalism. The loss, damage, theft or misappropriation of a stored vehicle or its contents shall be evidence of a violation of this provision, if the loss, damage, theft or misappropriation was reported to local law enforcement and the loss was attested to by the vehicle owner.

D. Storage and towing facilities shall have a clearly visible sign maintained at all times at the business office and at the entrance to any outside storage area, stating the name of the business, telephone number and hours of operation. An after-hour telephone number shall be included on the sign advising the public how to make contact for the release of vehicles, contents or personal property prior to any company charging a gate fee.

E. Removable personal items shall not be withheld by the towing or storage facility. Any person with picture identification, who shows proof of ownership, or written authorization from the stored vehicle's registered or legal owner, may inspect, photograph, view the vehicle and remove non-affixed personal property, including the license plate, without charge during normal business hours. These items will be released to the owner or person authorized by the vehicle owner upon request if there is no police hold on them.

F. Storage areas shall be adequate in size and construction for storing vehicles.

G. Whenever any vehicle has been towed to a storage facility, other than by owner's request, where fees are charged for such storage or parking, the owner or operator of the storage facility shall comply with the law enforcement notification requirements found in R.S. 32:1718.

H. The shared use of a storage facility, towing facility, business office or tow trucks by two or more different towing or storage companies is expressly prohibited.

I. Towing and storage operators will maintain all records dealing with the towing and storage of vehicles for a minimum of three years.

J. Towing or storage companies shall not store vehicles or charge for a service performed by another business or individual, unless the vehicle's owner authorizes the service or the vehicle's transfer to another business in writing.

K. All third party tows or storage shall be prohibited, unless authorized by a law enforcement agency or in writing by the towed or stored vehicle's owner prior to the move.

L. Vehicles shall be handled and returned in substantially the same condition as they existed before being towed or stored.

M. Personal property left in a vehicle and not claimed prior to a company obtaining a permit to sell on said vehicle,

shall be disposed of in accordance with existing applicable civil law.

N. The address that the towing or storage service lists on its applications shall be the business location where its business records are kept. The storage application shall also list all storage locations for vehicle redemption.

O. Vehicle repairs shall be authorized specifically by signature of vehicle owner or operator.

P. Towing and Storage Invoices, Bills, Repair Statements and Vehicle Repair Authorization Forms

1. All invoices, bills, statements and vehicle repair authorization forms shall be legible and include:

a. the legal name of the business and the physical and mailing address;

b. the vehicle description, VIN, license plate number, state of issue, vehicle year, vehicle make, and vehicle model and;

c. contain itemized charges for service as they occur.

2. All towing and storage invoices, bills, statements and vehicle repair authorization forms shall be:

a. provided to a vehicle owner at the time of recompense;

b. consecutively numbered and filed by number;

c. completed to indicate the date the vehicle was released, the person's name, driver's license number and signature of the person taking possession of the vehicle; and

d. readily available, containing all the required information, along with voided invoices, upon request by virtue of either being kept on the actual premises or electronically produced via fax or other similar technological medium with 10 minutes.

3. Towing invoices shall include the following legible information and shall be maintained with the towed vehicle at all times:

a. the requirements enumerated in Paragraph 1 above;

b. date, time and location of tow or service;

c. the tow-truck operator's name and time of dispatch; and

d. name and driver's license number of vehicle owner, operator, or other person with authority to authorize the tow, or the name of the law enforcement agency requesting and authorizing the tow.

Q. Storage facilities shall maintain storage records at the individual locations, which shall include at least the following information:

1. date and time call for service was received and location of vehicle if towed;

2. name of the person and company requesting and authorizing the tow or service;

3. description of the vehicle including VIN, license number and state, year, make, model and color;

4. the tow truck operator's name, if towed;

5. the date and location vehicle was placed in storage;

6. proof of filing ORSV or exceptions listed in the Towing and Storage Act;

7. letters of notification as required by these rules and law;

8. proof of all administrative costs; and

9. records of release of vehicles shall include the date and legal name, driver's license number of the person the stored/towed vehicle was released to.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:862 (May 2006).

§1943. Storage Rates

A. Vehicle storage fees shall be based on a calendar day and documented by ORSV notification or the requirements in R.S. 32:1722.

B. Towing and/or storage facilities shall be staffed and open for business Monday thru Friday, 8 a.m. to 5 p.m., excluding state holidays.

C. The daily storage fee, as set by the Public Service Commission and department approved gate fees and administrative fees shall be the only fees charged for storing a vehicle. There shall be no additional charges for locating or retrieving the vehicle in the storage facility, viewing of the vehicle, photographing the vehicle, removal of items from the vehicle, moving a vehicle, or for any other similar activity during business hours.

D. Each daily overcharge shall constitute a separate violation and additional administrative penalties may be assessed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:863 (May 2006).

§1945. Gate Fees

A. Business Hours

1. For the purposes of this part, business hours will be Monday thru Friday, 8 a.m. to 5 p.m., excluding state holidays.

2. Gate fees shall not be charged during business hours.

B. Gate Fee Charge

1. A towing or storage company that charges a gate fee shall not charge a fee greater than \$45.

2. An owner of a vehicle charged fees in violation of this Chapter shall have cause of action to recover the amount of the excess fees, plus attorney fees and all court costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:863 (May 2006).

Subchapter F. Rotation List

§1947. Law Enforcement Tow Truck Rotation List

A. Establishing a Rotation List

1. Louisiana law enforcement agencies may establish a rotation list of Louisiana towing companies using boom and/or slide back tow trucks and facilities licensed in accordance with the provisions of R.S. 32:1711 et seq., and rules and regulations promulgated herein.

2. Towing companies selected by a law enforcement agency to participate on their rotation list shall participate at the discretion of the law enforcement agency and may be removed for any violation of law, agency rule, or policy.

3. When a law enforcement officer determines that a motor vehicle must be towed, the law enforcement officer shall give the owner or operator of the motor vehicle the option to select a properly licensed towing company to tow his vehicle. If the owner or operator of the motor vehicle is unable to select a licensed towing company, chooses not to select a particular licensed towing company, or an emergency situation requires the immediate removal of the vehicle, the next available licensed towing company on the approved law enforcement rotation list shall be called by the law enforcement officer to tow the vehicle.

4. The towing company selected by the owner or operator of a vehicle or law enforcement agency shall be allowed to respond within to the call within 45 minutes. If the towing company fails to arrive within 45 minutes, the law enforcement officer may select the next available towing company from the approved rotation list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:863 (May 2006).

§1949. Severability Clause

A. If for any reason a provision of these rules is declared invalid, the invalidity of that provision shall not affect the validity of the remaining rules or other provisions thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1714.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the State Police, LR 32:864 (May 2006).

Stephen Hymel
Undersecretary

0605#048

RULE

Department of Revenue Policy Services Division

Health Insurance Credit for Contractors of Public Works (LAC 61:I.1195)

Under the authority of R.S. 47:287.759, R.S. 47:287.785, R.S. 47:1511, R.S. 47:1601, and R.S. 47:1603, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts LAC 61:I.1195 relative to the administration of the health insurance credit for contractors of public works.

The purpose of this regulation is to explain the procedure employed for the administration of the health insurance credit allowed for public works contractors by R.S. 47:287.759 as enacted by Act 504 of the 2005 Regular Session of the Legislature.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 11. Income: Corporation Income Tax

§1195. Health Insurance Credit for Contractors of Public Works

A. Louisiana Revised Statutes 47:287.759 allows for a tax credit against corporation income tax to contractors and subcontractors constructing a public work who offer health insurance to their employees and their dependents.

1. The amount of the credit is 2 percent of the total amount of the contract for the public work less any amounts paid to a subcontractor for a portion of the work performed by the subcontractor.

2. The total tax credit for all taxpayers is limited to \$3 million per calendar year.

3. At least 85 percent of the full-time employees must be offered health insurance. Contractors and subcontractors must pay 75 percent of the total premium for the health insurance of employees who choose to participate and at least 50 percent for each participating dependent of such employees.

4. Employees do not include independent contractors.

B. Definitions

Dependents—spouse and those persons who would qualify as dependents on the employee's federal income tax return.

Earnings—gross wages of the employee not including fringe benefits.

Health Insurance—coverage for basic hospital care, and coverage for physician care, as well as coverage for health care.

Public Work—a building, physical improvement, or other fixed construction owned by the state or a political subdivision of the state.

C. Procedure for Allocation of the Health Insurance Credit

1. The department will determine if the \$3 million cap on the health insurance credit has been exceeded after all possible extensions to file have passed for all taxpayers.

2. If the \$3 million cap on the health insurance credit is not exceeded and all applicable extensions to file returns have expired, contractors and subcontractors who earn the health insurance credit will be allowed the full amount of the credit properly claimed on their tax return with appropriate interest.

3. However, if more than \$3 million is claimed statewide, the department will allocate the credit on a pro rata basis in proportion to the amount of health insurance credit properly claimed on each employer's timely filed tax return. The allocation will be made after the filing deadline inclusive of all applicable extension periods.

a. Contractors and subcontractors claiming the health insurance credit and an overall refund of overpayment for the taxable year should file their return with the department.

i. The department will reduce the taxpayer's total refund of overpayment by the amount of the health insurance credit claimed on the tax return.

ii. An initial refund of overpayment, the amount of which is exclusive of the health insurance credit amount, will be sent to the taxpayer with a letter stating that the taxpayer's claimed health insurance credit will be held in abeyance until after the extended filing deadline and subsequently will be refunded with appropriate interest.

iii. The health insurance credit will be processed and refunded proportionately after the last extension for filing deadline.

iv. If the health insurance credit is reduced as provided by §1195.C.3 and the taxpayer owes additional money to the department, an assessment will be sent exclusive of penalties and interest if paid within 60 days.

(a). If the additional amount owed is paid within the 60-day period, the interest will be abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

(b). If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

b. Contractors and subcontractors who claim the health insurance credit and still owe additional taxes for the taxable year, should file their return with the department and remit payment with the return.

i. If the taxpayer's health insurance credit is reduced as provided by §1195.C.3, the taxpayer will receive an assessment for the difference without being subject to penalties and interest if paid within 60 days.

ii. If the additional amount owed is paid within the 60-day period, the interest will be abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

iii. If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

c. Contractors and subcontractors who claim the health insurance credit that reduce their tax liability to zero for a taxable year should file their return with the department.

i. If the taxpayer's health insurance credit is reduced as provided by §1195.C.3 such that the taxpayer owes additional tax, the taxpayer will receive an assessment for the taxes owed exclusive of interest and penalties if paid within 60 days.

ii. If the additional amount owed is paid within the 60-day period, the interest is abated pursuant to R.S. 47:1601. Payment of the additional amount owed within the 60-day period will be considered to be a request for waiver of delinquent payment penalties pursuant to R.S. 47:1603 and will be granted.

iii. If the amount owed is not paid within the 60-day period, interest and penalties will be computed from the original due date of the return regardless of any extensions.

D. Information that must be submitted with the return in order to properly claim the credit:

1. statement that health insurance has been offered to at least 85 percent of the employees;

2. copy of the health insurance coverage plan from the insurance company;

3. number of full-time employees working for the contractor or subcontractor; and

4. amount of the contract for public work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.759, R. S. 47:1601, R.S. 47:1603, R.S. 47:287.785, and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 32:864 (May 2006).

Cynthia Bridges
Secretary

0605#041

RULE

Department of Revenue Policy Services Division

Taxable Transactions for Hotel Services (LAC 61:I.4301)

The Department of Revenue, Office of the Secretary, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950, et seq., and the authority of R.S. 47:1511, amends LAC 61:I.4301 relative to sales tax applicable to transactions for hotel services.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 43. Sales and Use Tax

§4301. Uniform State and Local Sales Tax Definitions

A. ...

B. Words, terms and phrases defined in R.S. 47:301(1) through R.S. 47:301(27), inclusive, have the meaning ascribed to them therein and as further provided in §4301.C.

C. ...

Hotel—

a. The term *hotel* has been defined under R.S. 47:301(6) to be somewhat more restrictive than normally construed relative to the size of the establishment. Those establishments engaged in the business of furnishing sleeping rooms, cottages or cabins to transient guests that consist of six such accommodations at a single business location meet the statutory definition. If an establishment has fewer than six sleeping rooms, cottages or cabins at a single business location for transient guests, the establishment is not a *hotel* for purposes of *state and local sales or use tax*. The statutory definition of *hotel* excludes facilities with

fewer than the specified number of accommodations from collection of *state and local sales or use tax*.

b.i. In determining whether an establishment furnishes hotel services to transient guests, it is determined that a guest who transacts for the services of a hotel, regardless of the length of time that the hotel services are used, is considered a transient guest and the transaction is subject to sales tax. Where a hotel provides permanent residences to permanent occupants, the transaction is not subject to *state and local sales or use tax*. For the transaction to be considered a rental as a permanent residence to permanent occupants, the physical properties of the space must provide the basic elements of a home, including full-sized and integrated kitchen appliances and facilities. Additionally, the occupant must use the facilities of the hotel as a home with the intent to permanently remain. When all conditions of the above two standards are met, the occupant may be considered non-transient for the purposes of the *state and local sales or use tax*. A lease with a hotel for a period of not less than one year will be considered as evidence in support of permanent residency status, when the area rented contained the required physical properties of the hotel accommodations at the beginning of the lease. Proof that hotel rental contained the requisite physical properties of the hotel accommodations within a unit continuously rented by one person or family for a period greater than one year will be considered as evidence in support of permanent residency status. The department may require additional evidentiary support of claims of non-transient status.

ii. For the purposes of *state and local sales and use tax* collections under R.S. 47:301 et seq. a guest of a hotel is a natural person.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554, 2556 (December 2002), LR 29:186 (February 2003), LR 30:1306 (June 2004), LR 30:2870 (December 2004), LR 32:865 (May 2006).

Cynthia Bridges
Secretary

0605#053

RULE

**Department of Revenue
Policy Services Division**

Telephone Company Property Assessment Relief Fund
(LAC 61:I.1905)

Under the authority of R.S. 47:6014 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, adopts LAC 61:I.1905 concerning the deposits to be made to the Telephone Company Property Assessment Relief Fund.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 19. Miscellaneous Tax Exemptions

**§1905. Telephone Company Property Assessment Relief
Fund**

A. Telephone companies are allowed a credit for 40 percent of the total ad valorem taxes paid to political subdivisions of Louisiana on their public service properties that are assessed by the Louisiana Tax Commission at 25 percent of fair market value.

B. The credit can be taken against the following state taxes:

1. individual income tax;
2. corporation income tax; and
3. corporation franchise tax.

C. The monies to pay the credits will be taken from Telephone Company Property Assessment Relief Fund.

D. The state sales taxes collected on interstate telecommunication services will be deposited into the Telephone Company Property Assessment Relief Fund.

1. The amount state sales taxes collected on interstate telecommunications will be determined by the secretary using industry data available at the time the fund was originally created and was published by the Federal Communications Commission.

2. Based on the industry data published by the Federal Communications Commission in 1998, which was the latest available data at the time that the fund was created in 2000, 36 percent of telephone revenues in Louisiana from end-users were from interstate calling.

3. Accordingly, the Secretary of Revenue has notified the state Treasurer that 36 percent of the sales tax revenue collected on telecommunication services shall be deposited to the Telephone Company Property Assessment Relief Fund.

4. This Rule shall be effective July 1, 2006, in accord with Acts 2005, No. 266.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6014 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 32:866 (May 2006).

Raymond E. Tangney
Senior Policy Consultant

0605#043

RULE

**Department of Treasury
Teachers' Retirement System**

Credit for Involuntary Furlough and Leave without Pay
(LAC 58:III.401)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Trustees of the Teachers' Retirement System of Louisiana (TRSL) adopted the provisions of the R.S. 11:163(A)(2)(a) and (C)(2). This Rule provides for public employees placed on involuntary furlough or leave without pay (LWOP) due to a

gubernatorially declared disaster or emergency to continue to earn service credit in their retirement systems by making employee and employer contributions. These purchases may be paid to either TRSL or the employer and then remitted to TRSL.

**Title 58
RETIREMENT**

**Part III. Teachers' Retirement System of Louisiana
Chapter 4. Purchase of Service Credit**

**§401. Purchase of Service Credit for Involuntary
Furlough or Leave without Pay (LWOP) Due to
Gubernatorially Declared Disaster/Emergency**

A. General Provisions. If a TRSL member is on involuntary furlough or LWOP anytime during the period of August 29, 2005 through June 30, 2006, due to a gubernatorially declared disaster or emergency, he may purchase service and salary credit for each day of service he was on involuntary furlough or LWOP during this period under this provision if such service is not credited to his account.

1. TRSL members eligible to purchase service and salary credit under this rule must make application to TRSL prior to remitting any funds.

2. TRSL must receive certification from the member's employer as follows:

a. the member was or is on involuntary furlough or on LWOP due to a gubernatorially declared disaster or emergency;

b. the period of time during which the member was or is on involuntary furlough or LWOP due to a gubernatorially declared disaster or emergency; and

c. the member's full time salary as of August 29, 2005.

3. Invoices calculated under this provision will include interest charges at 15 day intervals should the payment become delinquent in accordance with R.S. 11:281.

4. Monthly payments must be paid after the close of month being purchased. For example: payments due for the month of February 2006 must be paid after February 28, 2006.

5. Payments to purchase service and salary credit cannot be made in advance. For example, an invoice issued in December 2005 for the January 2006's service and salary credit cannot be paid in December 2005.

6. DROP and Active-DROP members are not allowed to purchase service credit in accordance with R.S. 11:728(A).

7. Members may purchase all credit or partial credit while on involuntary furlough or LWOP.

B. Methods of Payment

1. Members may make payment on a month-by-month basis or make a lump sum payment.

2. Payments may be in the form of a direct payment from the member or a direct trustee-to-trustee transfer from a qualified plan or IRA.

3. Should a member elect to make payments through his employer, the employer is required to remit the payments to TRSL, along with a Report of Members Purchasing Declared Disaster/Emergency Leave. This separate report must include the member's name, Social Security number, the month/year being purchased, the full-time monthly

salary rate, the months of contract, employee contributions and interest, employer contributions and interest, and the date the member made payment to the employer.

4. Employers who do not remit the employee and employer contributions paid by the member in accordance with R.S. 11:281 will be liable for any delinquent interest.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:163 (A)(2)(a) and (C)(2).

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of Teachers' Retirement System of Louisiana, LR 32:867 (May 2006).

Maureen H. Westgard
Director

0605#049

RULE

**Department of Treasury
Teachers' Retirement System**

Deferred Retirement Option Plan—Distributions
Provided for by the Gulf Opportunity Zone Act of 2005
(LAC 58:III.510)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Trustees of the Teachers' Retirement System of Louisiana has adopted this Rule to implement provisions of the Gulf Opportunity Zone Act of 2005. This Act allows for distributions, from a public pension plan qualified under the provisions of the Internal Revenue Code, Section 401(a), to be made by retirees residing in the Hurricane Katrina, Hurricane Rita, and Hurricane Wilma disaster areas. These distributions will be allowed through December 31, 2006 without penalty.

**Title 58
RETIREMENT**

**Part III. Teachers' Retirement System of Louisiana
Chapter 5. Deferred Retirement Option Plan
§510. Distributions Provided for by Gulf Opportunity
Zone Act of 2005**

A. If a participant was impacted by Hurricanes Katrina, Rita, or Wilma they may be able to withdraw funds from their DROP/ILSB account in addition to those normally allowed under §509. In order to receive an additional distribution, the participant must have retired prior to the special withdrawal request.

B.1. A qualified hurricane distribution must be made on or after:

a. August 25, 2005 and before January 1, 2007, to an individual whose principal place of residence on August 28, 2005 was located in the Hurricane Katrina disaster area, and who sustained economic loss due to Hurricane Katrina;

b. September 23, 2005 and before January 1, 2007, to an individual whose principal place of residence on September 23, 2005 was located in the Hurricane Rita disaster area, and who sustained an economic loss due to Hurricane Rita (but is not a distribution described in Subparagraph B.1.a);

c. October 23, 2005 and before January 1, 2007, to an individual whose principal place of residence on October 23, 2005 was located in the Hurricane Wilma disaster area,

and who sustained an economic loss due to Hurricane Wilma (but is not a distribution described in Subparagraphs B.1.a or b).

2. The aggregate amount of eligible distributions cannot exceed \$100,000 in any tax year. No distribution is allowable greater than the participant's account balance. A qualified distribution is not subject to any penalty that would normally be imposed because of the participant's age, and the distribution is not subject to any mandatory federal income tax withholding.

C. Participants eligible to receive funds under this provision must complete a notarized Hurricane Affidavit attesting to their eligibility.

D. If the participant is married, consent of the participant's spouse is required to receive a Hurricane Katrina, Hurricane Rita, or Hurricane Wilma distribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:786-791 and the U. S. Gulf Opportunity Zone Act of 2005.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Teachers' Retirement System, LR 32:867 (May 2006).

Maureen H. Westgard
Director

0605#050

Notices of Intent

NOTICE OF INTENT

Tuition Trust Authority Office of Student Financial Assistance

START Savings Program
(LAC 28:VI.107, 305, 309, and 311)

The Louisiana Tuition Trust Authority announces its intention to amend its START Savings Program (R.S. 17:3091 et seq.) Rules.

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972 (ST0671NI).

The text of this proposed Rule may be viewed in its entirety in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments on the proposed changes (ST0671NI) until 4:30 p.m., June 12, 2006, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: START Savings Program

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

There are no estimated implementation costs or savings to state or local governmental units.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

There are no estimated effects on economic benefits to directly affected persons or non-governmental groups resulting from these measures.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no anticipated effects on competition and employment resulting from these measures.

George Badge Eldredge
General Counsel
0605#006

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Clean Air Mercury Rule Incorporation by Reference
(LAC 33:III.3003)(AQ257ft)

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.3003 (Log #AQ257ft).

This proposed rule is identical to federal regulations found in 70 FR 28606-28700 (May 18, 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 proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference the federal Clean Air Mercury Rule (CAMR) and provides for participation in the EPA-administered cap-and-trade program for annual mercury emissions. The federal rule seeks to reduce mercury emissions from coal-fired electrical generating units (EGUs). The federal EGU mercury cap-and-trade program for coal-fired EGUs was promulgated on May 18, 2005, and is closely based upon the highly successful Acid Rain Program. States have until November 2006 to submit to EPA their corresponding EGU emissions control plan based upon Section 111 of the Clean Air Act Amendments of 1990.

Mercury is a metal that exists naturally in the environment around the world. It has been demonstrated that mercury can be transported globally in the atmosphere. This mercury transport occurs from both natural and man-made sources. Emissions from coal-fired EGUs in the United States have been determined to be a significant source of mercury. Although there are numerous sources of mercury exposure in homes, industries, and nature, some of the most significant exposure risks occur when the mercury in the atmosphere eventually settles to the ground and finds its way into lakes, rivers, and streams. This mercury in the bottom sediments of some rivers and lakes undergoes methylation, a process carried out by bacteria in certain conditions. Methyl mercury then gets into the food chain and results in mercury exposure to persons who eat fish. There are numerous fish consumption advisories in Louisiana. Human exposure to

mercury can affect the nervous system and the function of several internal organs, such as the brain and the kidneys. Young children, especially the unborn, developing fetus, are particularly susceptible to the effects of mercury.

The federal rule establishes mercury limits from new and existing coal-fired EGUs and creates a market based cap-and-trade program that will reduce EGU emissions of mercury in two separate phases, in the years 2010 and 2018. Each state receives a mercury budget for each year. Louisiana's budget is 0.601 tons of mercury for years 2010-2017 and 0.237 tons of mercury thereafter. Each state can adopt any methodology to allocate their mercury allowances. The department proposes to adopt the federal model rule for mercury allowance allocations that are based upon baseline heat input. It also proposes to adopt the new source set-aside of five percent of the allowances in Phase 1, and three percent in Phase 2. New coal-fired EGUs will have to meet stringent new source performance standards in addition to being subjected to the caps. While individual states do have the authority to develop an alternative rule different from the federal cap-and-trade program, the department has concluded that alternatives to the EPA program which produce earlier and deeper reductions of mercury may not be technologically feasible and that rules which require all coal-fired EGUs to install mercury controls may not be cost effective, possibly subjecting the electricity rate payer to higher than necessary rates without a corresponding decrease in state-wide mercury deposition levels. The basis and rationale for this proposed rule are to mirror the federal regulations for CAMR.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference

§3003. Incorporation by Reference of 40 Code of Federal Regulations (CFR) Part 60

A. Except for 40 CFR Part 60, Subpart AAA, and as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2005, are hereby incorporated by reference as they apply to the state of Louisiana. Also incorporated by reference are revisions to 40 CFR Part 60, Subparts A, B, Da, and HHHH as promulgated as the Clean Air Mercury Rule on May 18, 2005, in the *Federal Register*, 70 FR 28606-28700; and Subpart EEEE, "Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or

Reconstruction is Commenced on or After June 16, 2006," and Subpart FFFF, "Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004," promulgated on December 16, 2005, in the *Federal Register*, 70 FR 74870-74924.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1239 (July 1999), LR 25:1797 (October 1999), LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:1009 (May 2004), amended by the Office of Environmental Assessment, LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2446 (October 2005), LR 32:809 (May 2006), LR 32:

A public hearing will be held on June 28, 2006, 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. Free parking is available 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 AQ257ft. Such comments must be received no later than June 28, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ257ft. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Baratavia Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

0605#016

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Major Stationary Source/Major Modification Emission Thresholds for Baton Rouge Ozone Nonattainment Area (LAC 33:III.111, 504, 509, 607, 709, and 711)(AQ253)

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.111, 504, 509, 607, 709, and 711 (Log #AQ253).

The department promulgated an emergency rule on June 15, 2005, to address rule revisions needed for transition from the 1-hour ozone National Ambient Air Quality Standard (NAAQS) to the 8-hour ozone NAAQS. The 1-hour ozone standard was revoked by the EPA in the federal 8-hour ozone implementation rule. The revocation of the 1-hour ozone standard was effective June 15, 2005. Under the 1-hour ozone standard the five-parish Baton Rouge ozone nonattainment area was classified as severe. Under the 8-hour ozone standard the Baton Rouge area is classified as marginal with an attainment date of June 15, 2007. To continue efforts toward attainment of the 8-hour ozone standard in the Baton Rouge area, the department is proposing to make permanent the revisions in LAC 33:III.Chapters 5 and 6 to the major stationary source threshold values, the major modification significant net increase values, and the minimum offset ratios for the Baton Rouge nonattainment area at values more in line with those listed for a classification of serious than for the marginal classification. These revisions include changing references to the ozone standard from the 1-hour standard to the 8-hour standard; amending text to reflect the NSR requirements applying to large sources in nonattainment areas for the 8-hour standard; including nitrogen oxides as a precursor for ozone; including the current fine particle (PM_{2.5}) NAAQS; and amending Tables 1 and 1a in LAC 33:III.711 to reflect the 8-hour ozone standard. Without this action the Baton Rouge nonattainment area, which is classified as marginal under the 8-hour ozone standard, would revert to marginal levels in Table 1 of LAC 33:III.504. This rule will promulgate in LAC 33:III.504.M, the thresholds set forth in Emergency Rule AQ253E that were effective as of June 15, 2005. The proposed rule revisions will constitute a proposed revision to the Louisiana State Implementation Plan (SIP) for air quality. The basis and rationale for this rule are to continue efforts toward attainment of the ozone standard and cleaner air in the five-parish Baton Rouge area.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 1. General Provisions

§111. Definitions

A. When used in these rules and regulations, the following words and phrases shall have the meanings ascribed to them below.

Ozone Exceedance—a daily maximum 8-hour average ozone measurement that is greater than the value of the standard.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 15:1061 (December 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:777 (August 1991), LR 21:1081 (October 1995), LR 22:1212 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2444 (November 2000), amended by the Office of the Secretary, Legal Affairs Division, LR 32:808 (May 2006), LR 32:

Chapter 5. Permit Procedures

§504. Nonattainment New Source Review Procedures

A. ...

1. For an area that is designated nonattainment for the ozone national ambient air quality standard (NAAQS), VOC and NO_x are the regulated pollutants under this Section. VOC and NO_x emissions shall not be aggregated for purposes of determining major stationary source status and significant net emissions increases.

2. Except as specified in Subsection M of this Section, the potential to emit of a stationary source shall be compared to the major stationary source threshold values listed in Subsection L. Table 1 of this Section to determine whether the source is major.

3. Except as specified in Subsection M of this Section, the emissions increase that would result from a proposed modification, without regard to project decreases, shall be compared to the trigger values listed in Subsection L. Table 1 of this Section to determine whether a calculation of the net emissions increase over the contemporaneous period must be performed.

a. - d. ...

4. Except as specified in Subsection M of this Section, the net emissions increase shall be compared to the significant net emissions increase values listed in Subsection L. Table 1 of this Section to determine whether a nonattainment new source review must be performed.

5. - 7. ...

8. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after December 20, 2001 and prior to June 23, 2003, and for which the nonattainment new source review (NNSR) permit was issued in accordance with Subsection D of this Section on or before June 14, 2005, the provisions of this Section governing serious ozone nonattainment areas applied to VOC and NO_x

increases. For applications deemed administratively complete in accordance with LAC 33:III.519.A on or after June 23, 2003, and for which the NNSR permit was issued in accordance with Subsection D of this Section on or before June 14, 2005, the provisions of this Section governing severe ozone nonattainment areas applied to VOC and NO_x increases.

B. - D.4. ...

5. Except as specified in Subsection M of this Section, emission offsets shall provide net air quality benefit, in accordance with offset ratios listed in Subsection L. Table 1 of this Section, in the area where the NAAQS for that pollutant is violated.

D.6. - F. ...

1. All emission reductions claimed as offset credit shall be from decreases of the same pollutant or pollutant class (e.g., VOC) for which the offset is required. Interpollutant trading, for example using a NO_x credit to offset a VOC emission increase, is not allowed. Except as specified in Subsection M of this Section, offsets shall be required at the ratio specified in Subsection L. Table 1 of this Section.

2. - 7.c. ...

8. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable, and if:

a. the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this Subparagraph, the administrative authority may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions unit (However, in no event may credit be given for shutdowns that occurred before August 7, 1977.);

b. the shutdown or curtailment occurred on or after the date the permit application or application for emission reduction credits (ERCs) was filed; or

c. the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit.

F.9. - K. Visibility Impairment. ...

L. Table 1—Major Stationary Source/Major Modification Emission Thresholds

Table 1 Major Stationary Source/Major Modification Emission Thresholds			
Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Ozone VOC/NO _x		Trigger Values	
Marginal	100	40(40) ²	1.10 to 1
Moderate	100	40(40) ²	1.15 to 1
Serious	50	25 ³ (5) ⁴	1.20 to 1 w/LAER or 1.40 to 1 internal w/o LAER

Table 1 Major Stationary Source/Major Modification Emission Thresholds			
Pollutant	Major Stationary Source Threshold Values (tons/year)	Major Modification Significant Net Increase (tons/year)	Offset Ratio Minimum
Severe	25	25 ³ (5) ⁴	1.30 to 1 w/LAER or 1.50 to 1 internal w/o LAER
Extreme	10	Any increase	1.50 to 1
CO			
Moderate	100	100	>1.00 to 1
Serious	50	50	>1.00 to 1
SO ₂	100	40	>1.00 to 1
PM ₁₀ ¹			
Moderate	100	15	>1.00 to 1
Serious	70	15	>1.00 to 1
Lead	100	0.6	>1.00 to 1

¹The requirements of LAC 33:III.504 applicable to major stationary sources and major modifications of PM₁₀ shall also apply to major stationary sources and major modifications of PM₁₀ precursors, except where the administrator determines that such sources do not contribute significantly to PM₁₀ levels that exceed the PM₁₀ NAAQS in the area.

²Consideration of the net emissions increase will be triggered for any project that would increase emissions by 40 tons or more per year, without regard to any project decreases.

³For serious and severe ozone nonattainment areas, the increase in emissions of VOC or NO_x resulting from any physical change or change in the method of operation of a stationary source shall be considered significant for purposes of determining the applicability of permit requirements, if the net emissions increase from the source equals or exceeds 25 tons per year of VOC or NO_x.

⁴Consideration of the net emissions increase will be triggered for any project that would increase VOC or NO_x emissions by five tons or more per year, without regard to any project decreases, or for any project that would result in a 25 ton or more per year cumulative increase in emissions of VOC within the contemporaneous period or of NO_x for a period of five years after the effective date of the rescission of the NO_x waiver, and within the contemporaneous period thereafter.

VOC= volatile organic compounds

NO_x = oxides of nitrogen

CO = carbon monoxide

SO₂ = sulfur dioxide

PM₁₀= particulate matter of less than 10 microns in diameter

M. Notwithstanding the parish's nonattainment status with respect to the 8-hour national ambient air quality standard (NAAQS) for ozone, the provisions of this Subsection shall apply to sources located in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge.

1. For an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x, consideration of the net emissions increase will be triggered for any project that would:

a. increase emissions of VOC or NO_x by 25 tons per year or more, without regard to any project decreases;

b. increase emissions of the highly reactive VOC (HRVOC) listed below by 10 tons per year or more, without regard to any project decreases:

- i. 1,3-butadiene;
- ii. butenes (all isomers);
- iii. ethylene;
- iv. propylene.

2. The following sources shall provide offsets for any net emissions increase:

- a. a new stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x;
- b. an existing stationary source with a potential to emit of 50 tons per year or more of VOC or NO_x with a significant net emissions increase of VOC, including HRVOC, or NO_x of 25 tons per year or more.

3. The minimum offset ratio for an offset required by Paragraph M.2 of this Section shall be 1.2 to 1.

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:

§509. Prevention of Significant Deterioration

A. - A.5.

B. Definitions. For the purpose of this Section, the terms below shall have the meaning specified herein as follows.

Major Modification—

- a. ...
- b. Any significant emissions increase from any emissions unit or net emissions increase at a major stationary source that is significant for volatile organic compounds (VOCs) or nitrogen oxides (NO_x) shall be considered significant for ozone.

c. - d. ...

Major Stationary Source—

- a. - c. ...
- d. a major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone;

e. - Table A. ...

Regulated NSR Pollutant—

- a. any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrative authority (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone);

b. - d. ...

Significant—

- a. in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emission Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy of particulate emissions
	15 tpy of PM ₁₀ emissions
Ozone	40 tpy of volatile organic compounds or nitrogen oxides
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics ¹	0.0000035 tpy
Municipal waste combustor metals ²	15 tpy
Municipal waste combustor acid gases ³	40 tpy
Municipal solid waste landfills emissions ⁴	50 tpy

¹Measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.

²Measured as particulate matter.

³Measured as sulfur dioxide and hydrogen chloride.

⁴Measured as nonmethane organic compounds.

b. - c. ...

C. - I.5. ...

- a. the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide	575 µg/m ³	8-hour average
Nitrogen dioxide	14 µg/m ³	annual average
Particulate matter	10 µg/m ³ of PM ₁₀	24-hour average
Sulfur dioxide	13 µg/m ³	24-hour average
Ozone	No <i>de minimis</i> air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or nitrogen oxides subject to PSD would require the performance of an ambient impact analysis including the gathering of ambient air quality data.	
Lead	0.1 µg/m ³	3-month average
Fluorides	0.25 µg/m ³	24-hour average
Total reduced sulfur	10 µg/m ³	1-hour average
Hydrogen sulfide	0.2 µg/m ³	1-hour average
Reduced sulfur compounds	10 µg/m ³	1-hour average

I.5.b. - AA.15.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 Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998), LR 24:1284 (July 1998), repromulgated LR 25:259 (February 1999), amended by the Office of Environmental Assessment,

Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2234 (December 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 31:3135, 3156 (December 2005), LR 32:

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits Banking

§607. Determination of Creditable Emission Reductions

A. - C. ...

1. If the design value for the nonattainment area is above the national ambient air quality standard (NAAQS) for ozone, the department shall compare the current total point-source emissions inventory for the modeled parishes to the base case inventory, except that, beginning with the 2005 emissions inventory, this comparison shall be made to the base line inventory.

2. - 4.a. ...

i. if the design value for the nonattainment area is above the NAAQS for ozone and the current total point-source inventory for the modeled parishes exceeds the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions, adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section, or emissions attributed to the stationary point source(s) in question in the base case or base line inventory, as appropriate; or

ii. if the design value for the nonattainment area is not above the NAAQS for ozone or the current total point-source inventory for the modeled parishes does not exceed the base case inventory or base line inventory, as appropriate per Paragraph C.1 of this Section, baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph C.3 of this Section; and

C.4.b. - D. ...

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 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 7. Ambient Air Quality

§709. Measurement of Concentrations—PM₁₀, PM_{2.5}, Sulfur Dioxide, Carbon Monoxide, Atmospheric Oxidants, Nitrogen Oxides, and Lead

A. PM₁₀, PM_{2.5}, sulfur dioxide, carbon monoxide, atmospheric oxidants, nitrogen oxides, and lead shall be measured by the methods listed in LAC 33:III.711.C, Table 2 or by such other equivalent methods approved by the department. The publications or their replacements listed in LAC 33:III.711.C, Table 2 are incorporated as part of these regulations by reference.

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 Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR

14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

§711. Tables 1, 1a, 2—Air Quality

A. Table 1. Primary Ambient Air Quality Standards

Table 1. Primary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM ₁₀	50 µg/m ³	(Annual arithmetic mean)
	150 µg/m ³	(Maximum 24-hour concentration not to be exceeded more than once per year)
PM _{2.5}	15.0 µg/m ³	(Annual arithmetic mean)
	65 µg/m ³	24-hour
Sulfur Dioxide (SO ₂)	80 µg/m ³	or 0.03 ppm (Annual arithmetic mean)
	365 µg/m ³	or 0.14 ppm (Maximum 24-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m ³	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m ³	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix 1.
Nitrogen Dioxide (NO ₂)	100 µg/m ³	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m ³	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

B. Table 1a. Secondary Ambient Air Quality Standards

Table 1a. Secondary Ambient Air Quality Standards		
Air Contaminant	Maximum Permissible Concentration	
PM ₁₀	50 µg/m ³	(Annual arithmetic mean)
	150 µg/m ³	(Maximum 24-hour concentration not to be exceeded more than once per year)
PM _{2.5}	15.0 µg/m ³	(Annual arithmetic mean)
	65 µg/m ³	24-hour
Sulfur Dioxide (SO ₂)	1,300 µg/m ³	(Maximum 3-hour concentration not to be exceeded more than once per year)
Carbon Monoxide (CO)	10,000 µg/m ³	or 9 ppm (Maximum 8-hour concentration not to be exceeded more than once per year)
	40,000 µg/m ³	or 35 ppm (Maximum 1-hour concentration not to be exceeded more than once per year)

Air Contaminant	Maximum Permissible Concentration	
Ozone	0.08 ppm daily maximum 8-hour average	The standard is met at an ambient air monitoring site when the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm, as determined in accordance with 40 CFR 50, Appendix I.
Nitrogen Dioxide (NO ₂)	100 µg/m ³	(0.05 ppm) (Annual arithmetic mean)
Lead	1.5 µg/m ³	(Maximum arithmetic mean averaged over a calendar quarter)

1. - 2. ...

C. Table 2. Ambient Air—Methods of Contaminant Measurement

Air Contaminant	Sampling Interval	Analytical Method
PM ₁₀	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix J.
PM _{2.5}	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix L.
Sulfur Dioxide	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix A.
	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 53, Subpart B.
Total Oxidants	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 50, Appendix D, and Part 53, Subpart B.
Carbon Monoxide	Continuous	Any method complying with reference or equivalent methods in Title 40, Code of Federal Regulations, Part 50, Appendix C, and Part 53, Subpart B.
Nitrogen Dioxide	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix F.
Lead	24 hours	Any method complying with reference method in Title 40, Code of Federal Regulations, Part 50, Appendix G.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

A public hearing will be held on June 28, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The

hearing will also be for the revision to the State Implementation Plan (SIP) to incorporate this proposed rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage 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 AQ253. Such comments must be received no later than July 5, 2006, 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 AQ253. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Baratavia 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: Major Stationary Source/Major
Modification Emission Thresholds for Baton Rouge
Ozone Nonattainment Area**

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

There are no expected implementation costs or savings to state or local governmental units by the proposed rule.

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

There is no estimated effect on revenue collections of state or local governmental units by the proposed rule.

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

There are no estimated costs or significant economic benefits to directly affected persons or non-governmental groups by the proposed rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment by the proposed rule.

Herman Robinson, CPM
Executive Counsel
0605#015

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of Facility Planning And Control

Capital Improvements Projects Procedure Manual (LAC 34:III.Chapter 1)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and the provisions of R.S. 39:121, The Division of Administration, Facility Planning and Control hereby gives notice of its intent to amend Title 34, Government Contracts, Procurement and Property Control, Part III, Facility Planning and Control, Chapter 1, Capital Improvement Projects, Subchapter A., Procedure Manual. These rule changes are the result of a review by Facility Planning and Control of the potential liability assumed by the state of Louisiana by taking responsibility for geotechnical investigation, topographic surveys and other site surveys by having them prepared and providing them to the designer. The increasing use of these surveys to make design decisions that are properly part of the designer's responsibility has increased the potential liability for the state and prompted this change. The change will make geotechnical investigation, topographic surveys and other site surveys part the designer's contract and make him fully responsible for them. He will be reimbursed by the owner for the direct cost.

This review also indicated the need to clarify the language regarding how the designer's compensation is affected by changes in the construction cost estimate and change orders. The changes will reduce the potential for unwarranted charges.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part III. Facility Planning and Control

Chapter 1. Capital Improvement Projects

Subchapter A. Procedure Manual

§101. Condition of the Contract

A. The Louisiana Capital Improvement Projects Procedure Manual for Design and Construction, 20064 Edition, herein referred to as the "procedure manual" or the "manual" and any amendments thereto, as published by Facility Planning and Control, shall be a part and condition of the contract between owner and designer, herein referred to as the "contract."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 32:

§105. Owner-User Agency Responsibilities

A. - C.1.d. ...

2. The owner shall reimburse the designer, in addition to the fee, the cost of site surveys described in §113.A.1.d when deemed necessary by the designer and agreed to by the owner. These shall include, but not be limited to, a topographic survey prepared by a registered land surveyor and a geotechnical investigation prepared by a professional engineer.

D. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 32:

§107. Construction Budget (AFC)

A. - B. ...

C.1. At the completion of the program completion phase, as stated hereinafter in §113, the designer shall determine whether the funds available for construction are realistic for the project when compared with the completed program. At this point, or at any other submissions of probable construction cost by the designer, if such probable construction cost is in excess of funds Available for Construction (AFC), the owner shall have the option to:

a. instruct the user agency to collaborate with the designer to revise the program so that it will be within the funds available for construction; such program revisions shall be done without additional compensation to the designer, except as provided in §113.C.4, hereinafter;

b. provide additional funds to increase the funds available for construction (AFC); or

c. abandon or suspend the project.

2. Any adjustment in the funds available for construction during design shall include an appropriate adjustment in the fee.

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:1076 (May 2005), LR 31:

§109. Compensation

A. - B.1. ...

2. Routine change orders which involve a small amount of effort will not involve extra compensation. Before the designer prepares a change order for which he feels he is entitled to extra compensation due to the extra effort involved, he shall so notify the owner and secure owner's approval to proceed with the change order. When final payment is made to the designer, all such change orders will be reviewed by the owner and the designer's contract will be amended to reflect extra compensation for the change orders which the owner has determined merit additional fee. The fee will be computed by increasing the contract award by the amount of change orders that qualify for additional fee as described above and recalculating the fee.

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 32:

§113. Designer's Services

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

d. The designer shall, as part of this contract, provide all geotechnical investigations, topographic surveys and other site related information necessary for the design of the project. The designer shall obtain one or more proposals

from registered land surveyors and geotechnical engineers when required for the project and recommend to the owner for his approval. The owner will contract directly for such services or may, with the agreement of the designer, include them in the designer's contract to be paid separately from the fee.

A.1.e. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:475 (September 1982), amended LR 11:851 (September 1985), LR 31:1079 (May 2005), LR 32:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earnings and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed rule.

Interested persons may submit comments to William Morrison, Facility Planning and Control, P.O. Box 94095, Baton Rouge, LA 70804-9095. Written comments will be accepted through June 10, 2006.

Jerry Jones
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Capital Improvements Projects Procedure Manual

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

The proposed revisions will make the following two changes in the document, neither of which involve significant cost changes except that there is a potential cost avoidance associated with placing the responsibility for the site information with the designer.

1. Currently the Louisiana Capital Improvement Projects Procedure Manual for Design and Construction requires the owner (the State of Louisiana) to provide to the designers contracted for the design of construction projects geotechnical, topographic and other site information. This rule change will require the designer to provide these services as part of his contract. The State currently bears the cost of these services

and under the revised rule will continue to pay by reimbursing the designer for the cost. There will be no increase in cost to the State but the responsibility for the information will be transferred to the designer.

There will be a decrease in workload due to the reduction in the number of contracts that must be prepared by Facility Planning and Control.

There is also a significant potential for cost avoidance by placing this responsibility on the designer. This is a potential cost avoidance that depends on the performance of the designers and is within their control. The amount of such costs is, therefore, difficult to predict and could run from zero to hundreds of thousands of dollars.

2. Language has been added to make it clear that the designer's fee will be adjusted if the construction cost is adjusted during design. Language has also been added to make it clear that change orders that qualify for an additional fee will be compensated according to the fee percentage stated in the contract. These changes do not change the fee but ensure that it is clear how the designer's fee will be adjusted or not adjusted if the amount available for construction (AFC) is changed during design or if the designer is entitled to payment for preparing change orders.

This will not result in any specific cost increase or savings to the State but will help prevent the possibility of unnecessary and unwarranted costs due to unclear language in the documents. Such potential cost would be in the one to ten thousand dollar range on a per contract basis should they occur. There is a low probability that they might occur but it was deemed prudent not to leave open this possibility.

There may be some cost effect on local governmental units because many of them use the Louisiana Capital Improvement Projects Procedure Manual for Design and Construction. However, this is entirely at their discretion and not encouraged by Facility Planning and Control. The State has no control over this and has no way to predict or estimate the cost of this use.

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

There are no revenues involved in this activity and there will be no effect on revenue collections.

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

1. There will be substantial potential costs to the private sector designers that provide design services for the office of Facility Planning and Control. Failure to do due diligence in procuring geotechnical investigations and/or topographic surveys can result in costly design errors and this rule change moves the responsibility for this from the State to the designers. This is a potential cost that depends on the performance of the designers and is within their control. The amount of such costs is, therefore, difficult to predict and could run from zero to hundreds of thousands of dollars.

2. This will ensure that no unwarranted economic benefits accrue to the private sector designers that provide design services for the office of Facility Planning and Control.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition will not be affected. Designers are currently required to obtain proposals for the geotechnical investigations and topographic surveys and to make recommendations the State for procurement. They will be required to use the same method of selection with the exception that they will now issue the contract to the firm with the best proposal instead of the State doing so.

Jerry Jones
Director
0605#078

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of Risk Management

Reporting of Claims
(LAC 37:I.Chapter 1-25)

Under the authority of R.S. 39:1535, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of Risk Management has repealed LAC 37, Part I Structured Settlements, which is only relevant to political subdivisions of the state of Louisiana and not subject to the Louisiana Office of Risk Management's rules and regulations. Additional changes were made to renumber the existing Sections in accordance with LAC uniform system of codification.

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

Title 37 INSURANCE

Part I. Risk Management

Subpart 1. Structured Settlements

Chapter 1. Definitions

§101. Definitions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:234 (April 1986), amended LR 31:56 (January 2005), repealed LR 32:

Chapter 3. Structured Settlement Services

§301. Qualifying Criteria for Acceptable Structured Settlement Firms

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:235 (April 1986), amended LR 12:832 (December 1986), LR 16:614 (July 1990), LR 17:1206 (December 1991), LR 31:57 (January 2005), repealed LR 32:

§303. Application, Investigation, Verification, List-Keeping of Qualified Structured Settlement Firms

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:235 (April 1986), amended LR 31:58 (January 2005), repealed LR 32:

§305. Grounds for Removal from List

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management,

LR 12:235 (April 1986), amended LR 31:58 (January 2005), repealed LR 32:

§307. Selection of Structured Settlement Firm for Structured Settlement Services

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:236 (April 1986), amended LR 12:832 (December 1986), LR 31:58 (January 2005), repealed LR 32:

§309. Qualified Plan Offerors and Providers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114 and 39:1527.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:236 (April 1986, amended LR 12:832 (December 1986), LR 16:615 (July 1990), LR 17:1207 (December 1991), LR 31:59 (January 2005), repealed LR 32:

§311. Selection of Plan Providers from among Plan Offerors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:236 (April 1986), amended LR 31:59 (January 2005), repealed LR 32:

§313. Disqualification of Plan Offerors and Providers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:237 (April 1986), amended LR 31:60 (January 2005), repealed LR 32:

Chapter 5. Insurance Policies, Trust Contracts, and Other Evidence of Obligations Implementing Structured Payment Plans

§501. Depository for Annuities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:237 (April 1986), amended LR 31:61 (January 2005), repealed LR 32:

Chapter 7. Administrative Procedures

§701. Dissatisfaction with Structured Settlement Firms and/or Plan Providers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:237 (April 1986), amended LR 31:61 (January 2005), repealed LR 32:

§703. Appeals from Decisional Acts of the Office of Risk Management

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management,

LR 12:237 (April 1986), amended LR 31:61 (January 2005), repealed LR 32:

§705. Appeals from the Commissioner

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R. S. 13:5114.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 12:238 (April 1986), amended LR 31:61 (January 2005), repealed LR 32:

Editor's Note: The following Sections have been renumbered in accordance with the LAC uniform system of codification.

Subpart 1. Insurance and Related Matters

Chapter 1. Underwriting

§101. Underwriting

A. All coverages which are self-insured by the Office of Risk Management are mandatory for all Louisiana state departments, agencies, boards, and commissions.

B. If any department, agency, board, or commission requires or wishes to procure any insurance coverages which are not written through the Louisiana Self Insurance Program, request is to be made to the Office of Risk Management to procure said coverage. It is the responsibility of the department, agency, board, or commission to provide the underwriting information required to procure or underwrite the risk.

C. All leases for real and movable property (including vehicles) which are entered into by any state department, agency, board, or commission are to be forwarded to the Office of Risk Management for review in compliance of insurance requirements.

D. All inquiries regarding interpretation of insurance coverages are to be addressed to the Underwriting Unit and are to be in a written form.

E. Boiler and machinery equipment at new locations are to be reported to the Underwriting Unit.

F. Builder's risk projects are to be reported to the Underwriting Unit when the construction contract has been awarded or the "Notice to Proceed" has been issued.

G. All newly constructed state-owned buildings are to be reported to the Underwriting Unit upon acceptance/completion.

H. All newly acquired state-owned aircraft are to be reported to the Underwriting Unit immediately but in no event more than 30 days after acquisition. All newly leased or borrowed aircraft are to be reported to the Underwriting Unit immediately but in no event more than 30 days after possession or lease.

I. Any newly acquired, constructed, leased, or borrowed airport or heliport facilities are to be reported to the Underwriting Unit before coverage will be effective.

J. All newly acquired state-owned marine vessels which are over 26 feet in length are to be reported to the Underwriting Unit immediately but in no event more than 30 days after acquisition. All newly leased or borrowed marine vessels which are over 26 feet in length are to be reported to the Underwriting Unit immediately but in no event more than 30 days after possession or lease.

K. Applications for new crime policies are to be submitted to the Underwriting Unit. Coverage does not become effective until the insurance company has accepted the new risk.

L. All departments, agencies, boards, and commissions are to provide the name, address, telephone number, and job title of the following:

1. the department, agency, board, or commission head;
2. the person(s) to receive insurance premium billings;
3. the safety coordinator or person(s) responsible for loss prevention matters;
4. the person(s) responsible for handling and disposition of claims matters;
5. the person(s) responsible for reporting exposure information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:19 (January 1987), amended LR 31:61 (January 2005), LR 32:

Chapter 3. Auditing and Statistics

§301. Auditing and Statistics

A. The exposure data requested by the Office of Risk Management (ORM) are to be submitted in a timely manner and in the form specified. The exposures may include, but are not limited to:

1. payroll;
2. maritime payroll;
3. number of board and commission members;
4. mileage of all licensed vehicles which are state-owned or leased, and all mileage on personal vehicles driven in the course and scope of state employment;
5. number of licensed vehicles;
6. acquisition or appraised value of property including, but not limited to, buildings, improvements, and inventory (includes contents, all equipment including mobile equipment and watercraft 26 feet and under), and boiler and machinery;
7. medical malpractice exposures including, but not limited to, patient days, clinic visits, emergency room visits, number of residents/ interns, and miscellaneous categories;
8. number of employees, and miscellaneous or special classes not falling within these definitions as required.

B. Billed units are to allocate premiums to subunits if required. It is not the ORM's responsibility to provide breakdowns at a lower level than the level to which premiums were budgeted or billed.

C. The Office of Risk Management is to receive immediate written notification of the abolishment, transfer, and/or merger of any department, agency, board or commission.

D. The state agencies are to provide or allow access to ORM representatives to records or information necessary to the effective operation of the Risk Management program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:19 (January 1987), amended LR 15:85 (February 1989), LR 31:62 (January 2005), LR 32:

Chapter 5. Billing

§501. Billing and Collection of Insurance Premiums

A. After an agency receives a billing invoice from the Office of Risk Management for payment of insurance

premiums, the agency is to render payment in full within 30 days from the billing date.

B. Every agency shall timely pay premiums billed by the Office of Risk Management. In the event any agency fails to pay any premiums due the Office of Risk Management within 120 days of the effective date of the appropriated insurance coverages, the Commissioner of Administration may upon request by the Office of Risk Management draw a warrant against budgeted funds of any delinquent agency directing the treasurer to pay the Office of Risk Management for the unpaid premiums. If an agency is a non-depository agency, the Commissioner of Administration may direct the head of such agency to render payment of insurance premiums due and owing to the Office of Risk Management.

C. All billing inquiries are to be directed to the Office of Risk Management, Accounting Unit, Accounts Receivable Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:20 (January 1987), amended LR 31:62 (January 2005), LR 32:

Chapter 7. Reporting of Claims

§701. Reporting of Property Damage Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states..."you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for damage to state-owned property which includes damage to buildings and improvements, contents, inventories, mobile equipment, heating and air conditioning systems, and marine hulls 26 feet and under.

C. All claims for damage to property owned by the state are to be reported to the Office of Risk Management's Property Claim Unit in writing. If a loss or claim is serious in nature, it is to be reported by telephone to the Office of Risk Management's Property Claim Unit.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. Information required to be submitted when a claim is reported to the Office of Risk Management's Property Claim Unit includes the following:

1. name of insured, location of property or unit;
2. date of loss;
3. description of loss;
4. location of item, state building ID/property control tag number;
5. size, model, and serial number of item, if applicable;
6. name of person reporting claim, listing job title, and telephone number; and
7. proof of ownership.

F. After a loss has occurred, all property which has been damaged is to be protected against further damage and is to be made available for inspection by a claims adjuster assigned by the Office of Risk Management.

G. If a loss occurs or a claim arises, the agency is not to assume any obligation or incur any expenses without authorization from the Office of Risk Management, but should act to protect property and minimize the loss.

H. If repair or replacement is not accomplished within 36 months of the loss date; or, if approval is not obtained from the Commissioner of Administration to use the funds for some other purpose, or to extend the 36 month prescriptive period, the claim file will be closed.

I. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management, Property Claims Unit for further handling.

J. Any objects and/or products which may have caused, contributed to, or which are suspect of causing an accident are to be retained and preserved as evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:20 (January 1987), amended LR 15:85 (February 1989), LR 31:62 (January 2005), LR 32:

§703. Reporting of Boiler and Machinery Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for bodily injury and third party property damage claims where such losses result from state-owned boiler and machinery equipment, and for property damage to state-owned boiler and machinery equipment.

C. All claims for damage to boiler and machinery equipment are to be reported to the Office of Risk Management's Property Claim Unit in writing. Any claim involving bodily injury is to be reported by telephone to the Office of Risk Management's Property Claims Unit.

D. Claims are to be submitted in writing to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. Information required to be submitted when a claim is reported to the Office of Risk Management's Property Claim Unit includes the following:

1. name of insured, location of property or unit;
2. date of loss;
3. description of item, to include size, model, serial number, and tonnage or capacity;
4. name, job title, and telephone number of person reporting claim;
5. name and phone number of person to be contacted by adjuster assigned by ORM.

F. After a loss has occurred, the property which has been damaged is to be protected against further damage and is to be made available for inspection by a claims adjuster.

G. If replacement, repair, reconstruction, or rebuilding is not commenced within 36 months of the loss date for all state property losses; or if a claim remains inactive for 36 months after replacement, repair, reconstruction or rebuilding is commenced; or if approval is not obtained from the Commissioner of Administration within the same period of time for expenditure of insurance proceeds for some other purpose, the claim file will be closed.

H. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Property Claim Unit for further handling.

I. Any objects and/or products which may have caused, contributed to, or which are suspect of causing an accident are to be retained and preserved as evidence.

AUTHORITY NOTE: Promulgated in accordance with R. S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:20 (January 1987) amended LR 15:85 (February 1989), LR 31:63 (January 2005), LR 32:

§705. Reporting of Comprehensive General Liability Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides Comprehensive General Liability coverage for bodily injury and property damage claims resulting from operations for which the agency could be held legally liable.

C. All general liability claims are to be submitted, in writing, to the Office of Risk Management on a General Liability Claim Reporting Form or in a narrative format. The General Liability Claim Reporting Form can be found on the Office of Risk Management's web site, www.doa.louisiana.gov/orm.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. If a loss is serious in nature, it is to be reported by telephone to the Office of Risk Management for review to determine if coverage is applicable.

F. Claims which are made against a state agency by a third party are to be submitted to the Office of Risk Management for review to determine if coverage is applicable.

G. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Claim Office for further handling.

H. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be removed from service, retained and preserved as evidence.

I. If a loss occurs or a claim arises the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:20 (January 1987), amended LR 15:85 (February 1989), LR 31:63 (January 2005), LR 32:

§707. Reporting of Worker's Compensation and Maritime Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for Worker's Compensation and Maritime Claims.

C. All accidents or occupational diseases involving state employees while in the course and scope of their employment with the state are to be reported to the Office of Risk Management within five days from the date of injury or knowledge. The forms used for this purpose are the Employer's Report of Occupational Injury or Disease Form (E-1, completed at the time of the accident), and the Pre-Existing Condition Form (E-2, which was completed when hired). The Office of Risk Management will accept electronic filing of the Employer's Report of Occupational Injury or Disease Form. Access www.doa.louisiana.gov/orm and click on Agency Claims Reporting System.

D. Employer's Report of Occupational Injury or Disease Forms can be obtained from the Office of Risk Management's web address cited in the above paragraph. The Pre-Existing Condition Form can be obtained from the Office of Risk Management, Claims Section, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. A copy of the Employer's Report of Occupational Injury or Disease Form and a copy of the Pre-Existing Condition Form for a claim in which lost time exceeds seven days, is to be submitted to the Office of Worker's Compensation Administration, P.O. Box 94040, Baton Rouge, LA 70804-9040 within 10 days of actual knowledge of injury or death.

F. All Employer's Report of Occupational Injury or Disease Forms and Pre-existing Condition Forms are to be accurately and completely filled out.

G. Information required to be submitted when a worker's compensation claim is reported on the Employer's Report of Occupational Injury or Disease Form includes:

1. agency's location code number (located in a block below the Employer's Federal Tax I.D. Number);

2. the occupation of the employee, inclusive of his/her classified or unclassified job title. A classified job title is to include the civil service job classification code number;

3. an injured employee's weekly wages are to be reported on the Employer's Report of Occupational Injury or Disease Form.

H. Information which is to be contained on the Preexisting Condition Form includes:

1. complete name, age, Social Security number, residential address, and civil service position being applied for;

2. check list of possible pre-existing diseases, disabilities, and/or conditions before employment;

3. description of particulars relative to any checked pre-existing permanent disabilities;

4. name and address of employer at time of previous injury;

5. witnessed and dated signature of applicant as to the completeness, accuracy, and validity of the information contained on the Pre-Existing Condition Form.

I. If an injured employee returns to work after having lost time, the Office of Risk Management, Worker's Compensation Claims Unit, is to be notified immediately by telephone or electronic mail, and an Employer's Supplemental Report of Injury is to be submitted confirming the return to work date. Also, an Employer's Supplemental Report of Injury Form is to be submitted to the Office of Risk Management at any time the injured employee's work status changes.

J. All lawsuits, demands, notices, summons, or other legal documents pertaining to claims are to be forwarded immediately to the Office of Risk Management's Claim Office for further handling.

K. Any objects and/or products which may have caused, contributed to, or which are suspected of causing any accident are to be retained and preserved as evidence.

L. Any claim paid by legislative appropriation is to be reported to the Office of Risk Management by Appropriations Control.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:21 (January 1987) amended LR 15:85 (February 1989), LR 16:401 (May 1990), LR 31:64 (January 2005), LR 32:

§709. Reporting of State Automobile Liability and Physical Damage Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for liability and physical damage to state-owned and leased licensed vehicles and excess liability coverage for employee's private automobiles while being operated with

proper authorization during the course and scope of state employment.

C. All claims for liability or physical damage to state-owned and leased licensed vehicles are to be reported to the Office of Risk Management's Transportation Claims Unit in writing. If a loss involves property damage estimated at \$5,000 or more or if a loss involves any bodily injury, the loss is to be reported by telephone to the Office of Risk Management Transportation Claims Unit.

D. All claims are to be submitted to the Office of Risk Management, Transportation Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106 on a DA 2041 (revised 12/98) accident report form. This form must be completed within 48 hours after an automobile accident. These forms are available through DOA/Forms Management and The Office of Risk Management's web site, www.doa.louisiana.gov/orm.

E. The Automobile Accident Form (DA 2041) must be completed and submitted to the Office of Risk Management, Transportation Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106 or faxed to (225) 342-4470 within 48 hours after the accident occurred.

F. Automobile accident reports are to be submitted with as much information as possible; however, if certain information is unavailable, the report is to still be submitted. Information which is unavailable can be obtained at a later date.

G. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be submitted immediately to the Office of Risk Management's Claim Office for further handling.

H. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

I. If a loss occurs or a claim arises, do not assume any obligation or incur any expenses without authority from the Office of Risk Management.

J. If repair or replacement of a state vehicle is not completed within 12 months of the loss date, or if approval is not obtained from the Commission of Administration within the same period of time for expenditure of insurance proceeds for some other purpose, the claim file will be closed.

K. More information relative to the reporting of state automobile liability and physical damage claims such as reimbursement of collision deductible on employees' personally-owned vehicle used on state business, towing of state vehicles, reduction of automobile liability limit in a special circumstance, rented motor vehicles and/or courtesy vehicles, and guidelines for in-house repairs to state owned licensed vehicles can be found on the Office of Risk Management's web site, www.doa.louisiana.gov/orm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:21 (January 1987) amended LR 15:85 (February 1989), LR 31:65 (January 2005), LR 32:

§711. Reporting of Aviation Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only

for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for aviation losses which includes liability and hull coverage. All claims are to be reported to the Office of Risk Management's Transportation Claims Unit.

C. Claims are to be submitted within 48 hours after an accident/incident to the Office of Risk Management, Transportation Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106 on the Aviation Accident Report form furnished by the Office of Risk Management. Please contact the Transportation Unit supervisor for these forms.

D. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Transportation Claims Unit for further handling.

E. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

F. If a loss occurs or a claim arises, the agency is not to assume any obligations or incur any expenses without authority from the Office of Risk Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:21 (January 1987) amended LR 15:85 (February 1989), LR 31:65 (January 2005), LR 32:

§713. Reporting of Wet Marine Claims (Over 26 Feet)

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance for liability and hull damage for marine vessels over 26 feet in length.

C. All claims involving vessels in excess of 26 feet are to be reported, in writing, to the Office of Risk Management's Transportation Unit. All bodily injury claims are to be reported by telephone to the Office of Risk Management's Transportation Unit.

D. Claims are to be submitted in writing within 48 hours after an accident/incident to the Office of Risk Management, Transportation Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E.1. Information required to be submitted when a claim is reported to the Office of Risk Management's Transportation Unit includes the following:

- a. complete description of vessel, including hull identification and coast guard certificate number;
- b. name of captain or master and passengers;
- c. exact location of incident;
- d. date and time of incident;
- e. names and addresses of third parties involved if known;
- f. description of damages;
- g. contact persons who can assist in investigation;
- h. circumstances surrounding and/or cause of accident.

2. All accidents/incidents involving ferry boats are to be reported to the Office of Risk Management on the Department of Transportation (DOTD) accident report forms: DOTD 03-18-3023 for private vehicles and DOTD 03-18-3024 for passenger(s) injured.

F. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Transportation Claims Unit for further handling.

G. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

H. If a loss occurs or a claim arises, the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

I. Refer to the Office of Risk Management's web site, www.doa.louisiana.gov/orm, for procedures for repairing water vessels (over 26 feet) covered by the commercial insurance market.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:21 (January 1987), amended LR 15:85 (February 1989), LR 31:65 (January 2005), LR 32:

§715. Reporting of Bond and Crime Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides insurance coverage for bond and crime which includes performance, money and securities. All claims are to be reported, in writing, to the Office of Risk Management's Property Claims Unit, P.O. Box 91106, Baton Rouge, LA 70821-9106.

C. Information required to be submitted includes the following:

1. name of insured agency;
2. date of loss;
3. location of loss;
4. circumstances surrounding the occurrence;
5. approximate value of loss; and
6. name of person reporting claim, listing job title and telephone number.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

F. If a loss occurs or a claim arises, the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:22 (January 1987), amended LR 15:85 (February 1989), LR 31:66 (January 2005), LR 32:

§717. Reporting of Medical Malpractice Liability Claims

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an 'occurrence' or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. Prior to July 1, 1988 the State of Louisiana provided medical malpractice coverage in accordance with the provision of R.S. 40:1299.39 which details coverage and liability provisions. Effective July 1, 1988, the State of Louisiana became self-insured for medical malpractice. Medical malpractice coverage is extended to state health care facilities and individuals acting in a professional capacity in providing health care services by or on behalf of the state, including medical, surgical, dental, or nursery treatment of patients.

C. Coverage excludes the following:

1. premises liability;
2. bodily injury to employees arising out of employment by the insured;
3. all obligations under Worker's Compensation or similar laws; and
4. bodily injury in handling or maintenance of automobiles, aircraft, watercraft, or transportation of mobile equipment by an auto owned, operated, rented, or loaned to any insured.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. If a loss is serious in nature, it is to be reported by telephone to the Office of Risk Management for review to determine if coverage is applicable.

F. Claims which are made against a state agency by a third party are to be submitted to the Office of Risk Management for review to determine if coverage is applicable.

G. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Medical Malpractice Claim Unit for further handling.

H. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

I. If a loss occurs or a claim arises, the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 13:22 (January 1987), amended LR 15:85 (February 1989), LR 31:66 (January 2005), LR 32:

§719. Reporting of Road and Bridge Hazard Claims (Department of Transportation and Development)

A. All claims must be reported as soon as possible, but no later than the prescription period outlined in Book III, Title 24, Chapter 4 of the Louisiana Civil Code. In most cases, prescription periods are one year. ORM will pay only for covered losses reported before one year from the date of the accident or discovery date. Policy language clearly states: "...you must see to it that we are notified as soon as practicable of an 'occurrence' or an offense which may result in a claim." Failure to report potential claims as soon as possible severely limits the ability of ORM to investigate the facts and may compromise the state's legal rights to subrogation from a responsible third party.

B. The state of Louisiana provides road and bridge hazard liability coverage for bodily injury and property damage claims resulting from the establishment, design, construction, existence, ownership, maintenance, use, extension, improvement, repair, or regulation of any state bridge, tunnel, dam, street, road, highway, or expressway for which the agency could be held legally liable.

C. All road and bridge hazard claims are to be submitted, in writing, to the Office of Risk Management on the DOTD/ORM Report of Road Hazard Incident form. Forms can be obtained from the Office of Risk Management's Road and Bridge Hazard Claims Unit or on the ORM web site, www.doa.louisiana.gov/orm.

D. Claims are to be submitted, in writing, to the Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106.

E. If a loss is serious in nature, it is to be reported by telephone to the Office of Risk Management for review to determine if coverage is applicable.

F. Claims which are made against a state agency by a third party are to be submitted to the Office of Risk Management for review to determine if coverage is applicable.

G. All lawsuits, demands, notices, summons, or other legal documents pertaining to a claim against a state agency are to be forwarded immediately to the Office of Risk Management's Claim Office for further handling.

H. Any objects and/or products which may have caused, contributed to, or which are suspected of causing an accident are to be retained and preserved as evidence.

I. If a loss or a claim arises, the agency is not to assume any obligation or incur any expenses without authority from the Office of Risk Management.

J. It would be the responsibility of the district office of the Department of Transportation and Development to verify the following:

1. that the alleged accident occurred on a state maintained highway/road;
2. existence of the damage;
3. whether the state had knowledge of the defect prior to the alleged accident;
4. the existence of any contract which may exist between the state and any municipality, contractor or other party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of the Governor, Division of Administration, Office of Risk Management, LR 15:85 (February 1989), amended LR 31:67 (January 2005), LR 32:

§721. Claims Unit Contacts

A. For further information on reporting a claim or requesting information regarding a specific claim, contact the Office of Risk Management, in writing, at P.O. Box 91106, Capitol Station, Baton Rouge, LA 70821-9106 or telephone the appropriate claims unit.

Unit	Contact the Following Telephone Number(s)
Claims-Administrative	(225) 219-0012 or (225) 219-0168
Property	(225) 342-8399
<ol style="list-style-type: none"> 1. Buildings and Improvements. Contents and equipment, excluding Boiler and Machinery. 2. Boiler and Machinery 3. Bonds and Crime 	
Transportation	(225) 342-8466
<ol style="list-style-type: none"> 1. Auto Liability 2. Automobile Comprehensive and Collision 3. Aviation 4. Wet Marine 	
General Liability-All Comprehensive General Liability	(225) 342-8463
Medical Malpractice	(225) 342-8442 (225) 219-0868
Workers' Compensation	(225) 342-7390 or (225) 342-8451 or (225) 342-8458 or (318) 487-5411
<ol style="list-style-type: none"> 1. Statutory and Employer's Liability 2. Maritime Compensation 	
Road and Bridge Hazards-All Road and Bridge Hazards	(225) 342-5441 or (225) 219-4846
Subrogation	(225) 342-8446

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 15:86 (February 1989), amended LR 31:67 (January 2005).

Chapter 9. Risk Analysis and Loss Prevention

§901. Risk Analysis and Loss Prevention

A. R.S. 39:1543 requires the development of a comprehensive loss prevention program, for implementation by all state agencies, including basic guidelines and standards of measurement.

B. In order to fully comply with this statute a comprehensive loss prevention plan has been developed, and the following are to be implemented by every state department, agency, board, or commission that employs 15 or more employees.

Any Other Loss Prevention Program—developed by the Office of Risk Management, Loss Prevention Unit in conjunction with the Interagency Advisory Council for the prevention and reduction in accident events that may cause injury, illness, or property damage.

Aviation Safety Program—program to provide a systematic method of screening, training, and accountability for employees and supervisors required to assign or operate state-owned aircraft in the scope of their employment.

Driver Safety Program—program to provide a systematic method of screening, training, and accountability for employees and supervisors required to assign or drive state-owned vehicles or personal vehicles in the course and scope of their employment.

Employee Training—training to establish a systematic method of training employees to perform the required tasks in a safe and efficient manner and to insure all employees receive periodic refresher training.

Equipment Management Program—written loss prevention maintenance program to include, but not limited to, a history of each piece of equipment, designate responsibility, schedule of when maintenance is to be performed, list of equipment to be maintained, how maintenance is to be performed.

First Aid—adoption of a first aid program which will provide a trained first aid person at each job site and shift. This policy covers all facilities and crews.

Hazard Control Program—program to establish a systematic method of recognizing, evaluating, and controlling hazards prior to them producing injury, illness, or property damage.

Housekeeping Program—program to provide a method for systematically inspecting and eliminating safety and fire hazards that result from uncontrolled sources. To establish clearly defined areas of responsibility for orderliness and cleanliness through each state-owned or operated grounds and facilities.

Inspections Program—a program to maintain a safe environment and control unsafe acts, roadway hazard inspection reports, and medical malpractice records.

Investigation Program—a program to thoroughly investigate and identify, as soon as possible, the actual causes and contributing factors of losses in an attempt to prevent recurrences.

Job Safety Analysis—a procedure to be used to review job methods and hazards that relate to the work environment. The job safety analysis should be performed on all tasks or processes that have a higher than normal rate of producing bodily injury or property damage.

Management Policy Statement—an expression of management, philosophies and goals toward safety.

Record Keeping—records to establish a procedure for the uniform development and maintenance of loss prevention and control documents to be retained for one year. This will include inspection reports, accident investigation reports, minutes of safety meetings, training records, boiler and machinery maintenance records, and/or conditions by regular and periodic facility equipment and roadway inspections.

Responsibility for Safety in an Organization—a written document to clearly define supervisory responsibilities at all levels.

Safety Meetings—meetings to be conducted by supervisors with employees on a quarterly basis, unless otherwise specified by ORM, to educate, inform, motivate and examine work practices for potentially unsafe acts that could produce bodily injury and provide a method to preclude recurrences.

Safety Rules—general instructions developed by agencies regarding the employees' responsibilities.

Water Vessel Operator Safety Program—program to provide a systematic method of screening, training, and accountability for employees and supervisors required to assign or operate state-owned water vessels in the scope of their employment.

C. The minimum requirements are in no way intended to require revisions of existing safety plans which meet or exceed these minimum requirements. However, these existing plans are subject to the Loss Prevention Unit for review and acceptance.

D. The Loss Prevention Unit will audit each department, agency, board, or commission to insure compliance of the development, implementation, and adherence to the program. Audits will be conducted once every three years with a re-certification review performed in subsequent years. The deadline for certification will be April 30 of each year for insurance premiums for the following fiscal year. Any agency, board or commission found to be in compliance with state law and loss prevention standards prescribed by the Office of Risk Management shall receive a credit to be applied to the agency's annual self-insured premium per line of insurance coverage, excluding the coverages for road hazards and medical malpractice, equal to 5 percent of the agency's total annual self-insured premium paid per line of coverage. An agency which has failed to receive certification after undergoing a loss prevention audit shall be liable for a penalty of 5 percent of the agency's total annual self-insured premium paid per line of coverage, excluding the coverages for road hazards and medical malpractice. Such compliance will be certified by major risk groups as follows:

1. workers compensation—regular;
2. workers compensation—maritime;
3. general liability;
4. auto liability and auto physical damage;
5. property and inland marine;
6. boiler and machinery;
7. bond and crime risk;
8. aviation;
9. marine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 14:349 (June 1988), amended LR 15:86 (February 1989), LR 31:68 (January 2005), LR 32:

Chapter 11. Law Enforcement Officers' and Firemen's Survivor Benefit Review Board

§1101. Survivors Benefits

A. Purpose

1. To establish an effective and efficient mechanism for fulfilling the provisions of R.S. 39:1533.A, 33:1981, 33:1947, and 33:2201.B.

2. To govern the submission, evaluation and determination of claims submitted pursuant to R.S. 33:1947, 33:2201, and 33:1981.

B. Application

1. The rules will apply to all claims arising from RS 33:1947, 33:2201, and 33:1981.

C. Definitions

Board—the Law Enforcement Officers and Firemen's Survivors Benefit Board.

Child—as defined in R.S. 33:1947.C.

Fireman—as defined in R.S. 33:1981.

Law Enforcement Officer—as defined in R.S. 33:2201.B.

Line of Duty—any activity performed in which a law enforcement officer suffers death as a result of:

a. an injury arising out of and in the course of the performance of his official duties; or

b. arising out of any activity while on or off duty, in his official enforcement capacity, involving the protection of life or property.

Qualifying Claim—those claims meeting the criteria of claims request documentation, and the meaning ascribed to line of duty.

Spouse—as defined in R.S. 33:1947.C.

D. Board Membership and Domicile

1. The board's official domicile will be located in Baton Rouge. All claims hearings, presentations etc. will be held in the board's official domicile. Claimant expenses related to claim preparation and presentation are not allowable for reimbursement. Board members serve on a gratuitous basis. The chairman of the board shall be on a rotation basis as follows: attorney general, legislative auditor, and state risk director. The term of each chairman is limited to two years. The attorney general's term shall begin effective September 19, 1989.

2. The board will be comprised of those individuals or their designees as stated in R.S. 33:1947.

E. Claims Requests

1. All claims shall be submitted to the chairman of Louisiana Law Enforcement and Firemen's Survivors Benefit Board through the Department of Justice-Attorney General.

2. All claim requests must include the following documentation:

a. notarized affidavit for decedent's date of employment, rank, duty assignment, routine work schedule, work responsibilities, brief statement outlining injuries;

b. copy of decedent's commission as police officer/fireman;

c. notarized affidavits from any witnesses to incident;

d. certified copy of investigative report, or uncertified copy accompanied by notarized affidavit of reporting investigative officer, which identifies copy of report as accurate reproduction of original report;

e. certified copy of decedent's death certificate and autopsy protocol report;

f. notarized affidavit from decedent's surviving spouse stating full their full name, address, date of marriage, and that they were not legally separated or divorced at time of death. Also, a certified copy of marriage license;

g. list of names and birth dates of each minor child born to or adopted by decedent, certified copies of birth certificates;

h. certified copy of letters of tutorship;

i. notarized affidavit of tutor or legal representative of surviving child stating child is unmarried and under the age of 18, or alternately, is unmarried, under the age of 23, and a student;

j. notarized affidavit of caretaker of surviving child which states the major child is physically and/or mentally handicapped, totally and permanently disabled, and solely dependent upon decedent for support. Also, copy of the major child's medical and /or psychological records; and

k. if decedent was not survived by a spouse, a notarized affidavit from parents which state that decedent was their child, the date and place of decedent's birth, and full name and address of each surviving parent. Also, a copy of decedent's birth certificate or other legal documents which indicate the name(s) of parent(s).

F. Procedures for Hearings

1. Upon receipt of a claim, the chairman will schedule the claim for board hearing within 60 days after all required documentation is received. Each claim shall be assigned a sequential number claim code which shall be utilized for official references.

2. The chairman shall notify the board members, claimant, and appointing authority of the claimant of the claim items up for consideration no later than 10 days prior to hearing.

3. At the hearing date described the board shall officially receive and act upon all claims received.

4. The board may, at its discretion, entertain additional oral presentations from outside parties regarding the claim.

5. The board shall have the following options with regards to the claim action:

a. approval of the qualifying claim;

b. denial of the claim;

c. deferral pending receipt of additional data.

6. The board shall inform the claimant, in writing, of its determination.

7. If approved, the board chairman shall certify to the Commissioner of Administration and request payment in accordance with R.S. 39:1533.

G. Appeals

1. Claimant may appeal within 60 days of being advised of the board's decision;

2. This appeal shall be filed in the 19th JDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:1947, R.S. 33:1981, R.S. 33:2201, and R.S. 39:1533.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Risk Management, LR 16:400 (May 1990), amended LR 31:69 (January 2005), LR 32:

Subpart 2. Worker's Compensation Fee Schedule Chapter 25. Fees §2501. Fee Schedule

A. The director, Office of Risk Management, Division of Administration, pursuant to notice of intent published December 20, 1987, and pursuant to provisions of R.S. 23:1034.2 and R.S. 39:1527 et seq., adopted effective April 1, 1988 a fee schedule for medical, surgical, and hospital services due under the Louisiana Worker's Compensation Act, R.S. 23:1021-1361, and which arise in the state self-insured worker's compensation cases. Effective, July 1, 1994, the Office of Risk Management began utilizing the Medical Fee Schedule promulgated by the Office of Workers' Compensation in accordance with R.S. 23:1034.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1527 et seq.

HISTORICAL NOTE: Promulgated by Office of the Governor, Division of Administration, Office of Risk Management, LR 14:148 (March 1988), amended LR 16:401 (May 1990), LR 31:69 (January 2005). LR 32:

Interested persons may submit written comments to J.S. "Bud" Thompson, Jr., Office of Risk Management, P.O. Box 91106, Baton Rouge, LA 70821-9106. He is responsible for responding to inquiries regarding this proposed Rule. All comments are to be received by close of business on May 10, 2006.

J.S. "Bud" Thompson, Jr.
State Risk Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Reporting of Claims

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

There are no implementation costs (savings) to state or local governmental units.

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

There are no estimated effect on revenue collections of state or local governmental units.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effect on competition and employment.

J.S. Thompson, Jr.
State Risk Director
0605#051

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Real Estate Commission

Reorganization of the Real Estate Commission
(LAC 46:LXVII.Chapters 3-37, 53, and 55)

Under the authority of the Louisiana Real Estate License Law, R.S. 37:1430 et seq., and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950, et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend or repromulgate LAC 46:LXVII.Real Estate, Chapters 3-55. The purpose of the amendments is to (1) provide an organized, concise, clear-cut body of information that is free of obscurity and ambiguity, (2) better describe the licensing, certification, and registration processes administered by the agency, and (3) remove arbitrary time constraints that serve to (a) disqualify otherwise qualified applicants and (b) nullify certain education hours and test scores.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate Subpart 1. Real Estate

Chapter 3. Initial License Applications

§301. Forms

A. Initial license applications shall be in such form and detail as prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443.

B. Initial license applications shall be classed in the following categories:

1. Salesperson;
2. Broker—Individual;
3. Broker—Corporation, Partnership, Limited Liability Company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§303. Sponsorship

A. Applicants for a salesperson license shall be sponsored by an active licensed broker and shall submit the Affidavit of Sponsorship Form (Part B) prescribed by the commission as proof of sponsorship.

B. The Affidavit of Sponsorship Form (Part B) may be submitted with the initial license application, but no later than 90 days after passing the license examination.

C. If the Affidavit of Sponsorship Form (Part B) is not received within the prescribed 90 days, an inactive license shall be issued to the salesperson applicant who shall then be subject to the Louisiana Real Estate License Law and the commission rules and regulations regarding inactive licensees. An active license shall not be issued until such time as the Transfer to Active Status Form prescribed by the commission is received.

D. Applicants for a broker license who elect to be sponsored by an active licensed broker shall be exclusively affiliated as an associate broker of the sponsoring broker.

E. Active licensed brokers who elect to sponsor an applicant for a real estate license shall be subject to the duties and penalties prescribed for sponsoring brokers in the Louisiana Real Estate License Law and commission rules and regulations and shall bear the responsibility for the license activity of any sponsored licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:37 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§305. Documentation

A. All initial license applications for an individual real estate broker or salesperson license shall be submitted with the following documentation:

1. proof of completion of the real estate instruction hours prescribed by R.S. 37:1437:

a. real estate pre-license instruction hours obtained in other jurisdictions may be accepted for full or partial credit at the discretion of the commission and shall be based on the applicability of the subject matter to current pre-license education requirements;

b. real estate pre-license instruction hours obtained from nationally recognized institutes may be accepted for full or partial credit at the discretion of the commission and shall be based on the applicability of the subject matter to current pre-license education requirements;

c. every applicant for a Louisiana real estate license shall provide proof of at least thirty classroom hours of pre-license instruction that includes the Louisiana Real Estate License Law, rules and regulations of the commission, Louisiana Civil Law, as it relates to real estate, and any other instruction hours the commission deems necessary and appropriate.

2. license history verification from each jurisdiction in which the applicant has held or currently holds a real estate license;

3. verification of passing an equivalent real estate license examination, if the applicant is currently or was previously a resident licensee in another jurisdiction;

4. copy of any trade name or trademark registration issued by the secretary of state for use by the individual broker or salesperson applicant in real estate license activities.

B. Every application for a corporation, partnership or limited liability company broker license shall be submitted by the designated qualifying broker with the following documentation:

1. copy of the resolution or other document executed by a principal of the corporation, partnership or limited liability company designating an individual real estate broker as the qualifying broker;

2. copy of the registration certificate issued by the secretary of state;

3. copy of any trade name or trademark registration issued by the secretary of state for use by the corporation, partnership or limited liability company in real estate license activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 5. Examinations

§501. Authorization

A. The commission shall issue an examination authorization to each eligible applicant. The examination authorization shall be valid for one examination and shall expire ninety days after the date it is issued.

B. It shall be the responsibility of each applicant that has received an examination authorization from the commission to contact the designated national testing service for an appointment to take the examination.

C. An applicant whose examination authorization expires prior to the applicant taking the examination shall receive a new examination authorization upon submission of a written request and the processing fee prescribed in R.S. 37:1443.

D. The commission shall provide each applicant with a license information bulletin that contains the examination procedures established by the commission and the designated testing service. Failure to comply with the procedures contained in the license information bulletin may result in disqualification from the examination and the forfeiture of all fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§503. Disqualification of Applicants

A. Any applicant who copies or communicates, or attempts to copy or communicate examination content shall be considered in violation of examination security, which shall be grounds for denial of a license and the forfeiture of all fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§505. Prohibited Activities

A. Licensees, certificate holders, registrants, school owners or school directors, and persons employed by or associated with a licensee, certificate holder, registrant, school owner or school director, shall not obtain or attempt to obtain by deceptive or fraudulent means any copyrighted test questions and/or confidential test material used by or belonging to any national testing service currently or previously contracted with the commission. Violations of this Section shall be cause for censure, suspension, or revocation of a license, certificate, or registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§507. Failure of Examination

A. Any applicant who fails an examination may apply to retake the examination by submitting a copy of the fail notice and a new examination processing fee to the commission within 90 days of the failed examination. Failure to reapply for an examination within the 90 day period shall result in closure of the applicant's file and

forfeiture of all fees. Thereafter, the applicant shall be required to submit a new application and remit all prescribed fees to be eligible for the licensing examination.

B. An applicant who does not pass both portions of the examination shall be required to retake the failed portion only; however, the score on the passed portion shall remain valid for a period of one year, after which time the applicant shall be required to retake it.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:38 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§509. Partial Failure of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§511. Examination Requirement for Out-of-State Applicants

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 7. Fees

§701. Duration of Fees

A. Fees for licenses, certificates, and registrations shall cover a period of one calendar year and shall not be prorated.

B. Except as otherwise provided in these rules and regulations all fees submitted to the commission are non-refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§703. Duration of Fees for Licenses, Certificates and Registrations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§705. Returned Checks

A. Payment of any fee with a check that is returned by a financial institution, wherein the reason for not paying the check is not a fault of the financial institution, shall be grounds for cancellation of the transaction for which the fee was submitted and/or the suspension or revocation of a license, registration or certificate.

B. Persons issuing checks that are returned to the commission by a financial institution for any reason shall be notified by certified mail at the most current address of record. Within 10 days from the date of the notification, the

person issuing the check shall remit a certified check, cashier's check, or money order, to the commission in the amount of the returned check, plus the processing fee prescribed in R.S. 37:1443.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 9. Renewal of Licenses, Registrations and Certificates

§901. Timely Submission of Renewal Applications

A. The timely submission of a renewal application and payment of the required fees shall be the responsibility of the individual licensee, registrant, or certificate holder.

B. The renewal license of a salesperson or associate broker shall not be issued before the license of the sponsoring broker is renewed.

C. A licensee, registrant, or certificate holder who fails to renew by December 31 is prohibited beginning January 1 from engaging in any activities requiring a license, registration, or certificate until such time as the license, registration, or certificate is renewed.

D. A licensee whose sponsoring broker fails to renew by December 31 is prohibited beginning January 1 from engaging in any activities requiring a license until such time as the sponsoring broker has renewed or the licensee transfers to a new sponsoring broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§903. Non-Renewal of Real Estate Licenses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§905. Renewal Application

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:39 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§907. Education Hours Required for Renewal

A. Any active licensee who fails to comply with the applicable post-license or continuing education requirement prescribed in R.S. 37:1437 shall not be issued a renewal license until such time as the requirement is met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 11. Delinquent Renewal

§1101. Application for Delinquent Renewal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§1103. Loss of Renewal Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 13. Broker Affiliation

§1301. Associate Broker

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§1303. Notification by Broker Applicants

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§1305. Notification by Individual Real Estate Broker

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§1307. Escrow Accounts Prohibited

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 15. Transfers and Terminations

§1501. Forms

A. A request to terminate sponsorship of a licensee or to transfer a licensee to a new broker shall be submitted on forms prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§1503. Fee Exemptions

A. A request for license transfer that is submitted within sixty days of any of the following circumstances shall be exempt from the transfer fee or delinquent renewal fee prescribed in R.S. 37:1443:

1. the sponsoring broker has died;
2. the sponsoring broker has failed to renew his license;
3. the license of the sponsoring broker has been suspended or revoked;
4. the license of the sponsoring broker has been transferred to the inactive status;
5. the sponsoring broker elects to discontinue the sponsorship of a licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§1505. Purchase or Acquisition of Agencies

A. When a licensed agency purchases or otherwise acquires another licensed agency, the sponsoring or qualifying broker of the acquiring agency shall notify the commission in writing no later than the second working day following the date of acquisition.

B. The notice shall specify the date of acquisition and shall request a transfer to the acquiring agency for all licensees sponsored by the acquired agency.

1. The sponsoring broker for the acquired agency shall return the licenses of all sponsored licensees to the commission no later than the second working day following the date of acquisition.

2. The commission shall issue new licenses to the acquiring agency for each licensee sponsored by the acquired agency. The effective date of transfer to the acquiring agency shall be the date of acquisition specified in the notification.

C. The notification of acquisition shall certify continuous errors and omissions insurance coverage for all licensees that are transferred to the acquiring agency. If the transfer of licensees necessitates payment to the commission for coverage under the commission group errors and omission insurance policy, a listing of all licensees for which coverage is requested and all applicable fees shall accompany the notification.

D. The sponsoring broker of the acquiring agency shall give written notice to all licensees transferred to the acquiring agency within two working days following the date of acquisition.

E. Any licensee of the acquired agency who elects to transfer from the acquiring agency shall do so in accordance with the provisions of R.S. 37:1441.A and §1501.A of this Chapter.

F. Any licensee of the acquired agency who is terminated by the acquiring agency shall be transferred in accordance with the provisions of R.S. 37:1441.A and §§1501.A and 1503.A.5 of this Chapter.

G. The acquiring agency shall provide a written report to the commission on the status of all former licensees of the acquired agency within 15 days following the acquisition.

1. The notification shall include a listing by category that identifies:

- a. each licensee that requested the return of their license to the commission;
- b. each licensee that is being terminated by the acquiring agency;
- c. each licensee that will remain with the acquiring agency.

2. The notification shall include the following documentation and fees:

- a. the license of each licensee that will not remain with the acquiring agency;
- b. copies of the written notification to and/or from each licensee as required by §1505.D of this Chapter;
- c. payment of the transfer fee prescribed in R.S. 37:1443 for each licensee who was sponsored by the acquired agency and who will remain with the acquiring agency;
- d. payment of the errors and omissions insurance fee prescribed in §1505.D of this Chapter, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:40 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§1507. Change of Licensing Status

A. A request to transfer a license from active to inactive status or from inactive to active status shall be submitted on forms prescribed by the commission and shall be accompanied by the fees prescribed in R.S. 37:1443, unless exempt as prescribed in §1503 of this Chapter.

B. Corporate, partnership and limited liability company broker licenses shall remain in the active license status.

C. An individual broker that elects to become exclusively affiliated with a sponsoring broker shall submit a request to transfer on forms prescribed by the commission, which shall be accompanied by the fees prescribed in R.S. 37:1443.

D. A licensee may transfer to inactive status without completing the 30-hour post-license education requirement; however, the commission shall not transfer the licensee to active status until such time that the post-license education requirement is complete.

E. The post-license education hours may be used to satisfy the continuing education hours, or a portion of the continuing education hours required for active status as follows:

1. one to three years of inactive status—30 hours of post-license education in lieu of the required 20 hours of continuing education. Any licensee remaining in the inactive status for more than one year shall also complete a four-hour continuing education course covering the Louisiana Real Estate License Law and commission rules and regulations within one year prior to the date of the transfer to active status;

2. three to five years of inactive status—30 hours of post-license education and at least 10 hours of continuing education. Any licensee remaining in the inactive status for more than one year shall also complete a four-hour continuing education course covering the Louisiana Real Estate License Law and commission rules and regulations within one year prior to the date of the transfer to active status;

3. more than five years of inactive status—30 hours of post-license education and at least 50 hours of continuing education. Any licensee remaining in the inactive status for more than one year shall also complete a four-hour continuing education course covering the Louisiana Real Estate License Law and commission rules and regulations within one year prior to the date of the transfer to active status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:485 (March 2002), amended LR 32:

Chapter 17. Termination Responsibilities

§1701. Relinquishment of Business Related Property and Data

A. A licensee whose business relationship with a sponsoring broker has been terminated for any reason shall immediately relinquish all business related property to the sponsoring broker, including:

1. the keys to any and all properties listed with the broker;
2. any documents that in any way pertain to real estate transactions wherein a broker or licensees sponsored by the broker has appeared in a licensing capacity. This does not preclude the licensee from retaining copies of such documents.

B. A sponsoring broker who alleges the failure of a former sponsored licensee to comply with §1701.A of this Chapter shall submit a signed written report of such failure to the commission. The signed report shall constitute a written complaint filed with the commission and shall list the specific business related data and property that was not relinquished to the sponsoring broker. The sponsoring broker shall provide a copy of the report to the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§1703. Financial Obligations; Commissions and Dues; Disputes

A. The commission shall not intervene or become otherwise involved in employment disputes or disputes pertaining to financial obligations that are the result of a business relationship between a broker and a sponsored licensee or a timeshare developer and timeshare sales registrant, including the payment of commissions and dues to professional organizations. Such disputes shall be settled by the respective parties or by a court of competent jurisdiction.

B. Employment disputes or disputes over financial obligations, commissions, or dues shall not be cause for the failure of a sponsoring broker to return a license or registration to the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:41 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§1705. Relinquishment of Business Related Data

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§1707. Report of Alleged Failure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 19. Names on Licenses, Registrations, and Certificates; Trade Names

§1901. Names on Licenses, Registrations and Certificates

A. All licenses, registrations and certificates issued by the commission shall be issued in the name of the legal entity of the applicant.

1. Licenses, registrations and certificates issued to individual real estate brokers, real estate salespersons, timeshare registrants, and real estate school instructors shall be issued in the name of the individual person.

2. Licenses, registrations and certificates issued to a corporation, partnership or limited liability company for any purpose shall be issued in the identical name as registered with the secretary of state. A license, registration or certificate shall not be issued to any corporation, partnership, or limited liability company not registered with the secretary of state.

3. Names on licenses, registrations and certificates issued by the commission shall not include a trade name unless the trade name is registered with the secretary of state and a copy of the registration is on file at the commission.

4. The name of a licensee whose real estate license has been revoked by the commission shall not appear on any license in a manner that represents, suggests, or implies that the former licensee is licensed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§1903. Trade Names

A. Names on licenses, registrations and certificates issued by the commission shall not include a trade name unless the trade name is registered with the secretary of state and a copy of the registration is on file at the commission.

B. Any name or trade name used by a licensee, registrant or certificate holder in any manner shall be a clearly identifiable entity that can be distinguished from that of another licensee, registrant or certificate holder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:830 (April 2002), amended LR 32:

§1905. Symbols and Trademarks

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 21. Concurrent Licenses and Registrations

§2101. Broker or Salesperson License; Timeshare

Interest Salesperson Registration

A. A broker may be concurrently licensed as an individual and as the designated qualifying broker of one or more corporations, limited liability companies, and/or partnerships.

B. Associate brokers and salespersons shall not be sponsored by more than one sponsoring broker.

C. A real estate license and a timeshare interest salesperson registration shall not be issued concurrently to any person. A broker shall not concurrently conduct real estate activities as an individual real estate broker and as an associate broker exclusively affiliated with another real estate broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 23. Branch Offices

§2301. Branch Office License; Supervision; Duties and Penalties

A. An office established by a broker or sponsored licensee for conducting any real estate license activity at a separate address from the registered address of the broker, wherein the name and telephone number of the broker or agency is advertised in any way, shall be considered a branch office and shall be licensed as such.

B. An application for a branch office shall be submitted on the forms prescribed by the commission and accompanied by the fees prescribed in R.S. 37:1443.

C. Every branch office shall be under the direct supervision of a licensed individual broker who shall be designated in writing as the branch office manager. A copy of the designation shall be submitted to the commission within five days following the date of the original designation or any changes thereto.

D. A broker designated as a branch office manager shall be subject to the duties and penalties prescribed for sponsoring brokers in R.S. 37:1430 et seq.; however, this shall not relieve the sponsoring broker of the ultimate responsibility for the branch office operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:829 (April 2002), amended LR 32:

Chapter 25. Advertising; Disclosures; Representations

§2501. Disclosures and Representations

A. Agreements between brokers to allow property data to be shared and disseminated to clients, customers, or

prospective clients, including but not limited to web-based or email multiple listing service property data, IDX or VOW property data does not constitute advertising or advertisement as to the property data shared; however, §2515 of this Chapter, shall apply to the area of such electronic communication that displays the property data on websites or email communications.

B. All advertising, disclosures, or representations by any licensee shall include the phone numbers and the identity of the sponsoring broker or firm through the use of the identical name under which the sponsoring broker or firm is licensed or a registered trade name that is a clearly identifiable entity which will distinguish the sponsoring broker or firm from other licensees, registrants, or certificate holders.

C. Any trade name used by a licensee, registrant or certificate holder in advertising shall be a trade name that is a clearly identifiable entity that will distinguish itself from other licensees, registrants or certificate holders.

D. All advertising of a licensed individual, partnership, firm, or corporate broker shall include their licensed business name, which for the purpose of these rules shall mean the name in which that individual, partnership, firm or corporation is on record with the commission as doing business as a real estate broker or, in the case of a trade name, that which is registered with the secretary of state and on record with the commission.

E. A salesperson or associate broker is prohibited from advertising under only his or her name.

F. All advertising by a salesperson or associate broker must be under the direct supervision of his or her sponsoring broker.

G. In all advertising, the salesperson or associate broker must include the name and telephone number of his or her broker as defined in this Section. The broker's name and telephone number must be conspicuous, discernible, and easily identifiable by the public.

H. If allowed by the sponsoring broker, the salesperson or associate broker may include in the advertisement:

1. the salesperson's or associate broker's personal logo or insignia, which cannot be construed as that of a company name;

2. the salesperson's or associate broker's contact information;

3. a group or team name, as long as the name(s) of the salesperson(s) and/or associate broker(s) are included near the team reference and cannot be construed as that of a company name; and

4. a slogan that may not be construed as that of a company name.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:42 (January 2000), amended by the Office of the Governor, LR 32:

§2513. Appraisals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:43 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 27. Escrow and Trust Accounts

§2701. Resident Broker Requirements

A. A resident broker, including corporations, partnerships and limited liability companies, engaged in the sale of real estate on behalf of clients shall open and maintain a sales escrow checking account in a financial institution in the state of Louisiana. All sales escrow accounts shall be titled in the identical wording as stated on the broker's license and the wording "Sales Escrow Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds received by a broker in connection with the sale of real estate shall be deposited in this account.

B. A resident broker, including corporations, partnerships and limited liability companies, engaged in the collection of rental payments on behalf of clients shall open and maintain a rental trust checking account in a financial institution in the state of Louisiana. All rental trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Rental Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental payments from or on behalf of clients shall be deposited into this account.

C. A resident broker, including corporations, partnerships and limited liability companies, engaged in property management activities on behalf of clients shall open a security deposit trust checking account in a financial institution in the state of Louisiana. All security deposit trust accounts shall be titled in the identical wording as stated on the broker's license and the wording "Security Deposit Trust Account" shall be imprinted on all checks and bank statements issued in connection with this account. Except as otherwise provided in this Chapter, all funds collected as rental security deposits from or on behalf of clients shall be deposited into this account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2703. Non-Resident Broker Requirements

A. Non-resident brokers shall be subject to the provisions of §2701 of this Chapter.

B. The sales escrow checking accounts, rental trust checking accounts and security deposit trust checking accounts of a non-resident broker may be opened and maintained in a Louisiana financial institution and/or a financial institution located in the resident state of the broker.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2705. Change in License Status; Associate Broker and Inactive Broker Requirements

A. Associate brokers are prohibited from opening and maintaining a sales escrow checking account, rental trust checking account, or security deposit trust checking account. All funds received by an associate broker in any real estate transaction shall be placed in the custody of the sponsoring broker.

B. An associate broker previously licensed as an individual broker or an active broker transferring to inactive status:

1. shall maintain all sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts for the limited and specific purpose of completing pending transactions and disbursing all deposits contained therein;

2. shall not deposit additional funds in sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts as of the effective date of affiliation with a sponsoring broker or transfer to inactive status;

3. shall have five working days from the date of affiliation with a sponsoring broker or transfer to inactive status to notify the commission in writing of the amount of funds in each escrow or trust account and the approximate date that each account will be closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2707. Branch Office Accounts

A. A broker may open additional sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts to accommodate business transacted out of a branch office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Louisiana Real Estate Commission, LR 32:

§2708. Signatory Rights on Checking Accounts

A. An individual real estate broker shall be an authorized signatory on each sales escrow checking account, rental trust checking account, or security deposit trust checking account and shall be responsible for the proper maintenance and disbursement of any funds contained therein. The addition of sponsored licensees and/or employees of the broker as signatories on the accounts shall not relieve the individual real estate broker of this responsibility.

B. The qualifying broker of a licensed corporation, partnership or limited liability company shall be an authorized signatory on sales escrow checking accounts, rental trust checking accounts and security deposit trust checking accounts maintained by the licensed entity and shall be responsible for the proper maintenance and disbursement of any funds contained therein. The addition of

sponsored licensees, principals and/or employees of the licensed entity as signatories on the accounts shall not relieve the qualifying broker of this responsibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Real Estate Commission, LR 32:

§2709. Additional Accounts

A. Where the interest of the principal parties to a transaction or series of transactions would be served thereby, and with the prior written consent of the principal parties, a broker or non-resident broker may open an additional sales escrow checking account, rental trust checking account or security deposit trust checking account, as prescribed in §§2701 and 2703 of this Chapter, and shall deposit therein all funds received in trust on behalf of the parties to the transaction or series of transactions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2711. Non-Interest Bearing Checking Accounts

A. Every sales escrow checking account, rental trust checking account or security deposit trust checking account shall be opened as a non-interest bearing checking account unless all parties having an interest in the funds to be deposited therein have agreed otherwise in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2713. Personal Funds in Escrow and Trust Checking Accounts

A. A sum not to exceed \$2,500 may be kept in each sales escrow checking account, rental trust checking account, and security deposit trust checking account, which sum shall be specifically identified and deposited to cover bank service charges relating to the accounts.

B. A broker engaged in property management activities may keep funds in excess of \$2,500 in a rental trust checking account for the temporary, limited, and specific purpose of enabling the broker to satisfy financial obligations for or on behalf of clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2715. Withdrawal

A. Funds deposited into a sales escrow checking account, rental trust checking account, or security deposit trust checking account shall not be withdrawn for any purposes except:

1. upon the mutual written consent of all parties having an interest in the funds;
2. upon commission order;
3. upon court order;
4. to deposit funds into the registry of the court in a concursus proceeding;

5. to deposit funds with the commission pursuant to Chapter 29;

6. to disburse funds upon a reasonable interpretation of the contract that authorizes the broker to hold such funds, provided that the disbursement is not made until 10 days after the broker has notified all parties and licensees in writing;

7. to return the funds to a buyer at the time of closing;

8. to cover the payment of service charges on sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts;

9. upon approval by the commission in connection with the sale or acquisition of a licensed entity;

10. to comply with the provisions of R.S. 9:3251 or any other state or federal statute governing the transfer of rents, security deposits or other escrow funds.

B. Deposits shall be disbursed within 30 days of an agreement between the principles in a real estate transaction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2717. Deposits

A. Funds received in a real estate sales, lease or management transaction shall be deposited in the appropriate sales escrow checking account, rental trust checking account or security deposit trust checking account of the listing or managing broker unless all parties having an interest in the funds have agreed otherwise in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2719. Account Closing

A. No sales escrow checking account, rental trust checking account, or security deposit trust checking account may be closed until such time as all deposits therein have been properly disbursed.

B. Bankruptcy and/or the revocation, suspension, or lapse of a broker license for any reason shall not be cause to close or discontinue maintenance of any sales escrow checking account, rental trust checking account, or security deposit trust checking account.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2721. Transfer of Trust Funds on Sale or Acquisition of Agency

A. When a licensed agency is sold or otherwise acquired by another licensed agency the sponsoring broker of the acquiring agency shall notify the commission in writing of the acquisition and the anticipated date of the transfer of trust funds. The notice shall specify the name of the acquired agency and account numbers of the sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts from which the funds will be

transferred and the account numbers of the accounts into which the funds will be deposited.

B. A letter requesting approval to transfer the funds shall be jointly signed by the sponsoring brokers of the acquired agency and the acquiring agency and shall accompany the notification to the commission.

C. The transfer of funds shall not occur without written approval from the commission, as prescribed in §2715.A.9 of this Chapter.

D. Within five working days following the transfer of funds a letter jointly signed by the sponsoring brokers of the acquired agency and the acquiring agency shall be forwarded to the commission certifying that all trust funds have been transferred. The letter shall include the following:

1. certification that all sales escrow checking account, rental trust checking account, and security deposit trust checking account funds have been transferred to and received by the acquiring agency;

2. certification that supporting documents for all trust funds have been delivered to and received by the acquiring agency;

3. a listing of all sales escrow checking accounts, rental trust checking accounts, or security deposit trust checking accounts from which a transfer was made and the amount of funds transferred from each account;

4. a listing of all sales escrow checking accounts, rental trust checking accounts, and security deposit trust checking accounts into which funds were deposited and the amount of funds deposited into each account.

E. Within 10 days following the transfer of funds, the sponsoring broker of the acquired agency shall close the escrow accounts and trust accounts from which the funds were transferred and shall advise the commission in writing when such action has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2723. Deposits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000); amended by the Office of the Governor, Real Estate Commission, LR 32:

§2725. Account Closing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§2727. Maintaining Accounts

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§2729. Corporations, Partnerships and Limited Liability Companies

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:45 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§2731. Transfer of Trust Funds on Sale or Acquisition of Agency

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§2733. Change of Licensing Status

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:46 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 29. Disbursement of Escrow Deposits

§2901. Escrow Disputes

A. When a dispute exists in a real estate transaction regarding the ownership or entitlement to funds held in a sales escrow checking account, the broker holding the funds shall send written notice to all parties and licensees involved in the transaction. Within 90 days of the scheduled closing date or knowledge that a dispute exists, whichever occurs first, the broker shall do one of the following:

1. disburse the funds upon the written and mutual consent of all of the parties involved;

2. disburse the funds upon a reasonable interpretation of the contract that authorizes the broker to hold the funds. Disbursement may not occur until 10 days after the broker has sent written notice to all parties and licensees;

3. place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding;

4. place the funds, including original promissory notes, with the Louisiana Real Estate Commission, with a request for an escrow disbursement order. This request shall include the names and last known address of the parties to the transaction, a copy of the purchase agreement, all forms required by the commission, and copies of any other documents relative to the dispute. The licensees and sponsoring brokers involved in the transaction shall appear when the dispute is brought before the commission;

5. disburse the funds upon the order of a court of competent jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§2903. Escrow Disbursement Order

A. Funds submitted to the commission with a request for an escrow disbursement order shall be immediately

deposited in an interest bearing escrow checking account pending final disposition.

B. At the discretion of the commission, the following action may be taken:

1. the commission may order an investigation;
2. the commission may call an adjudicatory hearing;
3. the commission may place the funds into the registry of any court of competent jurisdiction and proper venue through a concursus proceeding;
4. the commission may issue an escrow disbursement order providing for the disposition and allocation of disputed funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 31. Change of Address or Telephone Number; Website Address

§3101. Reporting Change of Address or Telephone Number; Website Address

A. The commission shall be notified in writing within 10 days of any changes in the business address and/or telephone number, including any website address, or residence address and/or telephone number of a licensee, certificate holder, or registrant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 33. Compensation

§3301. Full Knowledge

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 35. Disclosure by Licensee

§3501. Licensee as Principal in a Real Estate Transaction

A. The license status of a principal in a real estate transaction, whether individually or through an entity in which an interest is held by the licensee, shall be disclosed in writing to all other principals in the real estate transaction prior to entering into any real estate contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:44 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 37. Agency Disclosure

§3703. Agency Disclosure

A. Licensees shall provide the agency disclosure informational pamphlet or the agency disclosure form to all parties to a real estate transaction involving the sale or lease of real property.

B. Licensees are responsible for ensuring that the pamphlets and forms are the most current version prescribed by the commission and that reproductions of the pamphlet and form contain the identical language prescribed by the commission.

C. Licensees will provide the agency disclosure informational pamphlet or the agency disclosure form to prospective sellers/lessors and buyers/lessees at the time of the first face-to-face contact when performing any real estate related activity involving the sale or lease of real property, other than a ministerial act as defined in R.S. 9:3891(12).

D. Licensees providing agency disclosure informational pamphlets or agency disclosure forms to prospective sellers/lessors and buyers/lessees shall ensure that the recipient signs and dates the pamphlet or form. The licensee providing the pamphlet or form shall sign as a witness to the signature of the recipient, and the licensee shall retain the signed pamphlet or a copy of the form for a period of five years.

E. In any circumstance in which a seller/lessor or a buyer/lessee refuses to sign the agency disclosure informational pamphlet receipt or the agency disclosure form, the licensee shall prepare written documentation that includes the nature of the proposed real estate transaction, the time and date the pamphlet or form was provided to the seller/lessor or buyer/lessee, and the reasons given by the seller/lessor or buyer/lessee for not signing the pamphlet or form. This documentation shall be retained by the licensee for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), amended LR 29:349 (March 2003), amended by the Office of the Governor, Real Estate Commission, LR 32:

§3705. Dual Agency Disclosure

A. The dual agency disclosure form will be used by licensees acting as a dual agent under R.S. 9:3897.

B. Licensees are responsible for ensuring that the form is the most current version prescribed by the commission and that reproductions of the form contain the identical language prescribed by the commission.

C. Licensees shall ensure that the dual agency disclosure form is signed by all clients at the time the brokerage agreement is entered into or at any time before the licensee acts as a dual agent. A copy of this documentation shall be retained by the licensee for a period of five years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:47 (January 2000), amended LR 29:349 (March 2003), amended by the Office of the Governor, Real Estate Commission, LR 32:

Chapter 53. Real Estate Schools; Real Estate Education Vendors; Instructors

§5301. Definitions

A. Real estate school is defined as any individual or entity certified by the Louisiana Real Estate Commission to provide real estate pre-license education, post license education and continuing education courses.

B. Real estate education vendor is defined as any individual or entity certified by the Louisiana Real Estate Commission to provide post license and/or continuing education.

C. State certified real estate instructor is defined as any individual certified by the Louisiana Real Estate Commission to provide real estate instruction for a certified real estate school or certified real estate education vendor.

D. Guest lecturer is defined as a non-certified instructor who provides no more than two presentations of pre-license education for a certified real estate school in a calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5303. Certification; Applications and Procedures

A. Certifications issued under this Chapter shall be classed in the following categories:

1. real estate schools;
2. real estate education vendors;
3. real estate instructors.

B. Any individual or entity desiring to conduct business in this state as a real estate school, real estate education vendor, or real estate instructor shall file an application for certification with the commission.

C. The application shall be in such form and detail as prescribed by the commission and shall be accompanied by the certification fee(s) prescribed in R.S. 37:1443.

D. The commission shall approve or deny an application within 45 calendar days after it is received. Incomplete applications or a request from the commission for additional information may be cause for delay beyond 45 calendar days.

E. The commission may deny an application for certification for any of the following reasons:

1. the applicant has been convicted of forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or theft, or has been convicted of a felony or crime involving moral turpitude in any court of competent jurisdiction;
2. an application contains a false statement of material fact;
3. a professional license or certification held by an applicant has been revoked.

F. The commission shall issue a certificate and assign a certification number to approved applicants that shall be included on all forms, documents, reports, and/or correspondence filed with the commission.

G. Applicants for certification under this Chapter shall obtain a surety bond issued by an insurance company that is authorized to conduct business in this state.

1. Real estate school applicants shall file proof of a \$10,000 surety bond with the commission within 10 calendar days of initial approval.

2. Real estate education vendors shall file proof of a \$5,000 surety bond with the commission within 10 calendar days of initial approval.

3. Real estate instructors shall be exempt from the provisions of this Part and shall not be required to obtain a surety bond.

4. Bonds shall be in favor of the state of Louisiana and conditioned for the protection of the contractual rights of students who attend real estate courses offered by the real estate school or real estate education vendor.

5. Bonds shall remain effective and in force throughout the certification period of the real estate school or real estate education vendor.

6. Proof of bond renewal shall be provided to the commission annually.

7. Failure to maintain a bond shall be cause for revocation or suspension of a certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5305. Certifications; Exemptions and Exclusions

A. Colleges, universities, and state vocational-technical schools that provide courses in real estate shall not be required to apply for certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:486 (March 2002), LR 29:2073 (October 2003), LR 32:

§5307. Certification; Certificate of Authority

A. The certification to operate as a real estate school, real estate education vendor, or real estate instructor shall be in the form of a Certificate of Authority. No Certificate of Authority shall be issued or renewed for any school applicant holding a real estate broker license whose school is designed, intended and/or primarily used for instruction of that same broker/owner's future salesperson or broker affiliates.

B. A Certificate of Authority shall be issued for a maximum period of one year and shall expire annually on December 31 unless an application for renewal is submitted.

1. Renewal of an instructor Certificate of Authority shall require completion of eight hours of approved continuing education completed during the current certification period. The eight hours shall include four hours in the mandatory course specified by the commission.

2. The renewal of a Certificate of Authority for a real estate school or real estate education vendor shall be exempt from the continuing education requirements of this Section.

C. Failure to renew a Certificate of Authority by December 31 shall result in the following action.

1. All course approvals issued under the Certificate of Authority shall be automatically suspended, and the commission shall not accept any pre-license education, post-license education, or continuing education courses for credit, if the courses were offered after the expiration of the Certificate of Authority.

2. Applications for delinquent renewal of a Certificate of Authority shall not be accepted by the commission after January 31. Failure to renew an expired Certificate of Authority during the prescribed delinquent period shall result in the forfeiture of renewal rights. Any real estate school, real estate education vendor, or real estate instructor

that becomes ineligible to renew a Certificate of Authority shall apply as an initial applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5309. Real Estate Schools and Real Estate Education Vendors; Owners and Directors

A. All real estate schools and real estate education vendors shall designate a director, whose duty it shall be to ensure that the operations of the school or vendor, and all training locations, adhere to the requirements of the Louisiana Real Estate License Law and the rules and regulations of the commission, and who shall be held responsible to the commission for any violations thereof.

B. Directors shall coordinate and disseminate information pertaining to amendments in the license law, rules and regulations, or policies and procedures of the commission to all staff, instructors, and employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:52 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5311. Real Estate Schools and Real Estate Education Vendors; Facilities and Inspections

A. The commission may inspect any facility used by a real estate school or real estate education vendor at any time during regular business hours.

B. Real estate schools and real estate education vendors shall be subject to periodic audits and review, as determined by the commission, to ensure that courses are conducted in accordance with the provisions set forth in this Chapter, Chapter 55 of the commission rules and regulations, and R.S. 37:1460. This may include the observation and evaluation of classroom activities, course content, instructor proficiency, and/or the audit of reporting/attendance records.

C. If the real estate school or real estate school vendor is found deficient in any part of this Section, the commission shall prepare a report specifying the areas of deficiency.

D. Any real estate school or real estate education vendor that receives a report of deficiencies shall correct the deficiencies by the date designated by the commission and shall submit a report to the commission that outlines the corrective action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:53 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5313. Real Estate Schools and Real Estate Education Vendors; Record Keeping

A. Real estate schools and real estate education vendors shall maintain accurate and properly indexed records on all students for at least five years after course completion and shall produce those records for inspection upon request of the commission. Electronic records shall be maintained in a readily available format that does not prohibit, delay, or otherwise impede inspection.

B. Real estate schools and real estate education vendors shall maintain the following records on each student:

1. complete name and address;
2. total classroom hours taken and course title;
3. dates of attendance;
4. test scores or pass/fail indications;
5. copy of student contract.

C. Real estate schools and real estate education vendors shall provide any student who requests it with a duplicate copy of his/her course completion records. The real estate school or real estate education vendor shall determine any fee associated with providing the records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5315. Real Estate Schools and Real Estate Education Vendors; Tuition, Fees, and Contracts

A. Each real estate school shall enter into a written contract with each student that shall clearly set forth the tuition and fees charged by the school for a specific course of instruction and the school refund policy.

B. A copy of the contract, signed by an authorized representative of the school, shall be provided to the student immediately after both parties sign the contract.

C. Any additional fees charged for supplies, materials, or required books shall be clearly itemized in the school contract, and such supplies, materials, or books shall become the property of the student upon payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5317. Instructor Qualifications; Guest Lecturers

A. Applicants for instructor certification shall be required to pass the real estate instructor assessment examination specified by the commission and shall satisfy at least one of the following qualifications:

1. bachelor's degree with a major in real estate from an accredited college or university;
2. bachelor's degree from an accredited college or university and at least two years experience in the real estate business;
3. real estate broker license and a minimum of five years experience in the area of proposed instruction;
4. Juris Doctorate degree or the equivalent from an accredited law school and a minimum of three years experience in the area of the proposed instruction;
5. two years experience as a qualified instructor or professor in the business, finance or economics department of an accredited college or university;
6. any qualifications determined by the commission to be the equivalent of at least one of the qualifications prescribed in Paragraphs 1-5 of this Section.

B. A guest lecturer shall meet at least one of the following qualifications:

1. a college or university professor in real estate, finance, economics, or a related field;

2. a specialist with a degree or professional designation with expertise in the specific topic of instruction;

3. a real estate licensee with at least five years experience in the area of proposed instruction.

C. Guest lecturers shall not instruct pre-license courses pertaining to the Louisiana Real Estate License Law or the commission rules and regulations.

D. Guest lecturers shall not provide more than two presentations of pre-license education for a certified real estate school in a calendar year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5319. Prohibitions

A. Any activity that is designed to influence or solicit a pre-license education student to work under the sponsorship of any real estate broker shall be considered recruiting and is prohibited while on the premises of a real estate school.

B. In addition to the main location of the school, and any other facility in which the school provides pre-license education courses, the premises of a real estate school shall include Websites and any online and/or distance education courses provided by the school.

C. It shall be prohibited for any real estate brokerage firm to operate a real estate school under the same legal entity as the real estate brokerage firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5321. Change of Address

A. The commission shall be notified within 10 calendar days of any change in the address and/or telephone number of any real estate school or real estate education vendor.

B. The commission shall be notified within 10 calendar days of any change in the residence or business address and/or telephone number of any real estate school or real estate education vendor owner, director, or instructor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000), amended by the Office of the Governor, LR 32:

§5323. School Advertising

A. Advertising by real estate schools and real estate education vendors shall not be false or misleading.

B. The commission may require a real estate school or real estate education vendor to furnish proof of any advertising claims. The commission may order the retraction of advertising that violates the provisions of this Section. Such retractions shall be published in the same manner as the original claim and be paid for by the real estate school or real estate education vendor.

C. Certified real estate schools shall not guarantee the passing of the state real estate licensing examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:54 (January 2000); amended by the Office of the Governor, Real Estate Commission, LR 28:487 (2002), LR 32:

Chapter 55. Real Estate Courses

§5501. Course Approval; Applications and Procedures

A. Courses approved by the commission shall be classed in the following categories:

1. pre-license education;
2. post license education;
3. continuing education.

B. Real estate schools and real estate education vendors shall file a course approval application with the commission for each course that will be offered for credit toward an initial or renewal real estate license.

C. The course approval application shall be in such form and detail as prescribed by the commission and shall be accompanied by the processing fee prescribed in R.S. 37:1443.

D. The commission shall approve or deny a course approval application within 45 calendar days after it is received. Incomplete applications or a request from the commission for additional information may be cause for delay beyond 45 calendar days.

E. Each course approved by the commission shall remain active for three years and shall expire on December 31 of the third year unless a renewal application for course approval is filed with the commission. The commission shall not accept credit for a non-renewed course that is presented after the date of expiration.

F. The commission shall assign a tracking number to each approved course that shall be used with the approved course title on all forms, documents, reports, and/or correspondence filed with the commission.

G. Real estate schools and real estate education vendors shall not amend the title or outline of any approved course without first obtaining the written approval of the commission.

1. All requests to amend a course shall be accompanied by the new course outline and the processing fee prescribed in R.S. 37:1443.

2. It shall be the responsibility of the real estate school or real estate education vendor to amend each course as necessary so as to provide for any applicable law or rule change that is enacted during the course approval period. A fee shall not be required when a real estate course is amended to accommodate law or rule changes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5503. Pre-License Education Courses

A. Salesperson pre-license education courses offered by real estate schools shall be structured in the following manner:

1. salesperson 90-hour course that shall include:
 - a. Real Estate Principles and Practices;
 - b. Louisiana Real Estate License Law;
 - c. Commission Rules and Regulations;

d. Law of Agency, as contained in Title 9 of the Louisiana Revised Statutes;

e. Civil Law, as it pertains to real estate transactions.

B. Broker pre-license education courses offered by real estate schools shall be structured in the following manner:

1. 90-hour course on basic real estate fundamentals;
2. 30-hour course that shall include, and be limited to, the following topics:
 - a. Louisiana Real Estate License Law;
 - b. Commission Rules and Regulations;
 - c. Law of Agency, as contained in Title 9 of the Louisiana Revised Statutes;
 - d. Civil Law, as it pertains to real estate transactions;
 - e. Ethics and Professionalism;
3. 30-hour course on broker responsibilities.

C. Real estate schools shall not issue pre-license education credit for attendance at post license education courses or continuing education courses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:55 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5505. Post License Education Courses

A. Post-license courses offered by real estate schools and real estate education vendors shall be developed in accordance with the content outline prescribed by the commission.

B. Real estate schools and real estate education vendors shall not issue credit for any post-license education course unless the student has passed an examination on the course content. Salesperson post-license hours shall be secured through and reported by one approved vendor.

C. Real estate schools shall not incorporate post-license education with pre-license education instruction.

D. The commission may consider course work completed at colleges and universities, national appraisal organizations, the societies, institutes and councils of the National Association of REALTORS®, National Association of Real Estate Brokers, and federal, state, and local governmental entities for post-license education credit.

E. Post-license education courses shall be open to all licensees regardless of broker affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5507. Continuing Education Courses

A. Real estate schools and real estate education vendors may offer continuing education course topics that include, but are not limited to, appraisal, finance, taxes, zoning, Louisiana Real Estate License Law/commission rules and regulations, environmental quality, property management, and federal laws affecting real estate such as HUD and fair housing regulations.

B. Continuing education courses offered by real estate schools and real estate education vendors shall be a minimum of two hours.

C. Real estate schools shall not incorporate continuing education with pre-license education instruction.

D. The commission shall mandate a four hour topic for continuing education credit that licensees shall complete as a requirement for license renewal.

E. The commission may consider course work completed at colleges and universities, national appraisal organizations, the societies, institutes and councils of the National Association of REALTORS®, National Association of Real Estate Brokers, and federal, state, and local governmental entities for continuing education credit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5509. Methods of Instruction; Classroom Training, Correspondence, Distance Education

A. Classroom training that is led by an instructor and held in a physical location, or delivered via a network, may be used to present pre-license, post license, and continuing education courses and shall be in such format and detail as prescribed by the commission.

B. Correspondence courses shall be in such format and detail as prescribed by the commission for post license or continuing education credit hours. Passage of an examination on course content is a requirement for all correspondence courses.

C. Distance education, for the purpose of this Chapter, shall mean interactive Internet-based instruction and may be used for pre-license, post license, and continuing education courses. Real estate schools and real estate vendors that offer distance education courses shall apply for course approval as follows:

1. Distance education courses shall be submitted to the commission for content approval prior to any course offering.

2. Distance education courses that have been approved by the commission for course content shall be submitted to the Association of Real Estate License Law Officials (ARELLO) for certification of the delivery method prior to any course offering. Loss of ARELLO certification for courses approved under this Section shall automatically suspend commission approval of the course content.

D. Final examinations for correspondence and distance education courses shall consist of multiple choice questions with four possible answers (a, b, c and d) as follows:

1. a minimum of 20 questions for each two hours of continuing education credit; or

2. a minimum of 30 questions for each three hours of post licensing credit;

3. the examination that a student submits for grading shall include a signed and dated statement that the student has personally completed the course and examination.

E. All courses submitted for approval shall be in the exact format in which they will be sold to licensees for post licensing or continuing education credit.

F. Real estate schools and real estate education vendors shall obtain the student's name, drivers license or identification number, address, and payment prior to the student receiving the course.

G. Real estate schools and real estate education vendors shall not grade any written assignment or examination if it is presented for grading before the time frame for course completion has been reached.

H. Real estate schools and real estate education vendors shall not grade any examination that does not contain the signed certification required in Paragraph D.3 of this Section.

I. Real estate schools and real estate education vendors shall certify students as successfully completing a course only if the student completes any written assignments and passes the required examination on course content.

J. Real estate schools and real estate education vendors shall issue certificates containing the following information to students:

1. complete name of the real estate school or real estate education vendor and the Certificate of Authority number;

2. name and drivers license or identification number of the student;

3. course title;

4. number of credit hours completed;

5. date of course completion;

6. signature of verifier of course completion;

7. acknowledgment of student's successful completion of examination;

8. indication of correspondence study denoted as "correspondence" or "C".

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1435.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5511. Course Reporting; Schedules and Attendance

A. Real estate schools shall submit pre-license education course schedules to the commission.

B. Real estate schools and real estate education vendors shall submit continuing education and post license education course schedules and attendance verification reports to the commission.

C. Course schedules shall be received by the commission at least ten calendar days prior to the beginning of each month.

D. Course schedules and attendance verification reports shall be submitted in such form and detail as prescribed by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 32:

§5513. Certificate Renewal

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5515. Eligibility of Courses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:56 (January 2000); amended by the Office of the Governor, Real Estate Commission, LR 28:485 (March 2002), LR 29:2067 (October 2003), repealed LR 32:

§5517. Requirements for Submission of Additional Course Approval Requests by Approved Vendors

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:57 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5519. Post Licensing and Continuing Education Course Work by Correspondence or Other Distance Learning Methods

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:57 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5521. Post Licensing and Continuing Education Instructor Qualifications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 29:2067 (October 2003), repealed LR 32:

§5523. Prohibition of Recruiting

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5525. Course Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5527. Course Completion Verification and Reporting Requirements

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:58 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5529. Record Keeping

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5531. Inspection or Monitoring of Approved Vendors/Courses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5533. Pre-licensing Schools Offering Post Licensing and Continuing Education Courses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5535. Advertisement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:485 (March 2002), repealed LR 32:

§5537. Change of Address

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5539. Post Licensing and Continuing Education on an Individual Basis

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 28:486 (March 2002), repealed LR 32:

§5541. Commission Sponsored Seminars—Continuing Education Only

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:59 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5543. Seminar Instructor Qualifications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000), repealed by the Office of the Governor, Real Estate Commission, LR 32:

§5545. Minimum Length of Courses

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1431 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Real Estate Commission, LR 26:60 (January 2000), amended by the Office of the Governor, Real Estate Commission, LR 29:2068 (October 2003), repealed LR 32:

Family Impact Statement

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the May 20, 2006 *Louisiana Register*.

The proposed Rules have no known impact on family formation, stability, and autonomy.

Interested parties are invited to submit written comments on the proposed regulations through June 5, 2006 at 4:30 p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, Box 14785, Baton Rouge, LA, 70898-4785 or to 5222 Summa Court, Baton Rouge, LA, 70809.

Julius C. Willie
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Reorganization of the
Real Estate Commission**

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

There are no estimated implementation costs (savings) to state or local governmental units. The content of the proposed amendments is largely housekeeping in nature and is intended to restructure the rules to (1) provide a more organized, concise, clear-cut body of information this is free of obscurity and ambiguity, (2) better describe the licensing, certification, and registration processes, and to (3) remove arbitrary time constraints that serve to nullify certain education hours and test scores, thereby disqualifying otherwise qualified applicants.

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

Revenue collection will continue to be determined by the number of applicants, licensees, registrants, and certificate holders who elect to participate in the programs administered by the agency; however, collection of a processing fee, authorized (but on required) by R.S. 37:1443, and previously uncollected at the discretion of the Commission, will effect revenue collection. The impact is indeterminable, in that the processing fee will only be assessed to individuals who allow deadlines to expire, this requiring duplicate paperwork and processing time. The effect on revenue is not anticipated to be significant.

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

The proposed amendments improve the ability of an applicant to qualify for a license, thereby eliminating any costs associated with the need to requalify. Thereafter, costs to directly affected persons are limited to the regular fee schedule contained in R.S. 37:1443.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There is no estimated effect on competition and employment beyond that which is typical, wherein applicants, licensees, registrants, and certificate holders enter and exit the system each month.

Julius C. Willie
Executive Director
0605#055

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**

Family Planning Waiver
(LAC 50:XXII.Chapters 21-27)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt LAC 50:XXII.Chapters 21-27 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 proposes to implement a family planning research and demonstration project under the authority of a Section 1115 waiver. This waiver will provide family planning services to women from age 19 through 44 years old with income at or below 200 percent of the federal poverty level. The services provided will offer women in the targeted population the opportunity to decide when to start a family, to space children based on health concerns and on education and economic goals.

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 improving access to family planning services for women in the target population and because of the physical, mental, and emotional well-being which will result from the ability to plan pregnancies.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXII. 1115 Demonstration Waivers

Subpart 3. Family Planning Waiver

Chapter 21. General Provisions

§2101. Purpose

A. The Family Planning Waiver will increase access to family planning services for women who currently are not eligible for such services, but who would be eligible for Medicaid coverage, based on their income, if they became pregnant.

B. The primary goals of the Family Planning Waiver are to:

1. increase access to services which will allow management of reproductive health;
2. reduce the number of unintended pregnancies; and

3. decrease Medicaid expenditures from prenatal and delivery related services for women in the targeted population.

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 32:

§2103. Enrollment

A. Family Planning Waiver services will be available to eligible women according to the following enrollment caps.

1. For the first year, priority will be set to enroll up to 25,000 women whose pregnant woman certifications are being closed.

a. On a first-approved basis, up to 50,000 additional women who are not eligible for participation in the priority group established in Paragraph A.1 above may be enrolled until a cap of 75,000 enrollees has been reached for the first waiver year. Enrollment caps cannot be exceeded.

2. For the second year, priority will be set to enroll up to 22,250 women whose pregnant woman certifications are being closed.

a. On a first-approved basis, additional enrollees, including those established in Paragraph A.2 above, will be allowed to enroll until a cap of 110,250 enrollees has been reached for the second waiver year. Enrollment caps cannot be exceeded.

B. Additional enrollment caps for subsequent years will be published in Potpourri notices.

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 32:

Chapter 23. Eligibility

§2301. Recipient Qualifications

A. Family Planning Waiver services shall be provided to women who:

1. are 19 through 44 years of age;
2. have family income at or below 200 percent of the federal poverty level; and
3. are not eligible for inclusion in any other Medicaid program or State Children's Health Insurance Program (CHIP).

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 32:

Chapter 25. Services

§2501. Covered Services

A. Services provided in the Family Planning Waiver include:

1. annual physical exams;
2. necessary lab tests; and
3. contraceptive services, including sterilizations and Food and Drug Administration (FDA) approved family planning pharmaceuticals, devices, methods or supplies.

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 32:

§2503. Service Limits

A. There is a limit of four visits per calendar year for services rendered by a physician, nurse practitioner, physician assistant, or nurse.

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 32:

§2505. Service Delivery

A. Family planning waiver services may be delivered through any enrolled Medicaid provider whose scope of practice includes family planning 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 32:

Chapter 27. Reimbursement

§2701. Reimbursement Methodology

A. Reimbursement for family planning waiver services shall be made according to the following.

1. Tribal "638" facilities will be reimbursed at the rate set by the Centers for Medicare and Medicaid Services (CMS) Memorandum of Agreement with the Indian Health Services which allows states to claim 100 percent federal Medicaid assistance percentage for payments made by the state for services rendered to eligible American Indians and Native Alaskans. The department may, at its discretion, choose to reimburse these providers at the Medicaid fee-for-service rates if CMS discontinues the terms of the Memorandum of Agreement with the Indian Health Services.

2. All other providers, including federally qualified health centers and rural health clinics, will be reimbursed at the Medicaid fee-for-service rates.

B. Any portion of services covered under a recipient's private health insurance plan will not be covered by the Family Planning Waiver Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, June 29, 2006 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

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

RULE TITLE: Family Planning Waiver

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 a programmatic impact on the expenses of the state of \$238 for FY 05-06, \$2,487,997 for FY 06-07, and \$3,634,500 for FY 07-08. It is anticipated that \$476 (\$238 SGF and \$238 FED) will be expended in FY 05-06 for the state's administrative expense for promulgation of this proposed rule and the final rule. These expenditures are currently being used for family planning services in the Office of Public Health and will be transferred to the Medicaid Program for use as state matching funds (10 percent match rate) to implement the waiver program to serve a larger population. There will be no net increase to expenses from the State General Fund.

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 \$238 for FY 05-06, \$22,391,971 for FY 06-07, and \$32,710,501 for FY 07-08. It is anticipated that \$238 will be expended in FY 05-06 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed rule, which continues the provisions of the June 1, 2006 emergency rule establishes a family planning services waiver for women who currently are not eligible for such services, but who would be eligible for Medicaid coverage, based on their income, if they became pregnant (approximately 226,000 women over a five year period). It is anticipated that implementation of this proposed rule will increase program expenditures for family planning services by approximately \$24,879,968 for FY 06-07 and \$36,345,001 for FY 07-08.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Jerry Phillips
Acting Medicaid Director
0605#064

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**

Hospital Licensing Standards
(LAC 48:I.9469, 9505-9521)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to amend LAC 48:I.9469, 9507-9515 and repeal §§9517-9521 as authorized by R.S. 40:2100-2115 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated

a Rule that established new regulations governing the licensing of hospitals (*Louisiana Register*, Volume 29, Number 11). The bureau now proposes to amend the November 20, 2003 Rule in order to clarify under what conditions outpatient services can be offered when the corresponding service is not offered on an inpatient basis. The bureau also proposes to bring requirements for obstetrical and newborn services in line with recommendations from the *National Guidelines for Perinatal Care*.

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

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing

Chapter 93. Hospitals

Subchapter O. Outpatient Services (Optional)

§9469. General Provisions and Organization

A. ...

B. Outpatient services shall be appropriately organized, integrated with and provided in accordance with the standards applicable to the same service provided by the hospital on an inpatient basis.

1. Outpatient services shall be provided only under conditions stated in Subparagraphs a, b, or Clauses b.i-ii below.

a. Outpatient services may be provided by a hospital if that hospital provides inpatient services for the same area of service. For example, a hospital may provide psychiatric outpatient services if that hospital provides psychiatric services on an inpatient basis.

b. Outpatient services may be provided by a hospital that does not provide inpatient services for the same area of service only if that hospital has a written policy and procedure to ensure a patient's placement and admission into an inpatient program to receive inpatient services for that area of service. The policy and procedure must ensure that the hospital is responsible for coordination of admission into an inpatient facility and must include, but not be limited to, the following:

i. the hospital personnel and/or staff responsible for coordination of placement and admission into an inpatient facility; and

ii. the procedure for securing inpatient services for that patient.

2. For all outpatient services, there shall be established methods of communication as well as established procedures to assure integration with inpatient services that provide continuity of care.

3. When patients are admitted, pertinent information from the outpatient record shall be provided to the inpatient facility so that it may be included in the inpatient record.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 21:177 (February 1995), amended LR 29:2423 (November 2003), LR 32:

Subchapter S. Perinatal Services (Optional)

§9505. General Provisions

A. This Subchapter S requires that the level of care on the Obstetrical Unit and the Neonatal Intensive Care Unit shall be at the identical level except for free standing children's hospitals. All hospitals with existing obstetrical and neonatal services must be in compliance with this Subchapter S within one year of the promulgation date of this Rule. All new providers of obstetrical and neonatal services will be required to be in compliance with this Subchapter S immediately upon promulgation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 32:

§9507. Obstetrical Services

A. These requirements are applicable to those hospitals which provide obstetrical and neonatal services.

B. Levels of Care Units. There are four established obstetrical levels of care units:

1. Obstetrical Level I Unit;
2. Obstetrical Level II Unit;
3. Obstetrical Level III Unit; and
4. Obstetrical Level III Regional Unit.

C. Obstetrical services shall be provided in accordance with current acceptable standards of practice as delineated in the current AAP/ACOG *Guidelines for Perinatal Care*. Each advanced level of care unit shall provide all services and meet the personnel requirements of the lower designated units, as applicable, i.e., a Level III regional unit must meet the requirements of a Level I, II, and III unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 32:

§9509. Obstetrical Unit Functions

A. Obstetrical Level I Unit

1. General Provisions

a. Care and supervision for low risk pregnancies greater or equal to 35 weeks gestation shall be provided.

b. There shall be a triage system for identification, stabilization and referral of high risk maternal and fetal conditions beyond the scope of care of a Level I Unit.

c. There shall be a written transfer agreement with a hospital which has an approved appropriate higher level of care.

d. The unit shall provide detection and care for unanticipated maternal-fetal problems encountered in labor.

e. Blood and fresh frozen plasma for transfusion shall be immediately available.

f. Postpartum care facilities shall be available.

g. There shall be capability to provide for resuscitation and stabilization of inborn neonates.

h. The facility shall have a policy for infant security and an organized program to prevent infant abductions.

i. The facility shall support breast feeding.

j. The facility shall have data collection and retrieval capabilities including current birth certificate in

use, and shall cooperate and report the requested data to the appropriate supervisory agencies for review.

k. The facility shall have a program in place to address the needs of the family, including parent-sibling-neonate visitation.

l. The facility shall have written transport agreements. The transport service must be designed to be adequately equipped and have transport personnel with appropriate expertise for obstetrical and neonatal care during transport. Transport services shall meet appropriate local, state, and federal guidelines.

2. Personnel Requirements

a. Obstetrical services shall be under the medical direction of a qualified physician who is a member of the medical staff with obstetric privileges. The physician shall be Board Certified or Board Eligible in obstetrics/gynecology or Family Practice Medicine. The physician has the responsibility of coordinating perinatal services with the pediatric chief of service.

b. The nursing staff must be adequately trained and staffed to provide patient care at the appropriate level of service. The facility shall utilize the guidelines for staffing as provided by the AAP and the ACOG in the current *Guidelines for Perinatal Care* (See Table 2-1 in §9515, Additional Support Requirements).

c. The unit shall provide credentialed medical staff to ensure the capability to perform emergency Cesarean delivery within 30 minutes of the decision to operate (30 minutes from decision to incision).

d. Anesthesia, radiology, ultrasound, electronic fetal monitoring (along with personnel skilled in its use) and laboratory services shall be available on a 24-hour basis. Anesthesia services shall be available to ensure performance of a Cesarean delivery within 30 minutes as specified in Subparagraph c above.

e. At least one qualified physician or certified registered nurse midwife shall attend all deliveries, and at least one qualified individual capable of neonatal resuscitation shall attend all deliveries.

f. The nurse manager shall be a registered nurse (RN) with specific training and experience in obstetric care. The RN manager shall participate in the development of written policies, procedures for the obstetrical care areas, and coordinate staff education and budget preparation with the chief of service. The RN manager shall name qualified substitutes to fulfill duties during absences.

3. Physical Plant

a. Obstetrical patients shall not be placed in rooms with non-obstetrical patients.

b. Each room shall have at least one toilet and lavatory basin for the use of obstetrical patients.

c. The arrangement of the rooms and areas used for obstetrical patients shall be such as to minimize traffic of patients, visitors, and personnel from other departments and prevent traffic through the delivery room(s).

d. There shall be an isolation room provided with hand washing facilities for immediate segregation and isolation of a mother and/or baby with a known or suspected communicable disease.

e. Any new construction or major alteration of obstetrical units shall have a facility to enable Cesarean section deliveries in the obstetrical unit.

B. Obstetrical Level II Unit

1. General Provisions

a. The role of an obstetrical Level II unit is to provide care for most obstetric conditions in its population, but not to accept transports of obstetrical patients with gestation age of less than 32 weeks or 1,500 grams if delivery of a viable infant is likely to occur.

b. Conditions which would result in the delivery of an infant weighing less than 1,500 grams or less than 32 weeks gestation shall be referred to an approved Level III or Level III regional obstetrical unit unless the patient is too unstable to transport safely. Written agreements with approved obstetrical Level III and/or obstetrical Level III regional units for transfer of these patients shall exist for all obstetrical Level II units.

c. The unit shall be able to manage maternal complications of a mild to moderate nature that do not surpass the capabilities of a board certified obstetrician/gynecologist.

d. The needed subspecialty expertise is predominantly neonatal although perinatal cases might be appropriate to co-manage with a perinatologist.

e. Ultrasound equipment shall be on site, in the hospital, and available to labor and delivery 24 hours a day.

2. Personnel Requirements

a. The chief of obstetric services shall be a board-certified obstetrician or an active candidate for certification in obstetrics. This obstetrician has the responsibility of coordinating perinatal services with the neonatologist or pediatrician in charge of the neonatal intensive care unit (NICU).

b. A board-certified radiologist and a board-certified clinical pathologist shall be available 24 hours a day. Specialized medical and surgical consultation shall be readily available.

C. Obstetrical Level III Unit

1. General Provisions

a. There shall be provision of comprehensive perinatal care for high risk mothers.

b. The unit shall provide care for the most challenging of perinatal conditions. Only those conditions requiring a medical team approach not available to the perinatologist in an obstetrical Level III unit shall be transported to an obstetrical Level III regional unit.

c. Cooperative transfer agreements with approved obstetrical Level III regional units shall exist for the transport of mothers and fetuses requiring care unavailable in an obstetrical Level III unit or that are better coordinated at an obstetrical Level III regional unit.

d. Obstetric imaging capabilities to perform targeted ultrasound examination in cases of suspected abnormalities shall be available.

e. Genetic counseling and diagnostics shall be provided.

f. Ongoing educational opportunities shall be provided through organized educational programs.

g. This unit shall provide for and coordinate maternal transport with obstetrical Level I and II units.

2. Personnel Requirements

a. The chief of the obstetrical unit providing maternal-fetal medicine at a Level III unit shall assure that

appropriate care is provided by the primary attending physician for high risk maternal patients and shall be:

- i. board-certified in maternal-fetal medicine; or
- ii. an active candidate for subspecialty certification in maternal-fetal medicine; or
- iii. a board-certified obstetrician with experience in maternal-fetal medicine and credentialing to care for high risk mothers.

b. If there is no hospital-based perinatologist, a written consultative agreement shall exist with an approved obstetrical Level III or Level III regional obstetrical unit with a hospital-based perinatologist. The agreement shall also provide for a review of outcomes and case management for all high risk obstetrical patients for educational purposes.

c. A board-certified anesthesiologist with special training or experience in maternal-fetal anesthesia services at a Level III unit shall direct obstetrical anesthesia services. Personnel, including certified registered nurse anesthetists (CRNAs), with credentials to administer obstetric anesthesia shall be in-house 24 hours a day.

D. Obstetrical Level III Regional Unit

1. General Provisions

a. The unit shall have the ability to care for both mother and fetus in a comprehensive manner in an area dedicated to the care of the critically ill parturient.

b. These units shall provide for and coordinate maternal and neonatal transport with Level I, II and III NICU units throughout the state.

2. Personnel Requirements

a. The chief of service at the Level III regional obstetrical unit must be a board-certified perinatologist.

b. The obstetrical Level III Regional unit shall have the following obstetrical specialties or subspecialties on staff and clinical services available to provide consultation and care to the parturient in a timely manner:

- i. maternal-fetal medicine;
- ii. cardiology;
- iii. neurology; and
- iv. hematology.

c. Subspecialists to provide consultation in the care of the critically ill parturient shall be on staff in the following areas:

- i. adult critical care;
- ii. cardiothoracic surgery;
- iii. nephrology;
- iv. pulmonary medicine;
- v. neurosurgery;
- vi. endocrinology;
- vii. urology;
- viii. infectious disease; and
- ix. gastroenterology.

d. Personnel qualified to manage obstetrical emergencies shall be in-house 24 hours per day, including CRNAs, with credentials to administer obstetrical anesthesia.

e. A lactation consultant shall be on staff to assist breast feeding mothers.

f. Registered nurses with experience in the care of high risk maternity patients shall be in house on a 24-hour basis.

g. A nutritionist and a social worker shall also be available for the care of these patients.

D.3. - 7. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2427 (November 2003), amended LR 32:

§9511. Neonatal Intensive Care

A. This §9511 is applicable to those hospitals which provide obstetrical and neonatal services.

B. Levels of Care. There are four established neonatal levels of care units:

1. Neonatal Level I Unit;
2. Neonatal Level II Unit;
3. Level III NICU Unit; and
4. Level III regional NICU.

C. Each advanced level of care unit shall provide all services and meet the personnel requirements of the lower designated units, as applicable, i.e., a Level III regional unit must meet the requirements of the Level I, II, and III units.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2428 (November 2003), amended LR 32:

§9513. Neonatal Unit Functions

A. Level I Neonatal Unit

1. General Provisions

a. The unit shall have the capability for resuscitation and stabilization of all inborn neonates in accordance with Neonatal Resuscitation Program (NRP) guidelines. The unit shall stabilize unexpected small or sick neonates before transfer to the appropriate advanced level of care.

b. The unit shall maintain consultation and transfer agreements with an approved Level II or III as appropriate, and an approved Level III regional NICU, emphasizing maternal transport when possible.

c. There shall be a defined nursery area with limited access and security or rooming-in facilities with security.

d. Parent and/or sibling visitation/interaction with the neonate shall be provided.

e. The unit shall have the capability for data collection and retrieval.

2. Personnel Requirements

a. The unit's chief of service shall be a physician who is board-certified or board-eligible in pediatric or family practice medicine.

b. The nurse manager shall be a registered nurse with specific training and experience in neonatal care. The RN manager shall participate in the development of written policies and procedures for the neonatal care areas, and coordinate staff education and budget preparation with the chief of service. The RN manager shall name qualified substitutes to fulfill duties during absences.

c. Registered nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level I neonatal unit shall be 1:6-8. This ratio reflects traditional newborn nursery care. If couplet care or rooming-in is used, a registered nurse who is responsible for the mother should coordinate and administer neonatal care. If direct assignment of the nurse is also made to the nursery to

cover the newborn's care, there shall be double assignment (one nurse for the mother-neonate couplet and one for just the neonate if returned to the nursery). A registered nurse shall be available at all times, but only one may be necessary as most neonates will not be physically present in the nursery. Direct care of neonates in the nursery may be provided by ancillary personnel under the registered nurse's direct supervision. Adequate staff is needed to respond to acute and emergency situations.

B. Neonatal Level II Unit

1. General Provisions

a. There shall be management of small, sick neonates with a moderate degree of illness that are admitted or transferred.

b. There shall be neonatal ventilatory support, vital signs monitoring, and fluid infusion in the defined area of the nursery. Neonates requiring greater than 24-hour continuous ventilatory support shall be transferred to an approved Level III or Level III regional unit.

c. Neonates born at a Level II facility with a birth weight of less than 1,500 grams shall be transferred to an approved Level III or Level III regional NICU unit unless a neonatologist is providing on-site care in the hospital.

d. Neonates requiring transfer to a Level III or Level III regional NICU may be returned to an approved Level II unit for convalescence.

2. Personnel Requirements

a. A board-certified pediatrician with special interest and experience in neonatal care or a neonatologist shall be the chief of service.

b. Registered nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level II neonatal unit shall be 1:3-4 (See Table 2-1 of §9515, Additional Support Requirements).

C. Level III NICU

1. General Provisions

a. There shall be a written neonatal transport agreement with an approved Level III regional unit. There shall be an organized outreach educational program.

b. If the neonatologist is not in-house, there shall be a pediatrician who has successfully completed the Neonatal Resuscitation Program (NRP) or one neonatal nurse practitioner in-house for Level III NICU patients.

c. Direct consultation with a neonatologist shall be available 24 hours per day.

2. Personnel Requirements

a. The chief of service of a Level III NICU shall be a board-certified neonatologist. The following exceptions are recognized.

i. A board-certified pediatrician who is an active candidate for a subspecialty certification in neonatal medicine.

ii. In 1995, those physicians in existing units who were designated as the chief of service of the unit and who were not neonatal or perinatal board-certified, were granted a waiver by written application to the Office of the Secretary, Department of Health and Hospitals. This waiver shall be maintained as it applies only to the hospital where that chief of service's position is held. The physician cannot relocate to another hospital nor can the hospital replace the chief of service for whom the exception was granted and retain the exception.

b. Medical and surgical consultation shall be readily available and pediatric subspecialists may be used in consultation with a transfer agreement with a Level III regional NICU.

c. Registered nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level III NICU unit shall be 1:2-3 (See Table 2-1 of §9515, Additional Support Requirements).

D. Level III Regional NICU

1. General Provisions

a. Twenty-four hours per day in-house coverage shall be provided by a neonatologist, a second year or higher pediatric house officer, or a neonatal nurse practitioner. If the neonatologist is not in-house, there shall be immediate consultative ability with the neonatologist and he/she shall be available to be on-site in the hospital within 30 minutes.

b. The unit shall have a transport team and provide for and coordinate neonatal transport with Level I, Level II units and Level III NICUs throughout the state. Transport shall be in accordance with national standards as published by the American Academy of Pediatrics' Section on neonatal and pediatric transport.

c. The unit shall be recognized as a center of research, educational and consultative support to the medical community.

2. Personnel Requirements

a. The chief of service shall be a board-certified neonatologist.

b. Nurse to patient ratios may vary in accordance with patient needs. However, the ratio for a Level III regional NICU shall be 1:1-2 (See Table 2-1 in §9515, Additional Support Requirements).

c. The unit shall have the following pediatric specialties/subspecialties on staff and clinical services available to provide consultation and care to neonates in a timely manner:

- i. anesthesia;
- ii. pediatric surgery;
- iii. pediatric cardiology; and
- iv. pediatric ophthalmology.

d. Subspecialists to provide consultation in the care of the critically ill neonate shall be on staff in the following areas:

- i. pediatric neurology;
- ii. pediatric hematology;
- iii. genetics;
- iv. pediatric nephrology;
- v. pediatric endocrinology;
- vi. pediatric gastroenterology;
- vii. pediatric infectious disease;
- viii. pediatric pulmonary medicine;
- ix. orthopedic surgery;
- x. pediatric urologic surgery;
- xi. ENT surgery; and
- xii. cardiothoracic surgery.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR 32:

§9515. Additional Support Requirements

A. A Bioethics Committee shall be available for consultation with care providers at all times.

B. The following support personnel shall be available to provide consultation and care and services to Level II, Level III and Level III regional obstetrical, neonatal, and NICU units in a timely manner:

1. at least one full-time medical social worker who has experience with the socioeconomic and psychosocial problems of high-risk mothers and fetuses, sick neonates, and their families (additional medical social workers may be required if the patient load is heavy);

2. at least one occupational or physical therapist with neonatal expertise; and

3. at least one registered dietitian/nutritionist who has special training or experience in perinatal nutrition and can plan diets that meet the special needs of high-risk mothers and neonates.

C. The following support personnel shall be immediately available to be on-site in the hospital for Level II, Level III and Level III regional obstetrical, neonatal, and NICU units:

1. qualified personnel for support services such as laboratory studies, radiological studies, and ultrasound examinations (these personnel shall be readily available 24 hours a day); and

2. registered respiratory therapists or registered nurses with special training who can supervise the assisted ventilation of neonates with cardiopulmonary disease (optimally, one therapist is needed for each four neonates who are receiving assisted ventilation).

D. The staffing guidelines shall be those recommended by the current AAP/ACOG *Guidelines for Perinatal Care*. (See Table 2-1 below).

Table 2-1. Recommended Registered Nurse/Patient Ratios for Perinatal Care Services	
Nurse/Patient Ratio	Care Provided
Intrapartum	
1:2	Patients in labor
1:1	Patients in second stage of labor
1:1	Patients with medical or obstetric complications
1:2	Oxytocin induction or augmentation of labor
1:1	Coverage for initiating epidural anesthesia
1:1	Circulation for Cesarean delivery
Antepartum/ Postpartum	
1:6	Antepartum/postpartum patients without complications
1:2	Patients in postoperative recovery
1:3	Antepartum/postpartum patients with complications but in stable condition
1:4	Recently born infants and those requiring close observation
Newborns	
1:6-8	Newborns requiring only routine care
1:3-4	Normal mother-newborn couplet care
1:3-4	Newborns requiring continuing care
1:2-3	Newborns requiring intermediate care
1:1-2	Newborns requiring intensive care
1:1	Newborns requiring multi-system support
1:1 or Greater	Unstable newborns requiring complex critical care

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR 32:

§9517. Neonatal Unit Functions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), repealed LR 32:

§9519. Medical Staff

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2430 (November 2003), repealed LR 32:

§9521. Staffing

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2430 (November 2003), repealed LR 32:

Interested persons may submit written comments to Jerry Phillips, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, June 29, 2006 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Hospital Licensing Standards

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

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 05-06. It is anticipated that \$1,836 (\$918 SGF and \$918 FED) will be expended in FY 05-06 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect federal revenue collections other than the federal share of the promulgation costs for FY 05-06. It is anticipated that \$918 will be expended in FY 05-06 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This rule proposes to amend hospital licensing standards to clarify the conditions and timelines under which outpatient services can be offered when the corresponding service is not offered on an inpatient basis (approximately 607 providers). The rule also proposes to bring the requirements for obstetrical and newborn services in line with the recommendations from the National Guidelines for Perinatal Care (published by the American Academy of Pediatrics, 5th Edition-approximately 90 hospitals). It is anticipated that implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non governmental groups in FY 05-06, FY 06-07, and FY 07-08.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition or employment.

Jerry Phillips
Acting Medicaid Director
0605#063

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Regulation 33—Medicare Supplement
Insurance Minimum Standards
(LAC 37:XIII.525)

In accordance with R.S. 49:953(A) of the Administrative Procedure Act, the Department of Insurance proposes to amend Section 525, Medicare Select Policies and Certificates, of Regulation 33:Medicare Supplement Insurance Minimum Standards (LAC 37:XIII.Chapter 5). The amendments are designed to define the geographical service areas within which Medicare Select policies can be sold; to restrict the sale of Medicare Select policies to persons residing in the issuer's service area; and, to provide notice to policyholders of the potential effects on benefits payable under Medicare Select policies when policyholders move their residence outside of the service area. The amendments are put forth to alleviate confusion regarding Medicare Select policy benefits available to policyholders once the policyholder moves his or her residence outside of the insurer's network service area.

This regulation shall be effective upon final publication in the *Louisiana Register*.

**Title 37
INSURANCE**

Part XIII. Regulations

**Chapter 5. Regulation 33—Medicare Supplement
Insurance Minimum Standards**

§525. Medicare Select Policies and Certificates

A.1. - B. ...

* * *

Primary Residence—the policyholder's residence as listed on the policyholder's application for insurance or any other residence given by the policyholder to the issuer subsequent to the application date for the purpose of changing the policyholder's residence.

* * *

Service Area—the 50 mile geographical radius or area approved by the commissioner within which a policyholder's primary residence must be located in relation to an issuer's network provider and within which an issuer is authorized to offer a Medicare Select policy.

C. ...

D.1. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the commissioner.

2. After September 1, 2006, issuers shall be prohibited from selling new Medicare Select policies to those persons whose primary residence is located outside of the issuer's service area.

3. Medicare Select issuers shall provide notice, within 30 days after the publication of this rule, to all Medicare Select policyholders that:

a. if the policyholder changes his primary residence to a residence located outside of the issuer's service area:

i. the policyholder shall have the right to convert his current Medicare Select policy to a Medicare Supplement policy; and

ii. the issuer cannot cancel the policyholder's Medicare Select policy on the basis that the policyholder did not convert his Medicare Select policy to a Medicare Supplement policy.

iii. the terms of the policy shall govern with respect to benefits available to the policyholder after moving his primary residence outside of the service area.

b. The policyholder may incur a penalty in the form of some or all of the benefits under the Medicare Select policy not being payable if the policyholder requires medical services outside of the service area after the policyholder changes his primary residence to a residence located outside of the service area without converting his policy to a Medicare Supplement policy.

4. After October 1, 2006, upon the Medicare Select issuer obtaining actual knowledge that a policyholder has changed his primary residence to a residence located outside of the service area, the issuer shall mail to the policyholder the same notice, or one substantially similar, required in the above Paragraph D.3. The issuer shall mail this notice within 30 days after obtaining actual knowledge of the policyholder's change of residence.

E. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:224 and 42 U.S.C. 1395 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 25:1108 (June 1999), repromulgated LR 25:1488 (August 1999), amended LR 29:2442 (November 2003), LR 31:2910 (November 2005), LR 32:

Family Impact Statement

1 Describe the effect of the proposed Rule on the stability of the family. The proposed Rule should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed Rule on the authority and rights of parents regarding the education and supervision of their children. The proposed Rule should have no impact upon the rights and authority of parents regarding the education and supervision of their children.

3. Describe the effect of the proposed Rule on functioning of the family. The proposed Rule should have no direct impact upon the functioning of the family.

NOTICE OF INTENT

Department of Natural Resources Office of Mineral Resources

Dry Hole Credit Program (LAC 43:V.Chapter 4)

Editor's Note: The following Notice of Intent is being repromulgated due to a submission error. The original Notice of Intent was published in the March 2006 *Louisiana Register* on pages 496-501.

Under the authority of R.S. 30:150 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt LAC 43:V.401 et seq.

The purpose of this regulation is to detail the procedure to be utilized to administer the Dry Hole Credit Program allowed for by R.S. 30:150 et seq., as enacted by Act 298 of the 2005 Regular Session of the Legislature.

Title 43

NATURAL RESOURCES

Part V. Office of Mineral Resources

Chapter 4. Dry Hole Credit Program

§401. Definitions

A. Unless the context requires otherwise, the terms set forth hereinafter shall have the following respective meanings, to-wit:

Coastal Zone—that portion of the land and water bottoms of the state of Louisiana, including the Gulf of Mexico, set forth and defined as the coastal zone in R.S. 49:214.24.

Dry Hole—a completed well which is not productive of oil or gas in any sand and classified as a Status 29 well by the Office of Conservation.

Dry Hole Credit—the lesser of the value of 5 billion cubic feet of natural gas production (or the natural gas equivalent of condensate production) multiplied by the spot market price per cubic foot of natural gas at the Henry Hub (or any other gas gathering and marketing facility recognized by OMR from which spot market sales of gas occur, if Henry Hub is not available for comparison pricing), valued at the time application is made for certification as a royalty relief receiving well, or 50 percent of the dry hole well cost of the dry hole credit well which serves as the basis for the dry hole credit sought. The value of dry hole credit may be further modified if the dry hole credit well was drilled as a unit well in a unit which did not contain the entirety of the state mineral lease on which it was drilled or contains lands and leases in addition to that on which the dry hole credit well was drilled.

Dry Hole Credit Well—any new well drilled for purposes of developing and producing oil or gas mineral resources which:

- a. is spudded after July, 1, 2005, but completed before June 30, 2009 for the purpose of certification; and
- b. is drilled on a state mineral lease located within the coastal zone of Louisiana; and
- c. is drilled to a depth greater than 19,999 feet SSTVD; and

4. Describe the effect of the proposed Rule on family earnings and budget. The proposed Rule should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed Rule on the behavior and personal responsibility of children. The proposed Rule should have no impact upon behavior and personal responsibility of children.

6. Describe the effect of the proposed Rule on the ability of the family or a local government to perform the function as contained in the Rule. The proposed Rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

A public hearing on this proposed regulation will be held on June 27, 2006, at 9:30 a.m., in the Plaza Hearing Room of the Poydras Building, 1702 North Third Street, Baton Rouge, LA. Interested persons who wish to make comments may do so at the public hearing or by writing to Kyle M. Green, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business, 4:30 p.m., June 27, 2006. No preamble concerning the proposed regulation is available.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 33—Medicare Supplement Insurance Minimum Standards

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

It is not anticipated that the Department of Insurance will incur any costs or savings as a result of implementing this revision. Any new duties imposed upon the department by this revision would be handled by existing personnel.

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

Adoption of this proposed revision will not have any effect on revenue collections by state or local governmental units.

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

Data available are insufficient to determine the effect this revision could have on insurers and/or insureds; however, it is not expected that the amendments would result in any significant economic impact to insurers or insureds. Insurers should absorb the costs of policyholder notification as a normal business expense. Insureds will benefit by having a clearer understanding of their benefits should they relocate their residence outside of the geographic area covered by their policy.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that this revision would have any effect on employment or competition.

Chad M. Brown
Deputy Commissioner
0605#044

Robert E. Hosse
Staff Director
Legislative Fiscal Office

- d. is logged by suitable geophysical methods; and
- e. is verified by OMR as a dry hole by being classified as a Status 29 well by the Office of Conservation; and
- f. is not "commercially productive" by being completely plugged and abandoned according to rules promulgated by the Office of Conservation as evidenced by a copy of the well abandonment certificate duly signed by the appropriate authority in the Office of Conservation; and
- g. has had copies of any and all well information derived from drilling same, including geophysical and geological, surrendered to OMR to be held as a public record; and
- h. has been certified by the Office of Mineral Resources as a dry hole credit well.

Dry Hole Well Cost—a detailed, itemized list of actual costs (not AFE or estimated costs) of drilling the dry hole credit well from well site preparation (including such things as preparing board road, anchoring pads, dredging, permitting and similar preparatory work, but not including legal fees, lease related costs, hearing costs, title searches and similar types of cost), equipment and materials actually utilized in drilling the dry hole credit well, to plugging and abandoning the well according to rules promulgated by the Office of Conservation. All actual costs claimed shall conform generally to costs recognized and accepted as costs attributable to drilling a well only by the Council of Petroleum Accountants Societies (COPAS).

OMR—the Office of Mineral Resources, an office of the Department of Natural Resources and the statutorily designated staff of the Louisiana State Mineral Board.

Pre-Qualifying Well—any permitted, but undrilled, well for which pre-qualifying certification is sought and which meets the following criteria, to-wit:

- a. application is made by completely and accurately filling out the pre-qualifying form provided by OMR; and
- b. the proposed well is permitted to be drilled on a state mineral lease located in the coastal zone of Louisiana; and
- c. the proposed well is permitted to spud subsequent to certification by OMR of the dry hole credit well which applicant seeks to use as the basis for the dry hole credit offset; and
- d. applicant is the proper party granted authority to utilize the dry hole credit derived from the dry hole credit well, or his successor or assignee; and
- e. the proposed well has been permitted by the Office of Conservation to be drilled to a depth reasonably calculated to produce hydrocarbons from sands below 19,999 feet SSTVD; and
- f. the proposed well is permitted to spud after July 1, 2005 and completed before June 30, 2009; and
- g. applicant has obtained from the Office of Coastal Restoration and Management a letter setting forth the minimum mitigation to be required from the applicant if the well is drilled and completed as a hydrocarbon producer, which mitigation shall amount to not less than 125 percent of the wetlands impact of the pre-qualifying well if it becomes a royalty relief receiving well together with applicants agreement to fulfill said mitigation obligation; and

- h. is certified as a pre-qualifying well by OMR.

Royalty Relief Receiving Well—any new well drilled for purposes of developing and producing oil or gas mineral resources which:

- a. is spudded after July 1, 2005, but completed before June 30, 2009 for the purpose of certification; and
- b. is drilled after certification of the dry hole credit well sought to be utilized for the dry hole credit; and
- c. is drilled by the person or entity which has earned the dry hole credit for the dry hole credit well sought to be utilized, or his successor or assignee; and
- d. is drilled on a state mineral lease located within the coastal zone of Louisiana; and
- e. is drilled and completed as an oil or gas well, as so designated by the Office of Conservation, capable of producing from hydrocarbon bearing sands below 19,999 feet SSTVD; and
- f. has been previously certified as a pre-qualifying well by OMR; and
- g. does not utilize or attempt to utilize any other state tax credit (other than an income tax credit) or royalty modification of any kind to modify royalty paid to the state on production therefrom; and
- h. has, from being qualified as a pre-qualifying well, a letter from the Office of Coastal Restoration and Management setting forth the mitigation required from the applicant, which shall amount to not less than 125 percent of the wetlands impact of the royalty relief receiving well, together with the agreement by the applicant to perform said mitigation; and
- i. has been certified as a royalty relief receiving well by OMR.

SMB—the Louisiana State Mineral Board created by Act 93 of the 1936 Regular Session of the Louisiana Legislature.

True Vertical Depth—the actual vertical depth sub sea (below mean sea level) and referred to as SSTVD.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:

§403. Application for Status as a Dry Hole Credit Well

A. Only one person or entity shall be able to earn a dry hole credit for each dry hole credit well. The person or entity drilling a dry hole, having the right to apply (whether as the sole working interest party or by agreement between all working interest parties) and desiring to qualify said dry hole as a dry hole credit well, shall apply for status as a dry hole credit well by completely and accurately filling out the provided form and sending same to OMR at 617 North Third Street, LaSalle Building, Eighth Floor, P.O. Box 2827, Baton Rouge, LA 70821-2827, accompanied by the following, to-wit:

- 1. the 1 inch and 5 inch electrical survey; and
- 2. any side wall cores, logs or well surveys run on the well; and
- 3. a copy of that part of the daily drilling report showing the spud date and location and the last part showing drilling cessation, including pulling the drill stem out with the date thereof; and
- 4. a well survey verifying SSTVD and any deviation from vertical taken by the drill pipe; and

5. a copy of the well history report filed with the commissioner of conservation; and

6. a copy of the well abandonment certificate signed by the appropriate authority from the Office of Conservation showing that the well has been plugged and abandoned in conformity with the rules and regulations promulgated by the Office of Conservation; and

7. copies of any other data or information derived from the drilling of the dry hole which may reflect upon its status; and

8. a statement of dry hole cost (which shall be subject to audit by, and at the sole discretion of, the staff of OMR); and

9. written proof (which may include the AFE of the dry hole well showing the applicant to be the sole working interest party or, if more than one working interest owner, a written, notarized agreement, signed by all working interest owners as shown on the AFE, stating that applicant is the authorized party to receive the dry hole credit) that the applicant is the proper person to earn the dry hole credit if the well is certified as a dry hole credit well.

B.1. If the state mineral lease on which the certified dry hole credit well is drilled is part of a unit, either a voluntary unit or a commissioner's unit, which either:

a. contains only a portion of the said state mineral lease; or

b. if the unit contains the entirety of the lease on which dry hole credit well is drilled, but additional leases as well;

2. then the value of the dry hole credit allowed using that said dry hole credit well as its basis, whether the value of the dry hole credit is computed by utilizing the dry hole cost of that said dry hole credit well or by computing the value of 5 billion cubic feet of natural gas (or its equivalent in condensate), shall be reduced by multiplying the total dry hole credit by a fraction comprised of the proportion of the acreage of the state mineral lease on which the dry hole credit well is drilled, allocated in the unit to the total acreage of the unit.

C. All applicants must be duly registered with OMR pursuant to the requirements of Act 449 of the 2005 Regular Session of the Louisiana Legislature.

D. All data given to OMR on all dry hole credit wells certified pursuant to this rule shall be kept in a database at OMR and deemed a public record.

E. After all data submitted has been reviewed by the staff of OMR and the dry hole proposed by the applicant is determined to meet the criteria for a dry hole credit well, OMR shall issue a letter under the signature of the assistant secretary of OMR to the applicant certifying that the submitted dry hole has been deemed a dry hole credit well, and further, containing the serial number of the dry hole credit well, the applicant's name as the party or entity to whom the dry hole credit will be issued, that portion of the accepted total dry hole cost of the dry hole credit well which may be applied against royalty from a royalty relief receiving well (or fraction thereof if the dry hole credit well was a unit well containing leases other than that on which the dry hole credit well was located) and the spud, and plugging and abandonment dates of the dry hole credit well.

F. A report shall be made by OMR to the SMB at its next called meeting following the issuance of the dry hole

credit letter giving such information as shall be required by the SMB at the time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:

§405. Assignment of a Dry Hole Credit

A. The party named on the certification from OMR of a dry hole credit well as the party to whom the dry hole credit is issued may assign the entirety of the dry hole credit to another party or entity, but the dry hole credit shall not be divided in any assignment, either by assigning fractional interests or by assigning the entirety of the interest to more than one assignee.

B. Any assignment of a dry hole credit shall be in the form of an instrument signed by both assignor and assignee, duly witnessed and properly notarized, containing, in addition to language of transference of the dry hole credit, the complete legal names of the assignor and assignee, their respective business domiciliary addresses and correct, up-to-date telephone numbers, facsimile number and email address (if any), the serial number of the dry hole credit well which forms the basis of the dry hole credit together with the value of the dry hole credit being transferred, as both are set forth on the certification of dry hole credit well status belonging to the assignor. The original certification of dry hole credit well status shall be attached to and be a part of the assignment.

C. No assignment or transfer of a dry hole credit shall be valid unless approved by the SMB. The assignment or transfer of the dry hole credit shall utilize the same procedure as required for the assignment or transfer relating to minerals or mineral rights required under R.S. 30:128(A).

D. An assignee of a dry hole credit must be registered with OMR as a prospective lease holder in full compliance with Act 449 of the 2005 Regular Session of the Louisiana Legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:

§407. Application for Status as a Pre-Qualifying Well

A. A party desiring to apply a dry hole credit from a certified dry hole credit well to a proposed new well shall, prior to drilling the new well, complete in full an application form provided by, to be returned to, OMR at 617 North Third Street, LaSalle Building, Eighth Floor, P.O. Box 2827, Baton Rouge, LA 70821-2827, requesting that the proposed new well be certified as a pre-qualifying well. Together with, and accompanying, the completed application form, the applicant shall provide the OMR staff with the following, to-wit:

1. a drilling permit from the Office of Conservation which indicates that the proposed pre-qualifying well will be spudded after July 1, 2005, and prior to June 30, 2009, and drilled to a depth reasonably calculated to secure hydrocarbon production below 19,999 feet SSTVD; and

2. written proof that the proposed pre-qualifying well is going to be drilled (bottom-holed) on a state mineral lease located in the coastal zone of Louisiana, either as a lease well or a unit well (for which only a portion of the total dry hole credit amount shall apply, as obtained by multiplying the dry hole calculated by a fraction which is equal to the

proportion of the state mineral lease acreage on which the proposed pre-qualifying well is drilled as allocated within the unit to the total acreage of the unit); and

3. written proof in the form of an affidavit that all necessary permits and all rights-of-way have been acquired, that there are no impediments, including management approval, remaining to the drilling of the well and that the Office of Coastal Restoration and Management has been notified of the intended well in order to review the potential wetlands impact; and

4. the written certification of dry hole credit well status issued by OMR or an assignment of dry hole credit interest previously approved by the SMB showing that the applicant is the proper party to apply for pre-qualification status; and

5. written evidence from the Office of Coastal Restoration and Management, which shall have been notified of the application for pre-qualifying well status by OMR, obtained by the applicant, setting forth the estimated wetlands impact of the proposed new well together with an agreement by the applicant to mitigate not less than 125 percent of the wetlands impact, or more if required, in a manner approved by the Office of Coastal Restoration and Management.

B. No more than 20 active pre-qualifying wells and existing royalty relief receiving wells, in the aggregate, shall be certified by OMR at any one time. If a party or entity having a dry hole credit from a certified dry hole credit well proposes to drill a new well and applies for status of the new well as a pre-qualifying well, and there are already 20 active pre-qualifying wells and/or royalty relief receiving wells, in the aggregate, then that applicant shall be placed on a waiting list, in the order of date and time of application. Thereafter, if any active pre-qualifying wells become inactive, new applicants on the waiting list, in the order of their listing, may apply for status of a new well to be drilled as a pre-qualifying well provided that no pre-qualifying well status may be granted on or after June 30, 2009.

C. Upon applicant's furnishing the information hereinabove set forth, and if there are less than 20 active pre-qualifying wells and/or existing royalty relief receiving wells, in the aggregate, already certified, OMR may issue a letter certifying that:

1. as of the effective date set forth in the letter, the new proposed well, as designated by the serial number issued by the Office of Conservation on the drilling permit, is deemed an active pre-qualifying well; and

2. the pre-qualifying well status shall remain active only until:

i. the proposed new well is drilled, logged and deemed productive from hydrocarbon bearing sands located below 19,999 feet SSTVD or classified as a Status 29 dry hole by the Office of Conservation, or down hole drilling operations cease for a period in excess of six months without a log being run which indicates the well will be productive from hydrocarbon bearing sands below 19,999 feet SSTVD; or

ii. the expiration of the drilling permit used to obtain pre-qualifying status, whichever is earlier, but under no circumstances on or after June 30, 2009; and

3. the serial number of the dry hole credit well providing the basis for the dry hole credit and the amount of

dry hole well cost (computed from the letter of certification of dry hole credit well status) which may be used to offset royalty payments if the pre-qualifying well becomes a royalty relief receiving well; and

4. reference, as an attachment, to the wetlands impact mitigation letter and agreement between the applicant and the Office of Coastal Restoration and Management reiterating applicant's agreement to mitigate found by the Office of Coastal Restoration and Management, but not less than 125 percent of any actual wetlands impact, upon drilling the pre-qualifying well.

D. Under no circumstances shall a well permitted as a re-entry into an existing well bore, whether for deepening, sidetracking or otherwise, qualify for certification as a pre-qualifying well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:

§409. Application for Status as a Royalty Relief Receiving Well

A. Only a pre-qualifying well may become a royalty relief receiving well.

B. A party drilling a pre-qualifying well which is logged and deemed productive from hydrocarbon bearing sands below 19,999 feet SSTVD as a producing well may request certification as a royalty relief receiving well by completing the appropriate form provided by, and returning same to OMR at P.O. Box 2827, 617 North Third Street, LaSalle Building, Eighth Floor, Baton Rouge, LA 70821-2827, accompanied by the following documentation, to-wit:

1. written proof, including appropriate portions of the drilling report showing spud location and date, and bottom hole location, date and SSTVD; the completion report and log showing SSTVD of all perforations which contribute to the present productivity; plats showing the state lease on which the well is drilled; unit plats, Office of Conservation orders or voluntary unit agreements, if drilled within a unit, showing unit allocation of acreage of the state lease on which well is drilled in proportion to total unit acreage; and data from well tests reasonably calculated to test for productivity in all completions below 19,999 feet SSTVD, indicating that:

a. the well was spudded between July 1, 2005 and completed before June 30, 2009; and

b. the well is completed as productive from hydrocarbon bearing sands below 19,999 feet SSTVD as well as the percentage of perforations below 19,999 feet SSTVD; and

c. the well is drilled on a state mineral lease in the coastal zone of Louisiana; and

d. if the well is drilled in a unit, the proportion of state mineral lease acreage on which the well is drilled as allocated in the unit to the total acreage of the unit; and

2. the pre-qualification well certification issued by OMR showing the serial number of the pre-qualifying well, the party receiving the pre-qualifying well status and the sum of money attributed to the dry hole well cost which may be used to offset royalty payments to the state from the royalty relief receiving well; all of which indicates that the well for which royalty relief receiving well status is sought has been pre-qualified, that the applicant for royalty relief

receiving well status is the same party or entity to whom the pre-qualifying well certification was given and, if applicable, the amount of dry hole well cost which may be applied to offset royalty payments to the state on production from the royalty relief receiving well, if certified. All information obtained by OMR relating to qualifying a drilled and completed well as a royalty relief receiving well shall be kept in a database at OMR as a public record.

C. If applicant's well meets all of the criteria set forth in Act 298 of the 2005 Regular Session of the Louisiana Legislature as necessary to earn a dry hole credit offset, as evidenced by the information furnished in Subsection B above, OMR shall:

1. determine the total amount of dry hole credit which may be used to offset royalty payments to the state if the royalty relief receiving well status is granted by:

a. ascertaining the Platts spot market price per cubic foot of natural gas at the Henry Hub (or any other gas gathering and marketing facility recognized by OMR from which spot market sales of gas occur, if Henry Hub is not available for comparison pricing) and multiply that price by 5 billion cubic feet of gas to arrive at a sum of money; then

b. comparing the sum of money obtained in Subparagraph a herein to that portion of the dry hole well cost which may be used as a dry hole credit as set forth on the pre-qualifying well certification; and

c. determining the lesser of the two amounts as the total dry hole credit which may be used; and

2. if the royalty relief receiving well is a unit well, ascertain the proportion of acreage allocated to the state lease on which the pre-qualifying well was actually drilled (bottom holed) within the unit to the entire acreage of the unit and multiply that proportion by the total value of the dry hole credit as previously determined in Paragraph 1 hereinabove to obtain the revised dry hole credit allowed to offset royalty payments to the state from unit production allocated to the state lease; and

3. divide the value of the dry hole credit determined in Paragraphs 1 and 2 hereinabove by 36 to yield the maximum monthly value of dry hole credit which may be used by the royalty payer to offset monthly royalty payments to the state; and

4. notify the Office of Conservation that it is in the process of qualifying a newly drilled and completed well as a royalty relief receiving well and have the applicant request that said Office of Conservation issue a new, unique LUW code for production purposes to the well serial number of the pre-qualifying well sought to be certified as a royalty relief receiving well (no letter certifying status as a royalty relief receiving well will be issued until the Office of Conservation has issued the new, unique LUW code as requested); and

5. issue a letter certifying the previously certified pre-qualifying well, by serial number, as a royalty relief receiving well, which shall also contain the new, unique LUW code issued to that well by the Office of Conservation, the total monthly amount of dry hole credit, as calculated over a 36 month period, which may be used to offset any monthly royalty payments due the state on production from, or attributable to, the royalty relief receiving well, with the proviso that under no circumstances shall the value of monthly royalty paid to and received by the state on production from the royalty relief receiving well amount to

less than one-eighth of the total value received for the sale of monthly production, less other lease allowable deductions, allocated to the lease on which the royalty relief receiving well is located.

D. Certification as a royalty relief receiving well shall attach to, and only to, the former pre-qualifying well so certified, regardless of whether interests in the said royalty relief receiving well or the lease on which the said well is located are transferred subsequent to the certification. The dry hole credit offset amount specified in the certification shall be available only to the royalty payer on royalty due the state on production from the said royalty relief receiving well.

E. The decimal percentage of production due the state which yields the value from which the dry hole credit may be deducted by the royalty payer shall be the royalty specified in the state mineral lease on which the royalty relief receiving well is located or, if a unit well, the decimal portion allocated to that lease within the unit. However, at no time shall the monthly royalty, in value, paid to the state, after deducting the maximum allowed value of the monthly dry hole credit offset, amount to less than one-eighth of the total value received for the sale of monthly production, less other lease allowable deductions, allocated to the lease on which the royalty relief receiving well is located, as mandated in R.S. 30:127 and Act 298 of the 2005 Regular Session of the Louisiana Legislature. If the royalty payer on production from the royalty relief receiving well determines that, by deducting the maximum monthly value of the dry hole credit offset allowed, the value of the monthly royalty payment to the state would amount to less than the value of a one-eighth royalty, then the royalty payer shall deduct only that much of the monthly value of the dry hole credit offset allowed as will yield a royalty payment to the state of the value of a one-eighth royalty.

F. Applicant must designate by registered business name, domiciliary address, current telephone number, facsimile number (if one) and e-mail address, the royalty payer which would be authorized by OMR to apply the extension of dry hole credit royalty relief beyond the 36 month period initially granted by OMR.

G. Only one dry hole credit well may form the basis for a dry hole credit to be used to offset royalty payments to the state from only one royalty relief receiving well, and no more than 20 dry hole credit wells, in total, may be utilized as a basis to offset royalty payments to the state. The royalty relief dry hole credit shall be deemed issued when the pre-qualifying well has been certified as a royalty relief receiving well and its utilization to offset royalty payable to the state must begin within four years of the date of said certification.

H. If the pre-qualifying well is drilled and is a dry hole, the applicant may initiate the process to have that well qualified as a dry hole credit well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:

§411. Extending the Dry Hole Credit Offset beyond Thirty-Six Months

A. If the payer of royalty on production from, or allocated to, a certified royalty relief receiving well is not

able to utilize the full amount of the dry hole credit determined as applicable to that royalty relief receiving well to offset royalty payments to the state within the 36 month period from date of first production, a request, in writing, by the party or entity entitled to the dry hole credit to OMR to extend the period of royalty offset beyond the 36 month period may be made. The written request must identify, by LUW code and serial number, the certified royalty relief receiving well on which the extension of royalty offset is being requested, the total amount of dry hole credit utilized to offset royalty payments to the state in the 36 month period and the level of production of the royalty relief receiving well at the time of the request. The written request must be accompanied by the letter certifying the royalty relief receiving well status.

B. Should OMR decide to grant the extension, it shall issue a letter authorizing the full monthly dry hole credit offset on royalty payments to the state, which was previously granted for the 36 month period, to continue for an extension period not to exceed 24 additional months or until the full dry hole credit value is utilized, whichever is earlier. Under no circumstances shall the value of monthly royalty paid to the state during the extended 24 month period fall below the value of a one-eighth royalty, as specified in R.S. 30:127, nor shall the additional dry hole credit period exceed a total of 60 months or remain in force beyond June 30, 2013, whichever is earlier. Any dry hole credit offset not utilized within 60 months from date of first production, or before June 30, 2013, shall be lost to the payer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:

§413. Termination of Dry Hole Credit Offset

A. Should the total dry hole credit issued to a royalty relief receiving well be utilized in full to offset royalty payments to the state within 36 months from date of first production (or within the additional 24 month extension if granted), or a total of 60 months elapse from date of first production from the royalty relief receiving well without the total dry hole credit being utilized, or June 30, 2013 arrive, in either case, OMR shall issue a letter notifying the payer that, as of a certain date, no further dry hole credit will be available for offset against royalty paid to the state from production from that royalty relief receiving well. Upon issuance of that letter, OMR shall note the serial number and LUW code of that royalty relief receiving well in its database as one of only 20 such royalty relief receiving wells to be allowed.

B.1.a. Should production cease in whole or in part from productive sands below 19,999 feet in a royalty relief receiving well due to either:

i. a plug back from the formerly producing, but depleted sand below 19,999 feet and perforation into and production from sands above 19,999 feet in the same well; or

ii. perforations into and production from sands above 19,999 feet commingled with production from sands below 19,999 feet in the same well;

b. the dry hole credit offset allowed against production from that well shall be terminated in whole or in part in proportion to the percentage of production derived from sands above 19,999 feet as determined by the ratio of

the rate of flow from perforations above and below 19,999 feet.

2. If production from sands below 19,999 feet remains separate from production from sands above 19,999 feet in the same royalty relief receiving well, the dry hole credit offset may be used against the production from below 19,999 feet only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:150 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Mineral Resources, LR 32:

Family Impact Statement

The proposed adoption of LAC 43:V.401 et seq., regarding the Dry Hole Credit Program 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.

Interested parties may submit written comments relative to the proposed Rule until 4 p.m., Friday, June 30, 2006, to Monique M. Edwards, Executive Counsel, Office of the Secretary, Post Office Box 94396, 617 North Third Street, LaSalle Building, Twelfth Floor, Baton Rouge, LA 70804-9396.

Scott A. Angelle
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Dry Hole Credit Program

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

The Department of Natural Resources, Office of Mineral Resources will require three additional positions (auditor, engineer, geologist) to certify, monitor, and audit the participating wells. The costs of these personnel will be some \$205,000 in the first full year. An additional one-time \$50,000 will be utilized to modify the Department's royalty tracking system to account for this new relief, and a small amount of funds will be used for developing the rules and regulations necessary to implement the program. The Office of Mineral Resources was appropriated sufficient funds to implement the program. However, that funding and those three positions were eliminated during current year budget reductions. Therefore, these duties and functions will be absorbed utilizing existing funding and staff.

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

This program is expected to be revenue neutral in the first five years and then generate positive net revenue gain to the state in years 6 through 25. Participation in the program is limited to a total of twenty wells drilled by June 30, 2009 in the coastal zone on which the state will receive production royalties. Drillers must drill dry holes in the coastal zone before

any benefit is paid out by the state. The success rate for this type of discovery well is no less than 20 percent, thereby producing no less than 4 successful wells, each of which will need 10 additional wells to develop the field. Therefore, the statistical maximum of 16 dry holes will be offset by 44 successful wells, only 16 of which will receive the dry hole production credit.

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

The costs and/or economic benefits to others cannot be quantified. The program should have a positive effect on oil and gas exploration activity in the coastal zone and at the depths required by the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The effect on competition and employment cannot be quantified. If the program is successful in encouraging exploration, increased employment in the oil and gas sector will occur to the extent this targeting drilling activity does not divert activity from other areas of the state.

Robert D. Harper
Undersecretary
0605#039

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Division of Youth Services
Office of Youth Development**

Probationary Period (LAC 22:I.707)

In accordance with the applicable provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to the authority granted by R.S. 36:405, the Department of Public Safety and Corrections, Division of Youth Services, Office of Youth Development gives notice of its intent to promulgate §707. Probationary Period. The deputy secretary's purpose for promulgating this Rule is to supplement the information provided in the Employee Manual regarding probationary appointments and the attainment of permanent status, and to increase the probationary period for Youth Services employees to 12 months.

**Title 22
CORRECTIONS**

Part I. Corrections

Chapter 7. Youth Services

Subchapter A. Administration

§707. Probationary Period

A. Purpose. This rule will supplement the Employee Manual regarding probationary appointments and the attainment of permanent status and increase the probationary period to 12 months.

B. Applicability. The undersecretary or designee, unit heads, Youth Services (YS) Central Office's Human Resources Manager, Unit Human Resources staff, all newly hired classified employees and their supervisor's. unit heads shall ensure compliance with this policy.

C. Policy. It is the deputy secretary's policy that probationary periods for YS employees will be for a period of 12 months. If an employee performs assigned duties in a

satisfactory manner during the 12-month period, the employee will attain permanent status. If the employee does not perform assigned duties satisfactorily, the employee will be separated from employment.

D. Definitions

Agency Preferred Re-Employment List—a list of names of permanent employees who were laid off or demoted in lieu of a layoff.

Appointing Authority—Deputy Secretary of YS.

Classified Employee—an employee who is hired under the Civil Service system on a probational appointment and attains permanent status.

ISIS—Integrated Statewide Information Systems.

Permanent Appointment—the appointment of a probationary employee after certification by the appointing authority or designee, signifying that the employee has met the required standard of work during the probationary period.

Probational Appointment—an essential part of the examination process; used for the most effective adjustment of a new employee and for the elimination of any probationary employee whose performance does not meet required work standards. Employees who are required to serve probationary periods are those appointed to the following: permanent positions following certification from an open competitive employment list; original appointments to permanent positions in non-competitive classes; non-competitive re-employments based on prior service, except those hired from the Agency's Preferred Re-Employment List in a position which was filled with a probational appointment; and those employees who have an interruption of a probationary period for military purposes.

Unit Head—facility directors, Probation and parole program director, and the deputy secretary of designee for YS Central Office.

YS Central Office—offices of the deputy secretary, undersecretary or designee of the Office of Management and Finance, assistant secretaries and their support staff.

E. General. The appointing authority may separate a probationary employee at any time under Civil Service Rule No. 9.1(e).

F. Probational Appointments

1. All newly hired employees appointed on probational appointments shall serve a 12-month probationary period as a test period of satisfactory work performance as outlined in their job descriptions and determined by their supervisors.

2. A probationary employee who is absent for military training or active duty in excess of 30 consecutive calendar days shall return to work in the probationary status at the point reached in the probationary period before leaving. Absences of 30 consecutive calendar days or less shall be counted as part of the probationary period.

3. A former employee who is on the Agency Preferred Re-employment List and is re-employed in a position that must be filled with a probational appointment must serve a 12-month probationary period.

4. An employee who is permanently transferred, reassigned, or demoted to another position shall be eligible for permanent status in the new position after completing the probationary period that began prior to the change in position(s).

5. The probationary period of a part-time employee is computed on the same calendar basis as though employed full-time.

6. While on probationary status, an employee earns and can use annual, sick, and compensatory leave. The employee also gets paid for holidays and is eligible for health care and retirement benefits.

G. Permanent Appointments. Employees with permanent status who are promoted, transferred, reassigned, or demoted to another position are not required to serve a probationary period in the new position.

H. Permanent Appointment Action Following Probationary Period

1. A permanent appointment of a probationary employee shall begin upon certification by the appointing authority or designee to Civil Service that the employee has met the required standard of work while on probationary status.

2. A permanent appointment must be reported to Civil Service through the ISIS Human Resources System.

I. Monitoring Procedures

1. The Human Resources (HR) staff will run reports from the ISI Human Resources System of employees who are eligible for permanent status.

2. When an employee is eligible, HR staff will complete a "tickler" and forward to the employee's supervisor.

3. The supervisor will make a recommendation regarding permanent status and forward the recommendation to the appointing authority for approval.

4. The appointing authority will return the approval to the HR staff for entering into the ISIS Human Resources System.

5. The HR staff will notify the employee of the action taken with a copy of the "Employee Notification Form."

AUTHORITY NOTE: Promulgated in accordance with Civil Service Rules Nos. 8:10(b) and 17:25(a).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Youth Services, Office of Youth Development, LR 32:

Family Impact Statement

1. The proposed Rule will not affect the stability of the family.

2. The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. The proposed Rule will not affect the functioning of the family.

4. The proposed Rule will not affect the family earnings or family budget.

5. The proposed Rule will not affect the behavior or personal responsibility of children.

6. The proposed Rule is a state enforcement function.

Interested persons may submit written comments until 4:30 p.m., June 10, 2006, to Kathe R. Zolman, Department of Public Safety and Corrections, Office of Youth Development, Legal Department, 7919 Independence Blvd., State Police Building, Baton Rouge, LA 70806.

Simon G. Gonsoulin
Deputy Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Probationary Period

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

There are no implementation costs (savings) for state or local government.

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

There will be no estimated affect on revenue collection for state or local government units.

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

Although the proposed action will affect potential employees by increasing the probationary period for achieving permanent status from 6 months to 1 year, this action will not result in any costs and/or economic benefits to that group. Employees on probation receive substantially the same economic benefits that permanent employees receive such as annual leave, sick leave, retirement, and eligibility for a merit increase after 6 months.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no estimated effect on competition and employment.

Simon G. Gonsoulin
Deputy Secretary
0605#031

Robert E. Hosse
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

CCAP—Job Search and Repair and Improvement Grants
(LAC 67:III.Chapter 51)

The Department of Social Services, Office of Family Support, proposes to amend LAC 67:III.5102, 5103, 5104, 5107, and 5109 in the Child Care Assistance Program (CCAP).

Pursuant to ACF Guidance, ACYF-IM-CC-05-03, amendments are necessary to the Child Care Assistance program due to the devastation caused by Hurricanes Katrina and Rita, which has left numerous child care facilities destroyed or damaged and unsafe. The state currently provides Repair and Improvement Grants to certain child care providers but limits the receipt of these grants to one grant per state fiscal year. The amendment at §5107 will allow for the receipt of two Repair and Improvement Grants for state fiscal year 2005/2006 for providers in designated parishes.

Another consequence of the storms has been the significant loss of jobs throughout the state resulting in a dramatic increase in the number of people looking for work. CCAP does not currently provide assistance to low-income families who are searching for jobs. Therefore, the agency also plans to expand the eligibility criteria at §§5102, 5103, 5104, and 5109 to include job search as a qualifying activity for child care assistance. These amendments will help insure

that adequate child care is available and decrease the chance that the children will be left alone or in substandard care facilities.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter A. Administration, Conditions of Eligibility, and Funding

§5102. Definitions

Training or Employment Mandatory Participant (TEMP)—a household member who is required, to meet criteria described in §5103.B.4 including the head of household, the head of household's legal spouse or non-legal spouse, the MUP age 16 or older whose child(ren) need child care assistance, and the MUP under age 16 whose child(ren) live with the MUP and the MUP's disabled parent/guardian who is unable to care for the MUP's child(ren) while the MUP goes to school/work.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99 and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:1484 (July 2004), LR 31:2262 (September 2005), LR 32:

§5103. Conditions of Eligibility

A. - A.1. ...

B. Low-income families not receiving FITAP cash assistance, including former FITAP recipients who are given priority consideration, must meet the following eligibility criteria.

1. - 3. ...

4. Effective September 1, 2002, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, Veterans' Administration Disability benefits for a disability of at least 70 percent, or unless disabled and unable to care for his/her child(ren) as verified by a doctor's statement or by worker determination, the TEMP must be:

a. employed or conducting job search for a minimum average of 25 hours per week and all countable employment hours must be paid at least at the Federal minimum hourly wage; or

b. ...

c. engaged in some combination of employment which is paid at least at the Federal minimum hourly wage or job search, or job training, or education as defined in §5103.B.4.b that averages, effective April 1, 2003, at least 25 hours per week;

d. ...

e. participation in Job Search as a countable TEMP activity can only be used for four calendar months per state fiscal year.

5. - 6. ...

7. The family requests child care services, provides the information and verification necessary for determining eligibility and benefit amount, and meets appropriate application requirements established by the state. Required verification includes birth verification for all children under

18 years of age, proof of all countable household income, proof of the hours of all employment or education/training or job search, and effective October 1, 2004, proof of immunization for each child in need of care.

B.8. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193, Act 58 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1106 (July 2003), LR 29:1833 (September 2003), LR 30:496 (March 2004), LR 30:1487 (July 2004), LR 31:101 (January 2005), LR 31:2263 (September 2005), LR 32:

§5104. Reporting Requirements Effective February 1, 2004

A. ...

B. A Low Income Child Care household that is included in a Food Stamp semi-annual reporting household is subject to the semi-annual reporting requirements in accordance with §2013. In addition, these households must report the following changes within 10 days of the knowledge of the change:

1. ...

2. an interruption of at least three weeks or termination of any TEMP's employment or training or job search; or

3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:1487 (July 2004), amended LR 31:2263 (September 2005), LR 32:

Subchapter B. Child Care Providers

§5107. Child Care Provider

A. - H.2....

I. CCAP offers Repair and Improvement Grants to either licensed or registered providers, or to those who have applied to become licensed or registered, to assist with the cost of repairs and improvements necessary to comply with DSS licensing or registration requirements and/or to improve the quality of child care services.

1. - 1.c. ...

2.a. A provider can receive no more than one such grant for any state fiscal year. Exception: For the State Fiscal Year 2005/2006, providers in the following parishes will be eligible to receive two repair and improvement grants: Orleans, Plaquemines, Jefferson, St. Bernard, St. Tammany, Washington, Calcasieu, and Cameron.

b. To apply, the provider must submit an application form indicating that the repair or improvement or purchase is needed to meet DSS licensing or registration requirements, or to improve the quality of child care services. Two written estimates of the cost of the repair or improvement or purchase must be provided and the provider must certify that the funds will be used for the requested purpose. If the provider has already paid for the repair or improvement or purchase, verification of the cost in the form of an invoice or cash register receipt must be submitted. Reimbursement can be made only for eligible expenses incurred no earlier than six months prior to the application. If a provider furnishes

estimates to receive a grant, the grant must be spent for the requested purpose within three months of the date the grant is issued.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004), LR 30:1484, 1487 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:

§5109. Payment

A. - B.2.b. ...

3. The number of hours authorized for payment is based on the lesser of the following:

a. ...

b. the number of hours the head of household, the head of household's spouse or non-legal spouse, or the minor unmarried parent is working and/or attending a job training or educational program and/or conducting job search, each week, plus one hour per day for travel to and from such activity; or

B.3.c. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445 (December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), LR 31:2265 (September 2005), LR 32:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? Allowing job search as a TEMP activity will have a positive effect on the stability of the family because receipt of CCAP to conduct job search will result in more opportunities to secure employment.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? Allowing job search as a TEMP activity will have a positive effect on the education and supervision of their children since the children will be under adult supervision while the parent conducts job search.

3. What effect will this Rule have on the functioning of the family? The Rule will have no effect on the functioning of the family.

4. What effect will this Rule have on family earnings and family budget? Allowing two Repair and Improvement Grants for certain providers will have a positive effect on family earnings and family budget for these providers as they will be able to repair their centers or homes in order to reestablish, reopen, or improve their day care site. Allowing job search as a TEMP activity will have a positive effect on family earnings and family budget since child care will be provided to conduct job search which will result in more opportunities for employment and provide potential earnings and an increased family budget.

5. What effect will this Rule have on the behavior and personal responsibility of children? Allowing job search as a TEMP activity will have a positive effect on the behavior and personal responsibility of children since the parent may obtain employment, thereby being a positive role model.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, this is strictly an agency function.

Interested persons may submit written comments by June 29, 2006, to Adren O. Wilson, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, LA 70804-9065. He is the person responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on June 29, 2006, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann Silverberg Williamson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: CCAP—Job Search and Repair and Improvement Grants

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

The proposed rule will result in an implementation cost of \$2,557,987 for FY 05/06 and \$5,300,000 for FY 06/07 and 07/08. An additional \$600 is needed for publication of rulemaking, printing policy changes, and form revisions in FY 05/06 resulting in a total estimated implementation cost of \$2,558,587. The agency has sufficient federal and state funds to implement the proposed action for fiscal years 05/06 through 07/08 if appropriations remain at the current fiscal year budget level.

Costs associated with the Repair and Improvement (R&I) Grants—The agency has issued approximately \$357,987 for 103 R&I grants in the eight affected parishes for July 2005 through January 2006. Assuming that the same providers in the eight affected parishes receive a second R&I Grant, the projected cost increase is \$357,987 for FY 05/06. There is no anticipated increase for FY 06/07 since the provisions apply only to FY 05/06.

Costs associated with the Job Search provision—Current annual federal and state Child Care subsidy expenditures are projected to be approximately \$106 million (\$11,660,000 state and \$94,340,000 federal). There will be an estimated 5% increase in subsidy expenditures due to the job search provision resulting in a projected annual expenditure of \$111.3 million, or an increase of \$5.3 million. \$5.3 million divided by 12 months = approximately \$440,000 increase per month. \$440,000 x 5 months (February 1 through June 30) in FY 05/06 = \$2.2 million increase for FY 05/06.

Total for FY 05/06—\$357,987 (R&I Grants) + \$2,200,000 (Job Search) + \$600 (printing and publishing) = \$2,558,587.

FY 06/07 and 07/08—Annual Child Care subsidy expenditures are projected to increase by \$5,300,000 for FY 06/07 and for FY 07/08 (current \$106,000,000 x 5% = \$5,300,000).

There will be no costs to local governmental units.

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

There will be no impact on revenue collections for state or local governmental units.

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

Qualified child care providers in designated parishes will have additional funds to assist with repairs, improvements or purchases needed to reestablish or improve the quality of child care services. CCAP applicants and recipients will benefit from the proposed rule to include job search as an eligible activity to qualify for child care assistance. Applicants and recipients previously unable to obtain child care to seek employment will have a greater opportunity to secure employment with the aid of child care assistance.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

CCAP applicants and recipients conducting job search may be eligible for CCAP benefits, which will provide greater opportunity for employment and self-sufficiency.

Adren O. Wilson
Assistant Secretary
0605#071

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Social Services Office of Family Support

Electronic Disbursement of Child Support (LAC 67:III.2518)

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), by amending §2518, Electronic Disbursement of Child Support Payments. The agency will make it mandatory that all child support payments be distributed electronically pursuant to Section 454A(g) of the Social Security Act which allows the state to use its automated system to the maximum extent feasible for effective and efficient collection and disbursement of support payments.

As a result of delays with the distribution of child support payments experienced after Hurricanes Katrina and Rita, the agency chose to offer direct deposit and stored valued cards to its customers in designated parishes effective November 1, 2005. With the approaching 2006 hurricane season and the possibility of further delays in the distribution of child support payments, the agency will make electronic disbursement of child support payments mandatory effective April 1, 2006. This electronic disbursement process will allow the state to provide effective and efficient collections and disbursement of support payments.

A Declaration of Emergency effecting these changes was signed April 1, 2006, and published in the April issue of the Louisiana Register.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter D. Collection and Distribution of Support Payments

§2518. Electronic Distribution of Child Support Payments

A.1. Effective April 1, 2006, electronic disbursement of child support payments shall be mandatory except in the following situations:

- a. payments are forwarded to private collection agencies;
- b. physical or other disabilities impose a hardship to receive payments via electronic disbursement;
- c. the custodial parent is receiving FITAP benefits;
- d. payments are forwarded to the Non-Custodial parent;
- e. payments received are in excess of FITAP benefits; and
- f. any other exceptions as shall be determined by Support Enforcement Services to be necessary for effective program operations.

2. Electronic disbursement of child support includes direct deposits to the custodial parent's bank account (checking or savings) or payments to a stored value card account.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with section 454A(g) of the Social Security Act and PIQ-04-02.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:442 (March 2006), amended LR 32:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule will have no impact on the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule should have no effect on a person's authority and rights regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? The Rule will ensure that disbursements of child support payments are made in a timely and efficient manner. As a result, the family budget may be positively impacted.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

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.

Interested persons may submit written comments by June 29, 2006, to Adren O. Wilson, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, LA 70804-9065. He is responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on June 29, 2006, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Ann S. Williamson
Secretary

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

**RULE TITLE: Electronic Disbursement of
Child Support**

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

Support Enforcement Services (SES) will require all child support payments to be made electronically by either direct deposit or direct payment cards. The agency estimates a savings of \$156,471 for FY 05/06 and \$671,880 for FY 06/07 and FY 07/08. The estimated FY 05/06 savings are the net of \$11,499 that includes \$600 for the cost of rulemaking and \$10,899 for salaries of Westaff personnel hired during Hurricanes Katrina and Rita to redirect child support checks to the customers.

SES currently issues 140,203 child support checks monthly. Based on an 85 percent participation rate, 119,173 checks will no longer be mailed each month (140,203 x .85 = 119,173). The total savings per month are calculated as follows:

Postage savings:	119,173 x .293 = \$34,918
Envelope savings:	119,173 x .013 = \$1,549
Check stock savings:	119,173 x .008 = \$953

Bank check processing	
fee savings:	119,173 x .155 = \$18,570
Total savings per month	= \$55,990

The agency will issue direct payment cards to all customers not currently enrolled in direct deposit beginning April 2006. Total estimated savings for FY 05/06 will be \$55,990 x 3 months = \$167,970.

The estimated savings for FY 06/07 and 07/08 are \$55,990 x 12 months = \$671,880.

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

Implementation of this rule will have no effect on state and local revenue collections.

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

There are no anticipated costs to any non-governmental groups. Custodial parents may or may not incur fees associated with the use of the direct payment card (Chase Direct Payment Card) or direct deposit. The Chase Direct Payment Card offers free point-of-sale transactions, free monthly statements and one free ATM withdrawal per deposit at Chase and All Point ATMs. Regarding direct deposit, most banks offer free checking accounts when a direct deposit is established so it is not anticipated that there will be fees involved with this service. Therefore, the agency is unable to project fee amounts that will be incurred by its customers as they may in fact not incur any fees. Additionally, Chase has been unable to project the amount of fees that the customers/clients might incur.

There is no anticipated economic benefit to any persons or nongovernmental groups.

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

The proposed rule will have no impact on competition and employment.

Adren O. Wilson
Assistant Secretary
0605#070

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given July 24-28, 2006, 9:30 a.m. at Louisiana Technical College, Lomax Hall, Ruston, LA. The deadline for sending in application and fee is June 9, 2006. No applications will be accepted after June 9, 2006.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to June 9, 2006. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0605#012

POTPOURRI

Department of Agriculture and Forestry 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
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
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% - 1.0%	Syngenta
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
Impasse Termite System (Lambda-cyhalothrin)		Syngenta
Impasse Termite Blocker (Lambda-cyhalothrin)		Syngenta

Approved Termiticides and Manufacturers		
Product	Percentage	Manufacturer
Maxxthor SC (Bifenthrin)	0.06% - 0.12%	Ensysstex
Permasteer 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%	Zeneca
Premise 75 (Imidacloprid)	0.05% - 0.10%	Bayer
Premise .05SC (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
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
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
ValueLine Bifenthrin TC (Bifenthrin)	0.06% - 0.12%	FMC
**Premise Gel is approved for targeted (spot) application only.		
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
Labyrinth (Diflubenzuron)		Ensysstex
Labyrinth AC (Diflubenzuron)		Ensysstex
Recruit II (Hexaflumuron)		Dow Agro Sciences
Recruit II AG (Hexaflumuron)		Dow Agro Sciences
Recruit III (Noviflumuron)		Dow Agro Sciences
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Recruit IV (Noviflumuron)		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

Bob Odom
Commissioner

0605#038

POTPOURRI

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Air Permits

The Office of Environmental Services, Air Permits Division (APD), has established a procedure for technical review of the working draft of a proposed permit by facility representatives and other Divisions within DEQ. The technical review will take place after the working draft of the proposed permit has been developed and initially reviewed (but not approved) by the supervisor. The procedure will standardize the timing and duration of the review and also provide clear information in the public record regarding the review and the APD's responses to the review. As part of the procedure, a Worksheet for Technical Review of the Working Draft of the Proposed Permit has been developed. The completed form will become part of the public record for each proposed permit and will be available for public review during the public comment period. Additionally, the public notice for the proposed permit will contain a statement indicating whether or not the proposed permit was changed as a result of the technical review.

The procedure provides the facility an opportunity to clarify items early in the process. Internal DEQ stakeholders, specifically inspectors, are also provided an opportunity to address issues at the facility. During the subsequent review process, DEQ management will be provided an opportunity to view facility remarks, thereby allowing the permitting authority to be made aware of and consider key issues. Through this procedure the public and EPA are made specifically aware that the facility reviewed the working draft of the proposed permit very early in the process and may review the facility's concerns as well as the APD's response.

The procedure shall become effective July 1, 2006. Proposed permits in development on the effective date of the procedure and those developed after the effective date will be processed using this review procedure.

For further information, contact Cheryl Sonnier Nolan, Office of Environmental Services, Air Permits Division, at 225-219-3010 or cheryl.nolan@la.gov.

Herman Robinson, CPM
Executive Counsel

0605#047

POTPOURRI

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

**Comment Period Extension—2002 Base Year Emissions
Inventory for the Baton Rouge 8-Hour
Ozone Nonattainment Area**

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, will extend the comment period on the

proposed 2002 Base Year Emissions Inventory for the Baton Rouge 8-hour ozone nonattainment area. The 5-parish nonattainment area consists of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes. This revision to the Air Quality State Implementation Plan (SIP) is mandated under Section 110(a)(2)(F) and 172(c)(3) of the 1990 Clean Air Act Amendments (CAAA).

The Environmental Protection Agency has identified 2002 as the emissions inventory base year for the 8-hour ozone SIP planning process. The proposed inventory includes emission estimates from stationary point and nonpoint sources, onroad mobile sources, and nonroad mobile sources.

The Potpourri notice for the 2002 Base Year Emissions Inventory for the Baton Rouge 8-Hour Ozone Nonattainment Area was published on page 720 of the April 20, 2006, issue of the *Louisiana Register*. The public hearing will still be held at 1:30 p.m. on May 25, 2006, in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA. The comment period has been extended until 4:30 pm., June 30, 2006. Written comments should be submitted to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by email to vivian.aucoin@la.gov.

A copy of the document may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA or on the internet at www.deq.louisiana.gov/portal/Default.aspx?tabid=2381.

Herman Robinson, CPM
Executive Counsel

0605#045

POTPOURRI

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

**Comment Period Extension
Beauregard Parish Ozone Maintenance Plan**

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, Plan Development Section, will extend the comment period for the proposed revision to the Beauregard Parish Ozone Maintenance Plan. This revision to the Air Quality State Implementation Plan (SIP) is mandated under Section 110(a)(1) of the 1990 Clean Air Act Amendments (CAAA).

According to the Phase 1 8-Hour Implementation Rule published April 30, 2004 (69 FR 23951), a revision to the SIP is required for areas that are designated attainment for the 8-hour ozone National Ambient Air Quality Standards (NAAQS) and were designated attainment for the 1-hour ozone NAAQS with an approved maintenance plan. The Section 110(a)(1) maintenance plan for Beauregard Parish must be submitted to the Environmental Protection Agency not later than June 15, 2007.

The Potpourri notice for the Beauregard Parish Ozone Maintenance Plan revision was published on page 721 of the April 20, 2006, issue of the *Louisiana Register*. The public hearing will still be held on May 25, 2006, at 1:30 p.m. in

the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. The comment period has been extended until 4:30 p.m., June 30, 2006. Written comments should be submitted to Vivian H. Aucoin, Office of Environmental Assessment, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to vivian.aucoin@la.gov.

A copy of the SIP revision for Beauregard Parish may be viewed from 8 a.m. to 4:30 p.m. in the DEQ Public Records Center, Room 127, 602 N. Fifth Street, Baton Rouge, LA, or at the Southwest Regional Office located at 1301 Gadwall Street, Lake Charles LA. The document is available on the Internet at:

www.deq.louisiana.gov/portal/Default.aspx?tabid=2381.

Herman Robinson, CPM
Executive Counsel

0605#046

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
Gravis & Mitchell	St. Gabriel	L	Natalbany Lbr Co	A-7	037369 (28)
Smith-Wentworth	Bee Brake	M	Crothers	2	147048 (30)
Carter, Perrin & Brian	Jennings	L	Valle Arpent	001	022568 (28)
Wilcox Investment Company	Perkins	L	T E Perkins	002	039778 (30)

James H. Welsh
Commissioner

0605#040

POTPOURRI
Department of Natural Resources
Office of the Secretary
Fishermen's Gear Compensation Fund

Loran Coordinates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 23 claims in the amount of \$70,233.31 were received for payment during the period March 1, 2006-April 30, 2006.

There were 19 claims paid and 4 claims denied.

Loran Coordinates of reported underwater obstructions are:

27369	46942	Iberia
27856	46840	Vermilion
28020	46826	Terrebonne
28668	46870	Plaquemines
28737	46857	Plaquemines
28823	46830	Plaquemines

Latitude/Longitude Coordinates of reported underwater obstructions are:

2904.430	9015.428	Lafourche
2908.179	8926.096	Plaquemines
2908.477	9056.482	Terrebonne
2912.600	8903.340	Lafourche
2913.480	9116.850	Terrebonne
2914.998	8958.964	Jefferson
2915.474	8954.185	Jefferson
2917.232	8949.676	Jefferson
2917.698	8956.967	Jefferson
2921.258	8959.084	Jefferson
2921.697	9043.603	Terrebonne
2925.861	8951.420	Jefferson
2927.850	8929.240	Plaquemines
2939.256	8947.242	Plaquemines
2940.285	9006.651	Jefferson
2943.272	9153.335	Iberia
2959.521	8951.161	St. Bernard

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle
Secretary

0605#054

POTPOURRI

Department of Social Services
Office of Community Services

Child and Family Services Plan and Annual Progress and Services Report

The Louisiana Department of Social Services/Office of Community Services (DSS/OCS) announces opportunities for public review of the state's 2006 Annual Progress and Services Report (APSR). The APSR is a report on year two of the 2004-2009 Child and Family Services Plan (CFSP) with regard to the use of Title IV-B, Subpart 1 and Subpart 2, Title IV-E Chafee Independence Program and Child Abuse Prevention and Treatment Act (CAPTA) funds. The APSR is the report on the achievement of goals and objectives/outcomes and amends any changes to the agency's plan in the provision of services.

Louisiana, through the DSS/OCS, provides services that include child protection investigations, family services, foster care, adoption and the Chafee Independence Program. OCS will use its allotted funds provided under the Social Security Act, Title IV-B, Subpart 1, to provide child welfare services to prevent child abuse and neglect; to prevent foster care placement; to reunite families; to arrange adoptions; and, to ensure adequate foster care. Title IV-B, Subpart 2, entitled Promoting Safe and Stable Families, includes services to support families and prevent the need for foster care. The Chafee Independence Program funds services to assist foster children 15 years old and older that are likely to remain in foster care until age 18. Former foster care recipients who are 18 to 21 years of age who have aged out of foster care are also eligible for services. The services include basic living skills training and education and employment initiatives. The CAPTA funding is used to complement and support the overall mission of OCS with emphasis on developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

DSS/OCS is encouraging public participation in the planning of services and the writing of this document. The CFSP and the APSR are available for public review in the state library located at 701 N. Fourth Street, Baton Rouge, LA, and its repositories statewide. Also, the report can be found for review on the Internet under www.dss.state.la.us by scanning down to the OCS, CFSP link. Inquiries and comments on the plan may be submitted in writing to the OCS Assistant Secretary, PO Box 3318, Baton Rouge, LA 70821.

All interested persons will have the opportunity to provide recommendations on the plan, orally or in writing, at a public hearing scheduled for June 1, 2006, at 10 a.m. at the Commerce Building located at 333 Laurel Street in Baton Rouge, in the Office of Community Services, Seventh Floor, Room 732.

Ann S. Williamson
Secretary

0605#068

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