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Executive Orders

EXECUTIVE ORDER MJF 00-45

Tobacco Settlement Payment Options Task Force

WHEREAS, Executive Order No. MJF 2000-2, signed on January 28, 2000, established the Tobacco Settlement Payment Options Task Force (hereafter "Task Force") to compare the value of an immediate lump sum payment of the state of Louisiana's portion of \$246 billion obtained from the settlement of *Richard P. Ieyoub v. Philip Morris, Inc.*, No. 98-6473, Fourteenth Judicial District Court, parish of Calcasieu, and other cases, to the value of annual payments if received as scheduled in the amounts anticipated; analyze the risks involved in the tobacco settlement payment plan; and explore other tobacco settlement payment options that may be in the best interest of the citizens of the state of Louisiana;

WHEREAS, Executive Order No. MJF 2000-31, signed on September 27, 2000, established the deadline for the next meeting of the Task Force and extended its reporting period; and

WHEREAS, it is necessary to amend Executive Order No. MJF 2000-2, as amended by Executive Order No. MJF 2000-31, in order to further extend the reporting period for the Task Force and establish another deadline for its next meeting;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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: Subsection 2(D) of Executive Order No. MJF 2000-2, signed on January 28, 2000, is amended to provide as follows:

Submitting to the governor, speaker of the House of Representatives, and the president of the Senate, an updated comprehensive written report on the issues set forth in subsections 2(A), (B), and (C) of this Order by January 31, 2001.

SECTION 2: Section 5 of Executive Order No. MJF 2000-2 is amended to provide as follows:

The Task Force shall hold its next meeting on or before December 18, 2000. Thereafter, it shall meet at regularly scheduled intervals and at the call of one (1) or both of the co-chairs.

SECTION 3: All other sections, subsections, and/or paragraphs of Executive Order No. MJF 2000-2 shall remain in full force and effect.

SECTION 4: Executive Order No. MJF 2000-31, signed on September 27, 2000, is terminated and rescinded.

SECTION 5: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.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 15th day of November, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#001

EXECUTIVE ORDER MJF 00-46

State Employees Health Benefits Study Commission

WHEREAS, the state of Louisiana currently offers health benefits to employees of state agencies, school boards, and various political subdivisions through the State Employees Group Benefits Program (hereafter "SEGBP");

WHEREAS, in excess of 120,000 state, school board, and political subdivision employees receive health benefits through SEGBP;

WHEREAS, in excess of 220,000 individuals receive health benefits through SEGBP;

WHEREAS, health care costs are increasing at double-digit rates and are projected to do so into the future;

WHEREAS, the well-being of the state government workforce is vital to the proper functioning of state government and to the people of the state;

WHEREAS, it is essential to the well-being of the government workforce that its employees have access to the best possible health care services at the lowest possible rates;

WHEREAS, the current options and rate structures offered by SEGBP face rising costs and may be or may become actuarially unsound; and

WHEREAS, the interests of the state and its employees can best be served by the creation of a commission to study the best way to provide high quality health benefits to state employees at the lowest price possible;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 State Employees Health Benefits Study Commission (hereafter "Commission") is created and established within the executive department, Office of the Governor.

SECTION 2 The duties and functions of the Commission shall include, but are not limited to, the following:

1. Reviewing and analyzing the current health benefit options and rate structures offered through SEGBP;

2. Identifying and evaluating options for the delivery of health benefits to participating employees, in a manner which is actuarially sound;

3. Identifying and evaluating all reasonable options to improve the efficiency and cost effective administration of SEGBP, including program oversight, internal administration, and privatization;

4. Examining and evaluating the future impact of providing health benefits on the state budget; and

5. Conducting public hearings to receive input from SEGBP plan members, stakeholders, and others who are affected by SEGBP.

SECTION 3: The Commission shall submit a comprehensive written report to the governor by February 28, 2001, which addresses the issues set forth in Section 2. The Commission shall submit an interim report to the governor within sixty (60) days from its first meeting.

SECTION 4: The Commission shall be composed of fourteen (14) members who, unless otherwise specified, shall be appointed by, and serve at the pleasure of, the governor. The membership of the Commission shall be selected as follows:

1. The commissioner of administration, or the commissioner's designee;

2. The chair of the State Employees Group Benefits Program Board of Trustees, or the chair's designee;

3. Two (2) members of the State Employees Group Benefits Program Board of Trustees, appointed by the governor;

4. One (1) member employed by the Louisiana Department of Insurance with expertise in health insurance matters, appointed by the governor;

5. Three (3) members of the Louisiana House of Representatives, which shall include one (1) member of the House Appropriations Committee, to be appointed by the Speaker of the House of Representatives;

6. Three (3) members of the Louisiana Senate, which shall include one (1) member of the Senate Finance Committee, to be appointed by the president of the Senate;

7. One (1) member with expertise in the delivery of medical care services, appointed by the governor;

8. One (1) member with expertise in the financing of health care services, appointed by the governor; and

9. One (1) member employed by an institution of higher education with expertise in the field of health care services, appointed by the governor;

SECTION 5: The governor shall select the chair of the Commission. The membership of the Commission shall elect all other officers.

SECTION 6: The Commission shall meet monthly and at the call of the chair.

SECTION 7: Support staff, facilities, and resources for the Commission shall be provided by the State Employees Group Benefit Program.

SECTION 8: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Commission in implementing the provisions of this Order.

SECTION 9: This Order is effective upon signature and shall continue 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 16th day of November, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#002

EXECUTIVE ORDER MJF 00-47

Bond Allocation Louisiana Local Government
Environmental Facilities and Community
Development 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. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2000 (hereafter "the 2000 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2000 Ceiling; and

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

WHEREAS, the Louisiana Local Government Environmental Facilities and Community Development Authority has requested an allocation from the 2000 Ceiling to be used in connection with a program to provide financing for the acquisition, construction, installation, and operation of various solid waste treatment and disposal and waste water treatment facilities and equipment at BASF Corporation's manufacturing facility located in the unincorporated area of Geismar, parish of Ascension, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 private activity bond volume limits for the calendar year of 2000 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$6,000,000	Louisiana Local Government Environmental Facilities and Community Development Authority	BASF Corporation

SECTION 2: The granted allocation 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 granted allocation shall be valid and in full force and effect through the end of 2000,

provided that such bonds are delivered to the initial purchasers thereof on or before December 27, 2000.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: 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 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#009

EXECUTIVE ORDER MJF 00-48

Bond AllocationC Louisiana Public
Facilities 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. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2000 (hereafter "the 2000 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2000 Ceiling; and

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

WHEREAS, the Louisiana Public Finance Authority has requested an allocation from the 2000 Ceiling to be used in connection with a program to provide financing for the cost of improvements to an existing sugar mill located at 141 Leighton Quarters Road, Thibodaux, parish of Lafourche, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 private activity bond volume limits for the calendar year of 2000 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$2,000,000	Louisiana Public Facilities Authority	Lafourche Sugars, L.L.C.

SECTION 2: The granted allocation 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 granted allocation shall be valid and in full force and effect through the end of 2000, provided that such bonds are delivered to the initial purchasers thereof on or before December 27, 2000.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: 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 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#010

EXECUTIVE ORDER MJF 00-49

Bond AllocationC Industrial District No. 3 of
the Parish of West Baton Rouge, State of Louisiana

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2000 (hereafter "the 2000 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2000 Ceiling; and

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

WHEREAS, the Industrial District No. 3 of the parish of West Baton Rouge, state of Louisiana, has requested an allocation from the 2000 Ceiling to be used in

EXECUTIVE ORDER MJF 00-50

Bond Allocation Parish of Ascension, State of Louisiana

connection with a program to provide financing for the acquisition, construction, and installation of certain water pollution control facilities at the chemical plant complex of The Dow Chemical Company located at the corner of Woodland Road and the east side of Louisiana Highway No. 1 Frontage Road, approximately 2.5 miles north of the city of Plaquemine, parish of West Baton Rouge, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 private activity bond volume limits for the calendar year of 2000 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$4,000,000	Industrial District No. 3 of the parish of West Baton Rouge, state of Louisiana	The Dow Chemical Company

SECTION 2: The granted allocation 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 granted allocation shall be valid and in full force and effect through the end of 2000, provided that such bonds are delivered to the initial purchasers thereof on or before December 27, 2000.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: 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 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#011

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2000 (hereafter "the 2000 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2000 Ceiling; and

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

WHEREAS, the parish of Ascension, state of Louisiana, has requested an allocation from the 2000 Ceiling to be used in connection with a program to provide financing for the acquisition, construction, and installation of solid waste and disposal facilities for Shell Chemical, LP at its Geismar Plant located in the unincorporated area of the parish of Ascension, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 private activity bond volume limits for the calendar year of 2000 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$4,000,000	Parish of Ascension, State of Louisiana	Shell Chemical, LP

SECTION 2: The granted allocation 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 granted allocation shall be valid and in full force and effect through the end of 2000, provided that such bonds are delivered to the initial purchasers thereof on or before December 27, 2000.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: 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 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#012

EXECUTIVE ORDER MJF 00-51

Bond AllocationCIndustrial Development
Board of the Parish Calcasieu, Inc.

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2000 (hereafter "the 2000 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2000 Ceiling; and

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

WHEREAS, the Industrial Development Board of the Parish of Calcasieu, Inc., has requested an allocation from the 2000 Ceiling to be used in connection with a program to provide financing for the acquisition, construction, and installation of certain waste water treatment facilities at the refinery facilities of CITGO Petroleum Corporation located at 4401 Highway 108, city of Lake Charles, parish of Calcasieu, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 private activity bond volume limits for the calendar year of 2000 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$4,000,000	Industrial Development Board of the Parish of Calcasieu, Inc	CITGO Petroleum Corporation

SECTION 2: The granted allocation 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 granted allocation shall be valid and in full force and effect through the end of 2000, provided that such bonds are delivered to the initial purchasers thereof on or before December 27, 2000.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: 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 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#013

EXECUTIVE ORDER MJF 00-52

Bond AllocationCParish of St. John
the Baptist, State of Louisiana

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2000 (hereafter "the 2000 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2000 Ceiling; and

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

WHEREAS, the parish of St. John the Baptist, state of Louisiana, has requested an allocation from the 2000 Ceiling to be used in connection with a program to provide financing for the acquisition, construction, and installation of certain solid waste disposal, sewage treatment and/or waste water treatment facilities at the refinery facilities of Marathon Ashland Petroleum, LLC, located in the unincorporated area of Garyville, parish of St. John the Baptist, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 private activity bond volume limits for the calendar year of 2000 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$6,000,000	Parish of St. John the Baptist, State of Louisiana	Marathon Ashland Petroleum, LLC

SECTION 2: The granted allocation 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 granted allocation shall be valid and in full force and effect through the end of 2000, provided that such bonds are delivered to the initial purchasers thereof on or before December 28, 2000.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: 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 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#014

EXECUTIVE ORDER MJF 00-53

Bond AllocationCIndustrial Development
Board of the Parish of Ouachita, state of Louisiana, Inc.

WHEREAS, pursuant to the Tax Reform Act of 1986 and Act 51 of the 1986 Regular Session of the Louisiana Legislature, Executive Order No. MJF 96-25, as amended by Executive Order No. MJF 2000-15, 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 2000 (hereafter "the 2000 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2000 Ceiling; and

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

WHEREAS, the Industrial Development Board of the Parish of Ouachita, Louisiana, Inc., has requested an allocation from the 2000 Ceiling to be used in connection with a program to provide financing for the expansion of existing manufacturing facilities and the acquisition, construction, installation, and equipping of those facilities, located in the parish of Ouachita, state of Louisiana, in accordance with the provisions of Section 146 of the Internal Revenue Code of 1986, as amended;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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 private activity bond volume limits for the calendar year of 2000 as follows:

Amount of Allocation	Name of Issuer	Name of Project
\$2,000,000	Industrial Development Board of the Parish of Ouachita, Louisiana, Inc.	Metalfoms - Superlift Financial, Inc.

SECTION 2: The granted allocation 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 granted allocation shall be valid and in full force and effect through the end of 2000, provided that such bonds are delivered to the initial purchasers thereof on or before December 27, 2000.

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

SECTION 5: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 6: 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 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#015

EXECUTIVE ORDER MJF 00-54

Louisiana Women's Policy and Research Commission

WHEREAS, Executive Order No. MJF 2000-6, signed on February 16, 2000, established the Louisiana Women's Policy and Research Commission (hereafter "Commission");

WHEREAS, Executive Order No. MJF 2000-8, signed on March 1, 2000, increased the membership of the Commission; and

WHEREAS, it is necessary to amend Executive Order No. MJF 2000-6, as amended by Executive Order No. MJF 2000-8, in order to add additional members to the Commission and to amend ancillary provisions;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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: Section 3 of Executive Order No. MJF 2000-6, signed on February 16, 2000, is amended to provide as follows:

Commencing February 15, 2001, the Commission shall submit detailed annual reports to the governor, through the Office of Women's Services, which address the issues set forth in Section 2 of this Order.

SECTION 2: Section 4 of Executive Order No. MJF 2000-6 is amended to provide as follows:

The Commission shall consist of the following 25 members who, unless specified, shall be appointed by the governor and serve at his pleasure:

A. The governor, or the governor's designee;

B. The commissioner of administration, or the commissioner's designee;

C. The secretary of the Department of Economic Development, or the secretary's designee;

D. The secretary of the Department of Health and Hospitals, or the secretary's designee;

E. The secretary of the Department of Labor, or the secretary's designee;

F. The secretary of the Department of Social Services, or the secretary's designee;

G. The commissioner of Higher Education, or the commissioner's designee;

H. The superintendent of the Department of Education, or the superintendent's designee;

I. The executive director of the Office of Women's Services, Office of the Governor, or the executive director's designee;

J. The executive director of the Children's Cabinet, Office of the Governor, or the executive director's designee;

K. Four members of the Women's Legislative Caucus; and

L. 11 Louisiana women who have significant academic and/or professional expertise in one or more of the following areas:

1. Business or industry,
2. Economics,
3. Education,
4. Demographics,

5. Public health,
6. Law, or
7. Social science and/or social work.

SECTION 3: Section 8 of Executive Order No. MJF 2000-6 is amended to provide as follows:

Commission members shall not receive additional compensation or a per diem from the Office of the Governor for serving on the Commission. State officers and/or employees may seek reimbursement of travel expenses, in accordance with PPM 49, from their employing and/or elected department, agency, and/or office.

SECTION 4: All other paragraphs, sections, and subsections of Executive Order No. MJF 2000-6 shall remain in full force and effect.

SECTION 5: Executive Order No. MJF 2000-8, signed on March 1, 2000, is terminated and rescinded.

SECTION 6: This Order is effective upon signature and shall continue 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 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#016

EXECUTIVE ORDER MJF 00-55

Continuation of Hiring Freeze

WHEREAS, pursuant to Article IV, Section 5 of the Louisiana Constitution of 1974, as amended, Act No. 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature, Act No. 2 of the 2000 Second Extraordinary Session of the Louisiana Legislature, and/or R.S. 42:375, the governor may issue executive orders which prohibit the filling of any new or existing employment vacancies in the executive branch of state government (hereafter "hiring freeze"); and

WHEREAS, to ensure that the state of Louisiana will not suffer a budget deficit due to 2000-2001 appropriations exceeding actual revenues, prudent money management practices dictate that the best interests of the citizens of the state of Louisiana will be served by continuing until February 1, 2001, throughout the executive branch of state government, the hiring freeze which was ordered through June 30, 2000, by Executive Order No. MJF 2000-18, issued May 4, 2000; continued until September 30, 2000, by Executive Order No. MJF 2000-21, issued June 30, 2000; continued until November 1, 2000, by Executive Order No. MJF 2000-35, issued October 5, 2000; and continued until December 1, 2000, by Executive Order No. MJF 2000-42, issued on October 31, 2000;

NOW THEREFORE, I, M.J. "MIKE" FOSTER, JR., 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: Unless specifically exempted by Section 2 of this Order, no vacancy in an existing or new position of employment within the executive branch of state government in a budget unit and/or activity funded by Act No. 2 of the 2000 Second Extraordinary Session of the Louisiana Legislature (hereafter "Act No. 2") and/or Act No. 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature (hereafter "Act No. 11"), which existed on or occurred after May 4, 2000, the date of issuance of Executive Order No. MJF 2000-18, shall be filled without the express written approval of the commissioner of administration (hereafter "hiring freeze").

SECTION 2: All budget activities funded by Act No. 11 which were exempt from the hiring freeze ordered in Executive Order No. MJF 2000-18 continue to be exempt from the provisions of this Order. None of the budget activities funded by Act No. 2 are exempt from the provisions of this Order.

SECTION 3: Each department, agency, office, board, and/or commission shall file with the commissioner of administration, on the tenth (10th) day of each month, a monthly report reflecting projected savings that the department, agency, office, board or commission will generate through the implementation of this Order. Such reports shall reflect a full accounting of personnel changes within the department, agency, office, board or commission

for the reporting period covered, including an accounting of employment figures at the beginning and end of the reporting period and the number of vacancies filled and/or not filled during the reporting period, pursuant to the provisions of this Order. The reports shall include a categorized summary of transactions which resulted pursuant to the exemption granted in Section 2 of this Order and/or permitted pursuant to Section 4 of this Order.

SECTION 4: The provisions of Section 4 of Executive Order No. MJF 2000-18 are continued in effect.

SECTION 5: This Order is effective upon signature and shall remain in effect through February 1, 2001, or 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 the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 1st day of December, 2000.

M.J. "Mike" Foster, Jr.
Governor

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0012#008

Emergency Rules

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Capital Companies Tax Credit Program (LAC 10:XV.Chapter 3)

The Department of Economic Development, Office of the Secretary, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:9536(B), adopts the following amendment to the rules of the Capital Companies Tax Credit Program as authorized by R.S. 51:1935. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective December 17, 2000 and shall remain in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Economic Development, Office of the Secretary has found an immediate need to provide financial assistance to certified Louisiana capital companies whose primary investment objectives include investing in certified disadvantaged businesses or business ventures operating in economically distressed areas. Although the law provided for establishment of the investment funds discussed herein no funding has been made in over two years. Without these Emergency Rules the public welfare may be harmed as a result of the failure to provide funding to certified Louisiana capital companies whose primary investment objectives include investing in certified disadvantaged businesses or business ventures operating in economically distressed areas, which have resulted disruption resulting in the loss of industry and jobs in the disadvantaged communities of this state.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

Part XV. Other Regulated Entities

Chapter 3. Capital Companies Tax Credit Program

§320. Investment In Approved Funds

A. Any certified Louisiana capital company that has capital certified pursuant to R.S. 51:1931 for the calendar year 1999 or any year thereafter, and which qualifies for credits pursuant to R.S. 22:1068(E) shall invest an amount, as determined by the secretary, into the following investments:

1. fifty percent of the amount determined by the secretary shall be invested in one or more capital management funds as approved by the secretary whose primary investment objectives include pre-seed, seed, and early stage business ventures, and whose investment in any such business and its affiliates is limited to one million dollars or less. Investments made by such funds must give special emphasis to the Targeted Technology Clusters identified in Vision 2020 Master Plan For Economic

Development as adopted by the Louisiana Economic Development Council; and

2. fifty percent of the amount determined by the secretary shall be invested equally in any certified Louisiana capital company whose primary investment objectives include investing in the following three categories:

- a. certified disadvantaged businesses;
- b. business ventures operating in economically distressed areas; or
- c. Louisiana businesses and affiliates in an amount not exceeding one million dollars.

B. The amount to be invested by each certified Louisiana capital company pursuant to Subsection A shall be determined annually by the secretary beginning January 1, 2000. Such amount shall not exceed 10 percent of all capital certified in the previous calendar year that are eligible for credits pursuant to R.S. 22:1068(E). The amount to be invested pursuant to Subsection A shall be invested within 120 days from the end of the calendar year in which the capital is certified or 120 days from the date the secretary determines the amount to be invested, whichever is later.

C. The capital management fund referred to in Subsection A.1 shall be managed by a qualified individual and governed by a board consisting of one representative from each certified Louisiana capital company. The governing board of the capital management fund will develop policies for the administration and operation of the capital management fund.

D. Any entities receiving funds pursuant to subsection A.1 or A.2 shall comply with all requirements of R.S. 51:1921, et seq. (Chapter 26 of Title 51 of the Louisiana Revised Statutes) and with this Chapter with respect to such funds received as if those funds were certified capital as defined in R.S. 51:1923(1) with the exception that:

1. such funds shall earn no additional tax credits; and
2. for purposes of R.S. 51:1926(A)(1), 50 percent must be invested in qualified investments and for purposes of R.S. 51:1926(A)(2), 80 percent must be invested in qualified investments.

E. Amounts invested pursuant to subsection A.2 shall be invested directly into a certified Louisiana capital company. Investments directly into a business shall not qualify as an investment pursuant to Subsection A.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1935.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 27:

Don J. Hutchinson
Secretary

0012#058

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Opportunity Program for Students (TOPS)
High School Grade Point Average Calculation
(LAC 28:IV.301, 509, 903)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend rules of the Tuition Opportunity Program for Students (TOPS) (R.S. 17:3042.1 and R.S. 17:3048.1).

The Emergency Rules are necessary to implement changes to the TOPS rules to allow the Louisiana Office of Student Financial Assistance and state 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. The commission has, therefore, determined that these Emergency Rules are necessary in order to prevent imminent financial peril to the welfare of the affected students.

This declaration of emergency is effective November 9, 2000, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act.

Title 28 EDUCATION

Part IV. Student Financial Assistance Higher Education Scholarship and Grant Programs

Chapter 3. Definitions

§301. Definitions

ACT Score the highest composite score achieved by the student on the official ACT test (including National, International, Military or Special test types) or an equivalent score, as determined by the comparison tables used by LASFAC, on an equivalent Scholastic Aptitude Test (SAT). ACT or SAT test scores which are unofficial, including so-called "residual" test scores, are not acceptable for purposes of determining program eligibility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:1601 (July 2000), LR 26:1993, 1999 (September 2000), LR 26:2268 (October 2000), LR 27:

Chapter 5. Application; Application Deadlines and Proof of Compliance

§509. American College Test (ACT) Testing Deadline

A. The student must take the official ACT Test (including National, International, Military or Special test types) on or before the official April test date in the Academic Year (High School) in which the student graduates.

B. ...

C. Final ACT Testing Deadline for Reduced Awards

1. Beginning with awards made for the 2000-2001 academic year and thereafter, if an applicant does not achieve a qualifying score on the ACT or on the Scholastic Aptitude Test for the TOPS Opportunity Award by the April national ACT test date in the year of the applicant's high school graduation, then the applicant's first qualifying score for any TOPS Award obtained on an authorized testing date after the April national ACT test date in the year of the applicant's high school graduation but prior to July 1 of the year of such graduation will be accepted. However, when granting an award to an applicant whose qualifying test score is obtained on an authorized testing date after the date of the applicant's high school graduation but prior to July 1 of the year of such graduation, the applicant's period of eligibility for the award shall be reduced by one semester, two quarters, or an equivalent number of units at an eligible institution which operates on a schedule based on units other than semesters or quarters. Except for an applicant who has qualified for a TOPS-Tech Award on or prior to the April national ACT test date, an applicant will not be allowed to use a test score obtained after the April national ACT test date to upgrade a TOPS Award.

C.2. - D. ...

E. Students who graduated during the 1998-1999 school year who are otherwise qualified for a TOPS award and who obtained a qualifying score on the ACT Test or the Scholastic Aptitude Test on an authorized testing date after the date of the student's graduation but prior to July 1, 1999 shall be considered to have met the requirements of section 509 A and B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 26:1995 (September 2000), amended LR 27:

Chapter 9. TOPS Teacher Award

§903. Establishing Eligibility

A. - A.4.a.i. ...

ii. at the time of high school graduation, have attained a composite score on the ACT Test or the Scholastic Aptitude Test (SAT) which is, or is equivalent to, at least a 23 on the 1990 version of the ACT; and

A.4.a.iii - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:637 (April 1998), amended LR 24:1906 (October 1998), LR 26:68 (January 2000), LR 26:2269 (October 2000), LR 27:

Mark S. Riley
Assistant Executive Director

0012#60

DECLARATION OF EMERGENCY

Office of the Governor Board of Trustees of the State Employees Group Benefits Program

EPO Plan of Benefits Eligibility (LAC 32:V.Chapters 1 - 7)

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the

responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees, through its Chief Executive Officer, hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

The Board finds that it is necessary to revise and amend provisions of the EPO Plan Document, including increasing the calendar year deductible for employees, imposing a calendar year deductible for prescription drugs, increasing the deductible applicable to emergency room services, imposing a pre-existing condition limitation on new employees and their dependents, eliminating benefits for glucometers, and providing for limited availability of a 90-day supply of maintenance drugs.

Failure to adopt this rule on an emergency basis will adversely affect fiscal solvency of the State Employees Group Benefits Program and impact the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule, revising and amending the EPO Plan of Benefits, is effective January 1, 2001 and shall remain in effect for a maximum of 120 days, or until the final rule is promulgated, whichever occurs first.

Title 32

EMPLOYEE BENEFITS

Part V. Exclusive Provider (EPO) Plan of Benefits

Chapter 1. Eligibility

§101. Persons to be Covered

Eligibility requirements apply to all participants in the Program, whether in the PPO Plan, the EPO Plan or an HMO plan.

A. Employee Coverage

1. - 2. ...

3. Effective dates of coverage, New Employee, Transferring Employee Coverage for each Employee who completes the applicable Enrollment Form and agrees to make the required payroll contributions to his Participant Employer is to be effective as follows:

a. - b. ...

c. Employee Coverage will not become effective unless the Employee completes an Enrollment Form within 30 days following the date of employment. An Employee who completes an Enrollment Form after 30 days following the date of employment will be considered an overdue applicant.

d. An Employee that transfers employment to another Participating Employer must complete a Transfer Form within 30 days following the date of transfer in order to maintain coverage without interruption. An Employee who completes a Transfer Form after 30 days following the date of transfer will be considered an overdue applicant.

4. - 7. ...

8. Pre-Existing Condition (PEC). New Employees (on and after January 1, 2001)

a. The terms of the following paragraphs apply to all eligible Employees whose employment with a Participant Employer commences on or after January 1, 2001, and to the Dependents of such Employees.

b. The Program may require that such applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

c. Medical expenses incurred during the first 12 months that coverage for the Employee and/or Dependent is in force under the Plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care, or Treatment was recommended or received during the 6-month period immediately prior to the effective date of coverage. The provisions of this section do not apply to pregnancy.

d. If the Covered Person was previously covered under a Group Health Plan, Medicare, Medicaid or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

B. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1804 (October 1999), LR 27:

§103. Continued Coverage

A. - B. ...

C. Surviving Dependents/Spouse. The provisions of this section are applicable to surviving Dependents who elect to continue coverage following the death of an Employee or Retiree. On or after July 1, 1999, eligibility ceases for a Covered Person who becomes eligible for coverage in a Group Health Plan other than Medicare. Coverage under the Group Health Plan may be subject to HIPAA.

1. Benefits under the Plan for covered Dependents of a deceased covered Employee or Retiree will terminate on the last day of the month in which the Employee's or Retiree's death occurred unless the surviving covered Dependents elect to continue coverage.

a. ...

b. The surviving unmarried (never married) Children of an Employee or Retiree may continue coverage until they are eligible for coverage under a Group Health Plan other than Medicare, or until attainment of the termination age for Children, whichever occurs first;

C.I.c. - D. ...

E. Family and Medical Leave Act (F.M.L.A.) Leave of Absence. An employee on approved F.M.L.A. leave may retain coverage for the duration of such leave. The participant employer shall pay the employer's share of the premium during F.M.L.A. leave, whether paid leave or leave without pay. The participant employer shall pay the employee's share of the premium during unpaid F.M.L.A. leave, subject to reimbursement by the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1806 (October 1999), LR 27:

§107. Change of Classification

A. Adding or Deleting Dependents. The Plan Member must notify the Program whenever a Dependent is added to, or deleted from, the Plan Member's coverage that would

result in a change in the class of coverage. Notice must be provided within 30 days of the addition or deletion.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1809 (October 1999), LR 27:

Chapter 3. Medical Benefits

§301. Medical Benefits apply when eligible expenses are incurred by a Covered Person.

A. Eligible expenses are the charges incurred for the following items of service and supply. These charges are subject to the applicable deductibles, limits of the Fee Schedule, Schedule of Benefits, exclusions and other provisions of the Plan. A charge is incurred on the date that the service or supply is performed or furnished. Eligible expenses are:

1. - 8. ...

9. services of licensed speech therapist when prescribed by a physician and pre-approved through Outpatient Procedure Certification for the purpose of restoring partial or complete loss of speech resulting from stroke, surgery, cancer, radiation laryngitis, cerebral palsy, accidental injuries or other similar structural or neurological disease;

10. - 11.c. ...

d. accidental injury means a condition occurring as a direct result of a traumatic bodily injury sustained solely through accidental means from an external force. With respect to injuries to teeth, the act of chewing does not constitute an injury caused by external force;

12. durable medical equipment, subject to the lifetime maximum payment limitation as listed in the Schedule of Benefits;

[The Program will require written certification by the treating physician to substantiate the medical necessity for the equipment and the length of time that it will be used. The purchase of Durable Medical Equipment will be considered an eligible expense only upon showing that the rental cost would exceed the purchase price. Under no circumstances may the eligible expense for an item of Durable Medical Equipment exceed the purchase price of such item.]

13. - 18. ...

19. acupuncture when rendered by a medical doctor licensed in the state in which the services are rendered;

20. ...

21. services of a Physical Therapist and Occupational Therapist licensed by the state in which the services are rendered when:

a. - e. ...

f. approved through case management when rendered in the home;

23. ...

24. not subject to the annual deductible:

a. ...

b. mammographic examinations performed according to the following schedule:

i. one mammogram during the five-year period a person is 35-39 years of age;

24.b.ii. - 26. ...

27. services rendered by the following, when billed by the supervising physician:

a. Perfusionists and Registered Nurse Assistants assisting in the operating room;

b. Physician's Assistants and Registered Nurse Practitioners;

28. - 32. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1810 (October 1999), LR 27:

§307. Utilization ReviewC pre-admission Certification, Continued Stay Review

A. ...

B. For a routine vaginal delivery, PAC is not required for a stay of two days or less. If the mother's stay exceeds or is expected to exceed two days, PAC is required within 24 hours after the delivery or the date on which any complications arose, whichever is applicable. If the baby's stay exceeds that of the mother, PAC is required within 72 hours of the mother's discharge and a separate pre-certification number must be obtained for the baby. In the case of a Caesarean Section, PAC is required if the mother's stay exceeds or is expected to exceed two days.

C. No benefits will be paid under the Plan:

1. ...

2. unless PAC is requested within two business days following admission in the case of an emergency;

3. - 4. ...

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1812 (October 1999), LR 27:

§309. Outpatient Procedure Certification

A. ...

B. OPC is required on the following procedures:

1. - 6. ...

7. speech therapy;

C. No benefits will be paid for the facility fee in connection with outpatient procedures, or the facility and professional fee in connection with speech therapy:

C.1 - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1812 (October 1999), LR 27:

§311. Case Management

A. - E.8. ...

9. physical and occupational therapy rendered in a home setting.

F. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1812 (October 1999), LR 27:

§313. Dental Surgical Benefits

A. ...

B. Eligible expenses incurred in connection with the removal of impacted teeth, including pre-operative and post-operative care, anesthesia, radiology, and pathology services,

and facility charges are subject to the deductible, co-insurance and the maximum benefit provisions of the Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1813 (October 1999), LR 27:

§315. Medicare Reduction

A. ...

B. Retiree 100-Medicare COB. Upon enrollment and payment of the additional monthly premium, a Plan Member and Dependents who are covered under Medicare, both Parts A and B, may choose to have full coordination of benefits with Medicare. Enrollment must be made within 30 days of eligibility for Medicare or within 30 days of retirement if already eligible for Medicare and at the annual open enrollment.

§317. Exceptions and Exclusions for All Medical Benefits

A. No benefits are provided under this Plan for:

1. - 24. ...

25. Blank

26. - 40. ...

41. Glucometers

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1813 (October 1999), LR 26:488 (March 2000), LR 27:

§325. Prescription Drug Benefits

A. This Plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor, requiring a prescription, and dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a Covered Person as an inpatient Hospital patient or an outpatient Hospital patient, including insulin, Retin-A dispensed for Covered Persons under the age of 26, Vitamin B12 injections, prescription Potassium Chloride, and over-the-counter diabetic supplies including, but not limited to, strips, lancets and swabs.

B. The following drugs, medicines, and related services are not covered:

1. - 10. ...

11. drugs for treatment of impotence, except following surgical removal of the prostate gland; and

12. glucometers.

C. ...

1. Upon presentation of the Group Benefits Program Health Benefits Identification Card at a network pharmacy, and after satisfying the Prescription Drug Deductible set forth in the Schedule of Benefits, the Plan Member will be responsible for copayment of \$6 per prescription when a generic drug is dispensed, \$20 per prescription when a preferred brand name drug is dispensed, and \$30 per prescription when a non-preferred brand name drug is dispensed. The copayment cannot exceed the actual charge by the pharmacy for the drug.

2. - 4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations:

a. up to a 34-day supply of acute drugs may be dispensed at one time;

b. up to a 90-day supply of maintenance drugs may be dispensed at one time only at pharmacies identified as participating in the 90-day Maintenance Drug Plan administered by the prescription benefits manager; up to a 34-day supply of maintenance drugs may be dispensed at one time at any other network pharmacy; and

c. refills will be available only after 75 percent of drugs previously dispensed should have been consumed.

6. *Acute or Non-maintenance Drug* covered drug other than a maintenance drug as define herein.

7. *Brand Drug* the trademark name of a drug approved by the U. S. Food and Drug Administration.

8. *Generic Drug* chemically equivalent copy of a "brand name" drug.

9. *Maintenance Drug* covered drug that is determined by the Program's contracted prescription benefits management firm, using standard industry reference materials, to be routinely taken over a long period of time for certain chronic medical conditions. The drug must be listed on the established maintenance drug list as an approved drug for the patient's condition

10. *Non-Preferred Brand Drug* brand drug for which there is an equally effective, less costly therapeutic alternative available, as determined by the Pharmacy and Therapeutic Committee.

11. *Pharmacy and Therapeutic Committee* committee created by the Program's contracted prescription benefits management firm to advise its various plans on whether a drug has been accepted as safe and effective or investigations as well as whether a drug will be classified as a Preferred Brand Drug or a Non-Preferred Brand Drug. In making these determinations, the Pharmacy and Therapeutic Committee relies on the United States Food and Drug Administration as well as peer reviewed medical journals.

12. *Preferred Brand Drug* brand name drug that has received a classification of Preferred Brand from the Pharmacy and Therapeutic Committee based on the following criteria:

a. clinical uniqueness of the medication;

b. positive efficacy profile;

c. good side effect, safety, and drug interaction profile;

d. positive quality of the implications;

e. clinical experience with the medication; and

f. cost (only considered when clinical parameters are equal to other products in its class).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1815 (October 1999), LR 27:

Chapter 4. Uniform Provisions

§403. Properly Submitted Claim Form

A. For Plan reimbursements, all bills must show:

1. employee's name;

2. name of patient;

3. name, address, and telephone number of the provider of care;

4. diagnosis;

5. type of services rendered, with diagnosis and/or procedure codes;

6. date of service;
7. charges;
8. employee's member number;
9. provider Tax Identification number; and
10. medicare explanation of benefits, if applicable.

B. The Program can require additional documentation in order to determine the extent of coverage or the appropriate reimbursement. Failure to furnish the requested information within 90 days of the request will constitute reason for the denial of benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1816 (October 1999), LR 27:

Chapter 5. Claims Review and Appeal

§501. Claims Review Procedures and Appeals

A. ...

B. The request for review must be directed to Attention: Appeals and Grievances within 90 days after the date of the notification of denial of benefits, denial of eligibility, or denial after review by the utilization review, pharmacy benefit or mental health contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1818 (October 1999), LR 27:

§511. Subpoena of Witnesses; Production of Documents

A. - B. ...

C. No subpoena will be issued requiring the attendance and giving of testimony by witnesses unless a written request therefore is received in the office of the Program, Attention: Appeals and Grievances no later than 15 calendar days before the date fixed for the hearing. The request for subpoenas must contain the names of the witnesses and a statement of what is intended to be proved by each witness. No subpoenas will be issued until the party requesting the subpoena deposits with the Program a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled.

D. No subpoena for the production of books, papers and other documentary evidence will be issued unless written request therefore is received in the office of the Program, Attention: Appeals and Grievances no later than 15 calendar days before the date fixed for the hearing. The request for subpoena for books, papers, and other documentary evidence must contain a description of the items to be produced in sufficient detail for identification and must contain the name and street address of the person who is to be required to produce the items and a brief statement of what is intended to be proved by each item.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1819 (October 1999), LR 27:

§513. Appeals Decisions

A. ...

B. Appeals Heard by Referee: At the conclusion of the hearing, the Referee will take the matter under submission and, as soon as is reasonably possible thereafter, prepare a recommended decision in the case which will be based on

the evidence adduced at the hearing or otherwise included in the hearing records. The decision will contain findings of fact and statement of reasons. The recommended decision will be submitted to the Committee for review.

C. The Committee may adopt or reject the recommended decision. In the case of adoption, the Referee's decision becomes the decision of the Committee. In the case of rejection, the Committee will render its decision, which will include a statement of reasons for disagreement with the Referee's decision. The decision of the Committee will be final. A copy will be mailed by certified mail to the Covered Person and any Representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1819 (October 1999), LR 27:

§515. Rehearing

A. - B. ...

C. The request for rehearing must be filed with the Program, Attention: Appeals and Grievances on or before 30 calendar days after the mailing of the appeal decision of the Committee. The request will be deemed filed on the date it is received in the office of the Program.

D. ...

E. When the Committee grants a rehearing, an order will be issued setting forth the grounds. A copy of the order will be sent, along with notice of the time and place fixed for the rehearing, to the Appealing Party and any Representative by certified mail.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1819 (October 1999), LR 27:

Chapter 6. Definitions

§601. Definitions

*Accidental Injury*Ca condition occurring as a direct result of a traumatic bodily injury sustained solely through accidental means from and external force. With respect to injuries to teeth, the act of chewing does not constitute an injury caused by external force.

*Acute or Non-maintenance Drug*Ca covered drug other than a maintenance drug as define herein.

*Brand Drug*Ca the trademark name of a drug approved by the U. S. Food and Drug Administration.

*Children*Ca

1. any legitimate, duly acknowledged, or legally adopted Children of the Employee and/or the Employee's legal spouse dependent upon the Employee for support;

2. - 4. ...

*Generic Drug*Ca chemically equivalent copy of a "brand name" drug.

*Maintenance Drug*Ca covered drug that is determined by the Program's contracted prescription benefits management firm, using standard industry reference materials, to be routinely taken over a long period of time for certain chronic medical conditions. The drug must be listed on the

established maintenance drug list as an approved drug for the patient's condition.

* * *

Non-Preferred Brand Drug Ca brand drug for which there is an equally effective, less costly therapeutic alternative available, as determined by the Pharmacy and Therapeutic Committee.

* * *

Pharmacy and Therapeutic Committee Ca committee created by the Program's contracted prescription benefits management firm to advise its various plans on whether a drug has been accepted as safe and effective or investigations as well as whether a drug will be classified as a Preferred Brand Drug or a Non-Preferred Brand Drug. In making these determinations, the Pharmacy and Therapeutic Committee relies on the United States Food and Drug Administration as well as peer reviewed medical journals.

* * *

Preferred Brand Drug Ca brand name drug that has received a classification of Preferred Brand from the Pharmacy and Therapeutic Committee based on the following criteria:

1. clinical uniqueness of the medication;
2. positive efficacy profile;
3. good side effect, safety, and drug interaction profile;
4. positive quality of the implications;
5. clinical experience with the medication; and
6. cost (only considered when clinical parameters are equal to other products in its class).

* * *

Well-Baby Care Croutine care to a well newborn infant from the date of birth until age 1. This includes routine physical examinations, active immunizations, check-ups, and office visits to a physician and billed by that physician, except for the Treatment and/or diagnosis of a specific illness. All other health services coded with wellness procedures and diagnosis codes are excluded.

Well-Child Care Croutine physical examinations, active immunizations, check-ups and office visits to a Physician, and billed by a health care provider that has entered into a contract with the State Employees Benefits Program, except for the Treatment and/or diagnosis of a specific illness, from age 1 to age 16. All other health services coded with wellness procedures and diagnosis codes are excluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1820 (October 1999), LR 27:

Chapter 7 - Schedule of Benefits - EPO

§701 Comprehensive Medical Benefits

A. ...

1. Deductibles

	PPO/non participating provider	EPO
Inpatient deductible per day, maximum of 5 days per Admission (waived for admissions at PPO hospitals)	\$50	0
Emergency room charges for each visit unless The Covered person is hospitalized	\$150	0

immediately Following emergency room treatment (prior to And in addition to Calendar Year deductible)

Professional and other eligible expenses, Employees and Dependents of Employees, Per person, per Calendar Year	\$500	-0-
Professional and other eligible expenses, Retirees and Dependents of Retirees, Per person, per Calendar Year	\$300	-0-
Family Unit maximum (3 individual deductibles)		
Prescription Drugs, Per person, per Calendar Year (separate from and in addition to all other deductibles)	\$150	\$150

2 - 3. ...

4. Prescription Drugs

After Deductible (\$150 Per person, per Calendar Year)	50% non-Network in state
\$6 copayment for generic drugs, \$20 copayment for preferred brand name drugs, and \$30 copayment for non-preferred brand name drugs purchased at a network pharmacy	80% non-Network out of state

B. - E. ...

F. Physical /Occupational Therapy¹

See % payable after deductible - Pg. 4	\$15 copay for outpatient services
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Speech Therapy²

See % payable after deductible - Pg. 4	\$15 copay for outpatient services
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G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1823 (October 1999), LR 26:488 (March 2000), LR 27:

¹ ...

² Subject to Case Management Guideline if rendered in a home setting

³ Subject to Outpatient Procedure Certification Guidelines

A. Kip Wall

Interim Chief Executive Officer

0012#042

DECLARATION OF EMERGENCY

**Office of the Governor
Board of Trustees of the
State Employees Group Benefits Program**

New Participating Groups Risk Rated Premiums

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, and in accordance with, the Board of Trustees, through its Chief Executive

Officer, hereby invokes the Emergency Rule provisions of R. S. 49:953(B).

This action is necessary in order to implement the provisions of R.S. 42:851(A)(5)(b)(iii), as amended by Act 41 of the First Extraordinary Session of 2000. Failure to adopt this rule on an emergency basis may result in adverse financial impact that will affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule is effective January 1, 2001, and shall remain in effect for a maximum of 120 days or until promulgation of the final Rule, whichever occurs first:

If a state department or agency, school board, or political subdivision or other public entity elects to participate in health and accident benefits through the State Employees Group Benefits Program after participation in another group health and accident insurance program, the premium rate applicable to the employees and former employees of such group intended to be covered by the program shall be the greater of the premium rate based on the loss experience of the group under the prior plan or the premium rate based on the loss experience of the classification into which the group is entering.

In the event that the initial premium is based on the loss experience of the group under the prior plan, such premium shall remain in effect for a minimum of one year. The loss experience of the group shall be reviewed at the end of the first year, and annually thereafter. For the second and each subsequent year, the premium rate applicable to such employees and former employees covered by the program shall be the greater of the premium rate based on the loss experience of that group or the premium rate based on the loss experience of the classification in which the group is placed until such time as the premium rate becomes based on the loss experience of the classification in which the group is placed.

A. Kip Wall
Chief Executive Officer

0012#081

DECLARATION OF EMERGENCY

Office of the Governor Board of Trustees of the State Employees Group Benefits Program

PPO Plan of Benefits Eligibility
(LAC 32:III.Chapters 1 - 7)

Pursuant to the authority granted by R.S. 42:871(C) and 874(B)(2), vesting the Board of Trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, the Board of Trustees, through its Chief Executive Officer, hereby invokes the Emergency Rule provisions of R.S. 49:953(B).

The board finds that it is necessary to revise and amend provisions of the PPO Plan Document, including increasing the calendar year deductible for employees, imposing a calendar year deductible for prescription drugs, increasing

the deductible applicable to emergency room services, imposing a pre-existing condition limitation on new employees and their dependents, eliminating benefits for glucometers, and providing for limited availability of a 90-day supply of maintenance drugs.

Failure to adopt this Rule on an emergency basis will adversely affect fiscal solvency of the State Employees Group Benefits Program and impact the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the following Emergency Rule, revising and amending the PPO Plan of Benefits, is effective January 1, 2001, and shall remain in effect for a maximum of 120 days, or until the final rule is promulgated, which ever occurs first.

Title 32

EMPLOYEE BENEFITS

Part III. Exclusive Provider (PPO) Plan of Benefits

Chapter 1. Eligibility

§101. Persons to be Covered

Eligibility requirements apply to all participants in the Program, whether in the PPO Plan, the EPO Plan or an HMO plan.

A. Employee Coverage

1. - 2. ...

3. Effective dates of coverage, New Employee, Transferring Employee Coverage for each Employee who completes the applicable Enrollment Form and agrees to make the required payroll contributions to his Participant Employer is to be effective as follows:

a. - b. ...

c. Employee Coverage will not become effective unless the Employee completes an Enrollment Form within 30 days following the date of employment. An Employee who completes an Enrollment Form after 30 days following the date of employment will be considered an overdue applicant.

d. An Employee that transfers employment to another Participating Employer must complete a Transfer Form within 30 days following the date of transfer in order to maintain coverage without interruption. An Employee who completes a Transfer Form after 30 days following the date of transfer will be considered an overdue applicant.

4. - 7. ...

8. Pre-Existing Condition (PEC) New Employees (on and after January 1, 2001)

a. The terms of the following paragraphs apply to all eligible Employees whose employment with a Participant Employer commences on or after January 1, 2001, and to the Dependents of such Employees.

b. The Program may require that such applicants complete a "Statement of Physical Condition" and an "Acknowledgement of Pre-existing Condition" form.

c. Medical expenses incurred during the first 12 months that coverage for the Employee and/or Dependent is in force under the Plan will not be considered as covered medical expenses if they are in connection with a disease, illness, accident or injury for which medical advice, diagnosis, care, or Treatment was recommended or received during the 6-month period immediately prior to the effective date of coverage. The provisions of this section do not apply to pregnancy.

d. If the Covered Person was previously covered under a Group Health Plan, Medicare, Medicaid or other creditable coverage as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), credit will be given for previous coverage that occurred without a break of 63 days or more for the duration of prior coverage against the initial 12-month period. Any coverage occurring prior to a break in coverage 63 days or more will not be credited against a pre-existing condition exclusion period.

B. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1825 (October 1999), LR 27:

§103. Continued Coverage

A. - B. ...

C. Surviving Dependents/Spouse

The provisions of this section are applicable to surviving Dependents who elect to continue coverage following the death of an Employee or Retiree. On or after July 1, 1999, eligibility ceases for a Covered Person who becomes eligible for coverage in a Group Health Plan other than Medicare. Coverage under the Group Health Plan may be subject to HIPAA.

1. Benefits under the Plan for covered Dependents of a deceased covered Employee or Retiree will terminate on the last day of the month in which the Employee's or Retiree's death occurred unless the surviving covered Dependents elect to continue coverage.

a. ...

b. The surviving unmarried (never married) Children of an Employee or Retiree may continue coverage until they are eligible for coverage under a Group Health Plan other than Medicare, or until attainment of the termination age for Children, whichever occurs first;

C.1.c - D. ...

E. Family and Medical Leave Act (F.M.L.A.) Leave of Absence. An employee on approved F.M.L.A. leave may retain coverage for the duration of such leave. The participant employer shall pay the employer's share of the premium during F.M.L.A. leave, whether paid leave or leave without pay. The participant employer shall pay the employee's share of the premium during unpaid F.M.L.A. leave, subject to reimbursement by the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1827 (October 1999), LR 27:

§107. Change of Classification

A. Adding or Deleting Dependents The Plan Member must notify the Program whenever a Dependent is added to, or deleted from, the Plan Member's coverage that would result in a change in the class of coverage. Notice must be provided within 30 days of the addition or deletion.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1829 (October 1999), LR 27:

Chapter 3. Medical Benefits

§301. Medical Benefits apply when Eligible Expenses are Incurred by a Covered Person.

A. Eligible expenses are the charges incurred for the following items of service and supply. These charges are subject to the applicable deductibles, limits of the Fee Schedule, Schedule of Benefits, exclusions and other provisions of the Plan. A charge is incurred on the date that the service or supply is performed or furnished. Eligible expenses are:

1. - 8. ...

9. services of licensed speech therapist when prescribed by a physician and pre-approved through Outpatient Procedure Certification for the purpose of restoring partial or complete loss of speech resulting from stroke, surgery, cancer, radiation laryngitis, cerebral palsy, accidental injuries or other similar structural or neurological disease;

10. - 11.c. ...

d. accidental injury means a condition occurring as a direct result of a traumatic bodily injury sustained solely through accidental means from an external force. With respect to injuries to teeth, the act of chewing does not constitute an injury caused by external force.

12. Durable Medical Equipment, subject to the lifetime maximum payment limitation as listed in the Schedule of Benefits;

[The Program will require written certification by the treating physician to substantiate the medical necessity for the equipment and the length of time that it will be used. The purchase of Durable Medical Equipment will be considered an eligible expense only upon showing that the rental cost would exceed the purchase price. Under no circumstances may the eligible expense for an item of Durable Medical Equipment exceed the purchase price of such item.]

13. - 18. ...

19. acupuncture when rendered by a medical doctor licensed in the state in which the services are rendered;

20. ...

21. services of a Physical Therapist and Occupational Therapist licensed by the state in which the services are rendered when:

a. - e. ...

f. approved through case management when rendered in the home;

23. ...

24. not subject to the annual deductible;

a. ...

b. mammographic examinations performed according to the following schedule:

i. one mammogram during the five-year period a person is 35-39 years of age;

24.b.ii. - 26. ...

27. services rendered by the following, when billed by the supervising physician:

a. Perfusionists and Registered Nurse Assistants assisting in the operating room;

b. Physician's Assistants and Registered Nurse Practitioners;

28. - 32. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1830 (October 1999), LR 27:

§307. Utilization Review
Pre-Admission Certification, Continued Stay Review

A. ...

B. For a routine vaginal delivery, PAC is not required for a stay of two days or less. If the mother's stay exceeds or is expected to exceed two days, PAC is required within 24 hours after the delivery or the date on which any complications arose, whichever is applicable. If the baby's stay exceeds that of the mother, PAC is required within 72 hours of the mother's discharge and a separate pre-certification number must be obtained for the baby. In the case of a Caesarean Section, PAC is required if the mother's stay exceeds or is expected to exceed four days.

C. No benefits will be paid under the Plan:

1. ...

2. Unless PAC is requested within two business days following admission in the case of an emergency;

C.3. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1832 (October 1999), LR 27:

§309. Outpatient Procedure Certification

A. ...

B. OPC is required on the following procedures:

1. - 6. ...

7. speech therapy;

C. No benefits will be paid for the facility fee in connection with outpatient procedures, or the facility and professional fee in connection with speech therapy:

C.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1832 (October 1999), LR 27:

§311. Case Management

A. - E.8. ...

9. physical and occupational therapy rendered in a home setting.

F. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1833 (October 1999), LR 27:

§313. Dental Surgical Benefits

A. ...

B. Eligible expenses incurred in connection with the removal of impacted teeth, including pre-operative and post-operative care, anesthesia, radiology, and pathology services, and facility charges are subject to the deductible, co-insurance and the maximum benefit provisions of the Plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1833 (October 1999), LR 27:

§315. Medicare Reduction

A. ...

B. Retiree 100-Medicare COB. Upon enrollment and payment of the additional monthly premium, a Plan Member and Dependents who are covered under Medicare, both Parts A and B, may choose to have full coordination of benefits with Medicare. Enrollment must be made within 30 days of eligibility for Medicare or within 30 days of retirement if already eligible for Medicare and at the annual open enrollment.

§317. Exceptions and Exclusions for All Medical Benefits

A. No benefits are provided under this Plan for:

1. - 24. ...

25. Blank

26. - 40. ...

41. Glucometers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1834 (October 1999), LR 26:488 (March 2000), LR 27:

§323. Prescription Drug Benefits

A. This Plan allows benefits for drugs and medicines approved by the Food and Drug Administration or its successor, requiring a prescription, and dispensed by a licensed pharmacist or pharmaceutical company, but which are not administered to a Covered Person as an inpatient Hospital patient or an outpatient Hospital patient, including insulin, Retin-A dispensed for Covered Persons under the age of 26, Vitamin B12 injections, prescription Potassium Chloride, and over-the-counter diabetic supplies including, but not limited to, strips, lancets and swabs.

B. The following drugs, medicines, and related services are not covered:

1. - 10. ...

11. drugs for treatment of impotence, except following surgical removal of the prostate gland; and

12. glucometers.

C. ...

1. Upon presentation of the Group Benefits Program Health Benefits Identification Card at a network pharmacy, and after satisfying the Prescription Drug Deductible set forth in the Schedule of Benefits, the Plan Member will be responsible for copayment of \$8.00 per prescription when a generic drug is dispensed, \$25 per prescription when a preferred brand name drug is dispensed, and \$40 per prescription when a non-preferred brand name drug is dispensed. The copayment cannot exceed the actual charge by the pharmacy for the drug.

2. - 4. ...

5. Prescription drug dispensing and refills will be limited in accordance with protocols established by the prescription benefits manager, including the following limitations:

a. up to a 34-day supply of acute drugs may be dispensed at one time;

b. up to a 90-day supply of maintenance drugs may be dispensed at one time only at pharmacies identified as participating in the 90-day Maintenance Drug Plan administered by the prescription benefits manager; up to a 34-day supply of maintenance drugs may be dispensed at one time at any other network pharmacy; and

c. refills will be available only after 75 percent of drugs previously dispensed should have been consumed.

6. *Acute or Non-maintenance Drug* Ca covered drug other than a maintenance drug as define herein.

7. *Brand Drug* the trademark name of a drug approved by the U. S. Food and Drug Administration.

8. *Generic Drug* Ca chemically equivalent copy of a "brand name" drug.

9. *Maintenance Drug* Ca covered drug that is determined by the Program's contracted prescription benefits management firm, using standard industry reference materials, to be routinely taken over a long period of time for certain chronic medical conditions. The drug must be listed on the established maintenance drug list as an approved drug for the patient's condition

10. *Non-Preferred Brand Drug* Ca brand drug for which there is an equally effective, less costly therapeutic alternative available, as determined by the Pharmacy and Therapeutic Committee.

11. *Pharmacy and Therapeutic Committee* Ca committee created by the Program's contracted prescription benefits management firm to advise its various plans on whether a drug has been accepted as safe and effective or investigations as well as whether a drug will be classified as a Preferred Brand Drug or a Non-Preferred Brand Drug. In making these determinations, the Pharmacy and Therapeutic Committee relies on the United States Food and Drug Administration as well as peer reviewed medical journals.

12. *Preferred Brand Drug* Ca brand name drug that has received a classification of Preferred Brand from the Pharmacy and Therapeutic Committee based on the following criteria:

- a. clinical uniqueness of the medication;
- b. positive efficacy profile;
- c. good side effect, safety, and drug interaction profile;
- d. positive quality of the implications;
- e. clinical experience with the medication; and
- f. cost (only considered when clinical parameters are equal to other products in its class).

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1835 (October 1999), LR 27:

Chapter 4. Uniform Provisions

§403. Properly Submitted Claim Form

- A. For Plan reimbursements, all bills must show:
 1. employee's name;
 2. name of patient;
 3. name, address, and telephone number of the provider of care;
 4. diagnosis;
 5. type of services rendered, with diagnosis and/or procedure codes;
 6. date of service;
 7. charges;
 8. employee's member number;
 9. provider Tax Identification number; and
 10. medicare explanation of benefits, if applicable.

B. The Program can require additional documentation in order to determine the extent of coverage or the appropriate reimbursement. Failure to furnish the requested information

within 90 days of the request will constitute reason for the denial of benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1836 (October 1999), LR 27:

Chapter 5. Claims Review and Appeal

§501. Claims Review Procedures and Appeals

A. ...

B. The request for review must be directed to Attention: Appeals and Grievances within 90 days after the date of the notification of denial of benefits, denial of eligibility, or denial after review by the utilization review, pharmacy benefit or mental health contractors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1838 (October 1999), LR 27:

§511. Subpoena of Witnesses; Production of Documents

A. - B. ...

C. No subpoena will be issued requiring the attendance and giving of testimony by witnesses unless a written request therefore is received in the office of the Program, Attention: Appeals and Grievances no later than 15 calendar days before the date fixed for the hearing. The request for subpoenas must contain the names of the witnesses and a statement of what is intended to be proved by each witness. No subpoenas will be issued until the party requesting the subpoena deposits with the Program a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled.

D. No subpoena for the production of books, papers and other documentary evidence will be issued unless written request therefore is received in the office of the Program, Attention: Appeals and Grievances no later than 15 calendar days before the date fixed for the hearing. The request for subpoena for books, papers, and other documentary evidence must contain a description of the items to be produced in sufficient detail for identification and must contain the name and street address of the person who is to be required to produce the items and a brief statement of what is intended to be proved by each item.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1839 (October 1999), LR 27:

§513. Appeals Decisions

A. ...

B. Appeals Heard by Referee. At the conclusion of the hearing, the Referee will take the matter under submission and, as soon as is reasonably possible thereafter, prepare a recommended decision in the case which will be based on the evidence adduced at the hearing or otherwise included in the hearing records. The decision will contain findings of fact and statement of reasons. The recommended decision will be submitted to the Committee for review.

C. The Committee may adopt or reject the recommended decision. In the case of adoption, the Referee's decision becomes the decision of the Committee. In the case of rejection, the Committee will render its decision, which will

include a statement of reasons for disagreement with the Referee's decision. The decision of the Committee will be final. A copy will be mailed by certified mail to the Covered Person and any Representative thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1839 (October 1999), LR 27:

§515. Rehearing

A. - B. ...

C. The request for rehearing must be filed with the Program, Attention: Appeals and Grievances on or before 30 calendar days after the mailing of the appeal decision of the Committee. The request will be deemed filed on the date it is received in the office of the Program.

D. ...

E. When the Committee grants a rehearing, an order will be issued setting forth the grounds. A copy of the order will be sent, along with notice of the time and place fixed for the rehearing, to the Appealing Party and any Representative by certified mail.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1840 (October 1999), LR 27:

Chapter 6. Definitions

*Accidental Injury*Ca condition occurring as a direct result of a traumatic bodily injury sustained solely through accidental means from and external force. With respect to injuries to teeth, the act of chewing does not constitute an injury caused by external force.

*Acute or Non-maintenance Drug*Ca covered drug other than a maintenance drug as define herein.

*Brand Drug*Ca the trademark name of a drug approved by the U. S. Food and Drug Administration.

ChildrenCa

1. any legitimate, duly acknowledged, or legally adopted Children of the Employee and/or the Employee's legal spouse dependent upon the Employee for support;

2. - 4. ...

*Generic Drug*Ca chemically equivalent copy of a "brand name" drug.

*Maintenance Drug*Ca covered drug that is determined by the Program's contracted prescription benefits management firm, using standard industry reference materials, to be routinely taken over a long period of time for certain chronic medical conditions. The drug must be listed on the established maintenance drug list as an approved drug for the patient's condition.

*Non-Preferred Brand Drug*Ca brand drug for which there is an equally effective, less costly therapeutic alternative available, as determined by the Pharmacy and Therapeutic Committee.

*Pharmacy and Therapeutic Committee*Ca committee created by the Program's contracted prescription benefits management firm to advise its various plans on whether a drug has been accepted as safe and effective or investigations as well as whether a drug will be classified as a Preferred Brand Drug or a Non-Preferred Brand Drug. In making these determinations, the Pharmacy and Therapeutic Committee relies on the United States Food and Drug Administration as well as peer reviewed medical journals.

*Preferred Brand Drug*Ca brand name drug that has received a classification of Preferred Brand from the Pharmacy and Therapeutic Committee based on the following criteria:

1. clinical uniqueness of the medication;
2. positive efficacy profile;
3. good side effect, safety, and drug interaction profile;
4. positive quality of the implications;
5. clinical experience with the medication; and
6. cost (only considered when clinical parameters are equal to other products in its class).

*Well-Baby Care*Croutine care to a well newborn infant from the date of birth until age 1. This includes routine physical examinations, active immunizations, check-ups, and office visits to a physician and billed by that physician, except for the Treatment and/or diagnosis of a specific illness. All other health services coded with wellness procedures and diagnosis codes are excluded.

*Well-Child Care*Croutine physical examinations, active immunizations, check-ups and office visits to a Physician, and billed by a health care provider that has entered into a contract with the State Employees Benefits Program, except for the Treatment and/or diagnosis of a specific illness, from age 1 to age 16. All other health services coded with wellness procedures and diagnosis codes are excluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1840 (October 1999), LR 27:

Chapter 7 - Schedule of Benefits-PPO

§701 Comprehensive Medical Benefits

A. ...

1. Deductibles:

Inpatient deductible per day, maximum of 5 days per admission (waived for admissions at PPO Hospitals)	\$50
Emergency room charges for each visit unless the Covered Person is hospitalized immediately following emergency room Treatment (prior to and in addition to Calendar Year deductible)	\$150
Professional and other eligible expenses, Employees and Dependents of Employees, Per person, per Calendar Year	\$500 \$300
Professional and other eligible expenses, Retirees and Dependents of Retirees, Per person, per Calendar Year	
Family Unit maximum (3 individual deductibles)	
Prescription Drugs, Per person, per Calendar Year (separate from and in addition to all other deductibles)	\$150

2. - 3. ...

4. Prescription Drugs

After Deductible (\$150 per person, per Calendar Year) 50% non-Network in state
\$8 copayment for generic drugs, \$25 copayment for preferred brand name drugs, and \$40 copayment for non-preferred brand name drugs purchased at a network pharmacy 80% non-Network out of state

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:871(C) and 874(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees of the State Employees Group Benefits Program, LR 25:1843 (October 1999), LR 26:488 (March 2000), LR 27:

A. Kip Wall
Interim Chief Executive Officer

0012#041

DECLARATION OF EMERGENCY

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

Home and Community Based Services Waiver Program—Children's Choice Crisis Designation

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services adopts the following Emergency Rule under the Administrative Procedure Act, R.S. 49:950 et seq. The emergency rule shall be in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a rule implementing a Home and Community Based Services waiver called Children's Choice effective January 15, 2001 (*Louisiana Register*, Volume 26, Number 12). Children's Choice provides supplemental services, limited to \$7,500 per year per child for waiver services, to children with developmental disabilities who live with their families. Waiver recipients also receive all medical services covered by Medicaid, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. Families of children whose names are on the Mentally Retarded/Developmentally Disabled (MR/DD) waiver waiting list may choose to either apply for Children's Choice or have the child remain on the MR/DD waiting list. Families will be offered this choice in the order that the child's name was added to the MR/DD waiver waiting list, which has been combined into a single state-wide list from regional lists.

Children's Choice is designed to provide an attractive alternative to the MR/DD waiver. Services are designed to allow greater flexibility to enhance family functioning. Another unique feature is portability of the child's waiver slot: children who age out (reach their nineteenth birthday) will transfer with their waiver slot into a waiver that serves adults with developmental disabilities. In a continuing effort to address the concerns of families who will consider choosing Children's Choice, the department now proposes to adopt provisions for additional supports outside the \$7,500 cap on waiver service expenditures should certain

catastrophic events occur after a child has been found eligible for Children's Choice.

This action is necessary to avoid imminent peril to children with mental retardation or developmental disabilities who are participants in Children's Choice by providing a process by which additional services may be reimbursed in the event of a crisis that threatens the health and welfare of the child.

Emergency Rule

Effective January 15, 2001, the Department of Health and Hospitals, Bureau of Community Supports and Services adopts the following regulations regarding crisis provisions for children who participate in Children's Choice. This procedure is adopted on a trial basis for one year, beginning with the implementation date of the waiver.

Families must choose to either accept Children's Choice services or remain on the MR/DD Waiver waiting list. This is an individual decision based on a family's current circumstances. In the event that a family chooses Children's Choice for their child and later experiences a crisis that increases the need for paid supports to a level that cannot be accommodated within the \$7,500 cap on waiver expenditures, they may request consideration for a crisis designation. A crisis is defined as a catastrophic change in circumstances rendering the natural and community support system unable to provide for the health and welfare of the child at the level of benefits offered under Children's Choice. The following procedure has been developed to address these situations.

Crisis Designation Criteria

In order to be considered a crisis, one of the following circumstances must exist:

1. death of the caregiver with no other supports (i.e., other family) available; or
2. the caregiver incapacitated with no other supports (i.e., other family) available; or
3. the child is committed to the custody of DHH by the court; or
4. other family crisis with no caregiver support available, such as abuse/neglect, or a second person in the household becomes disabled and must be cared for by same caregiver, causing inability of the natural caregiver to continue necessary supports to assure health and safety.

Provisions of a Crisis Designation

Additional services (crisis support) outside of the waiver cap amount may be approved by the Bureau of Community Supports and Services (BCSS) State Office. Crisis designation is time limited, depending on the anticipated duration of the causative event. Each request for crisis designation may be approved for a maximum of three months initially, and for subsequent periods of up to three months, not to exceed 12 months total or until development of the next annual Comprehensive Plan of Care.

When the crisis designation is extended at the end of the initial duration (or at any time thereafter), the family may request the option of returning the child's name to the original application date on the MR/DD waiting list when it is determined that the loss of caregiver and lack of natural or community supports will be long-term or permanent. This final determination will be made by BCSS. Eligibility and services through Children's Choice shall continue as long as the child meets eligibility criteria.

Interested persons may submit written comments to: Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, Louisiana 70821-9030. She is the person responsible for responding to all inquiries regarding this emergency rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

David W. Hood
Secretary

0012#057

DECLARATION OF EMERGENCY

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

Public Hospitals CReimbursement Methodology

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Emergency Rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is adopted 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 rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule in June of 1994 which established the prospective reimbursement methodology for inpatient services provided in non-state operated acute care hospitals (*Louisiana Register*, Volume 20, Number 6). The reimbursement methodology was subsequently amended in a rule adopted in January of 1996 which established a weighted average per diem for each hospital peer group (*Louisiana Register*, Volume 22, Number 1). The January 1996 rule was later amended to discontinue the practice of automatically applying an inflation adjustment to the reimbursement rates in those years when the rates are not rebased (*Louisiana Register*, Volume 25, Number 5).

Act 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature directs the Department of Health and Hospitals to implement procedures to receive transfers of public funds from qualifying health care providers that will qualify as the state's matching share for the purpose of claiming federal financial participation (FFP). The department defines a qualifying health care provider as any public provider owned by a parish, city or other local government agency or instrumentality. This definition includes facilities owned jointly by two or more government entities, but does not include facilities owned jointly by government and private organizations. The bureau proposes to amend the reimbursement methodology for all non-state public hospitals (other than those recognized as small rural hospitals) to pay each hospital's unreimbursed Medicaid costs incurred in providing care to Medicaid recipients. This action is being taken to enhance federal revenues in the Medicaid Program. It is estimated that the expenditures necessary to implement this emergency rule will be

approximately \$13,352,079 in federal funds only for State Fiscal Year 2001.

Emergency Rule

Effective December 21, 2000, the Department of Health and Hospitals, Bureau of Health Services Financing establishes a supplemental payment to be issued to non-state public hospitals, which are not recognized by the Department as a small rural hospital, for unreimbursed Medicaid costs incurred in providing care to Medicaid recipients. Issuance of the supplemental payment is contingent on the public hospital entering into a cooperative endeavor agreement with the department to certify public funds as representing expenditures eligible for FFP.

The supplemental payment shall be calculated from each hospital's latest audited Medicaid cost report. The payment amount shall be determined by subtracting the actual Medicaid reimbursements from the total Medicaid costs as calculated from the audited cost report. The Medicaid reimbursements and Medicaid costs shall include inpatient (acute and psychiatric services) hospital services and outpatient hospital services. This amount shall then be inflated forward to State Fiscal Year 2001 using the annual Medicare PPS Marketbasket Index. There will be no adjustment to this payment if additional costs are identified subsequent to the completion of the audit process.

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

David W. Hood
Secretary

0012#056

DECLARATION OF EMERGENCY

Department of Insurance Office of the Commissioner

Regulation 76C Privacy of Consumer Financial Information (LAC 37:XIII.Chapter 99)

In accordance with the provisions of Louisiana Revised Statutes Title 49, Section 953(B) of the Administrative Procedures Act, the Department of Insurance has adopted an emergency regulation, Regulation 76, in order to implement without delay the provisions of Title V of the Gramm-Leach-Bliley Act and R.S. 22:3063. The federal act gives State insurance regulators the authority to establish appropriate standards for the collection, use and disclosure of nonpublic personal information gathered in connection with insurance transactions by insurance institutions, agents or insurance support organizations in their state, which is the purpose of Emergency Regulation 76. Because the effective date of the federal law is November 13, 2000, and the compliance date set forth in its accompanying federal regulation is July 1, 2001, affected parties must be given an opportunity to implement policies and procedures within their organizations to carry out the provisions of the mandate, identify those individuals who must be given notice and determine what

type of notice is to be given, draft appropriate privacy notices, and finally, provide notice by July 1, 2001.

Emergency rulemaking is necessary to immediately set forth these standards so that insurance institutions, agents and insurance support organizations will have adequate time to comply with federal and state mandates. Emergency rulemaking is necessary for protection of the threat of the public welfare caused by disclosure of consumers' nonpublic personal information in this state.

Additionally, emergency rulemaking is necessary to the extent that Title V of the Gramm-Leach-Bliley Act specifically provides that "If a State insurance authority fails to adopt regulations to carry out [Title V of the Gramm-Leach-Bliley Act] such State shall not be eligible to override, pursuant to Section 47(g)(2)(B)(iii) of the Federal Deposit Insurance Act, the insurance customer protection regulations prescribed by a Federal banking agency under Section 47(a) of such Act." In other words, the State will be statutorily penalized if it fails to adopt regulations to implement the Gramm-Leach Bliley Act privacy requirements, losing its authority to federal banking agencies and not being eligible to override the insurance customer protection regulations prescribed by a Federal banking agency under Section 305 of the Act.

Preamble

Congress' passage of the Gramm-Leach-Bliley Act (GLBA) in November 1999 requires financial institutions, including insurers, to protect the privacy of consumers. Title V of the Act sets forth these new Federal requirements, and provides that regulations be established by Federal and State agencies to implement the Act's privacy protections.

GLBA regulations developed by the Federal government apply to nonpublic personal information about individuals who obtain or are beneficiaries of products or services primarily for personal, family or household purposes from licensees. The National Association of Insurance Commissioners Insurance Information and Privacy Protection Act (NAIC Model Act) establishes standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents, or insurance support organizations. It applies to life, health, disability, and property and casualty insurance entities.

The NAIC model regulation implementing GLBA standards for insurers (NAIC GLBA Regulation) closely follows the Federal GLBA Regulations in most places, although the NAIC GLBA Regulation expands the applicability of the law beyond the minimum standards, especially for health. The NAIC GLBA Regulation applies to nonpublic personal financial information about individuals who obtain or are the beneficiary of products or services primarily for personal, family or household purposes from licensees. It does not apply to information about companies or about individuals who obtain products or services from business, commercial or agricultural purposes, but it does apply to nonpublic personal financial information about individuals who obtain products or services for personal, family or household purposes from licensees through group plans and all nonpublic personal health information.

Regulation 76 is drafted in accordance with the NAIC GLBA Model Regulation, and contains some revisions in order for the regulation to comply with current state insurance law. Regulation 76 does not include those portions of the NAIC or GLBA regulation that pertain to non-public personal health information.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 99. Regulation 76C Privacy of Consumer

Subchapter A. General Provisions

§9901. Authority

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9903. Purpose

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9905. Scope and Applicability

A. This regulation applies to:

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9907. Rule of Construction

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9909. Definitions

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

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

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

a. reasonably understandable. A licensee makes its notice reasonably understandable if it:

i. presents the information in the notice in clear, concise sentences, paragraphs, and sections;

ii. uses short explanatory sentences or bullet lists whenever possible;

iii. uses definite, concrete, everyday words and active voice whenever possible;

iv. avoids multiple negatives;

v. avoids legal and highly technical business terminology whenever possible; and

vi. avoids explanations that are imprecise and readily subject to different interpretations;

b. designed to call attention. A licensee designs its notice to call attention to the nature and significance of the information in it if the licensee:

i. uses a plain-language heading to call attention to the notice;

ii. uses a typeface and type size that are easy to read;

iii. provides wide margins and ample line spacing;

iv. uses boldface or italics for key words; and

v. in a form that combines the licensee's notice with other information, uses distinctive type size, style, and graphic devices, such as shading or sidebars;

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

i. places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

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

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

Commissioner The commissioner of insurance.

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

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

a. an individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to an insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship;

b. an applicant for insurance prior to the inception of insurance coverage is a licensee's consumer;

c. an individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution;

d. an individual is a licensee's consumer if:

i.(a). the individual is a beneficiary of a life insurance policy underwritten by the licensee;

(b). the individual is a claimant under an insurance policy issued by the licensee;

(c). the individual is an insured or an annuitant under an insurance policy or an annuity, respectively, issued by the licensee; or

(d). the individual is a mortgagor of a mortgage covered under a mortgage insurance policy; and

ii. the licensee discloses nonpublic personal financial information about the individual to a nonaffiliated third party other than as permitted under §§9929, 9931 and 9933 of this regulation.

e. Provided that the licensee provides the initial, annual and revised notices under §§9911, 9913 and 9919 of this regulation to the plan sponsor, group or blanket insurance policyholder or group annuity contract holder, workers' compensation plan participant, and further provided that the licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under §§9929, 9931 and 9933 of this regulation, an individual is not the consumer of the licensee solely because he or she is:

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

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

Control C

- a. ownership, control or power to vote ten percent (10%) or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;
- b. control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or
- c. the power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the commissioner determines.

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

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

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

- v. the consumer is a beneficiary or a claimant under a policy and has submitted a claim under that policy choosing a lump sum settlement option;
- vi. the customer's policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than annual privacy notices, material required by law or regulation, communication at the direction of a state or federal authority, or promotional materials;

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

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

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

- a. any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);
- b. the Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.); or
- iii. institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

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

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

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

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

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

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

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

i. nonpublic personal financial information set forth in Subchapters A, B, C;

ii. and D of this regulation if the licensee is an employee, agent or other representative of another licensee ("the principal") and:

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

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

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

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

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

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

PRIVACY NOTICE

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

Nonaffiliated Third Party Any person except:

a. a licensee's affiliate; or

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

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

Nonpublic Personal Information Nonpublic personal financial information.

Nonpublic Personal Financial Information

a. personally identifiable financial information; and

b. any list, description or other grouping of consumers (and publicly available information pertaining to

them) that is derived using any personally identifiable financial information that is not publicly available.

c. Nonpublic personal financial information does not include:

i. health information;

ii. publicly available information, except as included on a list described in Subsection T(1)(b) of this section; or

iii. any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information that is not publicly available.

d. Examples of Lists

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

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

Personally Identifiable Financial Information Any information:

a. a consumer provides to a licensee to obtain an insurance product or service from the licensee;

b. about a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

c. the licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer.

d. Examples

i. Information included. Personally identifiable financial information includes:

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

(b). account balance information and payment history;

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

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

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

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

(g) information from a consumer report.

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

(a). health information;

(b). a list of names and addresses of customers of an entity that is not a financial institution; and

(c). information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names or addresses.

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

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

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

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

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

e. **Examples**

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

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

f. **Reasonable Basis**

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

Subchapter B. Privacy and Opt Out Notices for Financial Information

§9911. Initial Privacy Notice to Consumers Required

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

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

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

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

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

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

C. **When the Licensee Establishes a Customer Relationship**

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

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

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

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

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

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

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

E. **Exceptions to allow subsequent delivery of notice.**

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

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

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

2. **Examples of Exceptions**

a. **Not at Customer's Election.** Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

b. **Substantial Delay of Customer's Transaction.** Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual

agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9913. Annual Privacy Notice to Customers Required

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

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

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

2. Examples

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9915. Information to be Included in Privacy Notices

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

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

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

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

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

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

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

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

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

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

B. Description of parties subject to exceptions. If a licensee discloses nonpublic personal financial information as authorized under §§9931 and 9933, the licensee is not required to list those exceptions in the initial or annual

privacy notices required by §§9911 and 9913. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

C. Examples

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

- a. information from the consumer;
- b. information about the consumer's transactions with the licensee or its affiliates;
- c. information about the consumer's transactions with nonaffiliated third parties; and
- d. information from a consumer reporting agency.

2. Categories of Nonpublic Personal Financial Information a Licensee Discloses

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

- i. information from the consumer, including application information, such as assets and income and identifying information, such as name, address and social security number;
- ii. transaction information, such as information about balances, payment history and parties to the transaction; and
- iii. information from consumer reports, such as a consumer's creditworthiness and credit history.

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

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

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

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

b. Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

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

4. Disclosures under exception for service providers and joint marketers. If a licensee discloses nonpublic

personal financial information under the exception in §9929 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the disclosure requirement of Subsection A.5 of this section if it:

a. Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of Subsection A.2. of this section, as applicable; and

b. States whether the third party is:

- i. A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or
- ii. A financial institution with whom the licensee has a joint marketing agreement.

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

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

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

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

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

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

2. A short-form initial notice shall:

- a. be clear and conspicuous;
- b. state that the licensee's privacy notice is available upon request; and
- c. explain a reasonable means by which the consumer may obtain that notice.

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

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

- a. provides a toll-free telephone number that the consumer may call to request the notice; or
- b. for a consumer who conducts business in person at the licensee's office, maintains copies of the notice on

hand that the licensee provides to the consumer immediately upon request.

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

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

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

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

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

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

2. Examples.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Joint Relationships

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

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

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

b. permit each joint consumer to opt out separately.

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

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

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

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

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

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

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

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

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

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

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

G. Duration of consumer's opt out direction.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9919. Revised Privacy Notices

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

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

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

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

4. the consumer does not opt out.

B. Examples

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

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9921. Delivery

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

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

a. hand-delivers a printed copy of the notice to the consumer;

b. mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

c. for a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

d. for an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

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

a. only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

b. sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

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

1. the customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

2. the customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

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

E. Retention or accessibility of notices for customers.

1. For customers only, a licensee shall provide the initial notice required by §9911A(1), the annual notice required by §9913A, and the revised notice required by §9919 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

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

a. hand-delivers a printed copy of the notice to the customer;

b. mails a printed copy of the notice to the last known address of the customer; or

c. Makes its current privacy notice available on a web site (or a link to another web site) for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

Subchapter C. Limits on Disclosures of Financial Information

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

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

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

2. Opt Out Definition. Opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party, other than as permitted by §§9929, 9931 and 9933.

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

- a. by mail. The licensee mails the notices required in Paragraph 1 of this subsection to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number or any other reasonable means within 30 days from the date the licensee mailed the notices;
- b. by electronic means. A customer opens an on-line account with a licensee and agrees to receive the notices required in Paragraph 1 of this subsection electronically, and the licensee allows the customer to opt out by any reasonable means within 30 days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account;
- c. isolated transaction with consumer. For an isolated transaction such as providing the consumer with an

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

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

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

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

- a. the licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;
- b. the licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and
- c. the licensee may disclose and use the information pursuant to an exception in §§9931 or 9933 of this regulation, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

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

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

- a. to the affiliates of the financial institution from which the licensee received the information;
- b. to its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

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

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

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

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

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

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

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

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

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

1. to the licensee's affiliates;

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

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

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

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

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

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

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

C. Examples

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

Subchapter D. Exceptions to Limits on Disclosures of Financial Information

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

A. General Rule

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

a. provides the initial notice in accordance with §9911; and

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

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

B. Service may include joint marketing. The services a nonaffiliated third party performs for a licensee under Subsection A of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

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

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

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

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

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

participating in research projects or as otherwise required or specifically permitted by federal or state law; or

f. In connection with:

- i. authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;
- ii. the transfer of receivables, accounts or interests therein; or
- iii. the audit of debit, credit or other payment information.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

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

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

1. with the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
 - 2.a. to protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product or transaction;
 - b. to protect against or prevent actual or potential fraud or unauthorized transactions;
 - c. for required institutional risk control or for resolving consumer disputes or inquiries;
 - d. to persons holding a legal or beneficial interest relating to the consumer; or
 - e. to persons acting in a fiduciary or representative capacity on behalf of the consumer;
3. to provide information to the commissioner or insurance, insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants and auditors;
4. to the extent specifically permitted or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), to law enforcement agencies (including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Record keeping), a state insurance authority, and the Federal Trade Commission), self-regulatory organizations or for an investigation on a matter related to public safety;
 - 5.a. to a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

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

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

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

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

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

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

9. for Purposes related to:

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

Subchapter E. Additional Provisions

§9945. Protection of Existing Requirements

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9947. Nondiscrimination

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

B. A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the provisions of this regulation.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9949. Violations and Penalties

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9951. Severability

A. If any section or portion of a section of this regulation or its applicability to any person or circumstance is held invalid by a court, the remainder of the regulation or the applicability of the provision to other persons or circumstances shall not be affected.

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

§9953. Effective Date

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner; LR 27:

Appendix AC Sample Clauses

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

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

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

Sample Clause A-1:

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

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

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

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

Sample Clause A -2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premiums, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A -2, Alternative 2:

We may disclose all of the information that we collect, as described [describe location in the notice, such as “above” or “below”].

A-3–Categories of information a licensee discloses and parties to whom the licensee discloses (institutions that do not disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirements of §§9915A(2), (3), and (4) to describe the categories of nonpublic personal information about customers and former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses. A licensee may use this clause if the licensee does not disclose nonpublic personal information to any party, other than as permitted by the exceptions in §§9931 and 9933.

Sample Clause A -3:

We do not disclose any nonpublic personal information about our customers or former customers to anyone, except as permitted by law.

A-4–Categories of parties to whom a licensee discloses (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of §9915A.3 to describe the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal information. This clause may

be used if the licensee discloses nonpublic personal information other than as permitted by the exceptions in §§9929, 9931 and 9933, as well as when permitted by the exceptions in §§9931 and 9933.

Sample Clause A -4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [provide illustrative examples, such as “life insurers, automobile insurers, mortgage bankers, securities broker-dealers, and insurance agents”];
- Non-financial companies, such as [provide illustrative examples, such as “retailers, direct marketers, airlines, and publishers”]; and
- Others, such as [provide illustrative examples, such as “non-profit organizations”].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A-5–Service provider/joint marketing exception

A licensee may use one of these clauses, as applicable, to meet the requirements of §9915A(5) related to the exception for service providers and joint marketers in §9929. If a licensee discloses nonpublic personal information under this exception, the licensee shall describe the categories of nonpublic personal information the licensee discloses and the categories of third parties with which the licensee has contracted.

Sample Clause A -5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [provide illustrative examples, such as “your name, address, social security number, assets, income, and beneficiaries”];
- Information about your transactions with us, our affiliates or others, such as [provide illustrative examples, such as “your policy coverage, premium, and payment history”]; and
- Information we receive from a consumer reporting agency, such as [provide illustrative examples, such as “your creditworthiness and credit history”].

Sample Clause A -5, Alternative 2:

We may disclose all of the information we collect, as described [describe location in the notice, such as “above” or “below”] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A-6–Explanation of opt out right (institutions that disclose outside of the exceptions)

A licensee may use this clause, as applicable, to meet the requirement of §9915A(6) to provide an explanation of the consumer’s right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. The licensee may use this clause if the licensee discloses nonpublic personal information other than as permitted by the exceptions in §§9929, 9931 and 9933.

Sample Clause A -6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may

opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)].

A-7-Confidentiality and security (all institutions)

A licensee may use this clause, as applicable, to meet the requirement of §9915A(8) to describe its policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A -7:

We restrict access to nonpublic personal information about you to [provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

Inquiries concerning this regulation should be directed to Brenda S. Nation, Executive Counsel, P.O. Box 94214, Baton Rouge, LA 70804-9214; telephone: (225) 342-4674; fax (225) 342-1632.

J. Robert Wooley
Acting Commissioner

0012#088

DECLARATION OF EMERGENCY

**Department of Public Safety and Corrections
Corrections Services**

Disciplinary Rules and Procedures for Adult Inmates
(LAC 22:I.341-365)

In accordance with the provisions of R.S. 49:953, the Louisiana Department of Public Safety and Corrections (Department) hereby determines that adoption of an Emergency Rule repealing in their entirety LAC 22:I. 341-365, inclusive, and promulgating new LAC 22:I. 341-365 to the Disciplinary Rules and Procedures for Adult Inmates is necessary and that for the following reasons failure to adopt the Emergency Rule amendments will result in imminent peril to the public health, safety and welfare.

The Disciplinary Rules and Procedures for Adult Inmates were adopted by the Department and published in the Louisiana Register and became effective February 15, 1993, LAC 22:I.341, et seq. It is the responsibility of the Secretary of the Department to prescribe rules and regulations for the maintenance of good order and discipline in the facilities and institutions under the jurisdiction of the Department, which rules and regulations shall include procedures for dealing with violations thereof. R.S. 15:829. The Disciplinary Rules and Procedures for Adult Inmates provide for loss of good time by an adult inmate for violation of the rules and regulations. Historically, planned or committed misbehavior by inmates that posed a threat to the security of the institution, employees, inmates and/or visitors but did not fall under a specific disciplinary rule was subject to the same sanctions as a rule violation. Recently, however, the Louisiana Supreme Court in *Tony Giles v. Cain*, 1999-2328

(La. 6/2/00), 762 So.2d 1116, rehearing denied on the merits, 1999-2328 (La. 8/31/00), 766 So.2d 1269, affirmed the District Court ruling that forfeiture of good time for threat to security violations does harm to an inmate's due process rights since the inmate does not have sufficient notice of the charges against him. As a result, the Department is compelled to amend the Disciplinary Rules and Procedures for Adult Inmates to define those prohibited activities that constitute a threat to the security of the institution, employees, inmates and/or visitors.

The Department, to insure the maintenance of good order and discipline must have the authority to impose penalties for violations of the rules and procedures to the full extent of the law. Disciplinary hearings within the facilities and institutions of the Department are numerous and ongoing and decisions rendered by such facilities and institutions that may be contrary to the holding in *Giles* may be subject to legal challenge, which is detrimental to the good order and discipline of the Department. These legal challenges will result in the release of inmates from prison earlier than would otherwise be the case, resulting in potential risk to the public safety. The inability to adequately sanction inmates for misbehavior under the current rules will degrade the safety of the institutions and pose an additional threat to public safety.

For the foregoing reasons, the Louisiana Department of Public Safety and Corrections has determined that the adoption of the following Emergency Rule is necessary and hereby adopts this Emergency Rule effective December 8, 2000, in accordance with R.S. 49:953(B). This Emergency Rule shall be in effect for the maximum period allowed under the Administrative Procedures Act or until adoption of the rule, whichever occurs first.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

**Subchapter B. Disciplinary Rules and Procedures for
Adult Inmates**

§341. Preface

A. This book of disciplinary rules and procedures constitutes clear and proper notice of same for each adult inmate sentenced to the Department of Public Safety and Corrections.

B. This book rescinds and supersedes the "Disciplinary Rules and Procedures for Adult Inmates" dated February 15, 1993 (as amended) and appeal decisions rendered pursuant to those rules and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin v. Conner*, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§343. Forward

A. The "Disciplinary Rules and Procedures for Adult Inmates" are established to help provide structure and organization for the prisons, and a framework within which the inmate population can expect the disciplinary system to function. They must be followed at all adult and contract facilities.

B. These rules, regulations, and procedures may only be changed by the Secretary of the Department of Public Safety and Corrections.

C. An inmate is only entitled to a due process hearing or other application of these procedures when loss of good time is involved. Otherwise, utilization of these procedures does not constitute the granting of any enforceable right or privilege to any inmate.

D. There are certain classification or other actions which may be taken that effect an inmate's custody status, job classification, housing assignment, institutional assignment and/or ability to participate in institutional programs or activities for which an inmate may expect routine change during the course of his incarceration. Such changes may result from classification decision making activity to promote institutional security or other legitimate institutional goals, or the imposition of other disciplinary penalties. Such changes may not be disciplinary penalties in and of themselves. In addition, any similar changes which result from the action of other Department Regulations and institutional policies are not considered penalties in the context of the disciplinary process.

E. In the event of a genuine emergency, such as a serious disturbance disrupting normal operations or a natural disaster, the Secretary or his designee may suspend any and all disciplinary rules and procedures for the duration of the emergency. Full hearings must be held within a reasonable time after the end of the emergency for those inmates who were subject to loss of good time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin v. Conner*, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§345. Definitions

Administrative SegregationCa temporary holding area, preferably a cell, where inmates are held whose continued presence in the general population poses a threat to life, property, self, staff, other inmates, the security or orderly running of the institution, or who are the subject of an investigation. In addition, inmates who are pending transfer to another institution or pending assignment or re-assignment within an institution may be held in *Administrative Segregation*. (Refer to section on "Disciplinary ProceduresCA *Administrative Segregation Guidelines*.")

AppealCa request by an inmate for review of a disciplinary decision. (Refer to section on "Appeals.")

AttemptCwhen an inmate has an intent to violate these disciplinary rules, whether or not he actually does something toward violating the rule.

ClassificationCa process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units, work assignments, and programs according to their needs and existing resources. Classification Board actions, even if resulting from an incident handled in the disciplinary process, are not disciplinary sanctions.

Confidential InformantCperson whose identity is not revealed to the accused inmate but who provides an employee(s) with information concerning misbehavior or planned misbehavior.

ConspiracyCtwo or more persons working in combination for the specific purpose of violating any disciplinary rule.

Counsel and Counsel SubstitutesCCounsel is an Attorney at Law of the inmate's choice who must be retained by the inmate. Counsel Substitutes are persons not admitted to the practice of law, but inmates who aid and assist, without cost, an accused inmate in the preparation and presentation of his defense and/or appeal. Counsel Substitutes are only those inmates appointed by the Warden, or his designee. (Refer to section on "Disciplinary Procedures - Counsel Substitutes.")

CustodyCthe type of housing and the level of supervision required for an inmate. Custody assignments will reflect public safety as the first priority, staff and inmate safety within the institution as the second priority, and then institutional or inmate need.

Disciplinary Detention/Extended LockdownCmaximum security area for confining inmates. (Refer to section on "Disciplinary Procedures - Disciplinary Detention/Extended Lockdown.")

Disciplinary Detention/IsolationCa punitive holding area where inmates are temporarily confined in a restricted situation after being so sentenced by the Disciplinary Board. (Refer to section on "Disciplinary Procedures - Disciplinary Detention/Isolation.")

Disciplinary ReportCa report on the approved form filed by an employee who has reason to believe that an inmate(s) has violated one or more disciplinary rules. Disciplinary Reports may be heard by the Disciplinary Officer or the Disciplinary Board.

HearingsCa fair and impartial review conducted by the Disciplinary Officer or the Disciplinary Board.

Investigation ReportCa report submitted for disposition to the Disciplinary Board detailing the facts uncovered in an investigation.

Maximum CustodyCassignment of an inmate to a cell based upon the need to protect the inmate, other inmates, the public, staff, or the institution. This includes *Administrative Segregation*, *Disciplinary Detention/Extended Lockdown* and *Working Cellblocks* and may include *Protective Custody/Extended Lockdown*. Movements inside the secure perimeter of a facility by maximum custody inmates are closely monitored by staff and may include the utilization of restraints in accordance with institutional policy. Movement outside of a secure perimeter is accomplished only under armed supervision or when appropriately restrained or otherwise secured.

Medium CustodyCgenerally, assignment of an inmate to a dormitory housing area. Movement outside of a secure perimeter is accomplished only under armed supervision or when appropriately restrained or otherwise secured. Institutional procedure governs internal movement controls.

Minimum CustodyCgenerally, assignment of an inmate to a dormitory housing area. Movement outside of a secure perimeter is usually authorized without armed supervision or restraint. Institutional procedure governs the level of staff supervision when outside the secure perimeter, as well as internal movement controls.

Posted PolicyCas used herein, applies to policy memorandums detailing what behavior is required or forbidden of inmates and generally reflects the individual needs of the facility--such as, but not limited to, count procedure, off-limits areas and ID Card policy. Posted

Policies must be distributed and posted in such a manner that inmates are placed on notice as to what behavior is required or forbidden, and the actions that may be taken should the policy be violated. (See Department Regulation No. C-01-006 "Institutional Policies/Procedures and Inmate Posted Policies.")

Protective Custody/Extended Lockdown A classification utilized when an inmate has a verifiable need for protection. (Refer to section on *Disciplinary Procedures* **C** *Protective Custody/Extended Lockdown*.)

Sanction A disciplinary penalty.

Security The physical construction characteristics of the facility in terms of perimeter security, building construction type, and internal movement controls.

Segregation A generic term used to encompass Administrative Segregation, Protective Custody, and Disciplinary Detention.

Working Cellblock A form of maximum custody distinguished by access to work and other programs consistent with security restrictions and institutional procedures.

Note: The pronouns "he" and "his" as used herein are for convenience only and are not intended to discriminate against female employees or inmates. Additionally, "employee" as used herein refers not only to an employee of the Department of Public Safety and Corrections, but also to any individual having the authority to exercise supervision over an inmate (such as, but not limited to, a teacher, an employee of a contractor, etc.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin v. Conner*, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§347. Disciplinary Procedures

A. **General Segregation Guidelines** **C** **Mental Health.** A mental health professional (as defined by the designated health care authority at the institution), must document a personal interview with any inmate who remains in Administrative Segregation, Protective Custody, or Disciplinary Detention for more than 30 consecutive days. A mental health assessment must be made at least every three months thereafter if confinement is continuous.

B. **Administrative Segregation Guidelines.** An inmate whose continued presence in the general population poses a threat to life, property, self, staff, other inmates, or to the security or orderly running of the institution, or who is the subject of an investigation, may (with the approval of the highest ranking supervisor on duty in the unit where the incident occurred or the shift supervisor), be placed in Administrative Segregation until his appearance before the Disciplinary Board or Classification Board. The supervisor, before the conclusion of his tour of duty, will review documentation for completeness, correctness, and investigate as needed to confirm the reasonableness of the allegation or circumstances prompting placement.

1. Inmates pending possible transfer to another facility, or pending assignment or re-assignment within an institution, may be held in Administrative Segregation. Inmates in Administrative Segregation pending such transfer will be entitled only to privileges allowed other inmates in Administrative Segregation.

2. Upon the request of an inmate or after review by appropriate institutional staff, an inmate may be placed in Administrative Segregation for his protection and/or the protection of others until the Disciplinary Officer/Disciplinary Board or Classification Board can review the circumstances and recommend appropriate action.

3. Time spent in Administrative Segregation must be credited against Disciplinary Detention/Isolation or Extra Duty sentences even when the sentence is suspended. Credit will not be given for time spent in Administrative Segregation on a request for protection or while awaiting transfer to another area.

4. Inmates in Administrative Segregation shall be allowed to receive all correspondence and to originate correspondence. Inmates in Administrative Segregation will be allowed visits; clean clothing on a scheduled basis; toothbrush and toothpaste; sufficient heat; light; ventilation; toilet facilities; and the same meals as other inmates. The status of inmates in Administrative Segregation should be reviewed by an appropriate review board at least every seven days for the first two months and every 30 days thereafter.

C. **Counsel Substitutes.** Behavior of Counsel Substitutes and Legal Aid Office workers must be above reproach. A job change is mandatory following conviction of a serious offense. Counsel Substitutes are not required to file appeals but should inform the inmate who wants to appeal of the proper way to file. They may be removed from their positions if the Warden or his designee believes it appropriate. No inmate (Counsel Substitute or not) can sell or trade for value legal services of any sort. Inmates who are not Counsel Substitutes may not provide services to other inmates without the approval of the Warden or his designee.

D. **Disciplinary Board.** A properly composed board will consist of two people **C** a duly authorized Chairman, and a duly authorized Member **C** each representing a different element (security, administration, or treatment.) The Chairman must be approved by the Secretary or his designee. The Member must be approved by the Warden or his designee. Decisions must be unanimous. If the decision is not unanimous, the case is automatically deferred for referral to a different Disciplinary Board. If the second decision is not unanimous, then a finding of Not Guilty is appropriate. Hearings shall be held within seven days of the date of the report, excluding weekends and holidays, for those inmates not placed in Administrative Segregation, unless the hearing is prevented by exceptional circumstances, unavoidable delays, or reasonable postponements. Reasons for all delays should be documented.

E. **Disciplinary Officer/Low Court Hearing.** A ranking security officer (Lieutenant or above) or any supervisory level employee from administration or treatment appointed by the Warden who conducts hearings of minor violations and who may impose only minor sanctions. Any Disciplinary Officer directly involved in the incident or who is biased for or against the accused cannot hear the case unless the accused waives recusal. Performance of a routine administrative duty does not necessarily constitute "direct involvement" or "bias." At these hearings, the accused inmate represents himself and is given full opportunity to speak in his own behalf. The presence of Counsel

Substitutes, witnesses, or the accusing employee is not permitted. These hearings are not taped. Hearings shall be held within seven days of the date of the report, excluding weekends and holidays, for those inmates not placed in Administrative Segregation, unless the hearing is prevented by exceptional circumstances, unavoidable delays, or reasonable postponements. Reasons for all delays should be documented. The Disciplinary Officer may also hear inmates who have signed written requests for protection and may recommend appropriate action.

F. Disciplinary Detention/Extended Lockdown

1. An indeterminate period of lockdown characterized by routine 90 day classification reviews to determine eligibility/suitability for release from this status. This type of segregation is used primarily after a Disciplinary Hearing for an inmate found guilty of violating one or more serious rules, or of being dangerous to himself or others, or of being a serious escape risk, or of posing a clear threat to the security of the facility. A Classification Board hearing is sufficient for an inmate who is initially classified as maximum custody.

2. Inmates in Disciplinary Detention/Extended Lockdown will be reviewed by an appropriate review board for possible release to a less restricted status approximately every 90 days.

G. Disciplinary Detention/Isolation

1. A determinate period of lockdown that is characterized by a limit of 10 consecutive days without a 24 hour break or no more than 20 days in a 30 day period. After 10 consecutive days in Disciplinary Detention/Isolation, the inmate must be released for a period of time not less than 24 hours. No inmate may be confined in Disciplinary Detention/Isolation except by action of the Disciplinary Board on the basis of a Disciplinary Report.

2. Inmates in Disciplinary Detention/Isolation shall be allowed to receive all correspondence and to originate correspondence. Inmates in Disciplinary Detention/Isolation will be allowed: visits; clean clothing on a scheduled basis; toothbrush and toothpaste; sufficient heat; light; ventilation; toilet facilities; and the same meals as other inmates.

H. Protective Custody/Extended Lockdown

1. Utilized for an inmate in need of protection. A Disciplinary Board or Classification Board hearing is not necessary when an inmate has signed a written request for protection and is transferred to Protective Custody/Extended Lockdown by the Disciplinary Officer/Disciplinary Board or Classification Board.

2. Inmates in Protective Custody/Extended Lockdown should be reviewed by an appropriate review board for possible release to a less restricted status at least every 7 days for the first 2 months and every 30 days thereafter.

I. Working Cellblock. An indeterminate period of assignment to a maximum custody status characterized by access to work and other programs consistent with security restrictions and institutional procedures. Classification reviews are utilized to determine eligibility/suitability for release from this status. This type of assignment is used primarily after a Disciplinary Hearing for an inmate found guilty of violating one or more serious rules, or of being dangerous to himself or others, or of being a serious escape risk, or of being in need of protection, or of posing a clear threat to the security of the facility. A Classification Board

hearing is sufficient for an inmate who is initially classified as maximum custody.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§349. Hearings

A. Disciplinary Board. Before the hearing can begin, accused inmates must acknowledge that they are familiar with their rights as follows:

1. the right to present evidence and witnesses in his behalf and to request cross-examination of the accuser, provided such requests are relevant, not repetitious, not unduly burdensome to the institution, or not unduly hazardous to staff or inmate safety. (The Board has the option of stipulating expected testimony from witnesses. In such a case, the Board should assign proper weight to such testimony as though the witness had actually appeared.) The accusing employee must be summoned when the report is based solely on information from Confidential Informants;

2. the right to Counsel Substitute for all alleged violations. The right to outside retained counsel only when the alleged violation is one for which the inmate could also be charged in a criminal court, e.g. possession of illegal drugs, rape, aggravated battery, etc.;

3. the right to not be compelled to incriminate himself;

4. the right to a written summary of the evidence and reasons for the judgment, including reasons for the sentence imposed, when the accused pled Not Guilty and was found Guilty. (This will usually appear on the finalized report.) The convicted inmate will automatically be given or sent a written summary;

5. the right to appeal consistent with the appeal procedure as outlined;

6. the right to a hearing within 72 hours of placement in Administrative Segregation. Official holidays, weekends, genuine emergencies, or good faith efforts by the administration to provide a timely hearing are the only exceptions. When it is not possible to provide a full hearing within 72 hours of placement in Administrative Segregation, the accused must be brought before the Board, informed of the reasons for the delay, and be remanded back to Administrative Segregation or released to his quarters after a date for a full hearing has been set;

7. the right to an unbiased hearing. Any Chairman/Member directly involved in the incident, who is biased for or against the accused, or who is in a therapeutic relationship with the inmate that would be jeopardized by the therapist's presence on the Disciplinary Board, cannot hear the case unless the accused waives recusal. Performance of a routine administrative duty does not necessarily constitute "direct involvement" or "bias;" and

8. the right to be given a written copy of the Disciplinary Report at least 24 hours before the hearing begins which describes the charges against the inmate (unless waived by him in writing.)

B. Conduct Of The Hearing. All rights and procedural requirements must be followed unless waived by the accused. Disciplinary Board hearings must be tape-recorded in their entirety, and the tapes preserved indefinitely for

subsequent judicial review. Hearings will generally be conducted as follows:

1. inmates who do not choose to be present can sign a waiver, which shall be read into the tape. Counsel Substitute shall represent him. The same applies to disruptive inmates who refuse to cooperate. If the inmate refuses to sign a waiver, one shall be prepared and his refusal noted with two witnesses. In either case, the Disciplinary Chairman should also sign the waiver;

2. the accused enters his name and number into the record (the tape) as does his Counsel or Counsel Substitute (if any) and confirms that he understands his rights. During the hearing, the accuser should only be present to testify. He may never be present during deliberations;

3. the Chairman reads the Disciplinary Report to the accused and asks for a plea. Available pleas are Not Guilty or Guilty. Should the accused attempt to enter an unavailable plea or refuse to enter a plea, the Chairman will enter a Not Guilty plea for him and proceed with the case;

4. preliminary motions, if any, by the defense should now be made. Such motions must be raised at the first opportunity or be considered waived and may include:

a. dismissal of the charge(s);

b. continuance (inmates are not entitled to a continuance to secure Counsel unless they are charged with a violation which is also a crime under state law. Only one continuance need be granted unless new information is produced. Therefore, all requests--to face accuser, call witness, etc.--must be made at once. A motion due to lack of 24-hour notice must be made at this time, including any challenge to the waiver of the 24-hour notice rule having not been made in writing.);

c. investigation;

d. any other appropriate motions.

5. the Board should rule on motions at the appropriate time and should give reasons for the ruling;

6. after entering his plea and motions, if any, the accused may present his defense. The Board may ask questions of the accused, his witnesses, and/or his accuser;

7. during deliberations, everyone except the Board, the Bailiff, and any official observers must leave the room, and the Board will decide the case on the basis of the evidence presented at the hearing. Official observers must not take part in the hearing or the deliberations. The Bailiff cannot participate in deciding the case or the sentence, and must not participate in the hearing at all when he is the accusing employee, unless he is summoned to testify under cross-examination. The accused's record may be examined to discover a pattern of similar misbehavior or a pending suspended sentence. The record may be examined in order to determine an appropriate sentence; and

8. following the deliberations, the Chairman will announce the verdict. If the verdict is Guilty, the Chairman will then announce the sentence. The Board has full authority to suspend any sentence they impose for a period of up to 90 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§351. Correcting Disciplinary Reports

A. A reviewing employee may change the rule number to fit the description prior to the hearing, but should ensure that the accused gets a corrected copy of the report at least 24 hours before the hearing begins. Rule number(s) may be added if the offense is clearly described on the report. An incident may consist of several related events; however, each separate and distinct rule violation should be processed independently in the disciplinary system.

B. Before the hearing begins, the Board may change the rule number to match the description of alleged misbehavior, if necessary, and also may change the rule number at any point prior to the deliberations, but should offer the accused a continuance to prepare the defense. It is the description of the conduct and not the rule number which determines the offense. The continuance may be waived and does not necessarily need to be for 24 hours.

C. Evidence. The Disciplinary Board shall carefully evaluate all evidence presented or stipulated. When the Disciplinary Report is based solely on information from a Confidential Informant, or from an inmate whose identity is known, it must be corroborated by witnesses (who may be other Confidential Informants), the record, or other evidence. The only time the accusing employee must be summoned for cross-examination is when the report is based solely on information from Confidential Informants. In order for the accuser to attest to the reliability of the information received from a Confidential Informant, the informant must not have been unreliable in the past and must have legitimate knowledge of the present incident(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§355. Sanctions

A. Sentences must fit the offense and the offender. An inmate with a poor conduct record may receive a more severe sentence than an inmate with a good conduct record for the same offense. Even so, serious offenses call for serious penalties. An inmate who violates more than one rule or the same rule more than once during an incident may receive a permissible sanction for each violation. After a finding of guilt for a new violation, a previously suspended sentence may be imposed as well as a new sentence. State and federal criminal laws apply to inmates. In addition to being sanctioned by prison authorities, inmates may also be prosecuted in state or federal court for criminal conduct. Restitution imposed in accordance with Department Regulation No. B-05-003 "Imposition of Restitution" is not a disciplinary penalty and may be assessed in addition to all other permissible penalties.

B. An inmate who has established a documented pattern of behavior indicating that he is dangerous to himself or others is a Habitual Offender. This includes an inmate who has been convicted of 3 major violations or a total of 5 violations in a 6 month period. Major violations are Schedule B offenses. A Habitual Offender may receive Schedule B penalties following conviction of a Schedule A offense when he has established a documented pattern of hostile or disruptive behavior as defined above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§357. Penalty Schedule-Disciplinary Report (Heard by Disciplinary Officer)

A. After a finding of guilt, the Disciplinary Officer may impose one or two of the penalties below for each violation:

1. reprimand;
2. extra Duty - up to 4 days for each violation;
3. loss of Minor Privilege for up to 2 weeks.

B. Extra Duty is defined as work to be performed in addition to the regular job assignment as specified by the proper authority. One day of Extra Duty is 8 hours of work.

C. Minor Privileges are:

1. radio and/or TV;
2. recreation and yard activities;
3. telephone (except for emergencies and legal);
4. movies;
5. canteen;
6. any other similar privilege.

AUTHORITY NOTE: Promulgated in accordance with RS. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§359. Penalty Schedule-Disciplinary Report (Heard by Disciplinary Board)

A. After a finding of guilt, the Disciplinary Board may impose one or two of the penalties below:

1. Schedule A
 - a. reprimand;
 - b. loss of minor privilege for up to 4 weeks;
 - c. extra duty - up to 4 days for each violation;
 - d. disciplinary detention/Isolation - up to 5 days for each violation;
 - e. forfeiture of good time Cup to a maximum of 30 days for each violation;
 - f. quarters change;
 - g. job change;
 - h. confinement to room or cell for up to 14 days (this does not exclude participation in work, meals, medical or other essential call-outs).
2. Schedule B
 - a. reprimand;
 - b. loss of minor privilege for up to 12 weeks, unless violation involved abuse of that privilege, then up to - 24 weeks;
 - c. confinement to room or cell for up to 30 days (this does not exclude participation in work, meals, medical, or other essential call-outs);
 - d. extra duty Cup to 8 days for each violation;
 - e. disciplinary detention/isolation - up to 10 days for each violation;
 - f. forfeiture of good time - up to a maximum of 180 days for each violation;
 - g. quarters change;
 - h. job change;
 - i. loss of hobbycraft - up to 12 months (at the discretion of the warden or his designee, based upon the

length of the sentence, this penalty may include loss of the hobbycraft box assignment--in such cases, the inmate would not be eligible to apply for resumption of this privilege until after the sentence has been served.) Loss of hobbycraft privileges that result from custody status changes, classification actions, housing or institutional assignment changes, other changes that may routinely occur during the course of incarceration, or the imposition of other disciplinary penalties are not to be considered as a "loss of hobbycraft" sanction in the context of the disciplinary process;

j. custody change from minimum to medium custody status. (Imposition of this sanction may include transfer to another institution.) Any quarters change, job change, or other changes that may result from imposition of this sanction are not a separate penalty for purposes of this section unless expressly indicated as a sanction;

k. custody change from minimum or medium custody status to maximum custody status (working cellblock or disciplinary detention/extended lockdown.) (imposition of this sanction may include transfer to another institution.) Any quarters change, job change, or other changes that may result from imposition of this sanction are not a separate penalty for purposes of this section unless expressly indicated as a sanction;

l. loss of visiting, if the violation involves visiting, to be reviewed by the warden or his designee every 90 days; (restrictions relative to non-contact versus contact visiting are governed by Department Regulation No. C-02-008 "inmate visitation" and are not considered disciplinary penalties).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§361. Penalty Clarifications

A. Good Time. An inmate is presumed to have earned his good time for the month on the first day of the month and may forfeit such good time at any point during the month.

B. Suspended Sentences. The Disciplinary Officer or the Disciplinary Board may suspend any sentence they impose for a period of up to 90 days. The period of suspension begins on the date of sentence. When the time period has expired, the report itself remains a part of the record, although the sentence may no longer be imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§363. Appeals

A. Appeals To The Disciplinary Board. An inmate who wants to appeal a case heard by the Disciplinary Officer ("Low Court") must appeal to the Disciplinary Board ("High Court.") As soon as the sentence is passed, the inmate who wants to appeal must clearly say so to the Disciplinary Officer who will then automatically suspend the sentence and schedule the case for the Disciplinary Board. The appeal hearing before the Disciplinary Board is a full hearing the same as any other hearing conducted by the Board. The

Disciplinary Board cannot upgrade the sanction imposed by the Disciplinary Officer. The appeal to the Disciplinary Board will be the final appeal in a case heard by the Disciplinary Officer. No other appeals are allowed. The appeal from the Disciplinary Officer to the Disciplinary Board will constitute the final administrative remedy regarding the disciplinary decision. Decisions rendered by the Disciplinary Officer and appealed to the Disciplinary Board may not be appealed to the Warden or to the Secretary.

B. Appeals To The Warden

1. An inmate who wants to appeal a case heard by the Disciplinary Board ("High Court") must, in all cases, appeal to the Warden. The inmate may appeal himself or through Counsel or Counsel Substitute. In either case, the appeal must be received within 15 days of the hearing. The appeal should be clearly written or typed on form AF-1. If the form is not available, the appeal may be on plain paper but should contain the information called for on the form. The Warden will decide all appeals within 30 days of the date of receipt of the appeal and the inmate will be promptly notified in writing of the results (unless circumstances warrant an extension of that time period and the inmate is notified accordingly).

2. Lengthy appeals of disciplinary actions will not be accepted into the appeals process. It is necessary only that the inmate provide basic factual information regarding his case. Appeals that are too long will be returned to the inmate for summarization. The inmate will have five days from receipt to comply with the instructions and resubmit. It is important to remember that abuse of the system impairs our ability to respond to legitimate problems in a timely fashion.

C. Appeals to the Secretary

1. An inmate who wants to appeal the decision of the Warden to the Secretary will indicate that he is "not satisfied" in the appropriate box on the Warden's "Appeal Decision" (form AF-2) and submit it to the ARP Screening Officer, (or, in some units, the Warden's Office). The form must be submitted within 5 days of its receipt by the inmate. No supplement to the appeal will be considered. It is only necessary that the inmate check the box indicating "I am not satisfied," date, sign, and forward to the appropriate person. The inmate will receive an acknowledgment of receipt and date forwarded to the Secretary's office. The institution will provide a copy of the inmate's original appeal to be attached to the form AF-2 for submission to the Secretary.

2. The Secretary will only consider appeals from decisions of the Warden which resulted in an imposed or suspended sentence of one or more of the following penalties:

- a. disciplinary detention/isolation;
- b. loss of good time;
- c. custody change from minimum to medium only if it involves transfer to another institution;
- d. custody change to maximum custody.

3. In addition, all "restitution" assessments may be submitted to the Secretary for review.

4. The secretary will decide all appeals within 85 days of the date of receipt of the appeal and the inmate will be promptly notified in writing of the results (unless circumstances warrant an extension of that time period and the inmate is notified accordingly). Absent unusual

circumstances, the Secretary will only consider review of the sentence of an inmate who pled guilty.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, Wolff v. McDonnell, 94 S.Ct. 2963 (1974), Ralph v. Dees, C.A. 71-94, USDC (Md. La.) and Sandin v. Conner, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

§365. Disciplinary Rules

A. An inmate found guilty of violating one or more of the rules defined below will be punished according to the penalty schedule designated in the rule and the type of hearing provided.

B. Contraband (Schedule B): No inmate shall have under his immediate control any drugs (such as, but not limited to, heroin, LSD, amphetamines, barbiturates, marijuana), unauthorized medication, alcoholic beverage, yeast, tattoo machine, or tattoo paraphernalia, syringe, weapon (such as, but not limited to, firearm, knife, iron pipe), or any other item not permitted by department regulation or institutional posted policy to be received or possessed, or any other item detrimental to the security of the facility, or smuggle or try to smuggle such items into or out of the facility. Money is contraband. The area of immediate control is an inmate's person, his locker(s), his cell, his room, his bed, his laundry bag, and his assigned job equipment (such as, but not limited to, his desk, his tool box, or his locker at the job), or the area under his bed on the floor unless the evidence clearly indicated that it belonged to another inmate. Contraband found in a cell shared by two or more inmates will be presumed to belong to all of them equally. Any inmate who is tested for and has a positive reading on a urinalysis or breathalyzer test will be considered in violation of this rule. An inmate who refuses to be tested or to cooperate in testing may also be found in violation of this rule, (including being unable to provide a urine specimen within 3 hours of being ordered to do so.) Any item not being used for the purpose for which it was intended will be considered contraband if it is being used in a manner that is clearly detrimental to the security of the facility.

C. Unauthorized Items (Schedule A): This distinguishes between contraband items that are detrimental to the security of the facility and those that are not authorized but clearly not detrimental to the safety and security of the facility.

D. Defiance (Schedule B): No inmate shall commit or threaten physically or verbally to commit bodily harm upon an employee, visitor, guest or their families. This includes throwing or attempting to throw any object, liquid, or substance, or spitting, or attempting to spit on an employee, visitor, guest or their families. No inmate shall curse or insult an employee, visitor, guest or their families. No inmate shall threaten an employee, visitor, guest or their families in any manner, however, an inmate may advise an employee of planned legal redress even during a confrontational situation (although an inmate's behavior in such a situation shall not be disrespectful or violate any other disciplinary rule.) No inmate shall obstruct or resist an employee who is performing his proper duties. No inmate shall try to intimidate an employee to make the employee do as the inmate wants him to do. An employee, visitor, guest or their families shall not be subject to abusive conversation, correspondence, phone calls, or gestures. La. R.S. 15:571.4 and Department Regulation No. B-04-005 "Forfeiture of

Good Time from Inmates who Escape or Commit Battery on an Employee" may provide for forfeiture of good time in addition to the provisions of these procedures.

E. Disobedience (Schedule A): Inmates must obey the Posted Policies for the facility in which they are confined. They must obey signs or other notices of restricted activities in certain areas, safety rules, or other general instructions. The only valid excuse for Disobedience or Aggravated Disobedience is when the immediate result of obedience would be bodily injury (this includes incapacity by virtue of a certified medical reason).

F. Disobedience, Aggravated (Schedule B): Inmates must obey direct verbal orders cooperatively and promptly; not debate, argue, or ignore them before obeying. When orders conflict, the last order received must be obeyed. Even orders the inmate believes improper must be obeyed; grievances must be pursued through proper channels. Sentences imposed by the Disciplinary Officer or the Disciplinary Board are to be carried out by the inmate. Violations of duty status will apply to this rule as will a violation of an order from the Disciplinary Board. The only valid excuse for Disobedience or Aggravated Disobedience is when the immediate result of obedience would be bodily injury (this includes incapacity by virtue of a certified medical reason).

G. Disorderly Conduct (Schedule A): All boisterous behavior is forbidden. This includes, but is not limited to, horseplay and/or disorderly conduct. Inmates shall not jump ahead or cut into lines at the store, movie, mess hall, or during group movements of inmates. Visitors and guests shall be treated courteously and not be subjected to disorderly or intrusive conduct. Inmates shall not communicate verbally into or out of cellblocks or other housing areas.

H. Disrespect (Schedule A): Employees, visitors, guests or their families shall not be subject to disrespectful conversation, correspondence, phone calls, actions or gestures. Inmates shall address employees, visitors, guests, or their families by proper title or by "Mr.," "Ms.," "Miss," or "Mrs." whichever is appropriate.

I. Escape (Schedule B): An escape or attempt to escape from the grounds of an institution or from the custody of an employee outside a facility, successful or not, or the failure to return from a furlough is a violation. La. R.S. 15:571.4 and Department Regulation No. B-04-005 "Forfeiture of Good Time from Inmates who Escape or Commit Battery on an Employee" may provide for forfeiture of good time for aggravated escape or simple escape in addition to the provisions of these procedures. (R.S. 14:110A.(2) provides for additional conditions under which an inmate in work release status may be charged under this rule.)

J. Fighting (Schedule B):

1. Hostile physical contact or attempted physical contact is not permitted. This includes fist fighting, shoving, wrestling, kicking, and other such behavior. Contact does not necessarily have to be made for this rule to be violated. If an inmate is found guilty of this violation, restitution may be imposed in accordance with Department Regulation No. B-05-003 "Imposition of Restitution."

2. Self-Defense Clarification: Self-defense is a complete defense and can be established to the Board by

demonstrating that his actions did not exceed those necessary to protect himself from injury.

K. Fighting, Aggravated (Schedule B):

1. Inmates shall not fight with each other using any object as a weapon (including any liquid or solid substances thrown or otherwise projected on or at another person). When two or more inmates attack another inmate without using weapons, the attackers are in violation of this rule, as are all participants in a group or "gang" fight. The use of teeth will also be sufficient to constitute a violation of this rule. No inmate shall intentionally inflict serious injury or death upon another inmate. Contact does not necessarily have to be made for this rule to be violated. If an inmate is found guilty of this violation, restitution may be imposed in accordance with Department Regulation No. B-05-003 "Imposition of Restitution."

2. Self-Defense Clarification. Self-defense is a complete defense and can be established to the Board by demonstrating that his actions did not exceed those necessary to protect himself from injury.

L. Gambling (Schedule B). No inmate shall operate or participate in any game of chance involving bets or wagers or goods or other valuables. Possession of one or more gambling tickets or stubs for football or any other sport is a violation. No inmate shall operate a book making scheme. Possession of gambling sheets with a list of names or codes, point spreads, how much owed, or how much wagered will be considered a violation.

M. Intoxication (Schedule B). No inmate shall be under the influence of any intoxicating substance at an institution or while in physical custody. Returning from a furlough under the influence of an intoxicating substance is a violation.

N. Malingering (Schedule B)

1. A qualified medical staff person (as defined by the institution's designated health care authority) determines that an inmate has made repeated and frequent complaints at sick call having little or no merit.

2. A qualified medical staff person (as defined by the institution's designated health care authority) determines that an inmate has sought emergency medical treatment not during scheduled sick call when there was no ailment or when there was a minor ailment that was or could have been properly handled at sick call.

3. If an inmate is found guilty of this violation, restitution may be imposed in accordance with Department Regulation No. B-05-003 "Imposition of Restitution."

O. Property Destruction (Schedule B). No inmate shall destroy the property of others or of the state. No inmate shall alter his own property when the result of such alteration is to render the article unsuitable according to property guidelines. Flooding an area and the shaking of doors ("racking down") are not permitted. Standing or sitting on face bowls is a violation. Whether or not the inmate intended to destroy the property and/or the degree of negligence involved may be utilized in defense of the charge. If an inmate is found guilty of this violation, restitution may be imposed in accordance with Department Regulation No. B-05-003 "Imposition of Restitution."

P. Radio/Tape Player Abuse (Schedule A). Radios/tape players must be used in accordance with the Posted Policies of the facility. Violations of Posted Policies regarding

radios/tape players may be processed under this rule. In addition to any sanction that may be imposed by the Disciplinary Officer or the Disciplinary Board, the ranking employee on duty may confiscate the radio/tape player for a period of up to 30 days. For repeated violations, the radio/tape player will be confiscated and disposed of in accordance with Department Regulation No. C-03-007 "Inmate Personal Property List, State Issued Items, etc." The inmate will not be permitted to have a similar item sent to him for one year.

Q. Self-Mutilation (Schedule B). No inmate shall deliberately inflict or attempt to inflict injury upon himself, upon a consenting inmate, or consent to have an injury inflicted upon himself. Tattoos, piercing of any parts of the body, and alterations to teeth are specifically included in this rule. Not included are obvious suicide attempts.

R. Sex Offenses, Aggravated (Schedule B). Carnal copulation by two or more inmates with each other, or by one or more inmates with an implement or animal(s), is not permitted. Two or more inmates who have obviously been interrupted immediately before or after carnal copulation are in violation. The same applies to one or more inmates with an implement or animal(s). Use of the genital organs of one of the inmates, regardless of sex, is sufficient to constitute the offense. Overt sexual activity is not permitted. Inmates may not participate in any sexual activity with each other. No inmate shall make sexual remarks, gestures, or sounds, or make sexual threats in conversation, or by correspondence or phone calls. No inmate shall deliberately expose the genital organs and/or masturbate in view of an employee, visitor, guest, or their families. No inmate shall sexually assault a person by force or threat of force.

S. Theft (Schedule B). No inmate shall steal from anyone. Forgery, a form of Theft, is the unauthorized altering or signing of a document(s) to secure material return and/or special favors or considerations. (The very act of the forgery will constitute proof of the crime. It need not have been successful in its conclusion.) Fraud, a form of Theft, is the deliberate misrepresentation of fact to secure material return and/or special favors or considerations. Any inmate who knowingly submits obviously false information to any employee within the Department of Public Safety and Corrections is guilty of this violation. Lying to the Secretary or Warden on appeal or in any other part of the Administrative Remedy Procedure or in correspondence will also be a violation. Those who file Administrative Remedy Requests that are frivolous or deliberately malicious may be disciplined under this Rule. No inmate shall have stolen items under his immediate control. No inmate shall have institutional property under his immediate control unless he has specific permission; this includes institutional foodstuffs. (Refer to Rule No. 1 for the definition of "area of immediate control".)

T. Unauthorized Area (Schedule A). An inmate must be in the area in which he is authorized to be at that particular time and date or he is in an unauthorized area. No inmate shall go into any housing unit other than that to which he is assigned - this includes standing in the doorway - unless he has permission.

U. Unsanitary Practices (Schedule A). Inmates must not spit or drop litter or cigarette butts anywhere but into a proper receptacle. Inmates must not smoke in unauthorized

areas. Inmates must maintain themselves, their clothing, and their shoes in as presentable a condition as possible under prevailing circumstances. Each inmate is responsible for keeping his bed and bed area reasonably clean, neat, and sanitary. Beds will be made according to the approved Posted Policy at the facility. Inmates must wear shoes/boots and cannot wear shirts that leave the armpits exposed or shorts into the mess hall, or chew gum in the mess hall.

V. Work Offenses (Schedule A). Inmates must perform their assigned tasks with reasonable speed and efficiency. Though inmates have specific job assignments, it may be required that they do work other than what their job assignments require; this work shall also be done cooperatively and with reasonable speed and efficiency. Being present, but not answering at the proper time at work roll call is a violation. A school assignment is considered to be a work assignment for the purposes of this rule.

W. Work Offenses, Aggravated (Schedule B). An inmate who flatly refuses to work or to go out to work, or who asks to go to Administrative Segregation rather than work, is in violation of this rule, as is an inmate who disobeys repeated instructions as to how to perform his work assignment. Hiding out from work or leaving the work area without permission is a violation. Falling far short of fulfilling reasonable work quotas is not permitted. Being absent or late from work roll call without a valid excuse (such as No Duty or callout) is a violation, as is not reporting for Extra Duty assignment. Being late to work (includes being late to school assignment) is a violation. A school assignment is considered to be a work assignment for the purposes of this rule.

X. Disturbance (Schedule B). No inmate shall create or participate in a disturbance. No inmate shall incite any other person to create or participate in a disturbance. A disturbance is considered as 2 or more inmates involving acts of force or violence toward persons or property or acts of resistance to the lawful authority of correctional officers and/or other law enforcement officers under circumstances which present a threat of injury to persons, to property, or to the security and good order of the institution.

Y. General Prohibited Behaviors (Schedule B). The following behaviors which may impair or threaten the security or stability of the unit or well-being of an employee, visitor, guest, inmate or their families are prohibited:

1. strong arming or using threats of violence or perceived harm or reprisal to secure gain or favor for oneself or others;
2. directly or indirectly threatening harm to oneself, (except obvious suicide attempts), another inmate, an employee, visitor, guest or their families;
3. threatening, planning, conspiring, or attempting to commit a violation of the rules of behavior for adult inmates or state or federal laws. Aiding or abetting another inmate involved in committing a violation of the rules, or state or federal laws;
4. engaging in non-professional relationships with an employee, visitor, or guest or other person the inmate may come in contact with while working on outside crews;
5. trafficking in drugs or alcohol, stolen goods, or sexual favors;
6. organizing or participating in a scam or similar behavior;

7. making unsolicited contact or attempted contact with the victims of one's criminal activity;

8. bribing, influencing, or coercing anyone to violate institutional policies, procedures, rules, or state or federal laws, or attempting to do so;

9. giving an employee anything of any value;

10. harassing behaviors conducted via telephone, correspondence, or other activities;

11. spreading rumors about an employee, visitor, guest, or inmate;

12. unapproved use of telephones;

13. purchasing or trading for inmate legal or other services. Performing legal work for another inmate or being in possession of another inmate's legal work when not assigned as a Counsel Substitute or when not approved by the Warden. (It is a violation for any inmate to give or receive anything of value relative to the provision of paralegal services.) An inmate may not perform or be in possession of staff legal work;

14. communicating or visiting with outsiders when not approved or communicating or visiting with any person after being given instructions not to communicate or visit with that person;

15. participating in a loud or boisterous argument or dispute even when a fight does not ensue;

16. participating in, organizing, or advocating a work stoppage;

17. making or attempting to make credit purchases;

18. abusing the Administrative Remedy Procedure;

19. belonging to a gang, advocating membership in a gang, or participating in any gang related activities, including any form of gang or group identification or signaling;

20. no inmate shall misrepresent himself to an employee, visitor, guest or the public;

21. starting or attempting to start a fire and/or attempting to heat substances utilizing electrical/mechanical devices or any other means;

22. failing to cooperate with an investigation;

23. any behavior not specifically enumerated herein that may impair or threaten the security or stability of the unit or well-being of an employee, visitor, guest, inmate or their families may still be the subject of a disciplinary report and all Schedule B penalties except for forfeiture of good time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.) and *Sandin v. Conner*, 115 S.Ct. 2293 (1995).

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of Adult Services, LR 27:

Richard L. Stalder
Secretary

0012#090

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Office of State Police

Safety Devices for Trailers
(LAC 55:I.2323)

In accordance with the emergency provisions of the Administrative Procedures Act, R.S. 49:953 B, and R.S. 32:384 the Office of State Police is declaring an emergency due to the public safety hazard posed by the inadequacy of safety chains to maintain control of a trailer which has become disconnected from the vehicle pulling it. This hazard has resulted in serious injury and death as a result of these disconnected trailers striking other vehicles on Louisiana roads and highways. The Legislature has statutorily provided [at R.S. 32:384(E)] for a safety device which would serve as an alternative to safety chains, but such statute requires the promulgation of a rule by the Office of the State Police which would outline the process for approval of such a device.

The following Rule was inadvertently deleted from a previously promulgated chapter concerning the Weights and Standards Mobile Police Force. The built-in time periods for promulgation of this Rule would create an unacceptable delay in approving such safety device.

The immediate promulgation of this rule would allow for a more timely approval of such a safety device, which in turn, could save lives. The effective date of this Emergency Rule is December 8, 2000, and it shall be in effect for 120 days or until the final rule takes effect through normal promulgation process, whichever occurs first.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 23. Weights And Standards

' 2323 Approval of Safety Devices

A. Pursuant to R.S. 32:384(D), every trailer and semi-trailer with a loaded gross weight capacity of up to 6,000 pounds shall be equipped with safety chains or another approved safety device. This statute requires that the safety device shall be securely attached to the towing vehicle when the trailer or semi-trailer is in motion, and shall be of sufficient strength to hold the trailer behind the towing vehicle in case the primary connection between the two vehicles detaches.

B. The above-mentioned safety device is to be approved by the department, as per R.S.32:384(E). In order to be approved, the device shall be produced, manufactured and/or constructed by a bonded and insured manufacturer of such equipment who carries product liability insurance and regularly produces safety devices of guaranteed quality. The manufacturer shall submit to the department certification from a bonded and insured reputable testing laboratory,

regularly engaged in the testing of such equipment, indicating that the strength capacity of the device submitted for approval and all its components are not less than the manufacturer's indicated breakaway weight or ultimate strength.

C. The device submitted for approval shall meet the following requirements:

1. construction material to consist of steel or other alloy of equal or greater strength;
2. tinsel strength of the unit and all components shall be greater than 6,000 pounds or the gross vehicle weight rating of the vehicle being towed, whichever is greater;
3. the method by which the safety device is attached from the towing vehicle to the towed vehicle shall be independent and not attached to the primary towing device. It should attach to the vehicle's main frame and/or receiver if equipped with a tow package and/or the bumper if the bumper is rated of sufficient strength to meet or exceed the tow rating for the safety device. At no time should the safety device be attached to the trailer hitch ball or shank;
4. the safety device shall meet or exceed the strength standards set by the Society of Automotive Engineers (S.A.E.) for the manufacture, use and application of safety chains, as they relate to the towing of vehicles or trailers.

D. The manufacturer of the submitted device shall:

1. have a certified bond of insurance in the amount of not less than \$1,000,000.
2. be a business in good standing, not delinquent on taxes or other fees.
3. assign a model designation to each variant or design and it shall be unique to the individual model. All changes or alterations to devices shall require a separate application being submitted by the manufacturer.

E. As a prerequisite to licensing, applicants shall submit the following to the department when seeking approval:

1. certificate of inspection from an insured and accredited scientific testing laboratory;
2. pictures and Schematics of the device;
3. certificate of insurance in the amount of not less than \$1,000,000;
4. articles of incorporation or other documents forming a legal company or business;
5. tax identification numbers.

F. The Commander of the Louisiana State Police Transportation and Environmental Safety Section, or his designee, shall have the authority and discretion to approve or deny any and all Safety Devices submitted for approval. The Louisiana State Police, may at its discretion, withdraw or repeal its approval, upon written notice, of any device that may later be determined unsafe or hazardous to the public or as a result of any actions by the manufacturer or its employees in violation of this section. All costs of testing, certification and other related costs shall be borne by the manufacturer/applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:384.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:

Jerry Jones
Undersecretary

0012#062

DECLARATION OF EMERGENCY

Department of Revenue Tax Commission

Ad Valorem Taxation (LAC 61:V.309, 703, 907,
1103, 1307, 1503, 2503, 2705 and 2707)

The Louisiana Tax Commission, at its meeting of December 5, 2000, exercised the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 47:1837, adopted the following additions, deletions and amendments to the Real/Personal Property Rules and Regulations.

This Emergency Rule is necessary in order for ad valorem tax assessment tables to be disseminated to property owners and local tax assessors no later than the statutory valuation date of record of January 1, 2001. Cost indexes required to finalize these assessment tables are not available to this office until late October, 2000. The effective date of this emergency rule is January 1, 2001.

Title 61

REVENUE AND TAXATION

Part V. Ad Valorem Taxation

Chapter 3. Real and Personal Property

§309. Tax Commission Miscellaneous Forms

A. - D. ...

E. Application For ExemptionCReal Estate Taxes may be used for exemption clarification in a case of a protest/appeal to the Tax Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 21:186 (February 1995), amended LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 27:

Chapter 7. Watercraft

§703. TablesC Watercraft

A. Floating EquipmentCMotor Vessels

Floating EquipmentCMotor Vessels				
Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2000	0.992	1	94	.93
1999	1.010	2	87	.88
1998	1.013	3	80	.81
1997	1.022	4	73	.75
1996	1.038	5	66	.69
1995	1.054	6	58	.61
1994	1.092	7	50	.55
1993	1.123	8	43	.48
1992	1.144	9	36	.41
1991	1.158	10	29	.34
1990	1.182	11	24	.28
1989	1.213	12	22	.27
1988	1.278	13	20	.26

B. Floating Equipment/Barges (Nonmotorized)

Floating Equipment/Barges (Nonmotorized)				
Cost Index (Average)		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2000	0.992	1	97	.96
1999	1.010	2	93	.94
1998	1.013	3	90	.91
1997	1.022	4	86	.88
1996	1.038	5	82	.85
1995	1.054	6	78	.82
1994	1.092	7	74	.81
1993	1.123	8	70	.79
1992	1.144	9	65	.74
1991	1.158	10	60	.69
1990	1.182	11	55	.65
1989	1.213	12	50	.61
1988	1.278	13	45	.58
1987	1.333	14	40	.53
1986	1.352	15	35	.47
1985	1.365	16	31	.42
1984	1.385	17	27	.37
1983	1.423	18	24	.34
1982	1.449	19	22	.32
1981	1.517	20	21	.32
1980	1.673	21	20	.33

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:924 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:204 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:479 (March 1998), LR 25:312 (February 1999), LR 26:506 (March 2000), LR 27:

Chapter 9. Oil and Gas Properties

§907. Tables/C Oil and Gas

A. ...

1. Oil, Gas and Associated Wells; Region C/North Louisiana

Table 907.A-1 Oil, Gas and Associated Wells Region C/North Louisiana				
Producing Depths	Cost/C New by depth, per foot		15% of Cost/C New by depth, per foot	
	\$Oil	\$Gas	\$Oil	\$Gas
0 - 1,249 ft.	7.03	14.82	1.05	2.22
1,250 - 2,499 ft.	9.12	10.66	1.37	1.60
2,500 - 3,749 ft.	13.02	11.71	1.95	1.76
3,750 - 4,999 ft.	14.37	14.39	2.16	2.16
5,000 - 7,499 ft.	19.64	19.94	2.95	2.99
7,500 - 9,999 ft.	20.94	29.45	3.14	4.42
10,000 -12,499 ft.	32.28	37.31	4.84	5.60
12,500 -Deeper ft.	N/A	66.84	N/A	10.03

2. Oil, Gas and Associated Wells; Region C/South Louisiana

Table 907.A-2 Oil, Gas and Associated Wells Region C/South Louisiana				
Producing Depths	Cost - New by depth, per foot		15% of Cost - New by depth, per foot	
	\$Oil	\$Gas	\$Oil	\$Gas
0 - 1,249 ft.	17.71	74.46	2.66	11.17
1,250 - 2,499 ft.	44.01	66.77	6.60	10.02
2,500 - 3,749 ft.	48.13	58.71	7.22	8.81
3,750 - 4,999 ft.	36.69	49.01	5.50	7.35
5,000 - 7,499 ft.	40.72	51.42	6.11	7.71
7,500 - 9,999 ft.	44.98	55.24	6.75	8.29
10,000 -12,499 ft.	50.13	66.29	7.52	9.94
12,500 -14,999 ft.	65.39	89.51	9.81	13.43
15,000 -17,499 ft.	100.29	110.25	15.04	16.54
17,500 -19,999 ft.	96.39	141.85	14.46	21.28
20,000 -Deeper ft.	109.25	201.01	16.39	30.15

3. Oil, Gas and Associated Wells; Region 3/Offshore State Waters

Table 907.A-3 Oil, Gas and Associated Wells Region 3/Offshore State Waters*				
Producing Depths	Cost/C New by depth, per foot		15% of Cost/C New by depth, per foot	
	\$Oil	\$Gas	\$Oil	\$Gas
0 - 1,249 ft.	N/A	N/A	N/A	N/A
1,250 - 2,499 ft.	344.56	383.09	51.68	57.46
2,500 - 3,749 ft.	319.28	294.72	47.89	44.21
3,750 - 4,999 ft.	280.71	136.43	42.11	20.46
5,000 - 7,499 ft.	209.68	153.61	31.45	23.04
7,500 - 9,999 ft.	177.27	153.83	26.59	23.07
10,000 -12,499 ft.	163.47	156.03	24.52	23.40
12,500 -14,999 ft.	145.61	174.37	21.84	26.16
15,000 -17,499 ft.	160.91	201.01	24.14	30.15
17,500 -Deeper ft.	462.60	301.20	69.39	45.18

A.4. - B.1. ...

2. Serial Number to Percent Good Conversion Chart

Table 907.B-2 Serial Number to Percent Good Conversion Chart			
Year	Beginning Serial Number	Ending Serial Number	25 Year Life Percent Good
2000	223899	Higher	96
1999	222882	223898	92
1998	221596	222881	88
1997	220034	221595	84
1996	218653	220033	80
1995	217588	218652	76
1994	216475	217587	72
1993	215326	216474	68
1992	214190	215325	64
1991	212881	214189	60
1990	211174	212880	56
1989	209484	211173	52
1988	207633	209483	48
1987	205211	207632	44
1986	202933	205210	40
1985	197563	202932	36
1984	189942	197562	32
1983	Lower	189941	30*
VAR.	900000	Higher	50

* Reflects residual or floor rate.

B.3. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2326.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:480 (March 1998), LR 25:313 (February 1999), LR 26:507 (March 2000), LR 27:

Chapter 11. Drilling Rigs and Related Equipment

§1103. Drilling Rigs and Related Equipment Tables

A.1. Land Rigs

Table 1103.A Land Rigs		
Depth "0" To 7,000 Feet		
Depth (ft.)	Fair Market Value	Assessment
3,000	\$ 135,400	\$ 20,300
4,000	181,900	27,300
5,000	222,600	33,400
6,000	263,300	39,500
7,000	303,800	45,600
Depth 8,000 To 10,000 Feet		
Depth (ft.)	Fair Market Value	Assessment
8,000	\$ 344,300	\$ 51,600
9,000	392,000	58,800
10,000	461,700	69,300
Depth 11,000 To 15,000 Feet		
Depth (ft.)	Fair Market Value	Assessment
11,000	\$ 521,500	\$ 78,200
12,000	613,800	92,100
13,000	700,500	105,100
14,000	786,500	118,000
15,000	870,400	130,600
Depth 16,000 To 20,000 Feet		
Depth (ft.)	Fair Market Value	Assessment
16,000	\$ 954,300	\$ 143,100
17,000	1,046,800	157,000
18,000	1,142,000	171,300
19,000	1,249,000	187,400
20,000	1,391,100	208,700
Depth 21,000 + Feet		
Depth (ft.)	Fair Market Value	Assessment
21,000	\$ 1,533,300	\$ 230,000
25,000 +	2,101,800	315,300

A.2. - C. ...

D. Well Service Rigs Land Only (Good Condition)

Table 1103.D Well Service Rigs		
Engine Rated hp	Fair Market Value	Assessment
220	\$ 91,080	\$ 13,700
300	102,470	15,400
400	130,930	19,600
500 +	170,780	25,600

E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:939 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR

23:205 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:487 (March 1998), LR 25:315 (February 1999), LR 26:508 (March 2000), LR 27:

Chapter 13. Pipelines

§1307. Pipeline Transportation Tables

A. Current Costs for Other Pipelines Onshore

Table 1307.A Current Costs for Other Pipelines Onshore		
Diameter (inches)	Cost Per Mile	15% of Cost Per Mile
2	\$ 83,660	\$ 12,550
4	91,380	13,710
6	104,240	15,640
8	122,240	18,340
10	145,390	21,810
12	173,680	26,050
14	207,110	31,070
16	245,670	36,850
18	289,390	43,410
20	338,250	50,740
22	392,250	58,840
24	451,390	67,710
26	515,670	77,350
28	585,090	87,760
30	659,660	98,950
32	739,370	110,910
34	824,220	123,630
36	914,210	137,130
38	1,009,350	151,400
40	1,109,630	166,440
42	1,215,040	182,260
44	1,325,600	198,840
46	1,441,310	216,200
48	1,562,150	234,320

Note: Excludes river and canal crossings.

B. Current Costs for Other Pipelines Offshore

Table 1307.B Current Costs for Other Pipelines Offshore		
Diameter (inches)	Cost Per Mile	15% of Cost Per Mile
6	\$ 430,670	\$ 64,600
8	438,810	65,820
10	449,260	67,390
12	462,030	69,300
14	477,140	71,570
16	494,550	74,180
18	514,290	77,140
20	536,350	80,450
22	560,740	84,110
24	587,440	88,120
26	616,460	92,470
28	647,810	97,170
30	681,480	102,220
32	717,460	107,620
34	755,780	113,370
36	796,410	119,460
38	839,360	125,900
40	884,630	132,690
42	932,230	139,830
44	982,150	147,320
46	1,034,390	155,160
48	1,088,950	163,340

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:941 (November 1984), LR 12:36 (January 1986), LR 16:1063 (December 1990), amended by the Department of Revenue, Tax Commission, LR 24:489 (March 1998), LR 25:316 (February 1999), LR 26:508 (March 2000), LR 27:

Chapter 15. Aircraft

§1503. Aircraft (Including Helicopters) Table

A. Aircraft

Table 1503 Aircraft (Including Helicopters)				
Cost Index (Average)		Average Economic Life (10 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2000	0.992	1	92	.91
1999	1.010	2	84	.85
1998	1.013	3	76	.77
1997	1.022	4	67	.68
1996	1.038	5	58	.60
1995	1.054	6	49	.52
1994	1.092	7	39	.43
1993	1.123	8	30	.34
1992	1.144	9	24	.27
1991	1.158	10	21	.24
1990	1.182	11	20	.24

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 10:943 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:206 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:316 (February 1999), LR 26:509 (March 2000), LR 27:

Chapter 25. General Business Assets

§2503. Tables Ascertaining Economic Lives, Percent Good and Composite Multipliers of Business and Industrial Personal Property

Business Activity/Type of Equipment	Average Economic Life In Years

Oilfield Rental Tanks	15

B. Cost Indices

Year	Age	National Average 1926 = 100	January 1, 2000 = 100*
2000	1	1084.3	0.992
1999	2	1065.0	1.010
1998	3	1061.8	1.013
1997	4	1052.7	1.022
1996	5	1036.0	1.038
1995	6	1020.4	1.054
1994	7	985.0	1.092
1993	8	958.0	1.123
1992	9	939.8	1.144

1991	10	928.5	1.158
1990	11	910.2	1.182
1989	12	886.5	1.213
1988	13	841.4	1.278
1987	14	806.9	1.333
1986	15	795.4	1.352
1985	16	787.9	1.365
1984	17	776.4	1.385
1983	18	755.8	1.423
1982	19	742.4	1.449
1981	20	709.2	1.517
1980	21	642.8	1.673
1979	22	584.4	1.841
1978	23	534.7	2.012
1977	24	497.1	2.164
1976	25	472.1	2.278
1975	26	444.3	2.421

*Reappraisal Date: January 1, 2000 - 1075.6 (Base Year)

D. Composite Multipliers

Table 2503.D Composite Multipliers 2001 (2002 Orleans Parish)									
Age	3 Yr	5 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr	
1	.69	.84	.89	.91	.93	.94	.96	.97	
2	.49	.70	.80	.85	.88	.91	.94	.96	
3	.34	.53	.68	.77	.81	.86	.91	.94	
4	.20	.35	.55	.68	.75	.81	.88	.92	
5		.24	.45	.60	.69	.76	.85	.90	
6		.21	.35	.52	.61	.72	.82	.89	
7			.28	.43	.55	.68	.81	.88	
8			.25	.34	.48	.62	.79	.88	
9			.23	.27	.41	.56	.74	.86	
10				.24	.34	.50	.69	.82	
11				.24	.28	.44	.65	.80	
12					.27	.38	.61	.78	
13					.26	.33	.58	.77	
14						.31	.53	.75	
15						.28	.47	.70	
16						.27	.42	.66	
17							.37	.61	
18							.34	.55	
19							.32	.49	
20							.32	.46	
21							.33	.43	
22								.42	
23								.42	
24								.43	
25								.46	
26								.48	

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 10:944 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:207 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:490 (March 1998), LR 25:317 (February 1999), LR 26:509 (March 2000), LR 27:

Chapter 27. Guidelines for Application, Classification and Assessment of Land Eligible to be Assessed at Use Value

§2705. Classification

* * *

Beauregard	Jefferson Davis	West Feliciana
Bienville	Plaquemines	
East Feliciana	Vernon	

* * *

AUTHORITY NOTE: Promulgated in accordance with LSA - Constitution of 1974, Article VII, §18, R.S. 47:2302, R.S. 47:2303 and R.S. 47:2304.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:289 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), LR 15:1097 (December 1989), LR 19:212 (February 1993), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 25:318 (February 1999), LR 26:510 (March 2000), LR 27:

§2707. Map Index Table

<p>Table 2707 Map Index Listing of General Soil Maps and Modern Soil Surveys For The State of Louisiana Published By U.S. Dept. of Agriculture, Natural Resources Conservation Service In Cooperation With Louisiana Agricultural Experiment Station</p>			
Parish	Date (General)	Map No. (General)	Date Published or Status (Modern)
* * *			
Winn	Dec., 1970	4-R-16052-A	May, 2000

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 and R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 3:290 (June 1977), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:946 (November 1984), LR 12:36 (January 1986), LR 13:188 (March 1987), LR 13:764 (December 1987), LR 14:872 (December 1988), LR 15:1097 (December 1989), LR 16:1063 (December 1990), LR 17:1213 (December 1991), LR 19:212 (February 1993), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 25:319 (February 1999), LR 26:511 (March 2000), LR 27:

Malcolm B. Price, Jr.
Chairman

0012#034

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Red Snapper Commercial Season

In accordance with the emergency provisions of R.S. 49:953(B), the Administrative Procedure Act, R.S. 49:967 which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use emergency procedures to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the secretary of the department, by the commission in its resolution of December 2, 1999, to close the 2000 fall commercial red snapper season in Louisiana state waters when he is informed that the designated portion of the commercial red snapper quota for the Gulf of Mexico has been filled, or projected to be filled, the secretary hereby declares:

Effective 12 noon, December 8, 2000, the commercial fishery for red snapper in Louisiana waters will close and remain closed until 12 noon, February 1, 2001. Nothing herein shall preclude the legal harvest of red snapper by legally licensed recreational fishermen once the recreational season opens. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell red snapper. Effective with the closure, no person shall possess red snapper in excess of a daily bag limit, which may only be in possession during the open recreational season as described above. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing red snapper taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5.

The secretary has been notified by National Marine Fisheries Service that the commercial red snapper season in Federal waters of the Gulf of Mexico will close at 12 noon, December 8 2000. Closing the season in state waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of this species in the long term.

James H. Jenkins, Jr.
Secretary

0012#006

Rules

RULE

Department of Economic Development Board of Home Inspectors

Home Inspectors (LAC 46:XL.Chapters 1-11)

In accordance with the provisions of the Administrative Procedure Act (R.S. 49:950, et seq.) and the Louisiana Home Inspector Licensing Law (R.S. 37:1471-1489), the Louisiana State Board of Home Inspectors hereby adopts the initial Rules of the Louisiana State Board of Home Inspectors ("LSBHI" or "board"). The board was established by Act 1999, No. 61, Section 2, enacting the Louisiana Home Inspectors Licensing Law ("law") contained in R.S. 37:1471-1489. The board is situated in the Department of Economic Development and domiciled in Baton Rouge. These proposed Rules implement the law by advising all those engaged in the business of inspecting existing residential homes for compensation, persons utilizing such services, and the general public of the legal obligations and responsibilities of residential home inspectors. The Rules promote the public interest through the creation of Standards of Practice and a Code of Ethics for licensed home inspectors. They further elaborate upon board powers and duties and afford citizens the right to request the board to determine the applicability of the law and these Rules to certain situations. The Rules further set forth how the board will administer its affairs and exercise the authority bestowed by the law. The board proposes the Rules in this part of the Louisiana Administrative Code be contained in six Chapters: Chapter 1C General Rules, including the requirements for licensure, applicable fees, and attendant agency enforcement actions; Chapter 3C Standards of Conduct; Chapter 5C Code of Ethics; Chapter 7C Disciplinary Action; Chapter 9C Declaratory Orders; and Chapter 11C Judicial Review. Where these Rules are silent regarding rule making, adjudications, or other board proceedings, the corresponding provisions of the Administrative Procedure Act shall apply. The board will conduct its meetings according to the Open Meetings Law. The books, documents, filings and other materials in possession of the board shall be available according to the Public Records Law and subject to any exceptions in that law.

These initial proposed Rules are the product of multiple board meetings. The board solicited and received input and suggestions from such groups as the Mortgage Lenders Association, the Realtors Association, the Home Builders Association, the Louisiana Chapter of the American Society of Home Inspectors, the American Institute of Architects, the Legal Division of the Department of Economic Development, the Association of Professional Engineering and Land Surveying, the Louisiana Pest Control Association, the Attorney General's Office, as well as several attorneys, individual home inspectors and other interested professionals. The board conducted several public meeting

to receive comments from interested parties and undertook many major revisions.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XL. Home Inspectors

Chapter 1. General Rules

§101. Administrative Procedure Act

This administrative code (Rules of the board) and all revisions and additions to these Rules shall be adopted in accordance with R.S. 49:950 et seq., the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1474.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2738 (December 2000).

§103. Board Appointment; Qualifications; Domicile; Meetings; Quorum; Service of Process; Publication

A. The board shall be composed of one member from each congressional district and appointed by the governor. Future board members will be appointed for a six-year term. Board members may serve only one full six-year term. Each member of the board shall be a United States citizen and a resident of the state, and shall have been actively engaged in the home inspection business on a full-time basis for one year preceding the appointment. The initial board members are required to obtain a license in accordance with the provisions of this Chapter. Thereafter, each member of the board shall be a licensed home inspector. Board members are to be confirmed by the Senate. The board shall be domiciled in Baton Rouge, but may meet in other locations as determined by the board. A majority of the board members shall constitute a quorum of the board for all purposes, including the issuance of licenses and the rulemaking and adjudicative functions of the board.

B. The board chairman shall be the initial agent for service of process. The board shall register the name and address of its agent for service of process as required by law.

C. The board shall publish quarterly a bulletin which shall be the official journal of the board. This bulletin shall contain notice of all applications filed, board agendas, minutes of open meetings, request for declaratory relief, and generally serve as the board's form notice to licensees and the public. All licensees shall receive the bulletin free of charge. Others may subscribe to the bulleting. Until such time as the board begins bulletin publication, notice of board meetings shall be published in the official state journal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1474-1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2738 (December 2000).

§105. Officers; Election; Secretary-Treasurer; Chief Operating Officer; Board Staff; Duties

A. Officers shall be elected by the board at the last meeting of the preceding year, shall serve a term of one year

and may be reelected for additional terms. Officers may be reelected for additional terms. The board shall elect a chairman and a vice chairman.

B. The board shall employ a secretary-treasurer who shall serve as the chief operating officer (COO) of the board and is not to be a member of the board. The COO shall employ other staff as reasonably necessary with approval of the board, and subject to budgetary limitations. In the absence of a contrary board pronouncement, the COO shall serve as the board's appointing authority.

1. The COO shall be the custodian of all documents, filings and records of the board, and may issue process in the board's name.

2. The COO shall be responsible for the day to day operations of the board office and shall prepare and submit a budget for the board's consideration and approval.

3. The COO may have other duties and responsibilities as conferred by the board.

4. The board shall fix the COO's compensation.

C. Until such time as the board employs a secretary-treasurer who serves as the COO, the chairman shall be responsible for the competent discharge of all administrative and related board functions. The chairman shall preside at all meetings, approve the agenda and shall be the official custodian of all records, until such time as a COO is employed.

D. The board shall be represented by the attorney general's office. In lieu of available representation from the attorney general, the board may retain qualified counsel of its choice as according to law and at fees no higher than the schedule provided by the attorney general for special assistant attorneys general. An attorney is qualified if a reasonable portion of their practice and experience is obtained from or devoted to administrative agency practice and procedure or civil litigation. In the event the board needs counsel on a specific area of expertise, an attorney may be retained for that purpose.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2738 (December 2000).

§107. Meetings

A. All meetings shall be held in accordance with the Louisiana Open Meetings Law. Unless otherwise designated, all meetings shall be held at the board's domicile in Baton Rouge.

B. The place, date and time of quarterly meetings are to be published in the official state journal at the beginning of each calendar year.

C. Special meetings shall be held at least two weeks after notification is given to each board member and after 24-hours notice is given to the public. Special meeting agendas are to be posted at the meeting site at least 24 hours prior to the meeting.

D. Notices of all meetings and agendas shall be provided to all persons requesting notice in the same manner as provided to board members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1474-1475, and R.S. 42:7.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2739 (December 2000).

§109. Definitions

ApplicantCa person who seeks to be examined for licensure by the board.

BoardCthe Louisiana State Board of Home Inspectors.

CodeCthe Louisiana Home Inspectors Licensing Administrative Code, promulgated in LAC 46:XL, Home Inspectors.

ComponentCa readily accessible and observable aspect of a system, such as a floor or wall, but not individual pieces such as boards or nails or where many similar pieces make up a component.

Credit HourCone continuing education course classroom hour, comprising at least 50 minutes of instruction.

Home InspectionCa written evaluation of two or more of the following components of a resale residential building:

1. electrical system;
2. exterior and interior components;
3. foundation;
4. heating and cooling systems;
5. plumbing system;
6. roof;
7. structural and foundation system;
8. any other related residential housing system as defined in the standards of practice prescribed by the board.

Home InspectorCa person who, in accordance with the provisions of these Rules, holds himself out to the general public and engages in the business of performing home inspections on resale residential buildings for compensation and who examines any component of a building, through visual means and through normal user controls, without the use of mathematical sciences.

InspectionCto examine readily accessible systems and components of a building in accordance with the board's Standards of Practice, using normal operating controls and opening readily accessible panels.

LawCthe Louisiana Home Inspector Licensing Law, R.S. 37:1471-1489.

License PeriodCone year, expiring on the last day of the month of issuance of the preceding year.

LicenseeCa person who has been issued a license by the board in accordance with the provisions of the law and these Rules.

LSBHCCa acronym for Louisiana State Board of Home Inspectors.

Residential Resale BuildingCa structure intended to be or that is used as a residence and consists of four or less living units, excluding commercial use space or units, and is not for sale for the first time.

RulesCthe body of regulations governing the board's discharge of its duties and responsibilities and prescribing the privileges and obligations of persons desiring to engage in the home inspection business in Louisiana under the Louisiana State Home Inspectors Licensing Law. It may also be referred to as the Louisiana Home Inspectors Licensing Administrative Code.

SystemCa combination of interactive or interdependent components assembled to carry out one or more functions.

Timely FilingCa letter or written communication bearing a United States Post Office mark inscribed with the date a filing or report is due at the board. Any report or materials for filing bearing the canceled Postal Mark received on the next business day following the due date are presumed

timely filed. Any report or materials for filing received after that time may be deemed timely filed only if evidenced by a return receipt or proof of mailing bearing the due date.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:1473 and R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2739 (December 2000).

§111. Licensing

A. Beginning January 1, 2001, no person shall engage in or conduct, or advertise or hold himself out as engaging in or conducting the business of, or acting in the capacity of, a home inspector within the state without first obtaining a license from the board.

B. No license to conduct business as a home inspector shall be issued to a corporation, limited liability company, partnership, firm, or group. The individually licensed inspectors, whether operating a business as a sole proprietorship or working for a company or corporation, shall be ultimately responsible for compliance with these Rules, including, but not limited to: payment of all applicable fees, proper retention of records, and all other obligations as prescribed by these Rules.

C. Licensing shall be governed by §§113 and 115.

D. All legal persons, business associations or related endeavors whose owners, shareholders, members, or other persons holding a proprietary interest in the endeavor who currently or formerly employ a licensed home inspector or an individual whose activities may be subject to the Law or the Rules shall permit the inspector or individual to retain copies of all related records of these activities. They shall be provided to the board upon its request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1477 and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000).

§113. Qualifications for Licensure and Application

A. Applicants must have:

1. attained the age of 18 years;
2. successfully completed high school or its equivalent/GED;
3. passed the required training and licensing examinations, unless exempt under §119.C;
4. paid the appropriate fees;
5. submitted an application for licensure on board prescribed forms which shall conform to these Rules;
6. proof of insurance as required by these Rules; and
7. not had a license revoked or suspended by the home inspector licensing authority of another state.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:1475-1477 and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000).

§115. Licensing Applications; Forms; Terms; Renewals; Inactive Status

A. Initial home inspector license applications are to be made on approved forms supplied by the board. Each applicant shall complete all Chapters of the application. The application shall also be notarized and accompanied by two current passport sized photographs of the applicant. The application shall contain the applicant's Social Security

number, however, the number shall be deleted or blackened out from any public record.

B. All requirements for issuance of a home inspection license, including passing the board approved licensing examination, must be met within one year of the date of application. Applications over one year old will be discarded and a new application and fee will be required.

C. Upon application for licensure of inspectors actively engaged in home inspections prior to January 1, 2001 and upon license renewal of all inspectors, the applicant shall submit a copy of a completed inspection report form. All client information, including name and address, shall be deleted from the form. Reports must comply with §123.

D. Licenses shall be renewed on an annual basis. Licenses shall expire one year after the last day of the month of issuance of the preceding year. Renewal requests shall be made on approved renewal application forms supplied by the board and must be received at least two weeks prior to the expiration date of the current license. Each applicant shall complete all Chapters of the renewal application.

E. Any licensee who fails to timely renew his license may thereafter obtain renewal upon by filing a renewal application and upon paying the appropriate renewal and delinquent fees. The period for delinquent renewal of an expired license shall be limited to the six-month period immediately following the expiration date of the active license. Failure to renew an expired license during such six-month period shall result in the forfeiture of renewal rights and shall require the former licensee to apply as an initial applicant and meet all requirements of an initial applicant. Any inspection during an expiration period is considered a violation and subject to disciplinary action by the board.

F. A licensee may hold inactive status by maintaining license renewals and continuing education requirements, but all insurance requirements are waived provided no home inspections are performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477, and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000).

§117. Fees; Submission of Report Fees; Timeliness of Filings

A. Fees charged by LSBHI are as follows:

1. Application for license	\$200
2. License renewal	\$100
3. Delinquent renewal (for home inspectors only)	\$100
4. Initial qualifying/continuing education provider	\$200
5. Annual renewal for education provider	\$200
6. Filing for additional course offerings	\$50
7. Inspection report	\$5

B. Each home inspection performed by an inspector under this law shall be subject to a \$5 state inspection fee per home inspection. This fee is to be made payable to the LSBHI and is to be remitted monthly in the following manner.

1. A reporting form, approved by the board, must be filed by the fifteenth day of the month following the inspection. The form shall list the inspections performed and total fees due.

2. Payment must be made by the fifteenth day of each month following the inspection. Payment is considered current if post marked by the fifteenth day. When the fifteenth day of any month falls on a legal holiday, reports are due on the next business day. Reports are timely if they bear a United States Post Office mark or cancellation. Reports bearing the postal mark received on the next business day after that time may be deemed timely filed only if evidenced by a return receipt or proof of mailing bearing the due date.

3. Failure to report and/or pay inspection report fees, if fees are due, can result in suspension of license, fine, or both.

4. The board may inspect any licensee's records to insure compliance with the licensee's obligation to submit reports and remit fees. The failure of a licensee to cooperate with the board's reasonable request for said inspection shall constitute a violation of these Rules.

C. The board may charge any additional fee or any additional charge not listed in this schedule as may be provided for under other law or regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477, and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000).

§119. Education /Training and Testing; Initial Licensure; Waiver

A. Beginning January 1, 2000 initial applicants for licensure must pass an LSBHI approved licensing examination, regarding home inspection information, techniques, standards of practice, and code of ethics, except as provided under §119.C.

B. Beginning July 1, 2001 any person filing an initial application for licensure shall present evidence to the board that they have satisfactorily completed at least 120 hours of required home inspection training course(s) by a training provider approved by the board.

1. At least 30, but not more than 40 hours, of the required instruction, shall be actual practical home inspections supervised by a licensed home inspector who is a certified training provider approved by the board. The remainder of the instruction must be classroom hours of home inspection class work approved by the board.

2. Satisfactory completion of course work includes attendance of specified hours and passage of an examination on course contents.

C. For initial licensure only, the above training and licensing examination requirements for initial licensure may be waived by the board through accumulated home inspection field experience as follows:

1. if an applicant demonstrates that he has been actively engaged in the business of conducting home inspections after January 1, 1995 for any consecutive 12 month period before January 1, 2000, a license can be issued without meeting the education/training and testing requirements. To be considered actively engaged, the applicant must provide proof of performing an average of five inspections per month during this 12 month period, which inspections meet or exceed the standards established in the Law and in these Rules. To be eligible, the following requirements must be met:

a. application must be received before July 1, 2001;

b. a copy of a completed inspection report form for an inspection performed after January 1, 1995 and prior to January 1, 2000, bearing the signature of the applicant as the inspector of the home, to serve as proof that the applicant is entitled to the examination waiver, must be submitted with the application;

c. upon request by the board, a list of inspections referred to in Subsection C.1 and/or a list of the clients served, which lists must be certified under oath as performed by the applicant, must be submitted for examination by the Board. The list(s) shall be considered confidential and not subject to disclosure;

d. all other requirements including continuing education for license renewal listed in §119 must be met;

2. for home inspectors beginning their business after January 1, 2000:

a. if initial application is received before July 1, 2001, all requirements of §119.A above will apply;

b. if initial application is received after July 1, 2001, all requirements of §119. A and B will apply;

c. all other requirements, including continuing education for license renewal listed in §119 must be met;

3. the board shall publish notice of all license waiver requests and final actions relating to the requests in its bulletin;

4. the board shall consider and approve or reject all licensure requests for waiver at its board meetings.

D. The board shall adopt, develop, and conduct a licensing examination, which may be administered by a nationally accepted testing service as determined by the board.

E. The board shall appoint an Examination Review Committee ("committee") to review examination material for evaluating and advising the board relative to the adoption and development of licensing examinations.

1. The committee's membership shall be appointed by a majority vote of the board and shall be composed of no less than five persons as follows:

a. the chairman of the board of the LSBHI or his designee;

b. a board member of the LSBHI;

c. a home inspector who is not a member of the board;

d. at least two persons from other Louisiana State Boards or associations who are knowledgeable in the area of education or training for the board or association which they represent.

2. The committee shall meet at least once annually, but may meet as often as may be necessary. The committee shall review all questions, tests or portions of any test under consideration for use by the board, and render a report to the board regarding the appropriateness of any question, test, or any portion thereof for use by the board. If, in the opinion of the committee, the material represents a fair assessment, the committee shall certify the material as suitable to the board for use in evaluating candidates for licensure. The board may then accept or reject the committee's certification at its sole discretion.

3. The board shall not evaluate any candidate on any question, test or any portion thereof or other material that has not been previously certified by the committee and ratified by the board.

4. Committee members shall serve for a term of one year from the date written acceptance of their appointment is conveyed to the board. They may serve until their successors have conveyed written acceptance to the board. Committee members may be re-appointed or removed by a majority vote of the board.

5. No committee member shall be associated with or have ownership interest in a school or training facility which provides education, testing or field training in the area of home inspection.

6. The board vests each member of the committee with complete authority to enter into confidentiality agreements which prohibit the public dissemination of information pertaining to committee review of questions or materials, including any questions or materials certified as proprietary by the person or facility submitting them for evaluation. Any person or testing facility submitting evaluation materials for review, certification, or otherwise, conveys and assigns to the board a right of limited use and license solely for use in the certification process and any related inquiry.

7. The committee may advise the board regarding the retention of experts to assist the committee in its performance of duties. The board may retain such experts at its expense.

8. The board shall hold harmless committee members for all actions and decisions made relative to the performance of their duties, except for a knowing violation of any confidentiality agreement entered into by such member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477, R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2741 (December 2000).

§121. Continuing Education

A. As a condition of license renewal, an inspector must certify completion of at least 20 hours of instruction during the previous licensing period, in courses approved by the board. Board-approved training providers may be given credit for course preparation and other activities as sanctioned by the board in lieu of the continuing education requirements. The board shall fix the amount of course credit to be received upon application by an instructor. No more than 10 hours of continuing education credit may be carried over into the following year.

B. Repetition of Courses

1. The same continuing education course may be taken only once for continuing education credit during any three year period, unless otherwise approved by the board.

2. For each license period the board may specify mandatory subject matter for one course, such course to be not less than two nor more than four credit hours. The remaining courses shall be elective courses covering subject matter to be chosen by the licensee and meeting all other criteria specified in this chapter.

3. Each course shall comprise of at least one credit hour.

C. Attendance Requirements

1. In order to receive credit for completing a continuing education course, a licensee must attend at least 90 percent of the scheduled classroom hours for the course, regardless of the length of the course.

D. Denial or Withdrawal of Credit

1. The board shall deny continuing education credit claimed by a licensee, and shall withdraw continuing education credit previously awarded by the board to a licensee if:

a. the licensee unintentionally provided incorrect or incomplete information to the board concerning continuing education or compliance with this Section; or

b. the licensee was mistakenly awarded continuing education credit because of an administrative error; or

c. the licensee failed to comply with the attendance requirement established by Paragraph C of this Section.

2. When continuing education credit is denied or withdrawn by the board under Subsection D of this Section, the licensee remains responsible for satisfying the continuing education requirement. Any license may be suspended until proof of compliance is submitted.

E. It is the duty of every licensee to provide proof of compliance with continuing education requirements on a timely basis. In order to receive credit from the board for completion of continuing education courses under this Section, proof of compliance must be submitted on forms approved by the board and prepared by board approved training providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1477, and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000).

§123. Home Inspection Reports; Consumer Protection

A. All home inspection reports shall comply with all requirements as set forth in the Standards of Practice, these Rules and the Law.

B. A copy of the Standards of Practice and Code of Ethics of Home Inspectors shall be provided to every client or his authorized agent, before services are rendered. When this is not practical, copies shall be attached to every completed home inspection report.

C. The board may review any home inspection report and require any change(s) as necessary to comply with Subsections A and B above.

D. Refusal to comply with this Section shall constitute cause for disciplinary action resulting in license revocation, suspension, fine or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000).

§125. Home Inspectors Record Keeping; Inspection; Production Retention

A. It shall be the responsibility of the licensed home inspector to maintain adequate records at all times in compliance with the provisions of the board's Rules.

B. Records shall be made available, upon reasonable request, to the board's representatives during normal business hours. The licensee shall have the right for a board production request to be made in writing on board stationery. The failure of a licensee to maintain adequate records or the failure to furnish copies of such records within 72 hours notice shall constitute a violation of this Rule.

C. Records shall be kept for three years from the day the inspection report was provided to the client. Any report

questioned by the board or any legal entity shall be retained for a period of five years from the date the inquiry was received by the licensee.

D. To facilitate compliance with record keeping requirements of this Section, copies of all home inspector's reports performed by a licensee shall be provided to the licensee upon any separation from employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000).

§127. Insurance

A. All active, practicing licensed home inspectors shall carry errors and omissions insurance as well as general liability insurance.

1. The LSBHI will establish a group insurance program for errors and omissions coverage and shall establish the terms and conditions of coverage, including but not limited to the permissible deductibles and permissible exemptions. Licensees shall have the option of obtaining errors and omissions insurance independently that complies with the coverage requirement established by the board.

2. Each licensee shall be notified of the required terms and conditions of coverage for the annual policy at least 30 days prior to the annual renewal date. If the required terms and conditions have not been modified from the previous year's policy, the terms and conditions for the previous year shall apply and the licensee shall not be so notified.

B. Each licensee who chooses not to participate in the group insurance program approved by the board shall file with the board a certificate of coverage showing compliance with the required terms and conditions of insurance coverage by the annual license renewal date. This certificate, notice of cancellation, renewal or suspension shall be provided to the board directly by the insurance company.

C. Insurance coverage requirements are as follows:

1. errors and omissions insurance:
 - a. minimum coverage C\$300,000 per year;
 - b. maximum deductible C\$2,000;
2. general liability insurance:
 - a. minimum coverage C\$300,000 per year;
 - b. maximum deductible C\$2,000.

D. Every licensee shall provide to his clients or the board's representatives proof of all insurance in force upon request.

E. Upon cancellation of any insurance where a gap in coverage may occur, the licensee shall immediately inform the board. When replacement coverage is obtained, evidence shall be immediately transmitted to the board.

F. Failure to maintain insurance is grounds for license revocation, non-renewal or other disciplinary action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1477 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2743 (December 2000).

§129. Reciprocity

A. If an applicant is licensed as a home inspector in another state which laws, rules and testing standards are similar to, but in no case less stringent than, those of the LSBHI, and the applicant is in good standing with that licensing authority, then that state's license may be accepted

as evidence of the applicant's experience and training. However, the applicant shall have satisfactorily completed an examination from a testing agency approved by the board, and shall pay all applicable fees as well as comply with the Louisiana Home Inspector Licensing Law and LSBHI administrative code. Applicants seeking reciprocity shall certify under oath that they are in good standing in any state where a license is held. The board may make inquiries of the licensing authority concerning the applicant and respond to similar requests from other licensing authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1484.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2743 (December 2000).

§131. Exemptions from Licensure

A. Certain individuals, when acting within the scope of their profession or license, are exempted from being required to hold a valid LSBHI license when performing inspections within their licensed profession or trade. Those individuals are:

1. persons licensed by the state as professional engineers when acting within the scope of their license;
2. persons licensed by the state as architects when acting within the scope of their license;
3. persons licensed by the state or any political subdivision as electricians when acting within the scope of their license;
4. persons licensed by the state or any political subdivision as plumbers when acting within the scope of their license;
5. persons licensed by the state or any political subdivision as heating and air conditioning technicians when acting within the scope of their license;
6. persons licensed by the state as real estate brokers or real estate sales persons when acting within the scope of their license;
7. persons licensed by the state as real estate appraisers, certified general appraisers, or residential real estate appraisers when acting within the scope of their license;
8. persons licensed by the state as pest control operators when acting within the scope of their license;
9. persons regulated by the state as insurance adjusters when acting within the scope of their profession;
10. persons who are employed as code enforcement officials by the state or any political subdivision when acting within the scope of their employment by such governmental entity;
11. persons licensed by the state or any political subdivision as contractors when acting within the scope of their license;
12. persons certified by the state or any political subdivision as certified energy raters when acting within the scope of their certification.

B. The board may consider and adopt additional exemptions by rule reasonably necessary to clarify and implement the exemptions in the Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1483.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2743 (December 2000).

§133 Report of Address Changes

A. Every licensee shall report any change in office address, residence address, office phone, or residence phone to the board, in writing, within 15 days of such change. The board shall acknowledge any change, in writing, and shall conform all records accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000).

§135 Display of License

A. Home inspectors shall be issued both a picture I.D. license and a license certificate.

B. The inspector is to have on their person the picture I.D. license when performing inspections. The picture I.D. license shall be produced upon request of interested parties when conducting an inspection.

C. A license certificate shall be displayed at the licensee's place of business. If the licensee operates from home, it is to be kept in a readily accessible file.

D. All correspondence, inspection reports and advertisements shall identify the licensee with the term "licensed home inspector" along with the license number of the inspector.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000).

§137 LSBHI Funds; Deposits and Disbursements; Board Members; Reimbursals

A. All board funds received shall be paid to LSBHI through its secretary-treasurer and deposited to the board's operating account established for that purpose. Disbursements made by LSBHI shall be signed by the chairman and the secretary-treasurer. In absence of the chairman or the secretary-treasurer, the vice chairman may sign all documents with the remaining authorized signatory.

B. All fees and moneys received by the board shall be used solely to effectuate the provisions of the law and these Rules. Such use may include, but is not limited to expenditures necessary for office fixtures, equipment and supplies and all other charges necessary to conduct the business of LSBHI.

C. No board member shall receive a per diem but shall be reimbursed for actual expenses incurred when attending a meeting of LSBHI or any of its committees and for the time spent on behalf of LSBHI on official business not to exceed ten days in any one month. Each board member shall be reimbursed upon approval of the board as evidenced by voucher for all necessary travel and incidental expenses incurred in carrying out the provisions of the rules of the board. No reimbursement, other than for lawful travel and mileage shall be allowed for attending any regular or special board meetings or for board related activities outside Louisiana. Reimbursement for time spent may be allowed if the board member is engaged in board business in Louisiana for the following, non-exclusive activities: participation as an appointed member of a special investigating entity; inspecting records of persons subject to the law and these Rules; and reviewing and processing applications for licensure unconnected with preparation for a board meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1474-1475, and R.S. 37:1489.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000).

§139. Prohibited Acts: Penalties and Costs

A. The board may suspend or revoke any license, or censure, fine, or impose probationary or other restrictions on any licensee for good cause shown which shall include but not be limited to the following:

1. conviction of a felony or the entering of a plea of guilty or nolo contendere to a felony charge under the laws of the United States or any other state;
2. deceit or misrepresentation in obtaining a license;
3. providing false testimony before the board;
4. efforts to deceive or defraud the public;
5. professional incompetence or gross negligence;
6. rendering, submitting, subscribing, or verifying false, deceptive, misleading, or unfounded opinions or reports;
7. violating any rule or regulation adopted by the board or any provision of these Rules or the law;
8. aiding or abetting a person to evade the provisions of this Chapter or knowingly combining or conspiring with an unlicensed person with the intent to evade the provisions of these Rules or the law;
9. violating any Standard of Conduct adopted by the board;
10. engaging in conduct or advertising or holding oneself out as engaging in or conducting the business or acting in the capacity of a home inspector without possessing a valid license;

11. falsely representing oneself as being the holder of a valid license by using the title "licensed home inspector" or any title, designation, or abbreviation deceptively similar or likely to create the impression that such person is licensed.

B. Violators of any of the provisions of these Rules or the law may be fined by the LSBHI in an amount not to exceed \$1,000 per each separate violation.

C. Revocation of a license as a result of disciplinary action by the board may prohibit the re-issuance of a license to such licensee. No license may be granted or renewed until any and all fines have been paid. The license of an applicant whose license has been revoked may be reissued by the board upon the successful completion by the applicant of the required examination and upon competent evidence of completion of 20 hours of continuing education as prescribed by the board. Licensees under probation may have their licenses renewed so long as the board certifies that the licensee is in compliance with the probationary terms and conditions.

D. The board, as a probationary condition or as a condition of a revocation or suspension, may require a licensee to pay all costs of the board proceedings, including but not limited to those expenses related to the services of investigators, stenographers, attorney, and any court, agency or board costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1486-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000).

§141. Cease and Desist Orders; Injunctive Relief

A. In addition to or in lieu of the criminal penalties and administrative sanctions provided for in the law and these Rules, the board may issue an order to any person engaged in any activity, conduct or practice constituting a violation of any provision of these Rules an order to cease and desist from such activity, conduct or practice. Such order shall be issued in the name of the state and under the official seal of the board.

B. If the person directed by an LSBHI cease and desist order does not cease and desist the prohibited activity, conduct, or practice within two days of service of such order by certified mail, the board may seek a writ of injunction in any court of competent jurisdiction and proper venue enjoining such person from engaging in the activity, conduct or practice, and recovery of all related costs of the type described in §139.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1488.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2745 (December 2000).

Chapter 3. Standards of Practice

§301. Minimum Standards

A. This Chapter sets forth the minimum Standards of Practice required of licensed home inspectors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2745 (December 2000).

§303. Definitions

A. The definitions in §109 are incorporated into this Chapter by reference. The following definitions apply to this Chapter:

Automatic Safety ControlCdevices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.

Central Air ConditioningCa system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.

Cross ConnectionAny physical connection or arrangement between potable water and any source of contamination.

Dangerous or Adverse SituationsCsituations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment.

DescribeCreport in writing a system or component by its type, or other observed characteristics, to distinguish it from other components used for the same project.

DismantleCto take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.

EnterCto go into an area to observe all visible components.

Functional DrainageCa drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.

Functional FlowCa reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.

InspectCto examine readily accessible systems and components of a building in accordance with the Standards of Practice, using normal operating controls and opening readily openable access panels.

InstalledCattached or connected such that the installed item requires tools for removal.

Normal Operating ControlsC homeowner operated devices such as a thermostat, wall switch, or safety switch.

ObserveCthe act of making a visual examination.

On-Site Water Supply QualityCwater quality based on the bacterial, chemical, mineral and solids contents of the water.

On-Site Water Supply QuantityCwater quantity based on the rate of flow of water.

Operate—to cause systems or equipment to function.

Readily Openable Access PanelCa panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components.

Representative NumberCfor multiple identical components such as windows and electrical outlets - one such component per room. For multiple identical exterior components Cone such component on each side of the building.

Roof Drainage SystemsCgutters, downspouts, leaders, splash blocks, scuppers, and similar components used to carry water off a roof and away from a building.

Shut DownCa piece of equipment or a system is shut down when it cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system.

Solid Fuel Heating DeviceCany wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, wood stoves (room heaters), central furnaces, and combinations of these devices.

Structural ComponentCa component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).

Technically ExhaustiveCan inspection involving the extensive use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.

Under Floor Crawl SpaceCthe area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2745 (December 2000).

§305. Purpose and Scope

A. Home inspections performed according to this Chapter shall provide the client with a better understanding of the property conditions, as observed at the time of the home inspection.

B. Home inspectors shall:

1. provide the client with a written pre-inspection contract, whenever possible, which shall:

a. state that the home inspection is to be done in accordance with the Standards of Practice of the Louisiana State Board of Home Inspectors;

b. describe what inspection services will be provided and their cost;

c. state that the inspection is limited to only those systems or components agreed upon by the client and the inspector; and

d. contain copies of the Standards of Practice and Code of Ethics;

2. observe and inspect readily visible and accessible installed systems and components listed in this Chapter, and/or as contractually agreed upon;

3. submit a written report to the client which shall:

a. describe those systems and components specified to be described in §§311 through 329, and/or as contractually agreed upon;

b. state which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;

c. state any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling; and

d. state the name, license number, and contain the signature of the person conducting the inspection.

C. This Chapter does not limit home inspectors from:

1. reporting observations and conditions or rendering opinions of items in addition to those required in Subsection B of this Rule; or

2. excluding systems and components from the inspection if requested by the client, and so stated in the written contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000).

§307. General Limitations

A. Home inspections done in accordance with this Chapter are visual and are not technically exhaustive.

B. This Chapter applies to residential resale buildings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000).

§309. General Exclusions

A. Home inspectors are not required to report on:

1. life expectancy of any component or system;
2. the causes of the need for a repair;

3. the methods, materials, and costs of corrections;
4. the suitability of the property for any specialized use;
5. compliance or non-compliance with codes, ordinances, statutes, regulatory requirements, special utility, insurance or restrictions;
6. the market value of the property or its marketability;
7. the advisability or inadvisability of purchase of the property;
8. any component or system that was not inspected;
9. the presence or absence of pest such as wood damaging organisms, rodents, or insects;
10. cosmetic items, underground items, or items not permanently installed;
11. hidden or latent defects; or
12. items not visible for inspection.

B. Home inspectors are not required to:

1. offer warranties or guarantees of any kind;
2. calculate the strength, adequacy, or efficiency of any system or component;
3. enter any area or perform any procedure that may damage the property or its components or be dangerous to the home inspector or other persons;
4. operate any system or component that is shut down or otherwise inoperable;
5. operate any system or component that does not respond to normal operating controls;
6. disturb insulation, move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
7. determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to toxins such as asbestos, radon and lead, carcinogens, noise, contaminants in the building or in soil, water, and air;
8. determine the effectiveness of any system installed to control or remove suspected hazardous substances;
9. predict future condition, including but not limited to failure of components;
10. project operating costs of components;
11. evaluate acoustical characteristics of any system or component; or
12. inspect special equipment or accessories that are not listed as components to be inspected in this Chapter.

C. Home inspectors shall not:

1. offer or perform any act or service contrary to law;
2. report on the market value of the property or its marketability;
3. report on the advisability or inadvisability of purchase of the property;
4. report on any component or system that was not inspected;
5. report on the presence or absence of pests such as wood damaging organisms, rodents or insects. However, the home inspector may advise the client of damages to the building and recommend further inspection by a licensed wood destroying insect inspector;
6. at the time of the inspection or for a reasonable time thereafter, advertise or solicit to perform repair services or any other type of service on the home upon which he has performed a home inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1478.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000).

§311. Structural Components

A. The home inspector shall inspect structural components including:

1. foundation;
2. floors;
3. walls;
4. columns or piers;
5. ceilings; and
6. roofs.

B. The home inspector shall describe the type of:

1. foundation;
2. floor structure;
3. wall structure;
4. columns or piers;
5. ceiling structure; and
6. roof structure.

C. The home inspector shall:

1. probe structural components only where deterioration is visible, except where probing would damage any surface;

2. enter under floor crawl spaces, basements, and attic spaces, except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected;

3. report the methods used to inspect under floor crawl spaces and attics; and

4. report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2747 (December 2000).

§313. Exterior

A. The home inspector shall inspect:

1. wall cladding, flashings and trim;
2. entryway doors and a representative number of windows;
3. garage door operators;
4. decks, balconies, stoops, steps, areaways, porches, and applicable railings;
5. eaves, soffits, and fascias; and
6. vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.

B. The home inspector shall:

1. describe wall cladding materials;
2. operate all entryway doors and a representative number of windows;
3. operate garage doors manually or by using permanently installed controls for any garage door operator; and
4. report whether or not any garage door operator will automatically reverse or stop and if so equipped with said safety feature.

C. The home inspector is not required to inspect:

1. storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;

2. fences;

3. presence of safety glazing in doors and windows;

4. garage door operator remote control transmitters;

5. geological conditions;

6. soil conditions;

7. recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment or athletic facilities);

8. detached buildings or structures;

9. presence or condition of buried fuel storage tanks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2747 (December 2000).

§315. Roofing

A. The home inspector shall inspect:

1. roof coverings;

2. rood drainage systems;

3. flashings;

4. skylights, chimneys, and roof penetrations; and

5. signs of leaks or abnormal condensation on building components.

B. The home inspector shall:

1. describe the type of roof covering materials; and

2. report the methods used to observe the roofing.

C. The home inspector is not required to:

1. walk on the roofing; or

2. inspect attached accessories including but not limited to solar systems, antennae, and lightning arrestors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2747 (December 2000).

§317. Plumbing

A. The home inspector shall inspect:

1. interior water supply and distribution systems, including piping materials, supports, insulation; fixtures and faucets; functional flow; leaks; and cross connections;

2. interior drain, waste and vent system, including: traps, drain, waste, and vent piping; piping supports and pipe insulation; leaks, and functional drainage;

3. hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues and vents;

4. fuel storage and distribution systems including interior fuel storage equipment, supply piping, venting, and supports; leaks; and

5. sump pumps.

B. The home inspector shall describe:

1. water supply and distribution piping materials;

2. drain, waste and vent piping materials;

3. water heating equipment; and

4. location of main water supply shutoff device.

C. The home inspector shall operate all plumbing and plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance or winterized equipment.

- D. The home inspector is not required to:
1. state the effectiveness of anti-siphon devices;
 2. determine whether water supply and waste disposal systems are public or private;
 3. operate automatic safety controls;
 4. operate any valve except water closet flush valves, fixture faucets, and hose faucets;
 5. inspect:
 - a. water conditioning systems;
 - b. fire and lawn sprinkler systems;
 - c. on-site water supply quantity and quality;
 - d. on-site waste disposal systems;
 - e. foundation irrigation systems;
 - f. spas;
 - g. swimming pools;
 - h. solar water heating equipment; or
 - i. inspect the system for proper sizing, design, or use of proper materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2747 (December 2000).

§319. Electrical

- A. The home inspector shall inspect:
1. service entrance conductors;
 2. service equipment, ground equipment, main overcurrent device, and main and distribution panels;
 3. amperage and voltage ratings of the service;
 4. branch circuit conductors, their overcurrent devices, and the compatibility of the ampacities and voltages;
 5. the operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
 6. the polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
 7. the operation of ground fault circuit interrupters; and
 8. smoke detectors.
- B. The home inspector shall describe:
1. service amperage and voltage;
 2. service entry conductor materials;
 3. service type as being overhead or underground; and
 4. location of main and distribution panels.
- C. The home inspector shall report any observed aluminum branch circuit wiring.
- D. The home inspector shall report on the presence or absence of smoke detectors, and operate their test function, if accessible, except when detectors are part of a central system.
- E. The home inspector is not required to:
1. insert any tool, probe, or testing device inside the panels;
 2. test or operate any overcurrent device except ground fault circuit interrupters;
 3. dismantle any electrical device or control other than to remove the dead front covers of the main and auxiliary distribution panels; or
 4. inspect:
 - a. low voltage systems;

- b. security system devices, heat detectors, or carbon monoxide detectors;
- c. telephone, security, cable TV, intercoms, or other ancillary wiring that is not part of the primary electrical distribution system; or
- d. built-in vacuum equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2748 (December 2000).

§321. Heating

- A. The home inspector shall inspect permanently installed heating systems including:
1. heating equipment;
 2. normal operating controls;
 3. automatic safety controls;
 4. chimneys, flues, and vents, where readily visible;
 5. solid fuel heating devices including fireplaces;
 6. heat distribution systems including fans, pumps, ducts and piping, with associated supports, insulation, air filters, registers, radiators, fan coil units, convectors; and
 7. the presence of an installed heat source in each room.
- B. The home inspector shall describe:
1. energy source; and
 2. heating equipment and distribution type.
- C. The home inspector shall operate the systems using normal operating controls.
- D. The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.
- E. The home inspector is not required to:
1. operate heating systems when weather conditions or other circumstances may cause equipment damage;
 2. operate automatic safety controls;
 3. ignite or extinguish solid fuel fires; or
 4. inspect:
 - a. the interior of flues;
 - b. fireplace insert flue connections;
 - c. humidifiers;
 - d. electronic air filters; or
 - e. the uniformity or adequacy of heat supply to the various rooms.
- AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.
- HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2748 (December 2000).
- ### §323. Central Air Conditioning
- A. The home inspector shall inspect:
1. central air conditioning systems including:
 2. cooling and air handling equipment;
 3. normal operating controls;
 4. fans, pumps, ducts, and piping, with associated supports, dampers, insulation, air filters, registers, fancoil units; and
 5. the presence of an installed cooling source in each room.
- B. The home inspector shall describe:
1. energy sources; and
 2. cooling equipment type.

C. The home inspector shall operate the systems using normal operating controls.

D. The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.

E. The home inspector is not required to:

1. operate cooling systems when weather conditions or other circumstances may cause equipment damage;
2. inspect non-central air conditioners; or
3. inspect the uniformity or adequacy of cool-air supply to the various rooms.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2748 (December 2000).

§325. Interiors

A. The home inspector shall inspect:

1. walls, ceiling, and floors;
2. steps, stairways, balconies, and railings;
3. countertops and a representative number of cabinets and drawers; and
4. a representative number of doors and windows.

B. The home inspector shall:

1. operate a representative number of windows and interior doors; and
2. report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.

C. The home inspector is not required to inspect:

1. paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors;
2. carpeting; or
3. draperies, blinds, or other window treatments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000).

§327. Insulation and Ventilation

A. The home inspector shall inspect:

1. insulation and vapor retarders in unfinished spaces;
2. ventilation of attics and foundation areas;
3. kitchen, bathroom, and laundry venting system; and
4. the operation of any readily accessible attic ventilation fan, and, when temperature permits, the operation of any readily accessible thermostatic control.

B. The home inspector shall describe:

1. insulation in unfinished spaces; and
2. absence of insulation in unfinished space at conditioned surfaces.

C. The home inspector is not required to report on:

1. concealed insulation and vapor retarders; or
2. venting equipment that is integral with household appliances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000).

§329. Built-in Kitchen Appliances

A. The home inspector shall inspect and operate the basic functions of the following kitchen appliances:

1. permanently installed dishwasher; through its normal cycle;
2. range, cook top, and permanently installed oven;
3. trash compactor;
4. garbage disposal;
5. ventilation equipment or range hood; and
6. permanently installed microwave oven.

B. The home inspector is not required to inspect:

1. clocks, timers, self-cleaning oven function, or thermostats for calibration or automatic operation;
2. non built-in appliances such as clothes washers and dryers; or
3. refrigeration units such as freezers, refrigerators and ice makers.

C. The home inspector is not required to operate:

1. appliances in use; or
2. any appliance that is shut down or otherwise inoperable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000).

Chapter 5. Code of Ethics

§501. Code of Ethics

A. Licensees shall discharge their duties with fidelity to the public and to their clients, and with fairness and impartiality to all.

B. Opinions expressed by licensees shall only be based on their education, experience and honest convictions.

C. A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client's designated representative unless an unsafe condition is discovered.

D. No licensee shall accept compensation or any other consideration from more than one interested party for the same service without consent of all interested parties.

E. No licensee shall accept commissions or allowances from other parties dealing with the client in connection with the inspection report.

F. No licensee shall offer commissions, fees or payment to other parties dealing with the client for the referral of the inspector to the client for an inspection.

G. No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.

H. Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest in a business that may affect the client.

I. No licensee shall allow his or her interest in any business to affect the quality of results of the inspection work that the licensee may be called upon to perform.

J. Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

K. Licensees shall bear a good reputation for honesty, trustworthiness and integrity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000).

Chapter 7. Disciplinary Actions

§701. Definitions

A. The following definitions are used in this Chapter. The definitions in the law and these Rules are incorporated into Chapter 4, Chapter 5, and Chapter 6 by reference.

File or Filing To place the document or item to be filed into the care and custody of the board. The board shall note thereon the filing date. All documents filed with the board, except exhibits, shall be filed in duplicate on letter size 8 1/2" by 11" paper.

Party The board, the licensee, and/or any other person who has an administratively cognizable interest in a particular board proceeding.

Service or Serve Personal delivery or, unless otherwise provided by law or rule, delivery by certified mail through the United States Postal Service, return receipt requested, addressed to the person to be served at his or her last known address. A Certificate of Service by the person making the service shall be appended to every document requiring service under these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000).

§703. Complaints

A. Anyone who believes that a licensee is or has been engaged in any conduct proscribed by the Law or these Rules, may file a written complaint with the board against that licensee. The board may, upon its own motion and upon passing by a vote of the majority of all board members, initiate an investigation of a licensee, person or company, based upon a complaint or its own knowledge.

B. An information memorandum approved by the board containing instructions for filing a complaint shall be mailed to anyone requesting such information from the board.

C. The complaint shall specifically identify the licensee and describe the conduct complained about.

D. Supporting information shall be included to justify the complaint. Supporting information shall refer to specific violations of the board's Rules or of the law. If the complaint involves items included in the Standards of Practice that the licensee did not observe or report, a list of those items must be submitted with the complaint. This information may be provided by the complainant, an architect, a professional engineer, a licensed contractor, another licensed home inspector, or any other interested party. A copy of any documentation supporting the allegations in the complaint, including but not limited to, the contract agreement, the inspection report, and any records made by any other consultant, shall be included with the complaint.

E. The complaint shall be in writing, signed by the complainant, and dated. The complaint shall include the complainant's mailing address, a daytime phone number at which the complainant may be reached, and the street address of the structure made the basis of the complaint.

F. The board shall not consider services that are under the jurisdiction of other regulatory agencies or licensing boards, such as, termite inspections, appraisals, or services rendered by licensed architects, engineers, or general contractors, unless the persons rendering those services are licensed home inspectors or hold themselves out as a licensed home inspector.

G. The board has no jurisdiction over persons who are exempted by the law or other provisions of these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1483, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000).

§705. Special Investigating Entity

A. The board shall appoint a committee, board member, employee, or other qualified licensee to verify whether the allegations listed in complaints may indicate violations of these Rules, the Standards of Practice, Code of Ethics or the law. This committee, board member, employee or licensee shall be referred to as the "Special Investigating Entity." Between board meetings, the chairman may appoint a special investigating entity to commence review of a complaint. This appointment shall be ratified by the board in executive session at its next meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000).

§707. Investigations; Special Investigating Entity; Board Review

A. Upon receipt of a complaint conforming to this Chapter, the board shall assign a docket number to the complaint and refer it to a special investigating entity.

B. A copy of the complaint shall be served upon the home inspector in accordance with Section .707.D. The inspector shall submit a written response to the special investigating entity within two weeks after receipt of the copy of the complaint.

C. The special investigating entity shall make an investigation of the charges. Upon evaluating the complaint and the response of the inspector, it shall prepare a report of its findings within 30 days of the completion of the investigation, and file the report with the board.

D. A copy of the Special Investigating Entity's report shall be mailed to the complainant and to the inspector.

E. The report shall state that the complaint either has or lacks sufficient evidence to support the allegations in the complaint.

F. If the report states that the allegations lack sufficient evidence, the special investigating entity shall:

1. advise the complainant in writing that the evidence was insufficient to support the allegations in the complaint;

2. advise the complainant that the complaint may be reviewed by the board to determine whether the finding of the special investigating entity is correct;

3. advise the complainant that the complainant must make a written request for the review by the board within 15 days of mailing and must set forth specific reasons why the special investigating entity's determination is incorrect;

4. if the complainant makes a written request for review by the board, the board shall review the report and the complainant's documentation. If the board finds that the allegations are unsupported by the evidence, the special investigating entity shall advise the complainant in writing that the board has concurred with the special investigating entity's conclusion that the complaint lacks sufficient evidence to support the allegations in the complaint.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000).

§709 Disciplinary Hearing; Procedure

A. If the special investigating entity's report or the board's review finds that there is sufficient evidence to support the allegations in the complaint, the board shall fix a time and place for a disciplinary hearing and give notice to the licensee and complainant. The disciplinary hearing shall be held in accordance with the adjudication provisions of the Administrative Procedure Act.

B. In all contested case hearings before the board, the chairman of the board shall serve as presiding officer. In the absence of the chairman, the vice chairman shall serve as presiding officer, or a presiding officer shall be elected by the board.

C. No board member, committee or employee serving as part of the special investigating entity shall participate in the consideration or decision of the matter or confection of the board's decision, order or opinion. However, any member of the special investigating entity may prosecute the case against the licensee or respondent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000).

§711. Pre-Hearing Resolution

A. The board's staff and the home inspector may attempt to resolve the complaint by means of a consensual agreement. Such consensual agreement may impose upon the licensee a penalty penalties or conditions which include, but are not limited to, requiring the licensee to take training or educational courses, placing the inspector on probation, issuing a letter of reprimand, imposing fines of up to \$1,000 per separate violation, and/or suspending or revoking the inspector's license, all as authorized in the law or these Rules.

B. The proposed consent agreement shall then be presented to the board at its next meeting. The board may either accept the consent agreement as written, modify the agreement and send it back to the licensee for acceptance, or reject the consent agreement. Accepted agreements shall be filed in the record of the docket.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000).

§713. Hearing Procedure; Decision; Notice; Effective Date; Rehearing

A. If no consent agreement is reached, the matter shall be heard by the board at its next regularly scheduled board meeting or special meeting which is to be held not less than 10 days prior to giving notice to all interested parties. The board shall consider the law and the evidence presented or in the record and base its decision accordingly.

B. No attorney, board member or employee serving as the prosecuting officer for the board staff shall participate in the consideration or formulation of the board's decision, any opinion related thereto, or any procedural matter.

C. The board shall render any final decision or order by majority vote of the board in open session. The date of the decision or order shall be indicated on the decision or order.

1. All parties of record shall receive notice of the board's decision within 30 days of the vote on the matter.

2. A board decision or order may be reconsidered by the board at the next board meeting on its own motion, or on motion by a party of record, for good cause shown pursuant to a written request filed at the board's office within 10 days following the decision date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000).

Chapter 9. Declaratory Orders

§901. Purpose

A. The purpose of this Chapter is to settle and afford relief from any uncertainty and insecurity with respect to the Rules of the board or the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1471-1489.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000).

§903. Declaratory Relief

A. The board may declare rights, status, and other legal relations of any interested person whose rights may be affected by the Rules of the board or by the law. Any person whose rights, status, or other legal relations are affected by these Rules may have determined any question of construction or validity arising under these Rules or the law and obtain a declaration of rights, status or other legal relations thereunder from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1471-1489.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000).

§905. Applications; Petitions; Parties

A. An application for declaratory order shall be made on a form provided by the board. The application for declaratory order must include the name, address and telephone number, both business and home, of the person bringing the application for declaratory order, the specific Rule or Rules at issue, and the specific question directed to the board. The application for declaratory order shall also advise the board of the name, address and telephone numbers of all persons who have or may claim any interest which may be affected by any decision or determination of the board. The board shall docket the application for declaratory order. The board shall provide notice of the application, along with a copy of the application for declaratory order to the person(s) identified who have or may claim an interest affected by any decision or determination of the board. Those persons who have or claim an interest shall confirm same in writing to the board within 15 days from the date of the board's notice containing the application for declaratory order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1471-1489.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000).

§907. Governing Law

A. When an action is initiated under this Chapter, all proceedings shall be in accordance with the Rules of the board, the Administrative Procedure Act, and other applicable Louisiana law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1471-1489.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2752 (December 2000).

§909. Hearings; Decisions; Rehearing; Time

A. All hearings on applications for declaratory orders filed at least 10 days prior to a scheduled board meeting shall be set for hearing at that meeting unless the board desires the matter be set prior thereto, in which case the parties will be notified of the earlier hearing date, time and place.

B. The board shall render its decision in open session and transmit written confirmation to parties of record within 30 days of its decision.

C. The board may decline to address the question presented and dismiss the application for declaratory order.

D. board decisions may be reconsidered by the board at the next board meeting on its own motion or on the motion of a party of record for good cause shown pursuant to a written request filed at the board office within 10 days following the decision date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1471-1489.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2752 (December 2000).

Chapter 11. Judicial Review

§1101. Judicial Review; Venue; Time

A. Any party of record aggrieved by a final board order or decision in an adjudication, rulemaking or declaratory order shall be entitled to judicial review whether or not application has been made to the board for rehearing. Such judicial review shall be initiated by the filing of a petition setting forth the objections to the board's decision or order with the Nineteenth Judicial District Court within 30 days of the date of mailing of the final board order or decision as provided for in the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1471-1489 and R.S. 49:964-966.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2752 (December 2000).

§1103. Appeals

A. Any party of record may obtain a review of final judgment of the Nineteenth Judicial District Court by the First Circuit Court of Appeal as provided for in the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1471-1489 and R.S. 49:964-966.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2752 (December 2000).

Sidney J. Chaisson, Jr.
Chairman

0012#089

RULE

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

Tuition Opportunity Program for Students (TOPS)
(LAC 28:IV.301, 703 and 803)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby revises the provisions of the Tuition Opportunity Program for Students (TOPS) (R.S. 17:3042.1 and R.S. 17:3048.1).

**Title 28
EDUCATION**

**Part IV. Student Financial AssistanceC Higher
Education Scholarship and Grant Programs**

Chapter 3. Definitions

§301. Definitions

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*First-Time Freshman*Ca student who is awarded TOPS Opportunity, Performance, or Honors and enrolls for the first-time as a full-time freshman in an academic program in a postsecondary school subsequent to high school graduation, and continues to be enrolled full-time on the fourteenth class day (ninth class day for Louisiana Tech) or enrolls for the first time, full-time in a Louisiana public community or technical college that offers a vocational or technical education certificate or diploma program or a non-academic undergraduate degree to pursue a skill, occupational training, or technical training subsequent to high school graduation. A student who is awarded TOPS Opportunity, Performance, or Honors and begins in an academic program in a postsecondary college or university in a summer session will be considered a First-Time Freshman for the immediately succeeding fall term. A student who is awarded TOPS Opportunity, Performance, or Honors and begins in a non-academic program in a postsecondary school in a summer term will be considered a First-Time Freshman at the time of such enrollment. The fact that a student enrolls in a postsecondary school prior to graduation from high school and/or enrolls less than full time in a postsecondary school prior to the required date for full time enrollment shall not preclude the student from being a First-Time Freshman.

*First-Time Student*Ca student who is awarded TOPS-TECH and enrolls for the first time, full-time in a Louisiana public community or technical college that offers a vocational or technical education certificate or diploma program or a non-academic undergraduate degree to pursue a skill, occupational training, or technical training subsequent to high school graduation, and continues to be enrolled full-time. The fact that a student who is awarded TOPS-TECH enrolls in an academic program at a postsecondary school prior or subsequent to graduation from high school, but prior to the required date for full time enrollment in a Louisiana public community or technical college that offers a vocational or technical education certificate or diploma program or a non-academic undergraduate degree, shall not preclude the student from being a First-Time Student.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:632 (April 1998), amended LR 24:1898 (October 1998), LR 24:2237 (December 1998), LR 25:256 (February 1999), LR 25:654 (April 1999), LR 25:1458, 1460 (August 1999), LR 25:1794 (October 1999), LR 26:65 (January 2000), LR 26:688 (April 2000), LR 26:1262 (June 2000), LR 26:2752 (December 2000).

Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity; Performance and Honors Awards

§703. Establishing Eligibility

A. - A.4.g.ii. ...

5.a. graduate from a BESE-approved, provisionally-approved, or probationally-approved public or nonpublic Louisiana high school or eligible non-Louisiana high school as defined in §1703.A.3; and

i. at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work constituting a core curriculum as follows:

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (one unit) or Applied Algebra 1A and 1B (two units)
1	Algebra II
1	Geometry, Trigonometry, Calculus or comparable Advanced Mathematics
1	Biology
1	Chemistry
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology
1	American History
1	World History, Western Civilization or World Geography
1	Civics and Free Enterprise (one unit combined) or Civics (one unit, nonpublic)
1	Fine Arts Survey; (or substitute two units performance courses in music, dance, or theater; or two units of studio art or visual art; or one elective from among the other subjects listed in this core curriculum)
2	In a single Foreign Language (one unit or credit for three or more hours of college foreign language for students graduating from high school during the 1996-1997 and 1997-1998 school years)
½	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one-half unit of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE); or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum); BESE has approved the following courses as computer related for purposes of satisfying the ½ unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Computer/Technology Applications (1 credit) Computer Architecture (1 credit) Computer/Technology Literacy (½ credit) Computer Science I (1 credit) Computer Science II (1 credit) Computer Systems and Networking I(1 credit) Computer Systems and Networking II (1 credit) Desktop Publishing (½ credit) Digital Graphics and Animation (½ credit) Multimedia Productions (1 credit) Web Mastering (½ credit) Independent Study in Technology applications (1 credit)

ii. for purposes of satisfying the requirements of §703.A.5.a.i., above, the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses:

Core Curriculum Course	Equivalent (Substitute) Course
Physical Science	General Science
Algebra I	Algebra I, Parts 1 and 2
Applied Algebra 1A and 1B	Applied Mathematics I and II
Algebra I, Algebra II and Geometry	Integrated Mathematics I, II, and III
Geometry, Trigonometry, Calculus, or Comparable Advanced Mathematics	Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III*
Chemistry	Chemistry Com
Fine Arts Survey	Speech Debate (2 units)
Western Civilization	European History

* Applied Mathematics III was formerly referred to as Applied Geometry

iii. for purposes of satisfying the requirements of §703.A.5.a.i., above, in addition to the courses identified in §703.A.5.a.ii the following courses shall be considered equivalent to the identified core courses and may be substituted to satisfy corresponding core courses for students of the Louisiana School for Math, Science and the Arts:

Core Curriculum Course	Equivalent (Substitute) Course
English III	EN 210 Composition/Major Themes in Literature (1 unit)
English IV	any two of the following 2 unit courses EN 311 Readings in Literature (at least one 311 course is a requirement) EN 311A American Literature EN 311B British Literature EN 302 Studies in the English Language EN 304 Topics in American and British Literature EN 312 Studies in Poetry EN 314 Readings in World Literature EN 322 Studies in Fiction EN 332 Introduction to Film Studies EN 342 Studies in Modern Drama EN 401 Creative Writing EN 402 Expository Writing EN 412 Studies in a Major Author – Shakespeare EN 422 Studies in a Major Author – Faulkner IS 314 Dramatic Text and Performance IS 315 Literature and Science IS 317 Evolution and Literature IS 318 Sacred Literature IS 411 English Renaissance
Algebra I (one unit)	Any combination of advanced math courses which equal one unit of course credit that are certified by the school to be equivalent of Algebra I
Algebra II (one unit)	Any combination of advanced math courses which equal one unit of course credit that are certified by the school to be equivalent of Algebra II MA 120 College Algebra (1 unit), or MA 121 Accelerated College Algebra (2 unit) and 2 unit of MA 203 Trigonometry
Physics	PH 110L Conceptual Physics (1 unit), or PH 210L General Physics (1 unit), or PH 250L Advanced Placement Physics (1 unit), or PH 310L Physics with Calculus

Biology II	BI 210L Advanced Placement Biology (1 unit), or BI 231L Microbiology (2 unit), and BI 241 Molecular and Cellular Biology (2 unit)
Civics (½ unit) and Free Enterprise (½ unit)	AH 243 American Government and Politics (2 unit), and SS 113 Economics (2 unit)
Western Civilization	EH 121 Ancient and Medieval History (2 unit) and EH 122 Modern History (2 unit)

or

A.5.b. - G.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:636 (April 1998), amended LR 24:1902 (October 1998), LR 25:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:2753 (December 2000).

Chapter 8. TOPS-TECH Award

§803. Establishing Eligibility

A. - A.3. ...

4. initially apply and enroll in a technical program as a First-Time Student, as defined in §301, in a public community or Louisiana Technical College, unless granted an exception for cause by LASFAC, not later than the term or semester excluding the summer term, immediately following the first anniversary of the date that the student graduated from high school or, if the student joins the United States Armed Forces within one year after graduating from high school, has enrolled in such eligible institution as a First-Time Student not later than the term or semester, excluding the summer term, immediately following the fifth anniversary of the date that the student graduated from high school or within one year from the date of discharge, whichever is earlier; and

A.5.-11. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance LR 24:1898 (October 1998), amended LR 24:2237 (December 1998), LR 25:1795 (October 1999), LR 26:67 (January 2000), LR 26:2754 (December 2000).

Mark S. Riley
Assistant Executive Director

0012#005

RULE

Student Financial Assistance Commission Office of Student Financial Assistance

Tuition Payment Program for Medical School Students
(LAC 28:IV.2303, 2307 and 2309)

The Louisiana Student Financial Assistance Commission (LASFAC) hereby revises provisions of the Tuition Payment Program for Medical School Students (R.S. 17:3041.10-15).

Title 28

EDUCATION

Part IV. Student Financial AssistanceC Higher Education Scholarship and Grant Programs

Chapter 23. Tuition Payment Program for Medical School Students

§2303. Establishing Eligibility

A. - A.3. ...

4. be enrolled in the third year of study or later at one of the LSU medical schools as a full-time student in a course of study leading to a doctorate degree in medicine with the intent to enter a residency program leading to a specialization in a primary care field or has earned such a degree prior to commencement of residency. A "primary care field" shall include the following fields of medicine: family medicine, general internal medicine, general pediatrics, obstetrics/gynecology or a medical/pediatrics practice;

A.5. - 9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1461 (August 1999), amended LR 25:2177 (November 1999), LR 26:2754 (December 2000).

§2307. Award Amount

A. ...

B. The loan disbursement will be in two increments during each academic year, unless disbursed subsequent to entering the third year of medical study, in which case any prior disbursements due may be included in the initial disbursement based upon requests for disbursements submitted by the LSU Medical Schools which are consistent in timing with the normal payment of tuition by medical school students.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1461 (August 1999), amended LR 26:2754 (December 2000).

§2309. Maintaining Eligibility

A. - A.1. ...

2. be considered in good standing by the LSU Medical Center and continue to make satisfactory progress towards a medical degree in a primary care field or have completed studies in good standing; and

A.3. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3041.10-3041.15.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 25:1462 (August 1999), amended LR 26:2754 (December 2000).

Mark S. Riley
Assistant Executive Director

0012#004

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Louisiana Pollutant Discharge Elimination
System (LPDES) Program
(LAC 33:IX.2313, 2331, 2361 and 2413)(WP037*)

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.2313, 2331, 2361, 2413, and Appendices N and O (Log #WP037*).

This Rule is identical to federal regulations found in 47 CFR 42434-432527, Number 149, August 4, 1999, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. 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).

EPA promulgated a Final Rule regarding revisions to National Pollutant Discharge Elimination System Permit Application Requirements for Publicly Owned Treatment Works and Other Treatment Works Treating Domestic Sewage on August 4, 1999. A requirement of the Louisiana Pollutant Discharge Elimination System program is to have requirements and regulations which meet at least the minimum EPA requirements. Therefore, revisions to the Louisiana regulations are necessary to meet the EPA minimum requirements. The rule will amend permit application requirements and application forms for publicly owned treatment works (POTWs), treatment works treating domestic sewage (TWTDS), and other dischargers designated by the state administrative authority. The Rule consolidates application requirements, including information regarding toxics monitoring, whole effluent toxicity (WET) testing, industrial user and hazardous waste contributions, and sewer collection system overflows. The most significant revisions require toxic monitoring for facilities designated as majors and other pretreatment POTWs and limited pollutant monitoring by facilities designated as minors. The regulations are being revised to ensure that permitting authorities obtain the information necessary to issue permits which protect the environment in the most efficient manner. The updated forms make it easier for permit applicants to provide the necessary information with their applications and minimize the need for additional follow-up requests from the permitting authority. The basis and rationale for this rule are to meet the minimum requirements of the EPA promulgated rule of August 4, 1999, regarding permit application requirements for POTWs and other treatment works treating domestic sewage.

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

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality Regulations

Chapter 23. The Louisiana Pollutant Discharge Elimination System (LPDES) Program

Subchapter A. Definitions and General Program Requirements

§2313. Definitions

A. The following definitions apply to LAC 33:IX.Chapter 23.Subchapters A -G. Terms not defined in this Section have the meaning given by the CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

* * *

[See Prior Text]

*Indian Country*C

a. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation;

b. all dependent Indian communities within the borders of the United States, whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and

c. all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

* * *

[See Prior Text]

*Treatment Works Treating Domestic Sewage (TWTDS)*Ca
POTW or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices. For purposes of this definition, domestic sewage includes waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works. In states where there is no approved state sludge management program under section 405(f) of the CWA, the EPA regional administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a treatment works treating domestic sewage, where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

* * *

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:722 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2755 (December 2000).

Subchapter B. Permit Application and Special LPDES Program Requirements

§2331. Application for a Permit

A. Duty to Apply

1. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR part 503, and who does not have an effective permit, except persons covered by general permits under LAC 33:IX.2345, excluded under LAC 33:IX.2315, or a user of a privately owned treatment works unless the state administrative authority requires otherwise under LAC 33:IX.2361.M, must submit a complete application (which shall include a BMP program if necessary under LAC 33:IX.2565) to the Office of Environmental Services, Permits Division in accordance with this Section and LAC 33:IX.Chapter 23.Subchapters E-G

2. Application Forms

a. All applicants for LPDES permits must submit applications on either state- or EPA-approved permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Application forms may be obtained by contacting the Office of Environmental Services, Permits Division or may be obtained electronically at www.deq.state.la.us.

b. Applications for LPDES permits may be submitted on EPA application forms as follows:

i. all applicants for permits, other than permits for POTWs and TWTDS, must submit Form 1;

ii. applicants for permits for new and existing POTWs must submit the information contained in Subsection J of this Section using Form 2A or other form provided by the state administrative authority;

iii. applicants for permits for concentrated animal feeding operations or aquatic animal production facilities must submit Form 2B;

iv. applicants for permits for existing industrial facilities (including manufacturing facilities, commercial facilities, mining activities, and silvicultural activities) must submit Form 2C;

v. applicants for permits for new industrial facilities that discharge process wastewater must submit Form 2D;

vi. applicants for permits for new and existing industrial facilities that discharge only nonprocess wastewater must submit Form 2E;

vii. applicants for permits for new and existing facilities whose discharge is composed entirely of storm water associated with industrial activity must submit Form 2F, unless exempted by LAC:33.IX:2341.C.1.b. If the discharge is composed of storm water and non-storm water, the applicant must submit Forms 2C, 2D, and/or 2E, as appropriate (in addition to Form 2F); and

viii. applicants for permits for new and existing TWTDS, subject to Subsection C.1.b of this Section, must submit the application information required by Subsection Q of this Section, using Form 2S or other form provided by the state administrative authority.

* * *

[See Prior Text in B-C.1]

a. All TWTDS whose sewage sludge use or disposal practices are regulated by 40 CFR part 503 must

submit permit applications according to the applicable schedule in Subsection C.1.b of this Section.

b. A TWTDS with a currently effective LPDES permit must submit a permit application at the time of its next LPDES permit renewal application. Such information must be submitted in accordance with Subsection D of this Section.

c. Any other TWTDS not addressed under Subsection C.1.a or b of this Section must submit the information listed in Subsection C.1.c.i -v of this Section, to the Office of Environmental Services, Permits Division within one year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using Form 2S or another form provided by the department. The Office of Environmental Services, Permits Division will determine when such TWTDS must submit a full permit application. The following information must be submitted:

i. the name, mailing address, and location of the TWTDS, and status as federal, state, private, public, or other entity;

ii. the applicant's name, address, telephone number, and ownership status;

iii. a description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of Subsection Q.8.d of this Section, the description must include the name and address of any facility where sewage sludge is sent for treatment or disposal and the location of any land application sites;

iv. the annual amount of sewage sludge generated, treated, used, or disposed (dry weight basis); and

v. the most recent data the TWTDS may have on the quality of the sewage sludge.

d. Notwithstanding Subsection C.1.a, b, or c of this Section, the state administrative authority may require permit applications for any TWTDS at any time if the state administrative authority determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

e. Any owner or operator of a TWTDS that commences operations after promulgation of an applicable standard for sewage sludge use or disposal shall submit an application to the Office of Environmental Services, Permits Division at least 180 days prior to the date proposed for commencing operations.

* * *

[See Prior Text in D-D.1]

2. All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that the state administrative authority may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.

E. Completeness

1. The state administrative authority shall not issue a permit before receiving a complete application for a permit except for LPDES general permits. An application for a permit is complete when the state administrative authority receives an application form and any supplemental information that are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or

permit for the same facility or activity. For the department administered LPDES program, an application that is reviewed under LAC 33:IX.2405 is complete when the state administrative authority receives either a complete application or the information listed in a notice of deficiency.

2. A permit application shall not be considered complete if a permitting authority has waived application requirements under Subsections J and Q of this Section and EPA has disapproved the waiver application. If a waiver request has been submitted to EPA more than 210 days prior to permit expiration and EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

F. Information Requirements. All applicants for LPDES permits, other than permits for POTWs and other TWTDS, must provide the following information to the Office of Environmental Services, Permits Division, using the application form provided by the state administrative authority (additional information required of applicants is set forth in Subsections G-K of this Section and LAC 33:I.1701):

* * *

[See Prior Text in F.1-I.2.e]

J. Application Requirements for New and Existing POTWs. Unless otherwise indicated, all owners/operators of POTWs and other dischargers designated by the state administrative authority must provide, at a minimum, the information in this Subsection to the Office of Environmental Services, Permits Division. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the state administrative authority. The state administrative authority may waive any requirement of this Subsection if he or she has access to substantially identical information. The state administrative authority may also waive any requirement of this Subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the state's justification for the waiver. A regional administrator's disapproval of a state's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information.

1. Basic Application Information. All applicants must provide the following information:

a. Facility Information. Name, mailing address, and location of the facility for which the application is submitted;

b. Applicant Information. Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

c. Existing Environmental Permits. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

i. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), subpart C;

ii. Underground Injection Control program under the Safe Drinking Water Act (SDWA);

iii. LPDES or NPDES program under the Clean Water Act (CWA);

iv. Prevention of Significant Deterioration (PSD) program under the CWA;

v. nonattainment program under the Clean Air Act;

vi. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

vii. ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

viii. dredge or fill permits under section 404 of the CWA; and

ix. other relevant environmental permits, including state permits;

d. Population. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Indian Country. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. Flow Rate. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Collection System. Identification of type(s) of collection system(s) used by the treatment works (e.g., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. Outfalls and Other Discharge or Disposal Methods. The following information for outfalls to waters of the United States and other discharge or disposal methods:

i. for effluent discharges to waters of the state, the total number and types of outfalls (e.g., treated effluent, bypasses, constructed emergency overflows);

ii. for wastewater discharged to surface impoundments:

(a) the location of each surface impoundment;

(b) the average daily volume discharged to each surface impoundment; and

(c) whether the discharge is continuous or intermittent;

iii. for wastewater applied to the land:

(a) the location of each land application site;

(b) the size of each land application site, in acres;

(c) the average daily volume applied to each land application site, in gallons per day; and

(d) whether land application is continuous or intermittent;

iv. for effluent sent to another facility for treatment prior to discharge:

(a) the means by which the effluent is transported;

(b). the name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c). the name, mailing address, contact person, phone number, and LPDES permit number (if any) of the receiving facility; and

(d). the average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

v. for wastewater disposed of in a manner not included in Subsection J.1.h.i-iv of this Section (e.g., underground percolation, underground injection):

(a). a description of the disposal method, including the location and size of each disposal site, if applicable;

(b). the annual average daily volume disposed of by this method, in gallons per day; and

(c). whether disposal through this method is continuous or intermittent.

2. Additional Information. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. Inflow and Infiltration. The current average daily volume of inflow and infiltration, in gallons per day, and steps the applicant is taking to minimize inflow and infiltration;

b. Topographic Map. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all process units, and showing:

i. the treatment plant area and process units;

ii. the major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. This includes outfalls from bypass piping, if applicable;

iii. each well where fluids from the treatment plant are injected underground;

iv. wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within one-fourth mile of the treatment works' property boundaries;

v. sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

vi. location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process Flow Diagram or Schematic. The following information regarding the diagram:

i. a diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points and approximate daily flow rates between treatment units; and

ii. a narrative description of the diagram; and

d. Scheduled Improvements, Schedules of Implementation. The following information regarding scheduled improvements:

i. the outfall number of each outfall affected;

ii. a narrative description of each required improvement;

iii. scheduled or actual dates of completion for the following:

(a). commencement of construction;

(b). completion of construction;

(c). commencement of discharge; and

(d). attainment of operational level; and

iv. a description of permits and clearances concerning other federal and/or state requirements.

3. Information on Effluent Discharges. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. Description of Outfall. The following information:

i. the outfall number;

ii. the state, parish, and city or town in which outfall is located;

iii. the latitude and longitude, to the nearest second;

iv. the distance from shore and depth below surface;

v. the average daily flow rate, in million gallons per day;

vi. the following information for each outfall with a seasonal or periodic discharge:

(a). the number of times per year the discharge occurs;

(b). the duration of each discharge;

(c). the flow of each discharge; and

(d). the months in which discharge occurs; and

vii. whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

b. Description of Receiving Waters. The following information (if known) for each outfall through which effluent is discharged to waters of the state:

i. the name of receiving water;

ii. the name of watershed/river/stream system and United States Natural Resource Conservation Service 14-digit watershed code;

iii. the name of state management/river basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

iv. the critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable);

c. Description of Treatment. The following information describing the treatment provided for discharges from each outfall to waters of the state:

i. the highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a). design biochemical oxygen demand (BOD₅ or CBOD₅) removal (percent);

(b). design suspended solids (SS) removal (percent);

(c). design phosphorus (P) removal (percent), where applicable;

(d). design nitrogen (N) removal (percent), where applicable; and

(e). any other removals that an advanced treatment system is designed to achieve; and

ii. a description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent Monitoring for Specific Parameters

a. As provided in Subsection J.4.b-j of this Section, all applicants must submit to the Office of Environmental Services, Permits Division effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the state. The state administrative authority may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The state administrative authority may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the pollutants listed in Appendix O, Table 1A of this Chapter.

c. All applicants whose facility has a design flow greater than or equal to 0.1 mgd must sample and analyze for the pollutants listed in Appendix O, Table 1 of this Chapter. Applicants whose facilities do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine from Appendix O, Table 1 of this Chapter.

d. Applicants for the following facilities must sample and analyze for the pollutants listed in Appendix O, Table 2 of this Chapter and for any other pollutants for which the state has established water quality standards applicable to the receiving waters:

i. all POTWs with a design flow rate equal to or greater than one million gallons per day;

ii. all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program; and

iii. other POTWs, as required by the state administrative authority.

e. The state administrative authority may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

f. Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The state administrative authority may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in Subsection J.4.b-e of this Section that are collected within four and one-half years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under LAC 33:IX.2531 unless an alternative is specified in the existing LPDES permit.

Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

i. the maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

ii. the average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

iii. the analytical method used; and

iv. the threshold level (e.g., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

j. Unless otherwise required by the state administrative authority, metals must be reported as total recoverable.

5. Effluent Monitoring for Whole Effluent Toxicity

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharge or on any receiving water near the discharge.

b. As provided in Subsection J.5.c-i of this Section, applicants for the following facilities must submit to the Office of Environmental Services, Permits Division the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters:

i. all POTWs with design flow rates greater than or equal to one million gallons per day;

ii. all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program; and

iii. other POTWs, as required by the state administrative authority, based on consideration of the following factors:

(a). the variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b). the ratio of effluent flow to receiving stream flow;

(c). the existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d). receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water or a water designated as an outstanding natural resource water; and

(e). other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the state administrative authority determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the state administrative authority

may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The state administrative authority may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing in accordance with Subsection J.5.b of this Section must provide:

i. results of a minimum of four quarterly tests for a year from the year preceding the permit application; or

ii. results from four tests performed at least annually in the four and one-half year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the permitting authority.

e. Applicants must conduct tests with multiple species (no fewer than two taxonomic groups listed in LAC 33:IX.1121.B; e.g., fish, invertebrate, plant), and test for acute or chronic toxicity, depending on the range of receiving water dilution. The department recommends, but does not require, that applicants conduct acute or chronic testing based on the latest recommended protocol for biomonitoring, which uses the following dilutions:

i. acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

ii. acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

iii. chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing in accordance with Subsection J.5.b of this Section must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the state administrative authority, or test summaries, if available and comprehensive, for each whole effluent toxicity test conducted in accordance with Subsection J.5.b of this Section for which such information has not been reported previously to the state administrative authority.

h. Whole effluent toxicity testing conducted in accordance with Subsection J.5.b of this Section must be conducted using methods approved under LAC 33:IX.2531.

i. For whole effluent toxicity data submitted to the state administrative authority within four and one-half years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each applicant required to perform whole effluent toxicity testing in accordance with Subsection J.5.b of this Section must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

6. Industrial Discharges. Applicants must submit the following information about industrial discharges to the POTW:

a. number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW;

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in LAC:33:IX.2705, that discharges to the POTW:

i. name and mailing address;

ii. description of all industrial processes that affect or contribute to the SIU's discharge;

iii. principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

iv. average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

v. whether the SIU is subject to local limits;

vi. whether the SIU is subject to categorical standards, and if so, under which category(ies) and subcategory(ies); and

vii. whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past four and one-half years; and

c. the information required in Subsection J.6.a and b of this Section may be waived by the state administrative authority for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in Subsection J.6.a and b of this Section:

i. an annual report submitted within one year of the application; or

ii. a pretreatment program.

7. Discharges From Hazardous Waste Generators and From Waste Cleanup or Remediation Sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. if the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR part 261, the applicant must report the following:

i. the receipt of such notice; and

ii. the hazardous waste number and amount received annually of each hazardous waste; and

b. if the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and sections 3004(u) or 3008(h) of RCRA, the applicant must report the following:

i. the identity and description of the site(s) or facility(ies) at which the wastewater originates;

ii. the identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR part 261, if known; and

iii. the extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

[Note: applicants are exempt from the requirements of Subsection J.7.b of this Section if they receive no more than fifteen kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).]

8. Reserved.

9. Contractors. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. Signature. All applications must be signed by a certifying official in compliance with LAC 33:IX.2333.

* * *

[See Prior Text in K-O.Note 3.e.Footnote 1]

P. Reserved.

Q. Sewage Sludge Management. All applicants with TWTDS subject to Subsection C.1.b of this Section must provide the information in this Subsection to the state administrative authority, using Form 2S or another application form approved by the state administrative authority. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the state administrative authority. The state administrative authority may waive any requirement of this Subsection if he or she has access to substantially identical information. The state administrative authority may also waive any requirement of this Subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the state's justification for the waiver. A regional administrator's disapproval of a state's proposed waiver does not constitute final agency action, but does provide notice to the state and permit applicant(s) that EPA may object to any state-issued permit issued in the absence of the required information.

1. Facility Information. All applicants must submit the following information:

- a. the name, mailing address, and location of the TWTDS for which the application is submitted;
- b. whether the facility is a Class I sludge management facility;
- c. the design flow rate (in million gallons per day);
- d. the total population served; and
- e. the applicant's status as federal, state, private, public, or other entity.

2. Applicant Information. All applicants must submit the following information:

- a. the name, mailing address, and telephone number of the applicant; and
- b. indication whether the applicant is the owner, operator, or both.

3. Permit Information. All applicants must submit the facility's LPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

- a. Hazardous Waste Management program under RCRA;
- b. UIC program under the Safe Drinking Water Act (SDWA);
- c. LPDES program under the CWA;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

e. nonattainment program under the Clean Air Act;

f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. dredge or fill permits under section 404 of the CWA; and

h. other relevant environmental permits, including state or local permits.

4. Indian Country. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.

5. Topographic Map. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

a. all sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

b. wells, springs, and other surface water bodies that are within one-fourth mile of the property boundaries and listed in public records or otherwise known to the applicant.

6. Sewage Sludge Handling. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction.

7. Sewage Sludge Quality. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in 40 CFR part 503 for the applicant's use or disposal practices on the date of permit application.

a. The state administrative authority may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

b. Applicants must provide data from a minimum of three samples taken within four and one-half years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

c. Applicants must collect and analyze samples in accordance with analytical methods approved under "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, unless an alternative has been specified in an existing sewage sludge permit.

d. The monitoring data provided must include at least the following information for each parameter:

- i. average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
- ii. the analytical method used; and
- iii. the method detection level.

8. Preparation of Sewage Sludge. If the applicant is a person who prepares sewage sludge, as defined at 40 CFR 503.9(r), the applicant must provide the following information:

a. if the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility;

b. if the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

i. the name, mailing address, and location of the other facility;

ii. the total dry metric tons per 365-day period received from the other facility; and

iii. a description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics;

c. if the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

i. whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

ii. whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1)-(b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

iii. a description of any other blending, treatment, or other activities that change the quality of sewage sludge;

d. if the sewage sludge from the applicant's facility meets the ceiling concentration in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR part 503.13(b)(3), the Class A pathogen requirements in 40 CFR part 503.32(a), and one of the vector attraction reduction requirements in 40 CFR part 503.33(b)(1)-(b)(8), and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this Subparagraph that is applied to the land;

e. if sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to Subsection Q.8.d of this Section, the applicant must provide the following information:

i. the total dry metric tons per 365-day period of sewage sludge subject to this Clause that is sold or given away in a bag or other container for application to the land; and

ii. a copy of all labels or notices that accompany the sewage sludge being sold or given away;

f. if sewage sludge from the applicant's facility is provided to another person who prepares, as defined at 40 CFR 503.9(r), and the sewage sludge is not subject to Subsection Q.8.d of this Section, the applicant must provide the following information for each facility receiving the sewage sludge:

i. the name and mailing address of the receiving facility;

ii. the total dry metric tons per 365-day period of sewage sludge subject to this Clause that the applicant provides to the receiving facility;

iii. a description of any treatment processes occurring at the receiving facility, including blending

activities and treatment to reduce pathogens or vector attraction characteristic;

iv. a copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and

v. if the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

9. Land Application of Bulk Sewage Sludge. If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to Subsection Q.8.d, e, or f of this Section, the applicant must provide the following information:

a. the total dry metric tons per 365-day period of sewage sludge subject to this Subparagraph that is applied to the land;

b. if any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located;

c. the following information for each land application site that has been identified at the time of permit application:

i. the name (if any) and location for the land application site;

ii. the site's latitude and longitude to the nearest second, and the method of determination;

iii. a topographic map (or other map if a topographic map is unavailable) that shows the site's location;

iv. the name, mailing address, and telephone number of the site owner, if different from the applicant;

v. the name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

vi. whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11;

vii. the type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

viii. whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

ix. other information that describes how the site will be managed, as specified by the permitting authority;

d. the following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site:

i. whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 40 CFR part 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR part 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority; and

ii. identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR part 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in Subsection Q.9.d.i of this Section, bulk sewage sludge subject to cumulative pollutant loading rates in 40 CFR part 503.13(b)(2) has been applied to the site since July 20, 1993; and

e. if not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

- i. describes the geographical area covered by the plan;
- ii. identifies the site selection criteria;
- iii. describes how the site(s) will be managed; and
- iv. provides for advance public notice of land application sites in the manner prescribed by state or local law. When state or local law does not require advance public notice, it must be provided in a manner reasonably calculated to apprise the general public of the planned land application.

10. Surface Disposal. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. the total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period;

b. the following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

i. the site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

ii. the total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site; and

c. the following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

i. the name or number and the location of the active sewage sludge unit;

ii. the unit's latitude and longitude to the nearest second, and the method of determination;

iii. if not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

iv. the total dry metric tons placed on the active sewage sludge unit per 365-day period;

v. the total dry metric tons placed on the active sewage sludge unit over the life of the unit;

vi. a description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

vii. a description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal and any federal, state, and local permit number(s) for leachate disposal;

viii. if the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

ix. the remaining capacity (dry metric tons) for the active sewage sludge unit;

x. the date on which the active sewage sludge unit is expected to close, if such a date has been identified;

xi. the following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a). the name, contact person, and mailing address of the facility; and

(b). available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

xii. whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9)-(b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

xiii. the following information, as applicable, to any groundwater monitoring occurring at the active sewage sludge unit:

(a). a description of any groundwater monitoring occurring at the active sewage sludge unit;

(b). any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c). a copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit; and

(d). a copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

xiv. if site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

11. Incineration. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. the total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;

b. the following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

i. the name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

ii. the total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator; and

c. the following information for each sewage sludge incinerator that the applicant owns or operates:

i. the name and/or number and the location of the sewage sludge incinerator;

ii. the incinerator's latitude and longitude to the nearest second, and the method of determination;

iii. the total dry metric tons per 365-day period fired in the sewage sludge incinerator;

iv. information, test data, and documentation of ongoing operating parameters indicating that compliance with the national emission standard for beryllium in 40 CFR part 61 will be achieved;

v. information, test data, and documentation of ongoing operating parameters indicating that compliance with the national emission standard for mercury in 40 CFR part 61 will be achieved;

vi. the dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation;

vii. the control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation;

viii. information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value;

ix. whether the applicant monitors total hydrocarbons (THC) or carbon monoxide (CO) in the exit gas for the sewage sludge incinerator;

x. the type of sewage sludge incinerator;

xi. the maximum performance test combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

xii. the following information on the sewage sludge feed rate used during the performance test:

(a). sewage sludge feed rate in dry metric tons per day;

(b). identification of whether the feed rate submitted is average use or maximum design; and

(c). a description of how the feed rate was calculated;

xiii. the incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used;

xiv. the operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

xv. identification of the monitoring equipment in place, including, but not limited to, equipment to monitor the following:

(a). total hydrocarbons or carbon monoxide;

(b). percent oxygen;

(c). percent moisture; and

(d). combustion temperature; and

xvi. a list of all air pollution control equipment used with this sewage sludge incinerator.

12. Disposal in a Municipal Solid Waste Landfill. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. the name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

b. the total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. a determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR part 258.

13. Contractors. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

14. Other Information. At the request of the permitting authority, the applicant must provide any other information necessary to determine the appropriate standards for permitting under 40 CFR part 503 and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements.

15. Signature. All applications must be signed by a certifying official in compliance with LAC 33:IX:2333.

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).

Subchapter C. Permit Conditions

§2361. Establishing Limitations, Standards, and Other Permit Conditions

In addition to the conditions established under LAC 33:IX.2359.A, each LPDES permit shall include conditions meeting the following requirements when applicable.

* * *

[See Prior Text in A-J.1]

2.a. Submit a local program when required by and in accordance with LAC 33:IX.Chapter 23.Subchapter T to assure compliance with pretreatment standards to the extent applicable under section 307(b) of the CWA. The local program shall be incorporated into the permit as described in LAC 33:IX.Chapter 23.Subchapter T. The program must require all indirect dischargers to the POTW to comply with the reporting requirements of LAC 33:IX.Chapter 23.Subchapter T.

b. Provide a written technical evaluation of the need to revise local limits under LAC 33:IX.2709.C.1, following permit issuance or reissuance.

* * *

[See Prior Text in J.3-R.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 LR 23:724 (June 1997), LR 23:1523 (November 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2282 (October 2000), LR 26:2764 (December 2000).

§2413. Fact Sheet

* * *

[See Prior Text in A-B.7]

8. provisions satisfying the requirements of LAC 33:IX.2445;

9. additional requirements found in LAC 33:IX.2779; and

10. justification for waiver of any application requirements under LAC 33:IX:2331.J or Q.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:725 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR:

Appendix N

Pollutants Eligible for a Removal Credit

[See Prior Text in I - Note 1]

II. Additional Pollutants Eligible for a Removal Credit (milligrams per kilogram--dry weight basis)

Pollutant	Use or Disposal Practice			
	LA	SD		
		Unlined ¹	Lined ²	I

[See Prior Test in Arsenic CChlordane]				
Chromium (total)	³ 100		³ 100	
Copper		³ 46	100	1400

[See Prior Text in DDD, DDE, DDT CZinc]				

Key:

LA = land application

SD = surface disposal

I = incineration.

¹ Active sewage sludge unit without a liner and leachate collection system.

² Active sewage sludge unit with a liner and leachate collection system.

³ Value expressed in grams per kilogram--dry weight basis.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:726 (June 1997), LR 23:959 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2764 (December 2000).

Appendix O

LPDES Permit Testing Requirements for Publicly Owned Treatment Works (LAC 33:IX.2331.J)

Table 1A – Effluent Parameters for All POTWS	
Biochemical oxygen demand (BOD-5 or CBOD-5)	
Fecal coliform	
Design flow rate	
PH	
Solids, total suspended	
Temperature	

Table 1 – Effluent Parameters for all POTWS With a Flow Equal to or Greater Than 0.1 MGD	
Name	CAS #
Ammonia (as N)	7664-41-7
Chlorine (total residual, TRC)	7782-50-5
Dissolved oxygen	
Nitrate/Nitrite	
Kjeldahl nitrogen	
Oil and grease	
Phosphorus	7723-14-0
Solids, total dissolved	

Table 2 – Effluent Parameters for Selected POTWS		
Common Name	Universal Name	CAS #
Hardness		
<i>Metals (total recoverable), Cyanide and Total Phenols</i>		
Antimony		7440-36-0
Arsenic		7440-38-2
Beryllium		7440-41-7
Cadmium		7440-43-9
Chromium		7440-47-3
Copper		7440-50-8
Lead		7439-92-1
Mercury		7439-97-6
Nickel		7440-02-0
Selenium		7782-49-2
Silver		7440-22-4
Thallium		7440-28-0
Zinc		7440-66-6
Cyanide		57-12-5
Total phenolic compounds		
<i>Volatile Organic Compounds</i>		
Acrolein		107-02-8
Acrylonitrile		107-13-1
Benzene		71-43-2
Bromoform		75-25-2
Carbon tetrachloride		56-23-5
Chlorobenzene	Phenyl chloride	108-90-7
Chlorodibromomethane		124-48-1
Chloroethane	Ethyl chloride	75-00-3
2-chloroethylvinyl ether	2-chloroethyl vinyl ether	110-75-8
Chloroform	Trichloromethane	67-66-3
Dichlorobromomethane		75-27-4
1,1-dichloroethane		75-34-3
1,2-dichloroethane		107-06-2
Trans-1,2-dichloroethylene	Trans-1,2-dichloroethene	156-60-5
1,1-dichloroethylene	Vinylidene chloride	75-35-4
1,2-dichloropropane	Propylene dichloride	78-87-5
1,3-dichloropropylene	1,3-dichloropropene	542-75-6
Ethylbenzene	Ethyl benzene	100-41-4
Methyl bromide		74-83-9
Methyl chloride		74-87-3
Methylene chloride	Dichloromethane	75-09-2
1,1,2,2-tetrachloroethane		79-34-5
Tetrachloroethylene		127-18-4
Toluene		108-88-3
1,1,1-trichloroethane		71-55-6
1,1,2-trichloroethane		79-00-5
Trichloroethylene		79-01-6
Vinyl chloride		75-01-4
<i>Acid-Extractable Compounds</i>		
P-chloro-m-cresol	4-chloro-3-methylphenol	59-50-7
2-chlorophenol		95-57-8
2,4-dichlorophenol		120-83-2
2,4-dimethylphenol		105-67-9
4,6-dinitro-o-cresol	Dinitro-o-cresol	534-52-1
2,4-dinitrophenol		51-28-5
2-nitrophenol		88-75-5
4-nitrophenol		100-02-7
Pentachlorophenol	pentachloro-Phenol	87-86-5
Phenol		108-95-2
2,4,6-trichlorophenol		88-06-2
<i>Base-Neutral Compounds</i>		
Acenaphthene		83-32-9
Acenaphthylene		208-96-8
Anthracene		120-12-7
Benzidine		92-87-5
Benzo(a)anthracene	Benzo[a]anthracene	56-55-3
Benzo(a)pyrene	Benzo[a]pyrene	50-32-8
3,4-benzofluoranthene	Benzo[b]fluoranthene	205-99-2

Benzo(ghi)perylene	Benzo[g,h,i]perylene	191-24-2
Benzo(k)fluoranthene	Benzo[k]fluoranthene	207-08-9
Bis (2-chloroethoxy) methane		111-91-1
Bis (2-chloroethyl) ether	2,2-dichlorodiethylether	111-44-4
Bis (2-chloroisopropyl) ether	bis-chloroisopropyl ether	108-60-1
Bis (2-ethylhexyl) phthalate	di-sec-octyl phthalate	117-81-7
4-bromophenyl phenyl ether		101-55-3
Butyl benzyl phthalate		85-68-7
2-chloronaphthalene		91-58-7
4-chlorophenyl phenyl ether	1-chloro-4-phenoxybenzene	7005-72-3
Chrysene		218-01-9
Di-n-butyl phthalate	Dibutyl phthalate	84-74-2
Di-n-octyl phthalate	Bis(n-octyl) phthalate	117-84-0
Dibenzo(a,h)anthracene	Dibenz[a,h]anthracene	53-70-3
1,2-dichlorobenzene	o-dichlorobenzene	95-50-1
1,3-dichlorobenzene	m-dichlorobenzene	541-73-1
1,4-dichlorobenzene	para-Dichlorobenzene	106-46-7
3,3-dichlorobenzidine		91-94-1
Diethyl phthalate		84-66-2
Dimethyl phthalate		131-11-3
2,4-dinitrotoluene		121-14-2
2,6-dinitrotoluene		606-20-2
1,2-diphenylhydrazine		122-66-7
Fluoranthene		206-44-0
Fluorene		86-73-7
Hexachlorobenzene		118-74-1
Hexachlorobutadiene		87-68-3
Hexachlorocyclopentadiene	Hexachlorocyclopentadiene	77-47-4
Indeno(1,2,3-cd)pyrene	Indeno[1,2,3-cd]pyrene	193-39-5
Isophorone		78-59-1
Naphthalene		91-20-3
Nitrobenzene	nitro-Benzene	98-95-3
N-nitrosodi-n-propylamine	N-nitrosodipropylamine	621-64-7
N-nitrosodimethylamine		62-75-9
N-nitrosodiphenylamine		86-30-6
Phenanthrene		85-01-8
Pyrene		129-00-0
1,2,4-trichlorobenzene		120-82-1

Note: If no universal name is listed, the common name and the universal name are the same.

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 26:2765 (December 2000).

James H. Brent, Ph.D.
Assistant Secretary

0012#020

RULE

Department of Environmental Quality Office of Environmental Assessment

Radiation Protection
(LAC 33:XV.Chapters 1, 3, 4, 15 and 20) (NE023*)

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.Chapters 1, 3, 4, 15, and 20 (Log #NE023*).

This Rule is identical to federal regulations found in 61 FR 65120, December 10, 1996; 62 FR 1662, January 13, 1997; 62 FR 39057, July 21, 1997; 63 FR 39477, July 23, 1998; 63 FR 45393, August 26, 1998, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 765-0399 or Box 82178, Baton Rouge, LA 70884-2178. 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 consists of amendments to the radiation protection regulations addressing several different subjects. Those subjects, as described by the Nuclear Regulatory Commission (NRC) in the pertinent articles of the Federal Register, are: resolution of dual regulation of airborne effluents of radioactive materials Clean Air Act; recognition of agreement state licenses in areas under exclusive federal jurisdiction within an agreement state; radiological criteria for license termination; and minor corrections, clarifying changes, and a minor policy change. Included are changes in the definitions of background radiation, decommission, declared pregnant woman, very high radiation area, high radiation area, individual monitoring devices, and eye dose equivalent. The definitions of constraint, critical group, distinguishable from background, and residual radioactivity are added. The main impact of this rule is the determination of criteria under which a site will be considered acceptable for unrestricted use so that a license can be terminated. The principal criterion is that the residual radioactivity that is distinguishable from background radiation results in a total effective dose equivalent (TEDE) to an average member of the critical group does not exceed 25 mrem per year. As a Nuclear Regulatory Commission Agreement State, in accordance with the NRC agreement signed on May 1, 1967, Louisiana has accepted the responsibility for promulgating regulations that satisfy the compatibility requirement of Section 274 of the Atomic Energy Act of 1954, as amended.

In certain areas defined by the NRC, state regulations must be the same as the NRC regulations. The extent to which the regulation must be identical, whether in content or in effect, is determined by the NRC. All amendments in this package are consequently mandated by the NRC, to comply with recent NRC regulation changes. The basis and rationale for this Rule are to achieve compatibility with the regulations of the Nuclear Regulatory Commission in accordance with Section 274 of the Atomic Energy Act of 1954, as amended.

This Rule meets an exception listed in R.S. 30:2019(D)(3) and R.S.49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This 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.

* * *

[See Prior Text]

Background Radiation—radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents, such as Chernobyl, that contribute to background radiation and are not under the control of the licensee. Background radiation does not include radiation from source, byproduct, or special nuclear materials regulated by the department.

* * *

[See Prior Text]

Decommission—to remove (as a facility) safely from service and reduce residual radioactivity to a level that permits:

1. release of the property for unrestricted use and termination of license; or
2. release of the property under restricted conditions and termination of the license.

* * *

[See Prior Text]

Distinguishable From Background—the detectable concentration of a radionuclide that is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

* * *

[See Prior Text]

Extremity—hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) Licensed Facilities—nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

* * *

[See Prior Text]

High-Radiation Area—an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 100 millirem (one millisievert) in one hour at 30 centimeters from the radiation source or 30 centimeters from any surface that the radiation penetrates.

* * *

[See Prior Text]

Individual Monitoring Devices—devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these regulations, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescence dosimeters (TLDs), pocket ionization chambers, and personal air sampling devices.

* * *

[See Prior Text]

Lens Dose Equivalent (LDE)—the external exposure of the lens of the eye, which is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm²).

* * *

[See Prior Text]

Residual Radioactivity—radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of LAC 33:XV.Chapter 4.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended 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).

Chapter 3. Licensing of Radioactive Material
§302. Deliberate Misconduct

A. Any licensee, certificate of registration holder, applicant for a license or certificate of registration, employee of a licensee, certificate of registration holder, or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's, or applicant's activities in this Section, may not:

1. engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule,

regulation, or order; or any term, condition, or limitation of any license issued by the department; or

2. deliberately submit to the department, a licensee, a certificate of registration holder, an applicant, or a licensee's, certificate holder's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect.

B. A person who violates Subsection A of this Section may be subject to enforcement action in accordance with the procedures in LAC 33:XV.108.

C. For the purposes of Subsection A.1 of this Section, deliberate misconduct by a person means an intentional act or omission that the person knows:

1. would cause a licensee, certificate of registration holder, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation, of any license issued by the department; or

2. constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:2767 (December 2000).

§328. Special Requirements for Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices that Contain Radioactive Material

[See Prior Text in A-H.1.c.i]

ii. displaying the radiation symbol described in LAC 33:XV.450.A and the words, "CAUTION, RADIOACTIVE MATERIAL," and "Not for Internal or External Use in Humans or Animals."

[See Prior Text in H.1.d-M.4.g]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2092 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2571 (November 2000), LR 26:2768 (December 2000).

§332. Expiration and Termination of Licenses and Decommissioning of Sites and Separate Buildings or Outdoor Areas

[See Prior Text in A-D.1.e]

i. report levels of radiation in units of milliroentgens per hour of beta and gamma radiation at 1 centimeter and gamma radiation at 1 meter from surfaces and report levels of radioactivity, including alpha, in units of transformations per minute (or microcuries) per 100 square centimeters removable and fixed on surfaces, microcuries per milliliter in water, and picocuries per gram in contaminated solids such as soils or concrete;

ii. specify the instrumentation used and certify that each instrument was properly calibrated and tested; and

iii. consider a site to be acceptable for unrestricted use if the residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water, and the residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels that are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

[See Prior Text in D.2-E.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 24:2094 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2571 (November 2000), LR 26:2768 (December 2000).

Subchapter E. Reciprocity

§390. Reciprocal Recognition of Licenses

A. Subject to these regulations, any person who holds a specific license from the U.S. Nuclear Regulatory Commission, any other agreement state, or any licensing state and issued by the agency having jurisdiction where the licensee maintains an office for directing the licensed activity and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the activities authorized in such licensing document within this state, except in areas of exclusive federal jurisdiction, for any period of time deemed appropriate by the department provided that the following conditions are met:

[See Prior Text in A.1-C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated 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 26:2574 (November 2000), LR 26:2768 (December 2000).

Chapter 4. Standards for Protection Against Radiation

Subchapter A. General Provisions

§403. Definitions

A. As used in this Chapter, the following definitions apply:

[See Prior Text]

*Constraint (Dose Constraint)*Ca value above which specified licensee actions are required.

*Critical Group*the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

*Declared Pregnant Woman*Ca woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant

woman withdraws the declaration in writing or is no longer pregnant.

* * *

[See Prior Text]

Very High Radiation Area Can area, accessible to individuals, in which radiation levels external to the body could result in an individual receiving an absorbed dose in excess of 5 Gy (500 rad) in one hour at 1 meter from a source of radiation or from any surface that the radiation penetrates.¹

* * *

[See Prior Text]

¹At very high doses received at high dose rates, units of absorbed dose (e.g., gray and rad) are appropriate, rather than units of dose equivalent (e.g., sievert and rem).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended LR 22:969 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2768 (December 2000).

Subchapter B. Radiation Protection Programs

§406. Radiation Protection Programs

* * *

[See Prior Text in A-C]

D. To implement the ALARA requirements of Subsection B of this Section, and notwithstanding the requirements in LAC 33:XV.421, a constraint on air emissions of radioactive material to the environment, excluding radon-222 and its daughters, shall be established by licensees such that the individual member of the public likely to receive the highest dose will not be expected to receive a total effective dose equivalent in excess of 10 mrem (0.1 mSv) per year from these emissions. If a licensee subject to this requirement exceeds this dose constraint, the licensee shall report the exceedance as provided in LAC 33:XV.487 and promptly take appropriate corrective action to ensure against recurrence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2769 (December 2000).

§410. Occupational Dose Limits for Adults

* * *

[See Prior Text in A-A.2]

- a. a lens dose equivalent of 0.15 Sv (15 rem); and

* * *

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

1. the deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits if the individual's monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable;

* * *

[See Prior Text in C.2-F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569

(October 1987), amended Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:969 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2769 (December 2000).

§412. Determination of External Dose from Airborne Radioactive Material

A. Licensees or registrants shall, when determining the dose from airborne radioactive material, include the contribution to the deep dose equivalent, lens dose equivalent, and shallow dose equivalent from external exposure to the radioactive cloud. See Appendix B of this Chapter, endnotes 1 and 2.

* * *

[See Prior Text in B]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2769 (December 2000).

§417. Dose to an Embryo/Fetus

A. The licensee or registrant shall ensure that the dose equivalent to the embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 5 mSv (0.5 rem). See LAC 33:XV.476 for recordkeeping requirements.

* * *

[See Prior Text in B]

C. The dose equivalent to the embryo/fetus shall be taken as the sum of:

1. the dose equivalent to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman; and

2. the dose that is most representative of the dose equivalent to the embryo/fetus from external radiation, that is, in the mother's lower torso region, determined as follows:

a. if multiple measurements have not been made, assignment of the highest deep dose equivalent for the declared pregnant woman shall be the dose equivalent to the embryo/fetus, in accordance with LAC 33:XV.414.C; or

b. if multiple measurements have been made, the dose equivalent to the embryo/fetus shall be the assignment of the deep dose equivalent for the declared pregnant woman from the individual monitoring device which is most representative of the dose equivalent to the embryo/fetus. Assignment of the highest deep dose equivalent for the declared pregnant woman to the embryo/fetus is not required unless that dose is also the most representative deep dose equivalent for the region of the embryo/fetus.

D. If by the time the woman declares pregnancy to the licensee or registrant, the dose equivalent to the embryo/fetus has exceeded 4.5 mSv (0.45 rem), the licensee or registrant shall be deemed to be in compliance with Subsection A of this Section if the additional dose equivalent to the embryo/fetus does not exceed 0.5 mSv (0.05 rem) during the remainder of the pregnancy.²

²The National Council on Radiation Protection and Measurements recommended in NCRP Report No. 91, "Recommendations on Limits for Exposure to Ionizing Radiation" (June 1, 1987), that no more than 0.5 mSv (0.05 rem) to the embryo/fetus be received in any one month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 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), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2769 (December 2000).

Subchapter C. Surveys and Monitoring

§431. Conditions Requiring Individual Monitoring of External and Internal Occupational Dose

Each licensee or registrant shall monitor exposures from sources of radiation at levels sufficient to demonstrate compliance with the occupational dose limits of this Chapter.

* * *

[See Prior Text in A-A.4]

a. an individual monitoring device used to determine the dose equivalent to the embryo/fetus of a declared pregnant woman, in accordance with LAC 33:XV.417, shall be located under the protective apron at the waist;

b. an individual monitoring device used to determine lens dose equivalent shall be located at the neck, or an unshielded location closer to the eye, outside the protective apron; and

* * *

[See Prior Text in A.4.c-B.2]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 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 22:971 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2770 (December 2000).

§432. Location of Individual Monitoring Devices

A. Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with LAC 33:XV.431.A wear individual monitoring devices as follows:

* * *

[See Prior Text in A.1]

2. an individual monitoring device used for monitoring the dose equivalent to the embryo/fetus of a declared pregnant woman, in accordance with LAC 33:XV.417.A, shall be located at the waist under any protective apron being worn by the woman;

3. an individual monitoring device used for monitoring the lens dose equivalent, to demonstrate compliance with LAC 33:XV.410.A.2.a, shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye; and

* * *

[See Prior Text in A.4]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 22:972 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2770 (December 2000).

Subchapter I. Records

§470. General Provisions

A. Each licensee or registrant shall use the special units curie, rad, and rem, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this Chapter. In the records required by this Chapter, the licensee may record quantities in the International System of Units (SI) in parentheses following each of the special units specified above. However, all quantities must be recorded as stated in this Subsection. Notwithstanding these allowances, when recording information on shipment manifests, as required in LAC 33:XV.465, information shall be recorded in SI or in both SI and special units.

B. The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this Chapter, such as total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, lens dose equivalent, deep dose equivalent, or committed effective dose equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended LR 24:2096 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2770 (December 2000).

§476. Records of Individual Monitoring Results

* * *

[See Prior Text in A]

1. the deep dose equivalent to the whole body, lens dose equivalent, shallow dose equivalent to the skin, and shallow dose equivalent to the extremities;

* * *

[See Prior Text in A.2-3]

4. the specific information used to calculate the committed effective dose equivalent in accordance with LAC 33:XV.413.A;

* * *

[See Prior Text in A.5-C]

D. The licensee or registrant shall maintain the records of dose equivalent to the embryo/fetus with the records of dose to the declared pregnant woman. The declaration of pregnancy, including the estimated date of conception, shall also be kept on file, but may be maintained separately from the dose records.

* * *

[See Prior Text in E-F]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Department of Environmental Assessment, Environmental Planning Division, LR 26:2578 (November 2000), LR 26:2770 (December 2000).

Subchapter J. Reports

§486. Notification of Incidents

* * *

[See Prior Text in A-A.1.a]

b. a lens dose equivalent of 0.75 Sv (75 rem) or more; or

* * *

[See Prior Text in A.1.c-B.1.a]

b. a lens dose equivalent exceeding 0.15 Sv (15 rem); or

* * *

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

C. Licensees or registrants shall make the reports required by Subsections A and B of this Section through initial contact by telephone and shall confirm the initial contact by telegram, mailgram, or facsimile to the Office of Environmental Compliance, or by e-mail utilizing the Incident Report Form and procedures found at www.deq.state.la.us/surveillance.

D. The licensee or registrant shall prepare each report filed with the department in accordance with this Section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

* * *

[See Prior Text in E]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended LR 22:973 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2579 (November 2000), LR 26:2770 (December 2000).

§487. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits

* * *

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

d. the limits for an individual member of the public in LAC 33:XV.421;

e. any applicable limit in the license or registration; or

f. the ALARA constraints for air emissions established under LAC 33:XV.406.D;

* * *

[See Prior Text in A.3-B.1.c]

d. corrective steps taken or planned to ensure against a recurrence, including the schedule for achieving conformance with applicable limits, ALARA constraints, generally applicable environmental standards, and associated license or registration conditions.

2. Each report filed in accordance with LAC 33:XV.487.A shall include for each occupationally overexposed individual the name, Social Security account number, and date of birth. With respect to the limit for the embryo/fetus in LAC 33:XV.417, the identifiers should be those of the declared pregnant woman. The report shall be prepared so that this information is stated in a separate and detachable portion of the report.

* * *

[See Prior Text in C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November

1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2579 (November 2000), LR 26:2771 (December 2000).

Chapter 15. Transportation of Radioactive Material §1502. Scope

* * *

[See Prior Text in A-C.4]

D. If U.S. DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the U.S. DOT specified in Subsection A of this Section to the same extent as if the shipment or transportation were subject to U.S. DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Office of Environmental Services, Permits Division.

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 26:1265 (June 2000), LR 26:2771 (December 2000).

Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

§2013. Radiation Survey Instruments

A. The licensee or registrant shall maintain sufficient calibrated operable radiation survey instruments at each field station to make physical radiation surveys as required by this Chapter and by LAC 33:XV.426 and 430. Instrumentation shall be capable of measuring 0.001 mSv (0.1 mrem) per hour through at least 0.5 mSv (50 mrem) per hour.

* * *

[See Prior Text in B-C]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated 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 26:2604 (November 2000), LR 26:2771 (December 2000).

Subchapter B. Precautionary Procedures in Logging and Subsurface Tracer Operations

§2031. Security

A. A logging supervisor must be physically present at a temporary job site whenever licensed materials are being handled or are not stored and locked in a vehicle or storage place. The logging supervisor may leave the job site in order to obtain assistance if a source becomes lodged in a well.

B. During each logging or tracer application, the logging supervisor or other designated employee shall maintain direct surveillance of the operation to protect against unauthorized and/or unnecessary entry into a restricted area, as defined in Chapter 1 of these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569

(October 1987), repealed and repromulgated 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 26:2771 (December 2000).

James H. Brent, Ph.D.
Assistant Secretary

0012#019

RULE

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

**Radiographer Trainee Requirements and Records
(LAC 33:XV.503 and 588)(NE025)**

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.503 and 588 (Log #NE025).

This Rule will change the definition of "radiographer trainee" to allow the individual to be a trainee for 24 consecutive months, provided the industrial radiography exam is taken during the first 12-month period. Previously the trainee status was only good for 12 consecutive months. The 12-month period for trainee status was putting a burden on some industrial radiography companies. This action will allow them to maintain trained personnel for a longer period of time and will give the trained personnel more time to prepare themselves to pass the industrial radiography exam. If an individual is granted trainee status and is working as part of a two-man radiography crew, the licensee must have the written confirmation letter from the department at the temporary job site where the individual is working. The basis and rationale for this Rule are to ensure that the individual working has been given written authorization as a trainee and time to get the proper experience needed for the trainee status.

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

**Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection**

**Chapter 5. Radiation Safety Requirements for
Industrial Radiographic Operations**

§503. Definitions

A. As used in this Chapter, the following definitions apply:

* * *

[See Prior Text]

Radiographer Trainee—any individual who satisfied the following conditions:

a. has been instructed for at least 40 hours in the subjects outlined in Appendix A.I - III of this Chapter;

b. has successfully completed a company-specific written examination and field test covering the applicable Louisiana radiation protection regulations (LAC 33:XV) and the company's operating and emergency procedures;

c. has completed and documented at least 40 hours of on-the-job training, in industrial radiography operations, as part of a three-person crew composed of an instructor, a radiographer, and the radiographer trainee applicant; and

d. has filed a completed Form DRC-20 with the department requesting radiographer trainee status and has received written confirmation from the department granting radiographer trainee status. Radiographer trainee status shall be granted only once for each individual and is valid for only 12 consecutive months. Radiography trainee status may be extended for an additional 12 consecutive months provided that the radiographer trainee has taken the industrial radiography radiation safety examination administered by the department or its agent during the first 12 months of granting radiographer trainee status.

* * *

[See Prior Text]

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 20:653 (June 1994), LR 23:1138 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2581 (November 2000), LR 26:2772 (December 2000).

**§588. Documents and Records Required at Temporary
Job Sites**

A. Each licensee or registrant conducting industrial radiography at a temporary job site shall have the following documents and records available at that job site for inspection by the department:

* * *

[See Prior Text In A.1-4]

5. daily pocket dosimeter records for the period of operation at the site;

6. the latest instrument calibration and leak test records for specific devices and sealed sources in use at the site. Acceptable records include tags or labels which are affixed to the device or survey meter; and

7. a copy of the written confirmation letter issued by the department granting radiographer trainee status to any radiographer trainee performing industrial radiography at the temporary job site.

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 20:653 (June 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2772 (December 2000).

James H. Brent, Ph.D.
Assistant Secretary

0012#069

RULE

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

Waste Tire Regulations (LAC 33:VII.Chapter 105)(SW029)

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 Solid Waste regulations, LAC 33:VII.Chapter 105 (Log #SW029).

The Rule clarifies definitions, simplifies the exemption process, simplifies the standards for waste tire generators, transporters, and recyclers, and implements the fee for off-road tires and tires weighing more than 100 pounds. The Rule also implements a raise in payments to waste tire processors from \$1 per 20 pounds of waste tire material processed and marketed to \$1.50 per 20 pounds. Waste tire processors have not received an increase since program inception in 1992. The revisions are necessary to meet the standards required by Act 1015 of the 1999 Regular Session of the Louisiana Legislature, which places a fee on off-road tires for their disposal and/or recycling. In addition, many of the sections in the Waste Tire Program regulations have not been updated since inception in 1994. These revisions will make the regulations current. The basis and rationale for this Rule are to incorporate the aspects of Act 1015 into the regulations and to make the standard current.

The department has submitted a report to the Legislative Fiscal Office and the Joint Legislative Committee on the Budget demonstrating that the environmental and public health benefits outweigh the social and economic costs reasonably expected to result from the Rule. This report is published in the Potpourri Section of the December 20, 2000, issue of the *Louisiana Register*. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part VII. Solid Waste

Subpart 2. Recycling

Chapter 105. Waste Tires

§10503. Administration

A. This program shall be administered by the Department of Environmental Quality.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2773 (December 2000).

§10505. Definitions

The following words, terms, and phrases, when used in conjunction with the Solid Waste Rules and Regulations, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

* * *

[See Prior Text]

AgreementCa written contract or other written arrangement between recipient persons and the administrative authority that outlines specific goals or responsibilities.

Authorization CertificateCwritten authorization issued by the administrative authority.

Clean ClosureCthe act of closing a facility whereby all waste tires and waste tire material are removed, including any resulting on-site or off-site contamination.

Collection CenterCa permitted or authorized location denoted on an authorization certificate where waste tires and waste tire material can be stored and/or collected.

CollectorCa person who operates a collection center.

* * *

[See Prior Text]

Destination FacilityCa facility where waste tires and/or waste tire material is processed, recycled, collected, stored and/or disposed after transportation.

* * *

[See Prior Text]

DisposalCthe depositing, dumping, or placing of waste tires or waste tire material on or into any land or water so that such waste tires, waste tire material, or a constituent thereof, may have the potential for entering the environment, or being emitted into the air, or discharged into any waters of Louisiana.

FacilityAny land and appurtenances thereto used for storage, processing, recycling, and/or disposal of solid waste or tire material, but possibly consisting of one or more units. (Any earthen ditches leading to or from a facility that receive waste are considered part of the facility to which they connect; except ditches which are lined with materials which are capable of preventing groundwater contamination.)

GeneratorCa facility that generates waste tires as a part of its business operations.

Government AgenciesClocal, parish, state, municipal, and federal governing authorities having jurisdiction over a defined geographic area.

* * *

[See Prior Text]

ManifestCthe form, provided by the department, used for identifying the quantity, composition, origin, routing, and destination of waste tires and/or waste tire material during transportation from the point of generation to the authorized destination.

* * *

[See Prior Text]

Mobile ProcessorCa standard permitted processor who has processing equipment capable of being moved from one location to another.

ModificationCany change in a site, facility, unit, process or disposal method, or operation that deviates from the specification in the permit. Routine or emergency maintenance that does not cause the facility to deviate from the specification of the permit is not considered a modification.

Motor VehicleCan automobile, motorcycle, truck, trailer, semi-trailer, truck-tractor and semi-trailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power.

*Off-Road Vehicle*Ca vehicle used for construction, farming, industrial uses, or mining, not normally operated on the roads of the state. This term does not include vehicles propelled solely by muscular power.

*Permittee/Permit Holder*Ca person who is issued a permit and is responsible for meeting all conditions of the permit and these regulations at a facility.

* * *

[See Prior Text]

*Processing*Ca any method or activity that alters whole waste tires so that they are no longer whole; such as, cutting, slicing, chipping, shredding, distilling, freezing, or other processes as determined by the administrative authority. At a minimum, a tire is considered processed only if its volume has been reduced by cutting it in half along its circumference.

*Processor*Ca person that collects and processes waste tires.

*Qualified Recycler*Ca any entity who uses waste tire material in a beneficial manner as determined by the administrative authority.

*Recycling*Ca any process by which waste tires, waste tire material, or residuals are reused or returned to beneficial use in the form of products or as a fuel source.

*Standard Permit*Ca written authorization issued by the administrative authority to a person for the construction, installation, modification, operation, or closure of facilities or equipment used or intended to be used to process or collect waste tires in accordance with the act, these regulations, specified terms and conditions, and the permit application.

*Temporary Permit*Ca written authorization issued by the administrative authority for a specific amount of time to a person for the construction, installation, operation, closure, or post closure of a particular facility used or intended to be used for processing waste tires or waste tire material in accordance with the act, these regulations, and specified terms and conditions.

*Tire*Ca continuous solid or pneumatic rubber covering encircling the wheel of a motor vehicle or off-road vehicle.

Tire Dealer—any person, business, or firm that engages in the sale of new tires for use on motor vehicles.

*Tire Wholesaler*Ca any wholesaler, supplier, distributor, jobber, or other entity who distributes tires to retail dealers in this state or to its own retail establishments in this state.

*Transporter*Ca person who transports waste tires.

*Unauthorized Waste Tire Pile*Ca pile in excess of 20 waste tires whose storage and/or disposal is not authorized by the administrative authority.

*Waste Tire*Ca whole tire that is no longer suitable for its original purpose because of wear, damage, or defect.

*Waste Tire Material*Ca waste tires after processing; such as, but not limited to, chipped, shredded, cut, or sliced tires, crumb rubber, steel cord, cord material, oil, or carbon black.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:37 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2773 (December 2000).

§10507. Exemptions

A. Any persons, facilities, or other entities subject to these regulations may petition the department for exemption from these regulations or certain portions thereof in accordance with LAC 33:VII.307.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:38 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2774 (December 2000).

§10509. Prohibitions and Mandatory Provisions

A. No person may knowingly or intentionally dispose unprocessed waste tires in a landfill within the boundaries of Louisiana.

B. Upon promulgation of these regulations, no person may store more than 20 whole waste tires unless they are authorized by the administrative authority and:

1. collected and stored at a registered tire dealer, registered used tire dealer, or registered other generator of waste tires;

2. collected and stored at an authorized waste tire collection center or permitted waste tire processing facility; or

3. collected and stored at an authorized waste tire recycling facility.

C. No person may transport more than 20 waste tires without first obtaining a transporter authorization certificate.

D. No person may receive payment from the Waste Tire Management Fund for processing tires without a standard permit issued by the department.

E. No regulated generator, collector, or processor may store any waste tire for longer than 365 days.

F. All persons subject to these regulations are subject to inspection and/or enforcement action by the administrative authority, in accordance with LAC 33:VII.10537.

G. All persons subject to these regulations shall maintain all records required to demonstrate compliance with these regulations for a minimum of three years. The department may extend the record retention period in the event of an investigation. The records shall be maintained at the regulated facility or site unless an alternate storage location is approved in writing by the administrative authority. All records shall be produced upon request for inspection by the department.

H. All persons who sell new tires shall retain and make available for inspection, audit, copying, and examination, a record of all tire transactions in sufficient detail to be of value in determining the correct amount of fee due from such persons. The records retained shall include all sales invoices, purchase orders, inventory records, and shipping records pertaining to any and all sales and purchases of tires. This recordkeeping provision does not require anything more than what is already required by R.S. 47:309(A).

I. Each tire wholesaler shall maintain a record of all new tire sales made to dealers in this state. This recordkeeping provision does not require anything more than what is already required by R.S. 47:309(A). These records shall contain and include the name and address of each tire purchaser and the number of tires sold to that purchaser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:38 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2774 (December 2000).

§10511. Permit System

A. Permit Requirements

1. Scope. Persons, other than generators and government agencies, operating collection facilities that collect waste tires and/or waste tire material and/or process waste tires or waste tire material for payment from the Waste Tire Management Fund must secure a permit and are subject to the requirements detailed in these regulations.

2. Types of Permits

a. Temporary Permits. A temporary permit allows continued operation of an existing collector and/or processor, in accordance with an approved interim operational plan, but does not allow the expansion or modification of the facility without approval of the administrative authority. The administrative authority may issue a temporary permit in the following situations:

* * *

[See Prior Text in A.2.a.i]

ii. Order to Close. To allow operations to continue at an existing facility while a closure plan is being processed or while a facility is being closed in accordance with a closure plan.

* * *

[See Prior Text in A.2.b]

3. Permit Provisions

* * *

[See Prior Text in A.3.a-b]

B. Modifications. Modification requests shall be tendered in accordance with LAC 33:VII.517. No modifications shall be made to the permit or facility without prior written approval from the administrative authority.

C. Suspension or Revocation of Permit. The administrative authority may review a permit at any time. After review of a permit, the administrative authority may, for cause, suspend or revoke a permit in whole or in part in accordance with procedures outlined in LAC 33:VII.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:38 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2775 (December 2000).

§10513. Permit Process for Existing Facilities Classified for Upgrade and for Proposed Facilities

* * *

[See Prior Text in A-A.3]

B. Submittal of Permit Applications

1. Any applicant for a standard permit for an existing or proposed facility shall complete a waste tire standard permit application, and submit four copies to the department. Each individual copy of the application shall be in standard three-ring-bound documents measuring 8 1/2 by 11 inches. All

appendices, references, exhibits, tables, etc., shall be marked with appropriate tabs.

* * *

[See Prior Text in B.2]

C. Requirements for Public Notification of Permit Application

1. As provided in R.S. 30:2022 and 30:2418, upon receipt of a permit application the department shall provide written notice on the subject matter to the parish governing authority and each municipality affected by the application.

* * *

[See Prior Text in C.2]

3. The applicant shall cause the notice of the hearing to be published in the official journal of the parish or municipality on two separate days preceding the hearing. The last day of publication of such notice shall be at least 10 days prior to the hearing. The applicant shall provide the department with proof of publication.

4. The applicant shall post a notice of the hearing, in prominent view of the public, for two weeks prior to the hearing, in the courthouse, government center, and all the libraries of the parish.

5. A public comment period of at least 30 days shall be allowed following the public hearing.

* * *

[See Prior Text in D-D.2]

E. Waste Tire Standard Permit Application Review

1. An application deemed unacceptable for technical review shall be rejected. Applications shall be subject to the completeness review requirements of LAC 33:I.1505.A.

2. Applications shall be subject to the technical review requirements of LAC 33:I.1505.B.

3. Closure plans that are determined to be unacceptable for a technical review shall be rejected. The applicant shall be required to resubmit the closure plan to the administrative authority.

4. An applicant whose closure plan is acceptable for technical review, but lacks the necessary information, shall be informed of such in a closure plan deficiency letter. These deficiencies shall be corrected by submission of supplementary information within 30 days after receipt of the closure plan deficiency letter. Closure plans that have been deemed technically complete shall be approved.

F. Standard Permit Applications Deemed Technically Complete

* * *

[See Prior Text in F.1-2]

3. After the six copies are submitted to the department, a notice shall be placed in the office bulletin (if one is available), the official journal of the state, and the official journal of the parish or municipality where the facility is located. The department shall publish a notice of acceptance for review one time as a single classified advertisement measuring three columns by five inches in the legal or public notices section of the official journal of the state and one time as a classified advertisement in the legal or public notices section of the official journal of the parish or municipality where the facility is located. If the affected area is Baton Rouge, a single classified advertisement measuring three columns by five inches in the official journal of the state shall be the only public notice required.

The notice shall solicit comment from interested individuals and groups. Comments received by the administrative authority within 30 days after the date the notice is published in the local newspaper shall be reviewed by the department. The notice shall be published in accordance with the sample public notice provided by the department.

4. A public hearing shall be held for any proposed standard permit application when the administrative authority determines, on the basis of comments received and other information, that a hearing is necessary.

5. Public Opportunity to Request a Hearing. Any person may, within 30 days after the date of publication of the newspaper notice required in Subsection F.3 of this Section, request that a public hearing be held. If the administrative authority determines that the hearing is warranted, a public hearing shall be held. If the administrative authority determines not to hold the requested hearing, the department shall send the person requesting the hearing written notification of the determination. The request for a hearing must be in writing and must contain the name and affiliation of the person making the request and the comments in support of or in objection to the issuance of a permit.

* * *

[See Prior Text in F.6]

7. Receipt of Comments Following a Public Hearing. The department shall receive comments for 30 days after the date of a public hearing.

* * *

[See Prior Text in G-G.2]

H. Public Notice of Permit Issuance. No later than 10 days following the issuance of a standard permit, the permit holder shall publish a notice of the issuance of the standard permit. This notice shall be published in the official journal of the state and in the official journal of the parish or municipality where the facility is located. The notice shall be published one time as a single classified advertisement measuring three columns by five inches in the legal or public notices section of the official journal of the state, and one time as a classified advertisement in the legal or public notices section of the official journal of the parish where the facility is located. If the affected area is Baton Rouge, a single classified advertisement measuring three columns by five inches in the official journal of the state will be the only public notice required. The permit holder shall provide proof of publication of the notice(s) to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2775 (December 2000).

§10515. Agreements with Waste Tire Processors

Standard permitted waste tire processors may apply to the administrative authority for subsidized funding to assist them with waste tire processing and marketing costs. This application form is available from the administrative authority.

A. Maximum Payments to Processors

1. Standard permitted processors shall be eligible to receive a minimum of \$1.50 per tire equivalent unit of 20

pounds of waste tire material that is actually recycled or that reaches certifiable end-market uses provided.

a. Standard permitted processors shall provide documentation to prove that they are contracted with a qualified recycler. Proof shall be provided in the form of a letter or other document from the qualified recycler.

b. Standard permitted processors shall provide a certificate of end use demonstrating that the waste tire material has been recycled.

c. Standard permitted processors shall provide a Department of Agriculture certified scale-weight ticket including gross, tare and net weights.

2. Standard permitted processors shall be eligible to receive a minimum of \$1.50 per 20 pounds of whole waste tire that is marketed and shipped to a qualified recycler in accordance with LAC 33:VII.10535.D.4.

a. Standard permitted processors must apply and obtain approval from the department in order to market and ship whole waste tires. At this time they shall provide a detailed description of the operational plan to market and ship whole waste tires to a qualified recycler, including:

i. shipping destination;

ii. place of origin of the tires;

iii. name of the qualified recycler;

iv. method of recycling authorized or allowed under applicable state and federal laws;

v. detailed description of product material or fuel source; and

vi. a copy of an agreement with the qualified recycler who will accept whole waste tires for recycling.

b. The standard permitted processor shall ensure the qualified recycler accepts whole waste tires or baled waste tires from the processor in accordance with its agreement and Subsection A.2.a of this Section.

B. The standard permitted processor shall provide, with the monthly report required by LAC 33:VII.10535.D.6, a certificate of end use by the qualified recycler, demonstrating that it has recycled the waste tires or waste tire material.

C. The standard permitted processor shall comply with LAC 33:VII.10533.

D. The standard permitted processor shall provide all documentation to demonstrate that all the requirements of this Section have been met.

E. Once the application is approved, the department shall issue an agreement in accordance with Subsection A of this Section.

F. General Conditions of Agreements. It shall be the responsibility of processors to make payments to authorized waste tire transporters who provide them with waste tires. This includes making payments to local governmental bodies acting as transporters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2776 (December 2000).

§10517. Standard Waste Tire Permit Application

Each applicant requesting a standard permit in accordance with these regulations shall complete the permit application,

including, but not limited to, the information included in this Section.

A. Processing Facility. The permit application shall include:

1. the name of the applicant;
2. the name and phone number of the owner/contact;

* * *

[See Prior Text in A.3]

4. the location of the processing/collection facility, including section, township, and range;

* * *

[See Prior Text in A.5-6]

7. the name, address, and phone number of a contact person in case of an emergency, other than the individual specified in Subsection A.2 of this Section;

8. a certification in writing that all the information provided in the application and in accordance with the application is true and correct. Providing false or incorrect information may result in criminal or civil enforcement. The applicant shall also provide the site master plan, including property lines, building, facilities, excavations, drainage, roads, and other elements of the process system employed, certified by a registered engineer licensed in the state of Louisiana;

9. a copy of written notification to the appropriate local governing authority, stating that the site is to be used as a waste tire processing and/or collection facility;

* * *

[See Prior Text in A.10]

11. written documentation from the property owner granting approval for use of property as a waste tire processing and/or collection facility, if property owner is other than applicant;

12. proof of publication of Notice of Intent to submit an application for a standard waste tire permit;

* * *

[See Prior Text in A.13-14.a]

b. waste tire acceptance plan, to count, record, and monitor incoming quantities of waste tires;

* * *

[See Prior Text in A.14.c-e.i]

ii. maximum number of waste tires and volume of waste tire material to be stored at any one time. The total amount of waste tires and volume of waste tire material shall not exceed 60 times the daily capacity of the processing unit;

* * *

[See Prior Text in A.14.e.iii-iv]

v. type of access roads and buffer zones; and

* * *

[See Prior Text in A.14.e.vi-15]

16. site closure plan to assure clean closure. The closure plan must be submitted as a separate section with each application. The closure plan for all facilities must ensure clean closure and must include the following:

a. the method to be used and steps necessary for closing the facility;

b. the estimated cost of closure of the facility, based on the cost of hiring a third party to close the facility at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive;

c. an estimate of the maximum inventory of whole waste tires and waste tire material on-site at any one time over the active life of the facility;

d. a schedule for completing all activities necessary for closure; and

e. the sequence of final closure as applicable;

* * *

[See Prior Text in A.17-21]

B. Waste Tire Collection Center. Waste tire processors or other persons may operate a waste tire collection center in accordance with LAC 33:VII.10527. All information required in Subsection A of this Section must be provided in a permit application for each waste tire collection center.

C. Governmental Agencies. Government agencies intending to operate collection centers and/or tire processing equipment for the purposes of volume reduction prior to disposal will not be required to possess permits provided that:

1. the governmental agency collection centers shall be located on property owned or otherwise controlled by the governmental agency, unless otherwise authorized by the department;

2. governmental agency collection centers shall be attended during operational hours and have controlled ingress and egress during non-operational hours;

3. governmental agency collection center personnel shall witness all loading and unloading of waste tires;

4. governmental agency collection centers may accept waste tires from roadside pickup, from rights-of-way, individual residents, and unauthorized waste tire piles. For the tires from unauthorized waste tire piles to be eligible for the \$1.50 per 20 pounds marketing payment to permitted processors as indicated in LAC 33:VII.10535, the governmental agency must notify the department, in writing, of the agency's intent prior to removing the tires from said site;

5. governmental agencies shall develop fire control plans and disease vector control plans for the collection center and/or tire processing equipment; and

6. governmental agencies shall satisfy the requirements of LAC 33:VII.10509 and 10533.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:39 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2776 (December 2000).

§10519. Standards and Responsibilities of Generators of Waste Tires

A. Within 30 days of commencement of business operations, generators of waste tires shall notify the department of their existence and obtain a generator identification number prior to initiating a waste tire manifest. Notification shall be on a form provided by the department.

B. Tire dealers must accept one waste tire for every new tire sold from the purchaser of the new tire at the time of purchase, unless the purchaser elects to retain the waste tire.

C. Each tire dealer doing business in the state of Louisiana shall be responsible for the collection of the \$2 waste tire fee upon the sale of each new tire weighing 100 pounds or less and a fee of \$1 per 20 pounds for tires

weighing more than 100 pounds. Tires weighing 100 pounds or less include all automobile, pickup, sport utility vehicle, front steer wheel tractor, and farm implement service tires. Tires weighing more than 100 pounds and less than 500 pounds shall pay a fee based on Appendix C of this Chapter. The figures in Appendix C are based on a weighted average of each size, regardless of brand or type. No fee shall be collected on tires weighing more than 500 pounds or solid tires. "Tire dealers" includes any dealer selling new tires in Louisiana, where the tire is delivered into this state.

D. All tire dealers shall remit the waste tire fee, as specified in LAC 33:VII.10535.B and C, to the department on a monthly basis on or before the twentieth day following the month covered. The fee shall be submitted along with the Monthly Waste Tire Fee Report Form WT01 obtained from the department. Until December 31, 2001, the fee shall be reported on Form WT01 in the following tire categories: passenger/light truck, medium truck, and off-road. On January 1, 2002, the fee shall be reported on Form WT02 and shall include all categories of tires listed in Appendix C. Every tire dealer required to make a report and remit the fee imposed by this Section shall keep and preserve records as may be necessary to readily determine the amount of fee due. Each dealer shall maintain a complete record of the quantity of tires sold, together with tire sales invoices, purchase invoices, inventory records, and copies of each Monthly Waste Tire Fee Report for a period of no less than three years. These records shall be open for inspection by the administrative authority at all reasonable hours.

* * *

[See Prior Text in E-E.1]

2. "All Louisiana tire dealers are required to collect a waste tire cleanup and recycling fee of \$2 per tire weighing 100 pounds or less and \$1 per 20 pounds for tires weighing more than 100 pounds, upon sale of each new tire. Tires weighing 100 pounds or less include all automobile, pickup, sport utility vehicle, front steer wheel tractor, farm implement service tires. Tires weighing more than 100 pounds and less than 500 pounds shall pay a fee based on Appendix C of this Chapter. The figures in Appendix C are based on a weighted average of each size, regardless of brand or type. No fee shall be collected on tires weighing more than 500 pounds or solid tires. This fee must be collected whether or not the purchaser retains the waste tires. Tire dealers must accept from the purchaser, at the time of sale, one waste tire for every new tire sold, unless the purchaser elects to retain the waste tire."

F. The waste tire fee established by R.S. 30:2418 shall be listed on a separate line of the retail sales invoice. No tax of any kind shall be applied to this fee.

G. Generators of waste tires shall comply with the manifest requirements of LAC 33:VII.10533.

H. For all waste tires and waste tire material collected and/or stored, generators must provide:

1. a cover adequate to exclude water from the waste tires;
2. vector and vermin control; and
3. means to prevent or control standing water in the containment area.

I. Generators of waste tires may store waste tires up to 120 days after receipt or generation; however, a generator of

waste tires may store waste tires a maximum of 365 days provided:

1. the storage is solely for the purpose of accumulating such quantities as are necessary to facilitate proper processing; and

2. documentation supporting the storage period and the quantity required for proper processing are available at the generator's facility for department inspection.

J. All waste tires and waste tire material must be collected and/or stored on property contiguous to the tire dealership or other waste tire generator facility.

K. No generator shall allow the removal of waste tires from his place of business by anyone other than an authorized transporter, unless the generator generates 50 or less waste tires per month from the sale of 50 new tires. In this case, the generator may transport his waste tires to an authorized collection or permitted processing facility provided LAC 33:VII.10523.C is satisfied.

L. A generator who ceases the sale of tires at the registered location shall notify the administrative authority within 10 days of the date of the close or relocation of the business. This notice shall include information regarding the location and accessibility of the tire sale and monthly report records.

M. Generators of waste tires shall segregate the waste tires from any new or used tires offered for sale.

N. Governmental agencies are not required to comply with this Section, except Subsections A, G, I, and J of this Section.

O. All tire wholesalers shall keep a record of all tire sales made in Louisiana. These records shall contain the name and address of the purchaser, the date of the purchase, the number of tires purchased, and the type and size of each tire purchased. These records shall be kept for a period of three years and shall be available and subject to inspection by the administrative authority at all reasonable hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000).

§10521. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:40 (January 1992), amended LR 20:1001 (September 1994), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2777 (December 2000).

§10523. Standards and Responsibilities of Waste Tire Transporters

A. Transporters of waste tires shall complete the application for transporter authorization form and submit the application, with the payment of the transporter fees as specified in LAC 33:VII.10535.A, to the administrative authority.

B. A transporter authorization certificate shall be valid for a maximum of one year from the date of issuance. All transporter authorization certificates expire on August 31 of each calendar year. The administrative authority shall issue to the transporter an appropriate number of transporter decals to be placed in accordance with Subsection F of this Section.

C. No person shall transport more than 20 waste tires without a completed manifest satisfying the requirements of LAC 33:VII.10533.

D. For in-state waste tire transportation, the transporter shall transport all waste tires to an authorized collection center or a permitted processing facility.

E. Any person who engages in the transportation of waste tires from Louisiana to other states or countries or from other states to Louisiana, or persons who collect or transport waste tires in Louisiana, but have their place of business in another state, shall comply with all of the requirements for transporters contained in this Section.

F. The transporter shall affix to the driver's door, along with the transporter decal, and the passenger's door of each truck or tractor listed on the notification form, the authorization certificate number in characters no less than three inches in height.

G. All persons subject to this Section shall notify the administrative authority in writing within 10 days when any information on the authorization certificate form changes, or if they close their business and cease transporting waste tires.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2778 (December 2000).

§10525. Standards and Responsibilities of Waste Tire

Processors

A. Upon receiving a shipment containing waste tires, the processor shall be responsible to verify the number of waste tires in each shipment by actually counting each waste tire. The processor shall sign each waste tire manifest upon receiving waste tires.

* * *

[See Prior Text in B-C]

D. All waste tire facilities must meet the following standards.

1. All processors shall control ingress and egress to the site through a means approved by the administrative authority, with at least one entrance gate being a minimum of 20 feet wide.

2. All facilities shall have a buffer zone of 100 feet. Waste tires and waste tire material shall not be placed in the buffer zone.

3. Fire Protection

a. There shall be no open burning.

b. The facility operator shall enter into a written agreement with the local fire department regarding fire protection at the facility.

c. The facility operator shall develop and implement a fire protection and safety plan for the facility to

ensure personnel protection and minimize impact to the environment.

4. Suitable drainage structures or features shall be provided to prevent or control standing water in the waste tires, waste tire material, and associated storage areas.

5. All water discharges, including stormwater runoff, from the site shall be in accordance with applicable state and federal rules and regulations.

6. All waste tire processors, collectors, and associated solid waste management units shall comply with LAC 33:VII.Subpart 1.

7. Waste tires and waste tire material shall be treated according to an acceptable and effective disease vector control plan approved by the administrative authority.

8. Waste tires and waste tire material stored outside shall be maintained in piles, the dimensions of which shall not exceed 10 feet in height, 20 feet in width, and 200 feet in length or in such dimensions as approved by the administrative authority.

9. Waste tire or waste tire material piles shall be separated by lanes with a minimum width of 50 feet to allow access by emergency vehicles and equipment.

10. Access lanes to and within the facility shall be free of potholes and ruts and be designed to prevent erosion.

11. The storage limit for waste tires and waste tire material shall be no more than 60 times the daily permitted processing capacity of the processing facility.

12. All waste tire facility operators shall maintain a site closure financial assurance fund in an amount based on the maximum number of pounds of waste tire material that will be stored at the processing facility site at any one time. This fund shall be in the form of a financial guarantee bond, performance bond, or an irrevocable letter of credit in the amount of \$20 per ton of waste tire material on the site. A standby trust fund shall be maintained for the financial assurance mechanism that is chosen by the facility. The financial guarantee bond, performance bond, irrevocable letter of credit, or standby trust fund must use the exact language included in the documents in Appendix A. The financial assurance must be reviewed at least annually.

13. An alternative method of determining the amount required for financial assurance shall be as follows:

a. the waste tire facility operator shall submit an estimate of the maximum total amount by weight of waste tire material that will be stored at the processing facility at any one time;

b. the waste tire facility operator shall also submit two independent, third-party estimates of the total cost of cleaning up and closing the facility, including the cost of loading the waste tire material, transportation to a permitted disposal site, and the disposal cost; and

c. if the estimates provided are lower than the required \$20 per ton of waste tire material, the administrative authority shall evaluate the estimates submitted and determine the amount of financial assurance that the processor is required to provide.

14. Financial assurances for closure and post closure activities must be in conformity with the standards contained in LAC 33:VII.727.A.2.i.

E. Mobile Processors

1. Only standard permitted processors shall be eligible to apply for mobile processor authorization certificates. Any

mobile processor certificate that expires after the effective date of these regulations shall not be renewed for a period extending beyond 365 days after the effective date of these regulations.

* * *

[See Prior Text in E.2-6]

7. Mobile processors are responsible for notifying the administrative authority in writing within 10 days when any information on the notification changes or if they cease processing waste tires with a mobile unit.

F. Governmental agencies may operate tire splitting equipment for the purposes of volume reduction prior to disposal without a permit to process waste tires, provided they meet the requirements outlined in LAC 33:VII.10517.C and request authorization from the administrative authority before initiating any processing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411-2422.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2779 (December 2000).

§10527. Standards and Responsibilities for Waste Tire Collectors and Collection Centers

A. All collection center operators shall satisfy the manifest requirements of LAC 33:VII.10533. All collection center operators shall be responsible for counting the tires in the shipment. The collection center shall maintain a log for all unmanifested loads of 20 or fewer waste tires.

B. All collection center operators shall meet the standards in LAC 33:VII.10525.D.1-10 and 12-14.

C. The storage limit for a collection center shall be 3000 whole waste tires or 60 times the daily permitted processing capacity, whichever is greater.

D. Use of mobile processing units are allowed at collection centers only when processed waste tire material is immediately deposited in a trailer or other suitable container for immediate removal from the site.

E. No processed waste tire material shall be deposited on the ground at a collection center at any time.

F. All collection centers shall provide a method to control and/or treat process water if applicable.

G. The closure plan for all collection centers must ensure clean closure and must include the following:

1. the method to be used and steps necessary for closing the center;

2. the estimated cost of closure of the center, based on the cost of hiring a third party to close the center at the point in the center's operating life when the extent and manner of its operation would make closure the most expensive;

3. an estimate of the maximum inventory of whole waste tires ever on-site over the active life of the center;

4. a schedule for completing all activities necessary for closure; and

5. the sequence of final closure as applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 18:41 (January 1992), amended LR 20:1001 (September 1994), amended by the Office of Environmental

Assessment, Environmental Planning Division, LR 26:2780 (December 2000).

§10529. Standards and Responsibilities of Property

Owners

A. Owners of property on which unauthorized waste tire piles are located shall remediate the site or reimburse the department for the cost of remediation, except as provided by R.S. 30:2156.

B. Owners of property on which unauthorized waste tire piles are located shall provide disease vector control measures adequate to protect the safety and health of the public, and shall keep the site free of excess grass, underbrush, and other harborage.

C. Owners of property on which unauthorized waste tire piles are located shall limit access to the piles to prevent further disposal of tires or other waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000).

§10531. Standards And Responsibilities of Qualified Recyclers

* * *

[See Prior Text in A-A.9]

B. All facilities recycling waste tires and/or waste tire material in Louisiana shall meet the requirements of LAC 33:VII.10525.D.

C. The storage limit for waste tire material shall be no more than 180 times the daily recycling capacity of the recycling facility. The facility must maintain records to document its compliance with this provision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000).

§10533. Manifest System

A. All shipments of more than 20 waste tires shall be accompanied by a waste tire manifest provided by the department and executed in accordance with this Section.

B. The manifest document flow is as follows:

1. the generator initiates the manifest (original and at least five copies), completing all of Section 1 and designating the destination facility in Section 3. After the transporter signs the manifest, the generator retains one copy for his files, and the original and all other copies accompany the waste tire shipment. Upon receipt of the waste tires, the transporter completes the Section 2, Transporter 1 information. If applicable, upon surrender of the shipment to a second transporter, the second transporter completes the Section 2, Transporter 2 information. After Transporter 2 signs the manifest, Transporter 1 retains his copy of the manifest;

2. the transporter secures signature of the designated destination facility operator upon delivery of waste tires and/or waste tire material to the designated destination facility. The transporter retains one copy for his files and gives the original and remaining copies to the designated destination facility operator;

3. the designated processing facility operator completes Section 3 of the manifest and retains a copy for his files. The designated processing facility operator shall submit the original manifest to the department with the monthly processor report. The designated processing facility shall send all remaining copies to the generator no later than seven days after delivery;

4. a generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated destination facility within 30 days of the date the waste tires and/or waste tire material was accepted by the initial transporter must contact the transporter and/or the owner or the operator of the designated destination facility to determine the status of the shipment; and

5. a generator must submit to the department written notification, if he has not received a copy of the manifest with the handwritten signature of the designated destination facility operator within 45 days of the date the shipment was accepted by the transporter. The notification shall include:

a. a legible copy of the manifest for which the generator does not have confirmation of delivery; and

b. a cover letter signed by the generator explaining the efforts taken to locate the shipment and the results of those efforts.

C. Upon discovering a discrepancy in the number or type of tires in the load, the designated destination facility must attempt to reconcile the discrepancy with the generator(s) or transporter(s). The destination facility operator must submit to the administrative authority, within five working days, a letter describing the discrepancy and attempts to reconcile it and a copy of the manifest(s). After the discrepancy is resolved a corrected copy is to be sent to the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2780 (December 2000).

§10535. Fees and Fund Disbursement

A. Permit and Application Fees. Each applicant shall submit a non-refundable application fee in the amount specified, according to the categories listed below. The appropriate fee must accompany the permit application or authorization application form.

* * *

[See Prior Text in A.1-4]

5. Permit modification fee **C**\$100.

* * *

[See Prior Text in A.6-8]

B. Waste Tire Fee upon Promulgation of These Regulations. A waste tire fee is hereby imposed on each new tire sold in Louisiana, to be collected by the tire dealer from the purchaser at the time of retail sale. The fee shall be \$2 per tire weighing 100 pounds or less and \$1 per 20 pounds for tires weighing more than 100 pounds. Tires weighing 100 pounds or less include all automobile, pickup, sport utility vehicle, front steer wheel tractor, and farm implement service tires. Tires weighing more than 100 pounds and less than 500 pounds shall pay a fee based on Appendix C of this Chapter. The figures in Appendix C are based on a weighted

average of each size, regardless of brand or type. No fee shall be collected on tires weighing more than 500 pounds or solid tires.

C. The disposition of the fee shall be as follows:

1. the entire waste tire fee shall be forwarded to the administrative authority by the tire dealer and shall be deposited in the Waste Tire Management Fund;

2. the waste tire fee shall be designated as follows: a minimum of \$1.50 per 20 pound equivalent will be utilized to pay waste tire processors that are working under agreement with the administrative authority for the processing of currently generated waste tires marketed in accordance with Subsection D.4 of this Section, a maximum of 10 percent of the waste tire fees collected may be utilized for program administration, 5 percent of the waste tire fees collected may be used for research and market development, and 10 percent of the waste tire fees collected may be used for unauthorized tire pile cleanup.

D. Payments for Processing and Marketing Waste Tires and Waste Tire Material. Payments made by the state of Louisiana are meant to temporarily supplement the business activities of processors and are not meant to cover all business expenses and costs associated with processing and marketing. Payments shall only be paid to standard permitted processors under written agreement with the department in accordance with LAC 33:VII.10515.

* * *

[See Prior Text in D.1-2]

3. No payments shall be made for marketing used tires or for tires destined to be retreaded.

4. The payment for marketing or recycling of shredded waste tire material shall be a minimum of \$1.50 per 20 pounds of waste tire material that is recycled by a qualified recycler. The processor shall demonstrate that the waste tire material has been recycled. The determination that waste tire material is being marketed to a qualified recycler shall be made by the administrative authority; this determination may be reviewed at any time.

5. The payment for marketing waste tire material produced by means other than shredding shall be determined on a case-by-case basis, but shall be a minimum of \$1.50 per 20 pounds of waste tire material.

6. The marketing payments shall be made to the processor for whole waste tires or baled waste tires that are marketed and shipped to a qualified recycler by the processor.

7. Payments shall be made to the processor on a monthly basis, after properly completed monthly reports are submitted by the processor to the department. Reporting forms will be provided by the administrative authority.

8. The amount of payments made to each processor is based on the availability of monies in the Waste Tire Management Fund.

9. All, or a portion, of a processor's payments may be retained by the administrative authority if the administrative authority has evidence that the processor is not fulfilling the terms of his agreement and/or his standard permit.

10. Waste tire material that was produced prior to January 1, 1998, and for which processing payments were made are only eligible for the additional \$0.15 incentive for marketing the waste tire material when the material is marketed after December 31, 1997.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2781 (December 2000).

§10536. Remediation of Unauthorized Tire Piles

A. Upon promulgation of these regulations, the administrative authority may issue agreements for remediation of unauthorized waste tire piles. The number of agreements issued each year shall be determined based on the availability of funds in the Waste Tire Management Fund that are designated for unauthorized waste tire pile remediation. Any such agreements shall designate specific eligible sites and the department shall monitor the remediation activities, which shall be made in accordance with the standards and responsibilities outlined in the Solid Waste Regulations, LAC 33:VII. Any such agreements shall stipulate a maximum amount of total allowable costs that shall be paid from the Waste Tire Management Fund. These monies shall not be applied to indirect costs and other unallowable costs, which include but are not limited to, administrative costs, consulting fees, legal fees, or premiums for performance bonds. Furthermore, they shall not be applied to reclamation efforts or remediation costs associated with other types of contaminants, which may be detected during the remediation process. Rather, these funds shall be applied to direct costs such as labor, transportation, processing, recycling, and disposal costs of the waste tires.

B. In order to apply for and receive funding for unauthorized waste tire site remediation, local governments must provide the administrative authority with unauthorized waste tire site information. This information includes, but is not limited to, accurate site location, number of tires on site, visual report on site with photographs and proximity to residences, schools, hospitals and/or nursing homes, and major highways. Such information shall be submitted using forms available from the administrative authority.

C. Unauthorized waste tire piles shall be chosen for remediation based on their placement on the waste tire priority remediation list. Point values shall be assigned in accordance with the Waste Tire Management Fund Prioritization System located in Appendix B of this Chapter. These ranking criteria were developed in consideration of threat to human health, threat of damage to surrounding property, and adverse impact on the environment.

* * *

[See Prior Text in D-G]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended LR 22:1213 (December 1996), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000).

§10537. Enforcement

* * *

[See Prior Text in A]

B. Investigations and Audits: Purposes, Notice. Investigations shall be undertaken to determine whether a violation has occurred or is about to occur, the scope and nature of the violation, and the identity of the persons or parties involved. Upon written request, the results of an investigation shall be given to any complainant who provided the information prompting the investigation and, if advisable, to any person under investigation, if the identity of such person is known. In cases where persons selling new tires have failed to report and remit the waste tire fee to the administrative authority, and the person's records are inadequate to determine the proper amount of fee due, or in cases(s) where a grossly incorrect report or a report that is false or fraudulent has been filed, the administrative authority shall have the right to estimate and assess the amount of the fee due, along with any interest accrued and penalties. The burden to demonstrate to the contrary shall rest upon the audited entity.

* * *

[See Prior Text in C-D]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2411 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 20:1001 (September 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2782 (December 2000).

**Appendix A
Louisiana Department of Environmental Quality
Financial Assurance Documents For Waste Tire
Facilities
(August 4, 1994)**

The following documents are to be used to demonstrate financial responsibility for the closure of waste tire facilities. The wording of the documents shall be identical to the wording that follows, except that the instructions in brackets are to be replaced with the relevant information and the brackets deleted.

**Sample Document 1:
Waste Tire Facility Financial Guarantee Bond**

Date bond was executed: [Date bond executed]

Effective date: [Effective date of bond]

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]

[site identification number, site name, facility name, and current closure amount 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 Waste Tire Management Fund 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 Resource Conservation and Recovery Act as amended (RCRA) and the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the waste tire facility identified above; and

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

NOW THEREFORE, if the Principal shall provide alternate financial assurance as specified in LAC 33:VII.10525.D.12-14 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 closure in accordance with the closure plan and permit requirements as guaranteed by this bond, the Surety shall place funds in the amount guaranteed for the facility into the Waste Tire Management Fund as directed by the administrative authority.

The Surety hereby waives notification of 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 receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this FINANCIAL GUARANTEE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this FINANCIAL GUARANTEE BOND on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified in the Louisiana Department of Environmental Quality's Waste Tire Regulations, LAC 33:VII.Chapter 105. Appendix A dated August 4, 1994, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETIES

[Name and Address]

State of incorporation:

Liability limit:

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[This information must be provided for each cosurety]

Bond Premium: \$

**Sample Document 2:
Waste Tire Facility Performance Bond**

Date bond was executed: [date bond executed]

Effective date: [effective date of bond]

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)]

[Site identification number, site name, facility name, facility address, and 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, Waste Tire Management Fund, 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 Resource Conservation and Recovery Act as amended (RCRA) and the Louisiana Environmental Quality Act, R.S. 30:2001, et seq., to have a permit in order to own or operate the waste tire facility identified above; and

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

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

OR, if the Principal shall provide financial assurance as specified in LAC 33.VII.10525.D.12-14 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 herein above.

Upon notification by the administrative authority that the Principal has been found in violation of the closure requirements of the Louisiana Administrative Code, Title 33, Part VII, 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 Waste Tire Management 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.VII.10525.D.12-14 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 Waste Tire Management Fund as directed by the administrative authority.

The Surety hereby waives notification of 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(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 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 receives written authorization for termination of the bond by the administrative authority.

The Principal and Surety hereby agree that no portion of the penal sum may be expended without prior written approval of the administrative authority.

IN WITNESS WHEREOF, the Principal and the Surety have executed this PERFORMANCE BOND and have affixed their seals on the date set forth above.

Those persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety, that each Surety hereto is authorized to do business in the state of Louisiana and that the wording of this surety bond is identical to the wording specified by the Louisiana Department of Environmental Quality's Waste Tire Regulations, LAC 33:VII.Chapter 105.Appendix A dated August 4, 1994, effective on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate Seal]

CORPORATE SURETY

[Name and Address]

State of incorporation:

Liability limit:

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every cosurety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond Premium: \$

**Sample Document 3:
Waste Tire Facility Irrevocable Letter of Credit**

Secretary
Louisiana Department of Environmental Quality
Post Office Box 82231
Baton Rouge, Louisiana 70884-2231

Dear Sir:

We hereby establish our Irrevocable Standby Letter of Credit Number [number] in favor of the Department of Environmental Quality of the State of Louisiana at the request and for the account of [permit holder's or applicant's name and address] for the closure fund for its [list site identification number, site name, and facility name] at [location], Louisiana for any sum or sums up to the aggregate amount of U.S. dollars \$ [number] upon presentation of:

(1) A sight draft, bearing reference to the Letter of Credit Number [number] drawn by the administrative authority together with;

(2) A statement signed by the administrative authority, declaring that the operator has failed to perform closure in accordance with the closure plan and permit requirements and that the amount of the draft is payable into the Waste Tire Management Fund.

The Letter of Credit is effective as of [date] and will expire on [date], but such expiration date will be automatically extended for a period of at least one year on the above expiration date, and on each successive expiration date thereof, unless, at least 120 days before the then current expiration date, we notify both the administrative authority and the [name of permit holder or applicant] by certified mail that we have decided not to extend this Letter of Credit beyond the then current expiration date. In the event we give such notification, any unused portion of this Letter of Credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both the Department of Environmental Quality and [name of permit holder/applicant] as shown on the signed return receipts.

Whenever this Letter of Credit is drawn under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft to the Department of Environmental Quality for deposit into the Waste Tire Management Fund in the name of [name of permit holder or applicant] in accordance with the administrative authority's instructions.

Except as otherwise expressly agreed upon, this credit is subject to the uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication Number 400, or any revision thereof effective on the date of issue of this credit.

We certify that the wording of this Letter of Credit is identical to the wording specified in the Louisiana Department of Environmental Quality's Waste Tire Regulations, LAC 33:VII.Chapter 105.Appendix A dated August 4, 1994, effective on the date shown immediately below.

[Signature(s) and Title(s) of Official(s) of issuing Institutions]

[Date]

Appendix B

Waste Tire Management Fund Prioritization System

Each waste tire site for which cleanup funds are solicited will be ranked according to the point system described below. The total number of points possible for any one site is 145 points. The points shall be allocated according to the following criteria:

I. Approximate Number of Tires in the Pile. This figure shall be an estimate by the department.

Number of Tires in Pile	Point Value
>1,000,000	50
250,001 - 1,000,000	40
100,001 - 250,000	30
50,001 - 100,000	20
50,000 or less	10

II. Proximity to Nearest Schools. If a school is located within the radius described below then the corresponding point value is assigned. Only one category may be chosen such that the maximum value allowed is 25.

Proximity to Nearest School	Point Value
School within 2 mile radius	25
School within 4 mile radius	17
School within 6 mile radius	9

III. Proximity to Residences. If 50 or more residences are located within the radius described below then the corresponding point value is assigned. Only one category may be chosen such that the maximum value allowed is 25.

Proximity to 50+ Residences	Point Value
50 or more within 2 mile radius	25
50 or more within 4 mile radius	17
50 or more within 6 mile radius	9

IV. Proximity to Hospitals and/or Nursing Homes. If a hospital and/or nursing home is located within the radius described below then the corresponding value is assigned. Only one category may be chosen such that the maximum value is 25.

Proximity to Hospital and/or Nursing Home	Point Value
Hospital and/or nursing home within 2 mile radius	25
Hospital and/or nursing home within 4 mile radius	17
Hospital and/or nursing home within 6 mile radius	9

V. Proximity to Major Highways. If a major highway is located within the radius described below then the corresponding value is assigned. Only one category may be chosen such that the maximum value is 20.

Proximity to Major Highway	Point Value
Major highway within ¼ mile radius	20
Major highway within ½ mile radius	10

Appendix C

Waste Tire Fee Collection Schedule

Waste tire fees shall be collected according to tire weight or by specific tire type identified in this Appendix.

Code	Category	Waste Tire Fee
A	0 to 100 pounds	\$2.00
B	101 to 120 pounds	6.00
C	121 to 140 pounds	7.00
D	141 to 160 pounds	8.00
E	161 to 180 pounds	9.00
F	181 to 200 pounds	10.00
G	201 to 220 pounds	11.00
H	221 to 240 pounds	12.00
I	241 to 260 pounds	13.00
J	261 to 280 pounds	14.00
K	281 to 300 pounds	15.00
L	301 to 320 pounds	16.00
M	321 to 340 pounds	17.00
N	341 to 360 pounds	18.00
O	361 to 380 pounds	19.00
P	381 to 400 pounds	20.00
Q	401 to 420 pounds	21.00
R	421 to 440 pounds	22.00
S	441 to 460 pounds	23.00
T	461 to 480 pounds	24.00
U	481 to 499 pounds	25.00
V	500 pounds or larger	No Fee

Waste Tire Fee Collection Schedule

\$2 shall be collected on all tires weighing less than 100 pounds unless specifically excluded by these regulations.

Medium Truck Tires

	Code	Fee
Bias, tube type		
825-20	A	\$2.00
900-20	A	2.00
1000-20	B	6.00
1000-22	B	6.00
Radial, tube type		
900 R20	C	7.00
1000 R20	C	7.00
1100 R20	D	8.00
1200 R20	F	10.00
1400 R20	I	13.00
1100 R22	E	9.00
1100 R24	E	9.00
1200 R24	F	10.00
Radial, tubeless		
9 R22.5	A	2.00
10 R22.5	B	6.00
11 R22.5	C	7.00
12 R22.5	D	8.00
11 R24.5	C	7.00
12 R24.5	D	8.00
Radial, low profile		
295/75 R22.5	C	7.00
285/75 R24.5	C	7.00
Super Single		
315/80 R22.5	D	8.00
385/65 R22.5	F	10.00
425/65 R22.5	G	11.00
445/65 R22.5	H	12.00

Rear Farm Tire, Bias

14.9-24	B	6.00
16.9-24	C	7.00
17.5L-24	D	8.00
18.4-24	F	10.00
19.5L-24	E	9.00
21L-24	H	12.00
16.9-26	H	12.00
18.4-26	H	12.00
23.1-26	N	18.00
28L-26	R	16.00
13.6-28	B	6.00
14.9-28	C	7.00
16.9-28	E	9.00
18.4-28	F	10.00
21L-28	J	14.00
16.9-30	F	10.00
18.4-30	F	10.00
23.1-30	L	16.00
24.5-32-R	R	22.00
VA500/95D32	U	25.00
16.9-34	G	11.00
18.4-34	H	12.00
20.8	M	17.00
23.1-34	N	18.00
11.2-38	B	6.00
12.4-38	B	6.00
13.6-38	C	7.00
15.5-38	D	8.00
16.9-38	G	11.00
18.4-38	I	13.00
20.8-38	N	18.00
9.5-42	A	2.00
20.8-42	P	20.00

Rear Farm Tire, Radial

280/70 R-18	I	13.00
380/70 R-20	B	6.00
380/70 R-34	D	8.00
14.9 R-24	G	11.00
320/75 R-24	A	2.00
16.9 R-24	F	10.00
16.9 R-26	G	11.00
18.4 R-26	J	14.00
620/75 R-26	R	22.00
13.6 R-28	D	8.00
14.9 R-28	G	11.00
16.9 R-28	H	12.00
600/65 R-28	G	11.00
420/70 R-28	F	10.00
480/70 R-28	J	14.00
440/80 R-28	B	6.00
380/85 R-28	B	6.00
420/85 R-28	B	6.00
385/80 R-30	B	6.00
420/90 R-30	B	6.00
14.9 R-30	G	11.00
16.9 R-30	I	13.00
18.4 R-30	I	13.00
480/70 R-30	K	15.00
520/70 R-30	J	14.00
540/65 R-30	J	14.00
30.5L R-32	Q	21.00
12.4 R-32	S	23.00
14.9 R-34	G	11.00
320/85 R-34	E	9.00
380/85 R-34	G	11.00
385/85 R-34	H	12.00
480/85 R-34	I	13.00
16.9 R-34	I	13.00
18.4 R-34	I	13.00

12.4 R-36	I	13.00
13.6 R-36	I	13.00
15.5 R-38	F	10.00
480/80 R-38	J	14.00
520/85 R-38	O	19.00
18.4 R-38	M	17.00
20.8 R-38	P	20.00
13.6 R-38	I	13.00
16.9 R-38	J	14.00
320/90 R-42	F	10.00
480/80 R-42	M	17.00
520/85 R-42	Q	21.00
18.4 R-42	M	17.00
20.8 R-42	R	22.00
14.9 R-46	K	15.00
18.4 R-46	P	20.00
320/90 R-46	H	12.00
340/85 R-46	K	15.00
380/90 R-46	J	13.00
380/85 R-46	L	16.00
420/80 R-46	L	16.00
480/80 R-46	L	16.00
520/85 R-46	T	24.00
480/80 R-50	R	22.00

Construction Tires Including Grader and Loader

750-15	A	2.00
820-15	A	2.00
825-20	A	2.00
900-15	A	2.00
900-16	A	2.00
950-20	I	13.00
1000-24	B	6.00
1100-16	A	2.00
1100-20	E	9.00
1200-20	H	12.00
1200-24	K	15.00
1200 R-24	M	17.00
1300-20	O	19.00
1300-24	G	11.00
1300 R-24	J	14.00
1400-20	L	16.00
1400 R-20	K	15.00
1400 R-21	K	15.00
1400-24	P	20.00
1400 R-24	Q	21.00
1400-25	J	14.00
1400 R-25	R	22.00
1600-16	A	2.00
1600-20	K	15.00
1600 R-20	M	17.00
1600-21	R	22.00
1600 R-21	O	19.00
1600-24	P	20.00
1600 R-24	P	20.00
2725-21	O	19.00

James H. Brent, Ph.D.
Assistant Secretary

0012#066

RULE

**Office of the Governor
Division of Administration
Board of the Trustees of the State
Employees Group Benefits Program**

Collection and Deposit of Contributions;
Penalty for Late Payment of Premiums;
Adjustments for Terminated Employees

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. 42:871(C) and 874(B)(2), vesting the board of trustees with the responsibility for administration of the State Employees Group Benefits Program and granting the power to adopt and promulgate rules with respect thereto, and in accordance with R.S. 42:876 regarding collection and deposit of contributions, the board finds that it is necessary to provide for assessment of a late payment penalty to participating employers that fail to remit full payment of premiums by the due date and to limit the time within which credit adjustments may be taken for terminated employees. The reason for this action is to avoid adverse financial impact on the State Employees Group Benefits Program which would affect the availability of services necessary to maintain the health and welfare of the covered employees and their dependents, which is crucial to the delivery of vital services to the citizens of the state.

Accordingly, the board hereby adopts the following Rule.

Collection and Deposit of Contributions

A. The board shall be responsible for preparing and transmitting to each participating employer a monthly invoice premium statement delineating the enrolled employees of that agency, the class of coverage, total amount of employer and employees contributions due to the board, and such other items as are deemed necessary by the board.

B. It shall be the responsibility of the participating employer to reconcile the monthly invoice premium statement, collect employee contribution by payroll deduction or otherwise, and remit the reconciled monthly invoice premium statement and both the employer and employee contributions to the board within 30 days after receipt of the monthly premium invoice statement.

C. Credit adjustments for premiums paid on behalf of employees and dependents of such employees whose coverage under the State Employees Group Benefits Program is terminated by reason of termination of employment with the participating employer may not be made by the participating employer after reconciliation of the second invoice following the date of termination of employment.

D. If any participating employer fails to remit, in full, both the employer and employee contributions to the board within 30 days after receipt of the monthly invoice premium statement, then:

1. at the request of the board, the state treasurer shall withhold from state funds due the participating employer the full amount of the delinquent employer and employee contributions and remit this amount directly to the board; and

2. the participating employer shall pay a penalty equal to 1 percent of the total amount due and unpaid, compounded monthly.

E. Payments received by the board shall be allocated as follows:

1. first, to any late payment penalty due by the participating employer;

2. second, to any balance due from prior invoices; and

3. third, to the amount due under the current invoice.

F. All employer and employee premium contributions for the payment of premiums for group benefits for state employees provided under the board's authority shall be deposited directly with the board. The board shall pay all monies due for such benefits as they become due and payable.

Kip Wall
Chief Executive Officer

0012#040

RULE

**Office of the Governor
Division of Administration
Property Assistance Agency**

Items of Property to be Inventoried
(LAC 34:VII.307)

Editor's Note: This Rule is being repromulgated to correct a citation error. The original rule may be viewed in the September 20, 2000 edition of the *Louisiana Register* on page 2005.

In accordance with the R.S. 49:950, et seq., the Division of Administration, Louisiana Property Assistance Agency, hereby amends LAC 34:VII.307.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part VII. Property Control

Chapter 3. State Property Inventory

§307 Items of Property to be Inventoried

A. All items of moveable property having an "original" acquisition cost, when first purchased by the state of Louisiana, of \$1000 or more, all gifts and other property having a fair market value of \$1000 or more, and all weapons, regardless of cost, with the exception of items specifically excluded in §307.F and §307.G, must be placed on inventory. The term "moveable" distinguishes this type of equipment from equipment attached as a permanent part of a building or structure. The term "property" distinguishes this type of equipment from "supplies" with supplies being consumable through normal use in no more than one year's time. All acquisitions of qualified items must be tagged with a uniform state of Louisiana identification tag approved by the commissioner of administration and all pertinent inventory information must be forwarded to the Louisiana Property Assistance Agency Director or his designee within 45 days after receipt of these items.

B. The head of the agency, at his discretion, may include items such as computers, electronic calculators, desks, file

cabinets, tables, and other property having an acquisition cost of less than \$1000 in the inventory.

C. Gifts of moveable property must be given a fair market value as agreed upon between the donor and head of the receiving agency and recorded in the inventory if the fair market value is \$1000 or more.

D. Agencies manufacturing moveable property for use within the agency must determine the estimated cost based on the cost of labor and materials and include such items in the inventory provided that estimated cost is \$1000 or more.

E. Agencies which are eligible to receive federal surplus property must place on inventory all items acquired from Federal Surplus which would ordinarily be classified as moveable property and which have an acquisition cost of \$1000 or more. The acquisition date will be the date of acquisition by the state agency and the acquisition cost will be the actual cost incurred by the state agency.

NOTE: There are federal regulations regarding accountability for federal surplus property. State agencies should contact the Federal Surplus Property section for information regarding these regulations.

F - G ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control, LR 2:241 (August 1976), amended LR 8:144 (March 1982), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 12:103 (February 1986), LR 26:2788 (September 2000), repromulgated LR 26:2789 (December 2000).

Irene C. Babin
Director

0009#023

RULE

**Department of Health and Hospitals
Board of Nursing**

Nursing Education Programs
(LAC 46:XLVII.Chapter 35)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Board of Nursing (board) pursuant to the authority vested in the board by R.S. 37:918, R.S. 37:919 has amended the Professional and Occupational Standards pertaining to Nursing Education Programs.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLVII. Nurses

Subpart 2. Registered Nurses

Chapter 35. Nursing Education Programs

§3503. Definitions

Distance Education—teaching learning strategies to meet the needs of students who are physically separated from the faculty.

Distance Education Technology—the methods and technical support used to teach students who may be physically distant from the faculty. The methods may

include audio conference, compressed video, electronic mail, and the World Wide Web.

Goals—the aims of the program including the expected competencies of the graduate.

Major Change in Curriculum—any one of the following shall be deemed to constitute a major change in curriculum:

1. alteration, other than editorial, in program's mission/philosophy and goals:

Nursing Education Program—a program whose purpose is to prepare graduates eligible to apply to write the registered nurse licensing examination.

1. ...

2. *Baccalaureate*—a program leading to a bachelor's degree in nursing conducted by an educational unit, department, division, college or school, that is an integral part of a college or university.

3. ...

Objectives—the behavioral expectations of the students in courses and throughout the program that lead to the goals of the program.

Preceptorship Experience—an individualized teaching-learning strategy in which a nursing student participates in clinical nursing practice while assigned to a preceptor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:913 and R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:184 (April 1977), amended by the Department of Health and Hospitals, Board of Nursing, LR 17:1208 (December 1991), LR 24:1293 (July 1998), LR 26:2789 (December 2000).

**§3511. Standards and Requirements for Nursing
Education Program: Mission/Philosophy and
Goals**

A. The nursing education program shall have a clear statement of mission/philosophy, consistent with the mission of the parent institution and congruent with current concepts in nursing education.

B. The program shall use an identified set of professional standards congruent with the mission/philosophy and from which the goals are developed. The standards shall be consistent with the *Legal Standards of Nursing Practice*, LAC 46:XLVII.3900.

C. Expected competencies of the graduate shall be clearly delineated.

D. Distance education programming is consistent with the mission and goals of the nursing unit and the governing organization.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:185 (April 1977), amended LR 10:1024 (December 1984), promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1146 (September 1993), LR 26:2789 (December 2000).

§3515. Faculty and Faculty Organization

A. - B.1. ...

2. The program head of a baccalaureate program shall hold a minimum of bachelor's and master's degrees in nursing, or its equivalent, and an earned doctorate, and shall

have a minimum of three years experience in the areas of nursing education and three years in clinical practice.

3. ...

4. The nurse faculty shall hold bachelor's and master's degrees in nursing. Requests for academic equivalency shall be approved on an individual basis (see LAC 46:XLVII.3515.B.6 for related standard).

5. Nurse faculty shall have a minimum of two years of nursing practice as a registered nurse in a clinical setting prior to their appointment.

6. Nurse faculty shall maintain current knowledge and skills in areas of responsibility and provide documentation of same.

7. Exceptions to the academic qualifications for nurse faculty shall be justified and approved under board-established guidelines. Such exceptions, if granted by the board shall be:

a. baccalaureate in nursing prepared individuals who are not enrolled in a masters' in nursing program are limited to a maximum of one calendar year;

b. baccalaureate in nursing prepared individuals who are enrolled in a masters' in nursing program shall be approved annually on an individual basis in accordance with current board guidelines. Exceptions may be granted to each individual for a maximum of three calendar years.

8. The number of faculty exceptions shall not exceed twenty percent of the number of full-time nurse faculty employed (not FTE) in the program.

C. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:186 (April 1977), amended LR 10:1025 (December 1984), LR 12:678 (October 1986), promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1147 (September 1993), LR 26:2789 (December 2000).

§3517. Student Selection and Guidance

A. - F. ...

G. Students shall be provided opportunity for input into the program.

H. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:187 (April 1977), amended LR 10:1025 (December 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1147 (September 1993), LR 23:962 (August 1997), LR 24:1293 (July 1998), LR 26:2790 (December 2000).

§3519. Facilities, Resources, Services

A. - D. ...

E. Nursing library resources shall be comprehensive, current and accessible.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:187 (April 1977), amended LR 10:1025 (December 1984), promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1147 (September 1993), LR 26:2790 (December 2000).

§3521. Curriculum

A. The faculty shall periodically review, evaluate and revise as appropriate the mission philosophy, and goals of the program.

B. The mission/philosophy and goals shall be used by the faculty in planning, implementing and evaluating the total program.

C. The goals shall be consistent with the mission and describe the cognitive, affective and psychomotor capabilities of the graduate.

D. The curriculum shall include, but not be limited to, content from the behavioral, biological, mathematical, nursing and physical sciences.

E. Opportunities shall be provided for the application of the nursing process throughout the curriculum and in a variety of settings.

F. Course objectives and content shall reflect society's concern with the bioethical and legal parameters of health care and professional practice.

G.1. The nursing courses shall provide for classroom and clinical laboratory instruction that shall be under the supervision of a faculty member of the nursing program.

2. Provision shall be made for learning experiences with clients having nursing care needs in all age groups and stages of the health-illness continuum as appropriate to the role expectations of the graduate.

H. Provision shall be made for the development of other knowledge and skills as deemed necessary by the faculty and as appropriate to the role expectations of the graduate.

I. The curriculum shall be arranged to provide opportunities for upward career mobility for students who have completed other nursing programs and have met appropriate requirements for licensure.

1. Mechanisms for the recognition of prior learning and advanced placement in the curriculum shall be in place.

2. Any formalized agreements between programs to facilitate the transfer of credit between nursing programs shall be identified and described.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:188 (April 1977), amended LR 10:1026 (December 1984), promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1148 (September 1993), LR 24:1293 (July 1998), LR 26:2790 (December 2000).

§3523. Program Evaluation

A. ...

1. mission/philosophy, outcomes of the curriculum;
2. - 4. ...
5. faculty evaluations of students;
6. ...
7. follow-up studies of the graduates;
8. employment functioning of the graduates; and
9. evaluation of faculty performance.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:188 (April 1977) amended by the Department of Health and Hospitals, Board of Nursing, LR 15:1081 (December 1989), LR 19:1148 (September 1993), LR 24:1293 (July 1998), LR 26:2790 (December 2000).

§3529. Selection and Use of Clinical Facilities

A. Hospitals used for clinical experiences shall be licensed by the state of Louisiana and certified by the Health Care Financing Administration (HCFA). In addition, hospitals should be accredited by the Joint Commission of Accredited Health Organizations (JCAHO). Other health care agencies shall be accredited or approved by a recognized accrediting or approving agency as appropriate.

B. - D. ...

E. The facility shall have:

- 1. a written mission/philosophy of patient/client care which gives direction to nursing care;
- 2. registered nurses to insure the safe care of patient and to serve as role models for students;
- 3. - 13. ...

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:189 (April 1977), amended by the Department of Health and Hospitals, LR 16:133 (February 1990), LR 19:1149 (September 1993), LR 26:2791 (December 2000).

§3533. Procedure for Establishing a New Program

A. - B.5. ...

a. mission/philosophy and goals;

B.5.c. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 3:190 (April 1977), amended by the Department of Health and Hospitals, Board of Nursing, LR 14:532 (August 1988), LR 24:1293 (July 1998), LR 26:2791 (December 2000).

§3534. Procedure for Restructuring an Existing Program Into/Within Higher Education

A. - C.5. ...

a. mission/philosophy and goals;

C.5.b. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 16:690 (August 1990), amended LR 24:1293 (July 1998), LR 26:2791 (December 2000).

§3536. Approval for Nursing Education Programs whose Administrative Control is Located in Another State Offering Programs, Courses, and/or Clinical Experience in Louisiana

A. - B.1.d.i ...

ii. a copy of the mission/philosophy and goals;

B.1.d.iii. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Nursing, LR 19:1145 (September 1993), amended LR 23:962 (August 1997), LR 24:1293 (July 1998), LR 26:2791 (December 2000).

§3537. Procedure for Proposed Major Change in Curriculum

A. A nursing education program proposing a major curriculum change shall submit to the board, six months prior to date of implementation, the following:

- 1. - 2. ...

3. mission/philosophy, goals, course objectives and course outlines;

4. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 10:1028 (December 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1150 (September 1993), LR 24:1293 (July 1998), LR 26:2791 (December 2000).

§3539. Procedure for Submitting Required Forms and Reports

A. - B.2.a. ...

b. A "community-based agency review form" shall be submitted by the nursing education program to the board describing facilities in which a student receives less than 10 percent of the total clinical experience in a given course. This form will be incorporated in the Annual Report.

3. Any program required to submit a National League for Nursing Accrediting Commission or a Council for Collegiate Nursing Education Interim Report shall submit a copy of the report to the board.

C. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 10:1028 (December 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 19:1150 (September 1993), LR 21:803 (August 1995), LR 24:1293 (July 1998), LR 26:2791 (December 2000).

§3541. Preceptorship Learning Experiences

A. - F. ...

G. The faculty member shall confer with each preceptor and student at least once during each daily learning experience.

H. - I. ...

J. There shall be one preceptor for each student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 10:1028 (December 1984), amended by the Department of Health and Hospitals, Board of Nursing, LR 17:1207 (December 1991), LR 24:1293 (July 1998), LR 26:2791 (December 2000).

§3542. Community-Based Learning Experiences

A. - G.4. ...

5. The faculty member shall confer with each preceptor and student(s) at least weekly during said learning experience.

6. ...

7. There shall be no more than three students per preceptor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 21:803 (August 1995), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 26:2791 (December 2000).

Interested persons may submit written comments on the proposed rules to Barbara L. Morvant, Executive Director, Louisiana State Board of Nursing, 3510 N. Causeway Blvd,

Suite 501, Metairie, LA, 70002. The deadline for receipt of all written comments is 4:30 p.m. on September 5, 2000.

Barbara L. Morvant
Executive Director

0012#059

RULE

**Department of Health and Hospitals
Board of Physical Therapy Examiners**

**Disciplinary Process and Procedures
(LAC 46:LIV.329)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, that the Board of Physical Therapy Examiners (Board), hereby amends its existing rules as set forth below.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LIV. Physical Therapy Examiners
Subpart 2. Practice**

**Chapter 3. Practice
Subchapter D. Disciplinary Proceedings**

§329. Disciplinary Process and Procedures

A. - C. ...

D. Pursuant to the Health Insurance Portability Act of 1996, Public Law 104-191, the board is required to report certain information, including final adverse actions it has taken against its licensees, to the Secretary of Health and Human Services of the United States for recordation in the Health Integrity and Protection Data Bank. The board may delegate an agent, such as the Federation of State Boards of Physical Therapy, to act on its behalf to report information and submit queries to the Health Integrity and Protection Data Bank as required by Federal law, as amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2401.2A(3).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Physical Therapy Examiners, LR 15:389 (May 1989), LR 19:208 (February 1993), LR 26:2792 (December 2000).

Becky Lege', P.T.
Chairman

0012#003

RULE

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

Chiropractic Service Termination of Services

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 et seq. and pursuant to Title XIX of the Social Security Act and as directed by the

1999-2000 General Appropriation Act, which states, "The secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing terminates coverage of chiropractic services for recipients age 21 and older. In addition, reimbursement to chiropractors for radiology services is discontinued. However, coverage for medically necessary manual manipulations of the spine shall continue for recipients from birth up to the age of 21 when the service is rendered as the result of a referral from an Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) medical screening provider.

David W. Hood
Secretary

0012#043

RULE

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

**Durable Medical Equipment (DME) Equipment and
Supplies Delivery Reimbursement Reduction**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 General Appropriation Act, which states: "The secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the reimbursement rate for delivery of prior authorized durable medical equipment and supplies to either the lesser of billed charges or 5 percent of the total shipping amount for the medical equipment and supplies up to a maximum of \$50.

David W. Hood
Secretary

0012#044

RULE

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

Emergency Ambulance Transportation Services Medicare Part B Claims

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Bureau of Health Services Financing compares the Medicare payment and the Medicaid rate on file for the procedure codes on Medicare Part B claims for emergency ambulance services. If the Medicare payment exceeds the Medicaid rate, the claim is adjudicated as a paid claim with a zero payment. If the Medicaid rate exceeds the Medicare payment, the claim is reimbursed at the lesser of the co-insurance and deductible or up to the Medicaid maximum payment.

If the Medicaid payment is reduced or eliminated as a result of applying the limit of the Medicaid maximum payment, the amount of the Medicare payment plus the amount of the Medicaid payment (if any) shall be considered to be payment in full for the service. The recipient does not have any legal liability to make payment for the service.

David W. Hood
Secretary

0012#051

RULE

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

Home and Community Based Services Waiver Louisiana Children's Choice

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act.

Rule

The Department of Health and Hospitals implements a new Medicaid Home and Community Based Services

(HCBS) waiver entitled Children's Choice effective January 15, 2001. The policies and procedures governing this HCBS waiver are incorporated into the Children's Choice Provider manual. Children's Choice is implemented in accordance with the waiver document, its amendments, and renewals as approved by the Health Care Financing Administration.

I. Waiver Eligibility

The order of entry is first come, first served from a statewide list arranged by date of application for Mentally Retarded/Developmentally Disabled (MR/DD) waiver services. Families will be given a choice of accepting a slot in the Children's Choice Waiver or remaining on the MR/DD waiver waiting list. The number of participants is contingent on available funding.

A. Children's Choice services are available to children who meet the following criteria:

1. age from birth through age 18;
2. on the MR/DD Waiver waiting list;
3. meet all financial and non-financial criteria for HCBS waiver eligibility;
 - a. income less than three times the SSI amount for the child (excluding consideration of parental income);
 - b. resources less than the SSI resource limit of \$2,000 for a child (excluding consideration of parental resources);
 - c. SSI disability criteria;
 - d. ICF/MR level of care criteria; and
 - e. all Medicaid non-financial requirements such as citizenship, residence, Social Security number, etc.

B. In addition, the plan of care must be sufficient to assure the health and welfare of the waiver applicant/participant in order to be approved for waiver participation or continued participation.

C. Children who reach their nineteenth birthday while a participant in the Children's Choice will transfer with their waiver slot to a HCBS waiver serving adults who meet the criteria for an ICF/MR level of care.

II. Service Cap

A. Children's Choice services are capped at \$7,500 per year per individual.

B. Participants are eligible to receive all medically necessary Medicaid State Plan services, including EPSDT services.

III. Service Definitions

The following services are included in the service package for Children's Waiver. All services must be included on the approved plan of care which prior authorizes all services.

A. Case management consists of services which will assist individuals who receive Children's Choice services in gaining access to needed waiver and other state plan services, as well as needed medical, social, educational and other services, regardless of the funding source for the services to which access is gained. Case managers shall be responsible for ongoing monitoring of the provision of services included in the individual's plan of care. Case managers shall initiate the process of assessment and reassessment of the individual's level of care and the review of plans of care as required.

B. Center-based respite is services provided in a licensed respite care facility to individuals unable to care for themselves. These services are furnished on a short-term

basis because of the absence or need for relief of those persons who normally providing the care.

C. Environmental accessibility adaptations are physical adaptations to the home or vehicle provided when required by the individual's plan of care as necessary to ensure the health, welfare and safety of the individual, or which enable the individual to function with greater independence in the community, and without which the individual would require additional supports or institutionalization.

1. Such adaptations to the home may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies which are necessary for the welfare of the individual.

a. Adaptations which add to the total square footage of the home are excluded from this benefit.

b. All services shall be in accordance with applicable state and local building codes.

2. An example of adaptation to the vehicle is a van lift.

3. Excluded are those adaptations or improvements to the home or vehicle which are of general utility, and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

D. Family training is defined as training and education for families of recipients that is appropriate to the needs of the child, presented by professional organizations or practitioners, and individually approved by the Bureau of Community Supports and Services. For purposes of this service, "family" is defined as the persons who live with or provide care to a person served on the waiver, and may include a parent, step-parent, spouse, children, relatives, foster family, legal guardian, or in-laws. Training and education includes reimbursement for travel expenses and registration fees for caregivers to attend approved seminars and similar opportunities for knowledge dissemination when such opportunities are approved as appropriate.

E. Family support services are services provided by a Personal Care Attendant that enables a family to keep their developmentally disabled child or family member at home and also enhances family functioning. Services may be provided in the child's home or outside of the child's home in such settings as after school programs, summer camps, or other places as specified in the approved comprehensive plan of care. Family support includes:

1. assistance and prompting with eating, bathing, dressing, personal hygiene, and essential housekeeping incidental to the care of the child, rather than the child's family. The preparation of meals is included, but not the cost of the meals themselves;

2. assistance with participating in the community including activities to maintain and strengthen existing informal networks and natural supports. Providing transportation to these activities is also included.

F. Diapers are provided for participants who are 3 years of age and older when it is necessary for the welfare of the individual and included in the written plan of care.

IV. Provider Qualifications

A. Case Management Providers. Families of waiver participants shall choose one case management agency from

those contracted with DHH in their region to provide MR/DD case management services.

B. Service Providers. Agencies licensed to provide personal care attendant services may enroll as a provider of Children's Choice services, with the exception of case management services. Agencies that enroll to be Children's Choice service provider shall provide family support services, and shall either provide or subcontract for all other waiver services. Families of participants shall choose one service provider agency from those available in their region who will provide all waiver services, except case management. The following individuals shall not be employed or contracted by the service provider to provide services reimbursed through Children's Choice:

1. legally responsible relatives (spouses, parents or stepparents, foster parents, or legal guardians); or

2. any other relatives who live in the same household with the participant.

David W. Hood
Secretary

0012#045

RULE

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

Hospital Program
Outpatient Services
Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the provisions of the January 1996 Rule governing the reimbursement of specified outpatient surgical procedures and the interim reimbursement for all other outpatient hospital services. Those surgical procedures that meet the following criteria are reimbursed at the highest flat fee in the four Medicaid outpatient surgery payment groups when the procedure is performed in an outpatient setting:

1. the surgical procedure is not included on the Medicaid outpatient surgery list; and

2. the surgical procedure is identified by an ICD-9 procedure code in which the first two digits are within the range of "01" through "86."

The interim reimbursement rate for all other outpatient hospital services is changed to a hospital specific cost to charge ratio calculation based on filed cost reports for the period ending in state fiscal year 1997. The cost to charge ratio calculation to determine the interim reimbursement rate is not applicable to laboratory services subject to the Medicare Fee Schedule and outpatient surgeries. Final reimbursement for outpatient services will continue to be adjusted at cost settlement to 83 percent of the allowable costs documented in the cost report, except for laboratory services subject to the Medicare Fee Schedule and outpatient surgeries.

David W. Hood
Secretary

0012#046

RULE

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

Louisiana Children's Health Insurance Program (LACHIP)

The Department of Health and Hospitals, Bureau of Health Services Financing, adopts the following Rule as authorized by R.S. 46:153. This Rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implements the third phase of the Louisiana Children's Health Insurance Program (LACHIP) effective January 1, 2001, by expanding coverage under the Medicaid Program to uninsured children, from birth up to age 19, whose family income is up to 200 percent of the federal poverty level (FPL). This expansion is in compliance with section 4901 of the Balanced Budget Act of 1997 which enacted Title XXI of the Social Security Act, Act 128 of the 1998 First Extraordinary Session of the Louisiana Legislature which enacted the LACHIP Program, Act 1197 of the 1999 Regular Session of the Louisiana Legislature and Act 11 of the 2000 Second Extraordinary Session of the Louisiana Legislature which authorizes the funding for the expansion. All other requirements for LACHIP eligibility will remain the same.

David W. Hood
Secretary

0012#050

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Out-of-State Hospitals Inpatient Services Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Bureau of Health Services Financing amends the reimbursement methodology contained in the January 1996 and September 1997 Rules for out-of-state hospitals that meet the following criteria:

1. have provided at least 500 inpatient hospital days in state fiscal year 1999 to Louisiana Medicaid recipients and
2. are located in a border city. Border cities are defined as those cities that are located within a 50-mile trade area of the Louisiana state border. The following two cities meet the criteria for number of inpatient hospital days provided to Louisiana Medicaid recipients and the definition of a border city: Natchez, Mississippi and Vicksburg, Mississippi.

Louisiana Medicaid reimbursement for inpatient services provided in all hospitals located in these border cities will be at the lesser of each hospital's actual cost per day as calculated from the 1998 filed Medicaid cost report or the Mississippi Medicaid per diem rate. The actual cost per day is calculated by dividing total Medicaid inpatient costs by total Medicaid inpatient days, including nursery days. This reimbursement methodology is applicable for all inpatient services rendered to Louisiana Medicaid recipients in out-of-state hospitals located in border cities, including those recipients who are under age of 21.

David W. Hood
Secretary

0012#048

RULE

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

Professional Services Program
Physician Services
Reimbursement Reduction

Editor's Note: This Rule contains a correction in the procedure code tables, originally printed as a Notice of Intent in the September 20, 2000 edition of the *Louisiana Register* on pages 2095 - 2096.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 1999-2000 General Appropriation Act, which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the reimbursement paid to physicians for specific Current Procedural Terminology (CPT) procedure codes. The reimbursement for CPT procedure codes 99295 and 99298 (neonatal care) is reduced by 16 percent. In addition, the reimbursement is reduced to the following amounts for CPT procedure codes for tonsillectomy and adenoidectomy:

Procedure Code	Payment Rate
42821	\$425.25
42825	\$405.00
42826	\$438.75
42830	\$408.38
42831	\$388.13

David W. Hood
Secretary

0012#047

RULE

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

Targeted Case Management Services
Nurse Home Visits for First Time Mothers

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following Rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This Rule is in

accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the July 1999 Rule governing case management services to include a new targeted population of Medicaid recipients, consisting of first time mothers who reside in the Department of Health and Hospitals (DHH) administrative regions of Thibodaux (3), Lafayette (4), Lake Charles (5) and Monroe (8). Providers of nurse home visits for first time mothers case management services must provide home visit services for eligible recipients in all parishes of the Thibodaux, Lafayette, Lake Charles and Monroe regions.

I. Eligibility Criteria

A Medicaid recipient must not be beyond the twenty-eighth week of pregnancy and must attest that she meets one of the following definitions of a first-time mother in order to receive Nurse Home Visits case management services:

- A. is expecting her first live birth, has never parented a child, and plans on parenting this child; or
- B. is expecting her first live birth, has never parented a child and is contemplating placing the child for adoption; or
- C. has previously been pregnant, but has not delivered a child because of an abortion or miscarriage; or
- D. is expecting her first live birth, but has parented stepchildren or younger siblings; or
- E. had previously delivered a child, but her parental rights were legally terminated within the first six months of that child's life; or
- F. has delivered a child, but the child died within the first six months of life.

A physician's statement, medical records, legal documents, or birth and death certificates will be required as verification of first-time mother status.

After the birth of the child, the focus of Nurse Home Visit for First-Time Mothers case management is transferred from the mother to the child and services may continue until the child's second birthday. However, recipients may not receive more than one type of Medicaid funded case management at a time. To incorporate the child's needs into the plan of care, a complete reassessment and a update of the comprehensive plan of care must be completed within six weeks of the delivery and 30 days prior to the child's first birthday. If during the reassessment it is determined that the child qualifies for CHILDNET and Infants and Toddler's case management, the Nurse Home Visit case manager shall transfer the child to the Infants and Toddlers Program.

The bureau also amends the staffing qualifications contained in the July 1999 Rule to include specific requirements for case management agencies serving the new targeted population.

II. Staffing Qualifications

Case managers and supervisors providing services to this targeted population must meet the following educational qualifications: possession of a license or temporary permit to practice professional nursing in the state of Louisiana and certification of training in the David Olds Prenatal and Early Childhood Nurses Home Visit Model. In addition, a supervisor must have one year of professional nursing experience. A master's degree in nursing or public health

may be substituted for the required one year of professional nursing experience for the supervisor.

The bureau also amends the standards for participation contained in the July 1999 Rule to include a new provider enrollment requirement applicable to all new case management agencies.

III. Standards for Participation

Providers interested in enrolling to provide Medicaid case management services must submit a written request to the Division of Home and Community Based Waiver Services (DHCBS) identifying the case management population and the region they wish to serve. A new provider must attend a Provider Enrollment Orientation prior to obtaining a provider enrollment packet. The bureau will offer orientation sessions at least twice per year. Enrollment packets will only be accepted for service delivery in those DHH regions that currently have open enrollment for case management agencies interested in serving certain targeted populations.

David W. Hood
Secretary

0012#049

RULE

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

Targeted Case Management Services
Targeted EPSDT Case Management

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

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing expands coverage of case management services to include a new targeted group of Medicaid eligibles. This new targeted population shall consist of Early, Periodic Screening, Diagnosis and Treatment (EPSDT) recipients who are between the ages of 0 and 21 years old, on the MR/DD Waiver waiting list, and meet the specified eligibility criteria. The point of entry for targeted EPSDT case management services shall be the Office of Citizens with Developmental Disabilities (OCDD) regional offices. However, for those recipients under 3 years of age, case management services will continue to be provided through Childnet. This new targeted population shall be served by agencies who have accepted the department's amendment to their existing contract. In addition, the bureau amends the staffing qualifications contained in the July 1999 Rule to establish a new staff position for case management agencies entitled case manager trainee.

I. Eligibility Criteria

A. In order to be eligible to receive case management services, the EPSDT recipient must be in the above-referenced age range and meet one of the following criteria:

1. placement on the MR/DD waiver waiting list on or after October 20, 1997, and have passed the OCDD Diagnosis and Evaluation (D&E) process by the later of October 20, 1997, or the date they were placed on the MR/DD waiver waiting list; or

2. placement on the MR/DD waiver waiting list on or after October 20, 1997, but did not have a D&E by the later of October 20, 1997, or the date they were placed on the MR/DD waiver waiting list. Those recipients in this group who subsequently pass or passed the D&E process are eligible for these targeted case management services. For those who do not pass the D&E process, or who are not undergoing a D&E, they may still receive case management services if they meet the definition of a person with special needs.

Special needs is defined as a documented, established medical condition, as determined by a licensed physician, that has a high probability of resulting in a developmental delay or that gives rise to a need for multiple medical, social, educational and other services. In the case of a hearing impairment, the determination of special needs must be made by a licensed audiologist or physician.

Documentation that substantiates that the EPSDT recipient meets the definition of special needs for case management services includes, but is not limited to:

1. receipt of special education services through the state or local education agency; or

2. receipt of regular services from one or more physicians; or

3. receipt of or application for financial assistance such as SSI because of a medical condition, or the unemployment of the parent due to the need to provide specialized care for the child; or

4. a report by the recipient's physician of multiple health or family issues that impact the recipient's ongoing care; or

5. a determination of developmental delay based upon the Parents' Evaluation of Pediatric Status, the Brignance Screens, the Child Development Inventories, Denver Developmental Assessment, or any other nationally recognized diagnostic tool.

II. Case Management Trainee

The case management trainee position may be utilized to provide services to the following target populations: Infants and Toddlers, HIV, MR/DD Waiver, Elderly and Disabled Adult Waiver and Targeted EPSDT. The case management trainee must meet the following educational qualifications: a bachelor's degree in social work, psychology, education, rehabilitation counseling, or a human-service-related field from an accredited college or university. The case management agency must obtain prior approval from the bureau before a case management trainee can be hired. The maximum allowable caseload for a case manager trainee is 20 recipients.

David W. Hood
Secretary

0012#052

RULE

**Department of Natural Resources
Office of Conservation**

Reorganization of Statewide Order No. 29-B
(LAC 43:XIX.Chapters 3, 4 and 5)

Today, the Office of Conservation is publishing notice of a complete reorganization of Statewide Order No. 29-B, LAC 43:XIX.129. Currently, Section 129 provides for the regulation of oilfield related pits, injection/disposal wells, and commercial oilfield waste disposal facilities. The Office of Conservation is anticipating various amendments of these regulations in the next few months. Additional space is needed to facilitate the proposed changes.

Therefore, this reorganization effort will move the oilfield pit regulations into new Chapter 3, move the injection/disposal well regulations into new Chapter 4, and move the commercial facility regulations into new Chapter 5. The cross-reference chart below indicates the new locations for the rules in each existing section. This action will also result in Section 129 being reserved for future use.

Existing Location	New Location	Description
§129.B.1	§301	Definitions
§129.B.2	§303	General Requirements
§129.B.3	§305	Notification
§129.B.4	§307	Pit Classification, Standards, and Operational Requirements.
§129.B.5	§309	Monitoring Program
§129.B.6	§311	Pit Closure
§129.B.7	§313	Pit Closure Techniques and Onsite Disposal of NOW
§129.B.8	§315	Disposal of Reserve Pit Fluids by Subsurface Injection
§129.B.9	§317	Requirements for Community Saltwater Disposal Wells and Systems.
§129.Q	§319	Exceptions
§129.R	§321	Effect on Existing Special Orders
§129.S	§323	Applicability
---	§401	(Reserved for Definitions)
§129.A	§403	Permits Required
§129.C	§405	Application Requirements for New Recovery Injection and New Saltwater Disposal Wells
§129.D	§407	Application Requirements for Enhanced Recovery Projects
§129.E	§409	Permit Notice Requirements
§129.F	§411	Duration of Permits
§129.G	§413	Transfer of Permits
§129.H	§415	Construction Requirements for New Wells
§129.I	§417	Monitoring and Reporting Requirements
§129.J	§19	Logging and Testing Requirements
§129.K	§421	Confinement of Fluids
§129.L	§423	Enhanced Recovery Injection and Disposal Well Plugging Requirements
§129.M	§501 et. seq.	Commercial Facility Regulations - New Chapter 5
§129.N	§425	Liquid Hydrocarbon Storage Wells
§129.O	§427	Injection Well Filing Fees
§129.P	§429	Annular Disposal
§129.Q	§431	Exceptions
C	§433	(RESERVED)
C	§435	(RESERVED)
C	§437	(RESERVED)
C	§439	(RESERVED)
§129.R	§441	Effect on Existing Special Orders

§129.S	§443	Applicability
§129.M.1	§501	Definitions
§129.M.2	§503	Offsite Storage, Treatment, and/or Disposal of Nonhazardous Oilfield Waste at Commercial Facilities
§129.M.3	§505	Permit Application Requirements for Commercial Facilities and Transfer Stations
§129.M.4	§507	Permitting Procedures
§129.M.5	§509	Criteria for the Operation of Commercial Facilities and Transfer Stations
§129.M.6	§511	Manifest System
§129.M.7	§513	Land Treatment Facility Requirements
§129.M.8	§515	Resource Conservation and Recovery of Nonhazardous Oilfield Waste
§129.M.9	§517	Closure
§129.Q	§519	Exceptions
§129.R	§521	Effect on Existing Special Orders
§129.S	§523	Applicability

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation

Subpart 1. Statewide Order No. 29-B

Chapter 1. General Provisions

§129. Reserved

Chapter 3. Pollution Control Onsite Storage, Treatment and Disposal of Nonhazardous Oilfield Waste (NOW) Generated from the Drilling and Production of Oil and Gas Wells (Oilfield Pit Regulations)

§301. Definitions

Coastal Area that area comprising inland tidal waters, lakes bounded by the Gulf of Mexico, and salt water marshes and more particularly identified as the intermediate marshes, brackish marshes, and saline marshes on the Vegetative Type Map of the Louisiana Coastal Marshes, published by the Louisiana Department of Wildlife and Fisheries, August, 1978.

Community Saltwater Disposal Well or System as defined in §501.

Contamination the introduction of substances or contaminants into a groundwater aquifer, a USDW or soil in such quantities as to render them unusable for their intended purposes.

Elevated Wetland Area a wetland area which is not normally inundated with water and where land mass and levee material are available for mixing with waste fluids during closure of a pit.

Exempt Pits compressor station pits, natural gas processing plant pits, emergency pits, and salt dome cavern pits located in the coastal area.

Groundwater Aquifer water in the saturated zone beneath the land surface that contains less than 10,000 mg/l TDS.

Hydrocarbon Storage Brine well water, potable water, rainwater, or brine (partially saturated to completely saturated) used as a displacing fluid in hydrocarbon storage well operations.

Manufactured Liner any man-made synthetic material of sufficient size and qualities to sustain a hydraulic conductivity no greater than 1×10^{-7} cm/sec after installation and which is sufficiently reinforced to withstand normal wear and tear associated with the installation and pit use without damage to the liner or adverse affect on the quality thereof. For purposes of this Chapter and Chapter 5, a

manufactured liner used in pit construction must meet or exceed the following standards.

Parameter or Test Standard
Thickness (average) > 10 mm (.01 in)
Breaking Strength (Grab Method)* 90 lbs
Bursting Strength * 140 psi
Tearing Strength * 25 lbs
Seam Strength * 50 lbs

*Testing is to be performed according to ASTM method D-751, latest revision.

Mining Water Cwell water, potable water, rainwater, or unsaturated brine which is injected into a brine solution mining well for recovery as saturated brine.

NOW Cnonhazardous oilfield waste.

Nonhazardous Oilfield Waste Cas defined in §501.

Onsite Cfor purposes of this Section, on the same lease or contiguous property owned by the lessor, or within the confines of a drilling unit established for a specific well or group of wells.

Operation of Oil and Gas Facilities Cas used in this Section, all oil and gas wells, disposal wells, enhanced recovery injection wells and facilities, flowlines, field storage and separation facilities, natural gas processing and/or gas sweetening plants, and compressor stations.

Pit Cfor purposes of this Chapter, a natural topographic depression or man-made excavation used to hold produced water or other nonhazardous oilfield waste, hydrocarbon storage brine, or mining water. The term does not include lined sumps less than 660 gallons or containment dikes, ring levees or firewalls constructed around oil and gas facilities.

Produced Water Cliquids and suspended particulate matter that is obtained by processing fluids brought to the surface in conjunction with the recovery of oil and gas from underground geologic formations, with underground storage of hydrocarbons, or with solution mining for brine.

Production Pits Ceither earthen or lined storage pits for collecting NOW sediment periodically cleaned from tanks and other producing facilities, for storage of produced water or other nonhazardous oilfield wastes produced from the operation of oil and gas facilities, or used in conjunction with hydrocarbon storage and solution mining operations as follows.

1. **Burn Pits** Cearthen pits intended for use as a place to temporarily store and periodically burn nonhazardous oilfield waste (excluding produced water) collected from tanks and facilities.

2. **Compressor Station Pits** Clined or earthen pits intended for temporary storage or disposal of fresh water condensed from natural gas at a gas pipeline drip or gas compressor station.

3. **Natural Gas Processing Plant Pits** Clined or earthen pits used for the storage of process waters or stormwater runoff. No produced water may be stored in a natural gas processing plant pit.

4. **Produced Water Pits** Clined or earthen pit used for storing produced water and other nonhazardous oilfield wastes, hydrocarbon storage brine, or mining water.

5. **Washout Pits** Clined earthen pits used to collect wash water generated by the cleaning of vacuum truck tanks and other vessels and equipment only used to transport nonhazardous oilfield waste. Any materials other than NOW are prohibited from being placed in such pits.

6. **Well Test Pits** Csmall earthen pits intended for use to periodically test or clean up a well.

7. **Emergency Pits** Clined or earthen pits used to periodically collect produced water and other NOW fluids only during emergency incidents, rupture or failure of other facilities.

8. **Onshore Terminal Pits** Clined or earthen pits located in the coastal area used for storing produced water at terminals that receive crude oil and entrained water by pipeline from offshore oil and gas production facilities.

9. **Salt Dome Cavern Pits** Clined or earthen pits located in the coastal area associated with the storage of petroleum products and petroleum in salt dome caverns.

Reserve Pits Ctemporary earthen pits used to store only those materials used or generated in drilling and workover operations.

Submerged Wetland Area Ca wetland area which is normally inundated with water and where only levee material is available for mixing with waste fluids during closure of a pit.

Underground Source of Drinking Water (USDW) Cfor the purpose of administering these rules and regulations is defined in §403.B.

Upland Area Can area which is not identified as a wetland and includes farm land, pasture land, recreational land, and residential land.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2798 (December 2000).

§303. General Requirements

A. Produced water generated from the drilling and production of oil and gas wells shall be disposed of into subsurface formations not productive of hydrocarbons, unless discharged or disposed of according to the provisions of §303.E or transported offsite in accordance with LAC 43:XIX, Subpart 1, Chapter 5.

B. Produced water may be disposed of by subsurface injection into legally permitted or authorized operators saltwater disposal wells, commercial saltwater disposal wells, enhanced recovery injection wells, community saltwater disposal wells, or gas plant disposal wells. The use of hydrocarbon storage brine and mining water in storage and/or mining operations is not considered to be disposal.

C. Contamination of a groundwater aquifer or a USDW with NOW is strictly prohibited. In addition, the injection of NOW into a groundwater aquifer or a USDW is strictly prohibited.

D. Produced water and other NOW generated in the drilling and production of oil and gas wells shall not be disposed of into a zone producing or productive of hydrocarbons unless such disposal is approved by the Office of Conservation after a public hearing or unless prior approval to use the proposed zone for such disposal can be documented.

E. The discharge of produced water or other NOW (including drilled solids) into manmade or natural drainage or directly into state waters is allowed only in conformance with any applicable state or federal discharge regulatory program.

F. The use of closed NOW storage systems is encouraged by the Office of Conservation; therefore, the use

of new or existing pits to store produced water, drilling fluids, and other NOW generated from the drilling and production of oil and gas wells is prohibited unless:

1. notification for each pit is submitted to the Office of Conservation as outlined in §305; and
2. pits are in conformance with standards set forth in §307.

G. Unless exempted from liner requirements in §303.K.8 or §303.M below, all existing produced water pits, onshore terminal pits, and washout pits which are to be utilized in the operation of oil and gas or other facilities must be shown to comply with the liner requirements of §307.A.1.a or be permanently closed in accordance with the pit closure criteria of §311 and §313 by January 20, 1989. A certification attesting to compliance with these requirements shall be submitted to this office in a timely manner.

H. All existing pits which are not to be utilized in the operation of oil and gas or other facilities must be permanently closed according to the requirements of §311 and §313 by January 20, 1989. A certification attesting to compliance with these requirements shall be submitted to this office in a timely manner.

I. Operators of existing pits are required to comply with all applicable operational requirements of §307.A.2 and 4, §307.B.1, 2, and 3, §307.C.2, 4, 5, and 6, §307.D.2, 4, and 5, §307.E.1, 3, 4, and 6, and §307.F.1 and 3.

J. Production pits, except for those identified in §303.K.1 and §303.M below, may not be constructed in a "V" or A zone as determined by flood hazard boundary or rate maps and other information published by the Federal Emergency Management Agency (FEMA), unless such pits have levees which have been built at least 1 foot above the 100-year flood level and able to withstand the predicted velocity of the 100-year flood. Location, construction and use of such pits is discouraged.

K. Production pits located in the coastal area shall be subject to the following requirements.

1. Except for exempt pits, no production pit may be constructed in the coastal area after June 30, 1989.
2. Production pits located in the coastal area shall be closed in compliance with §311 and §313 by January 1, 1993 with the following exceptions:
 - a. exempt pits as such term is defined in §301;
 - b. any onshore terminal pit that was in existence on June 30, 1989, provided such pit has an approved Louisiana Water Discharge Permit System (LWDPS) permit applicable thereto. Upon expiration of such permit, operator shall discontinue use of said pit and comply with the provisions of §307;
 - c. any production pit which is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit is not subject to the closure requirements of §311 and §313 until January 1, 1995 or until expiration of such permit which ever occurs first. Upon expiration of such permit, operator shall discontinue use of said pit and comply with the provisions of §307.
3. Operators of existing production pits located in the coastal area shall submit Form UIC-15-CP to the Office of Conservation by January 1, 1991. Pits closed prior to October 20, 1990 are not considered existing pits for purposes hereof.

4. Operators intending to construct an exempt pit shall submit Form UIC-15-CP to the Office of Conservation at least 10 days prior to start of construction thereof.

5. Production pits located within the coastal area must maintain a levee with an elevation of at least two feet above mean high tide, the liquid level in pit(s) shall not be permitted to rise within two feet of top of pit levee or walls, and any surface water discharge from an active pit must be done in accordance with appropriate state or federal regulatory programs. Such discharge must be piped to open water (within the marsh) that receives good flushing action and shall not otherwise significantly increase the salinity of the receiving body of water or marsh. Further, unless otherwise indicated in §303.K.6,7,8 and 9, production pits located in the coastal area shall comply with the standards and operational requirements set forth in §307.

6. Burn pits, compressor station pits, natural gas processing plant pits, and well test pits located in the coastal area are exempt from the liner requirements of §307.A.

7. Salt dome cavern pits are exempt from the liner requirements of §307.A.

8. Produced water pits, washout pits, and onshore terminal pits located in the coastal area shall comply with the liner requirements of §307.A unless such pit is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit.

9. Emergency pits located in the coastal area shall comply with the requirements of §307.E unless such pit is subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit.

10. Any production pit which is not subject to an approved Louisiana Water Discharge Permit System (LWDPS) permit on October 20, 1990 shall submit a closure plan to the Office of Conservation by January 1, 1991.

L. Within six months of the completion of the drilling or workover of any permitted well, the operator (generator) shall certify to the commissioner by filing Form UIC-16 the types and number of barrels of NOW generated, the disposition of such waste, and further certify that such disposition was conducted in accordance with applicable rules and regulations of the Office of Conservation. Such certification shall become a part of the well's permanent history.

M. Based upon the best practical technology, production pits located within an 'A' zone (FEMA) which meet the following criteria are not subject to the levee height requirements of §303.J above or the liner requirements of §307.A.1:

1. pit size is less than or equal to 10' x 10' x 4' deep;
2. such pit contains only produced brine; and
3. such pit is utilized for gas wells producing less than 25 mcf per day and less than or equal to one barrel of saltwater per day (bswpd).

N. Evidence of contamination of a groundwater aquifer or USDW may require compliance with the monitoring program of §309, compliance with the liner requirements of §307.A.1, or immediate closure of the pit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2799 (December 2000).

§305. Notification

A. Existing Pits

1. Each pit which was constructed prior to January 20, 1986 is an existing pit. Use of an existing pit is prohibited unless the operator has reported that pit to the Office of Conservation by July 20, 1986 according to the requirements of this Paragraph. Notification shall contain the information requested below. Pits closed prior to January 20, 1986 are not considered existing pits.

2. Operators of existing pits must submit the following information to the Office of Conservation by July 20, 1986:

a. for each existing pit to be utilized in the operation of oil and gas facilities, the information requested in §305.D.1-8 below;

b. for each existing pit not to be utilized in the operation of oil and gas facilities the information requested in §305.D.1-6 below;

c. a plan and schedule of abandonment for closure of pits identified in §305.A.2.b above. Such plan must comply with the provisions of §303.H, §311, and §313. Failure to comply with the plan in a timely manner will subject an operator to appropriate civil penalties.

3. Operators of existing pits in the coastal area shall comply with the requirements of §303.K.3.

B. New Pits. Except for reserve pits, operators must notify the Office of Conservation of the intent to construct new pits at least 10 days prior to start of construction. Notification shall contain all information requested in §305.D or §303.K.4 as appropriate. The Office of Conservation may inspect any proposed pit site prior to or during construction; however, initial use of the completed pit need not be deferred if no inspection is made.

C. Reserve Pit Notification. For reserve pits used in drilling and workover operations, notification requirements of this rule shall be satisfied by application for a drilling or work permit.

D. Notification Information RequiredCForm UIC-15

1. name of facility pit (indicate whether new or existing);

2. field designation, if applicable;

3. section, township and range (include approximate footage location of pit center);

4. parish name;

5. type of pit (consistent with definitions in §301);

6. size of pit (length, width and depth);

7. type of liner if applicable;

8. certification that each pit will or does conform to standards stipulated under §307 applicable to that type pit and that such compliance will be within the time frame described in §303.G, H, and I, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2801 (December 2000).

§307. Pit Classification, Standards, and Operational Requirements

A. Produced Water, Onshore Terminal, and Washout Pits

1. Except where exempted by §303.K.8 and §303.M, groundwater aquifer and USDW protection for above-listed pits shall be provided by one of the following.

a. A liner along the bottom and sides of pits which has the equivalent of 3 continuous feet of recompacted or natural clay having a hydraulic conductivity no greater than 1×10^7 cm/sec. Such liners include, but are not limited to the following.

i. *Natural Liner*Cnatural clay having a hydraulic conductivity meeting the requirements of §307.A.1.a above.

ii. *Soil Mixture Liner*Csoil mixed with cement, clay-type, and/or other additives to produce a barrier which meets the hydraulic conductivity requirements of §307.A.1.a above.

iii. *Recompacted Clay Liner*Cin situ or imported clay soils which are compacted or restructured to meet the hydraulic conductivity requirements of §307.A.1.a above.

iv. *Manufactured Liner*Csynthetic material that meets the definition in §301 and is equivalent or exceeds the hydraulic conductivity requirements of §307.A.1.a above. Pits constructed with a manufactured liner must have side slopes of 3:1 and the liner at the top of the pit must be buried in a 1' wide and 1' deep trench. A sufficient excess of liner material shall be placed in the pit to prevent tearing when filled with NOW.

v. *Combination Liner*Ca combination of two or more types of liners described in this Section which meets the hydraulic conductivity requirements of §307.A.1.a above.

b. Any other alternate groundwater aquifer and USDW protection system acceptable to the Office of Conservation.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphon or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal and/or state regulatory programs are not considered to be pollution or contamination as used herein.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Liquid levels in pits shall not be permitted to rise within two feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of NOW to the environment.

5. When use of a pit will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of all fluids in a manner compatible with all applicable regulations and closed in accordance with §303.F and G within six months of abandonment.

B. Reserve Pits

1. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal or state regulatory programs are not considered to be pollution or contamination as used herein.

2. Liquid levels in pits shall not be permitted to rise within two feet of top of pit levees or walls. Pit levees or

walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of NOW to the environment.

3. Operators shall prevent the placing of produced water, waste oil, trash, or any other material into a reserve pit which would increase the difficulty in clean-up of the pit or otherwise harm the environment. Such material shall be properly stored and disposed of according to applicable state or federal regulations.

4. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of completion of drilling or work over operations.

C. Burn Pits

1. Pits shall be constructed in such a manner as to keep fire hazards to a minimum, and in no case shall be located less than 100 feet from a well location, tank battery, separator, heater-treater, or any and all other equipment that may present a fire hazard.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Any burning process shall be carried out in conformance with applicable air quality regulations. Notification as required by said regulation shall be made to the Air Quality Division, Department of Environmental Quality.

5. No produced water, radioactive material (except industry-accepted and license-approved radioactive material utilized in oilfield operations, and radioactive material naturally occurring in the produced fluids), or other noncombustible waste products shall be placed in pits, except water or emulsion which may be associated with crude oil swabbed or otherwise produced during test operations, or during tank or other vessel cleaning operations. NOW must be removed or burned periodically to assure that storage of materials in the pit is kept to a minimum.

6. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of NOW to the environment.

7. When use of pits will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

D. Well Test Pits

1. Pits shall be constructed in such a manner as to keep fire hazards to a minimum, and in no case shall be located less than 100 feet from a well location, tank battery, separator, heater-treater, or any and all other equipment that may present a fire hazard.

2. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and

no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination.

3. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

4. Within 30 days after completion of a well test, pits shall be emptied of produced fluids and must remain empty of produced fluids during periods of nonuse.

5. Liquid levels in pits shall not be permitted to rise within two feet of top of pit walls or dikes. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of NOW to the environment.

6. When use of pits will be permanently discontinued, the Office of Conservation shall be notified in writing. Pits shall be emptied of fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

E. Emergency Pits

1. Groundwater aquifer and USDW protection for emergency pits shall be evaluated on a case-by-case basis. Operators who intend to utilize existing or new emergency pits without liners must demonstrate by written application to the Office of Conservation that groundwater aquifer and USDW contamination will not occur; otherwise, emergency pits shall be lined. Applications to demonstrate unlined pits will not contaminate groundwater aquifers and USDW's shall at a minimum address the following:

a. *Emergency Incident Rate* Operator shall estimate the number of times a pit will be utilized each year. A detailed discussion of the facility operation and reasons for the emergency incident rate must be addressed.

b. *Soil Properties* Operator shall describe and evaluate soil properties onsite. Soil hydraulic conductivity and physical properties must be addressed to assess potential groundwater aquifer and USDW impacts.

c. *Groundwater Aquifer Evaluation* Water quality, groundwater aquifer, and USDW depth shall be evaluated.

d. *Produced Water Composition* (total dissolved solids and oil and grease) must be determined to assess potential impacts on the site.

2. All emergency pits required to be lined must conform to hydraulic conductivity requirements in §307.A.1 above.

3. No produced water or any other NOW shall be intentionally placed in any emergency pit not meeting the hydraulic conductivity requirements (1×10^{-7} cm/sec for 3 continuous feet of clay) except in the case of an emergency incident. In emergency situations, notice must be given to the Office of Conservation within 24 hours after discovery of the incident. Produced water and any other NOW must be removed from the pit within seven days following termination of the emergency situation.

4. Pits shall be protected from surface waters by levees and by drainage ditches, where needed, and no siphons or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Surface discharges of pit contents under federal or state permits are not considered to be pollution or contamination as used herein.

5. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pits as provided under §305.B.

6. Liquid level in pits shall not be permitted to rise within 2 feet of top of pit levees. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of NOW to the environment.

7. When use of pits will be permanently discontinued, the Office of Conservation shall be notified in writing. After notification to the Office of Conservation, pits shall be emptied of all fluids in a manner compatible with all applicable regulations, and closed in accordance with §311 and §313 within six months of abandonment.

F. Natural Gas Processing Plant Pits, Compressor Station Pits, and Salt Dome Cavern Pits

1. Pits shall be protected from surface waters by levees or walls and by drainage ditches, where needed, and no siphon or openings will be placed in or over levees or walls that would permit escaping of contents so as to cause pollution or contamination. Authorized surface discharges of pit contents under federal and/or state regulatory programs are not considered to be pollution or contamination as used herein.

2. A representative of the Office of Conservation must be given an opportunity to inspect prior to and during construction of the pit as provided under §305.B.

3. Liquid levels in pits shall not be permitted to rise within 2 feet of top of pit levees or walls. Pit levees or walls shall be maintained at all times to prevent deterioration, subsequent overflow, and leakage of NOW to the environment.

4. When use of a pit will be permanently discontinued by the operator of record, the Office of Conservation shall be notified in writing. Pits shall be emptied of all fluids in a manner compatible with all applicable regulations and closed in accordance with §311 and §313 within six months of abandonment.

G. Office of Conservation Corrective Action and Closure Requirement. Should the Office of Conservation determine that continued operation of pits specified in this Subparagraph may result in contamination of a groundwater aquifer or a USDW, or the discharge of fluids into man-made or natural drainage or directly into state waters, or contamination of soils outside the confines thereof, further use of the pit shall be prohibited until conditions causing or likely to cause contamination have been corrected. If corrective measures are not satisfactorily completed in accordance with an Office of Conservation compliance order or schedule, the commissioner may require closure of the pit. When an order for closure is issued, a pit shall be closed in accordance with §311 and §313 and the operator must comply with any closure schedule issued by the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2801 (December 2000).

§309. Monitoring Program

A. Upon a determination by the operator or the Office of Conservation that any pit subject to this rule is likely to contaminate a groundwater aquifer or a USDW, the Office of Conservation shall require the timely submission of a plan

for the prevention of such contamination. Such plan may include using an under-built drainage and collection system, monitoring wells, and/or other means that the Office of Conservation may approve to prevent or detect contamination. Any required monitor wells shall be registered with the appropriate state agency.

B. When required by the Office of Conservation, monitoring shall be conducted on a quarterly schedule. A written report summarizing the results of such monitoring shall be submitted to the Office of Conservation within 30 days of the end of each quarter.

C. If monitoring of a groundwater aquifer or USDW indicates contamination due to a discharge from a pit, the owner or operator shall immediately notify the Office of Conservation. Within 30 days, the operator shall empty the pit of all NOW and submit a remedial plan for prevention of further contamination of any groundwater aquifer or any USDW. Upon approval, the remedial plan shall be implemented by the operator and monthly progress reports, reviewing actions taken under the plan and their results, will be filed with the Office of Conservation until all actions called for in the plan have been satisfactorily completed.

D. Notification received by the Office of Conservation, pursuant to §309.A, B, or C above, of any contamination of a groundwater aquifer or a USDW as the possible result of a discharge, or information obtained by the exploitation of such notification shall not be used against the reporting owner or operator in any criminal action, including but not limited to those provided for by Louisiana Revised Statutes 30:18, except in a prosecution for perjury or for giving a false statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2803 (December 2000).

§311. Pit Closure

A. Pits must be closed properly to assure protection of soil, surface water, groundwater aquifers and USDW's. Operators may close pits utilizing onsite land treatment, burial, solidification or other techniques approved by the Office of Conservation only if done so in compliance with §313 and §315. Otherwise, all NOW must be manifested according to §511 and transported offsite to a permitted commercial facility.

B. Liability for pit closure shall not be transferred from an operator to the owner of the surface land(s) on which a pit is located.

C. For evaluation purposes prior to closure of any pit and for all closure and onsite and offsite disposal techniques, excluding subsurface injection of reserve pit fluids, nonhazardous oilfield waste (pit contents) must be analyzed for the following parameters:

1. pH;
2. total metals content (ppm) for:
 - a. arsenic;
 - b. barium;
 - c. cadmium;
 - d. chromium;
 - e. lead;
 - f. mercury;
 - g. selenium;
 - h. silver;

- i. zinc;
 - 3. oil and grease (percent dry weight);
 - 4. soluble salts and cationic distributions:
 - a. electrical conductivity CEC in mmhos/cm (millimhos);
 - b. sodium adsorption ratio CSAR;
 - c. exchangeable sodium percentage CESP (percent);
- and
- d. cation exchange capacity CCEC (milliequivalents/100 gm soil).

4. Radioisotopes if such pit is located in the coastal area and is closed after October 20, 1990.

D. Laboratory Procedures for Nonhazardous Oilfield Waste Analyses

1. For soluble salts, cationic distributions, metals (except barium) and oil and grease (organics) samples are to be analyzed using standard soil testing procedures as presented in the Laboratory Manual for the Analysis of Oilfield Waste (Department of Natural Resources, August 9, 1988, or latest revision).

2. For barium analysis, samples are to be digested in accordance with the "True Total" method, as presented in the Laboratory Procedures Manual for the Analysis of Oilfield Waste (Department of Natural Resources, August 9, 1988 or latest revision).

3. For radioisotopes, the sampling and testing of pit sludges shall comply with the provisions of Department of Environmental Quality, NORM Regulatory Guide, dated March 12, 1990 or latest revision thereof.

E. Documentation of testing and closure activities, including onsite disposal of NOW, shall be maintained in operator's files for at least three years after completion of closure activities. Upon notification, the Office of Conservation may require the operator to furnish these data for verification of proper closure of any pit. If proper onsite closure has not been accomplished, the operator will be required to bring the site into compliance with applicable requirements.

F. Reserve pits utilized in the drilling of wells less than 5,000 feet in depth are exempt from the testing requirements of §311.C and §313 provided the following conditions are met:

- 1. The well is drilled using only freshwater "native" mud which contains no more than 25 lbs/bbl bentonite, .5 lbs/bbl caustic soda or lime, and 50 lbs/bbl barite; and
- 2. Documentation of the above condition is maintained in the operator's files for at least three years after completion of pit closure activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2803 (December 2000).

§313. Pit Closure Techniques and Onsite Disposal of NOW

A. Reserve pit fluids, as well as drilling muds, cuttings, etc. from holding tanks, may be disposed of onsite provided the technical criteria of §313.C, D, E, or F below are met, as applicable. All NOW must be either disposed of on-site or transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5 or under the direction of the commissioner.

B. Prior to conducting onsite pit closure activities, an operator must make a determination that the requirements of this Subparagraph are attainable.

C. For all pit closure techniques in this Subparagraph, except solidification, waste/soil mixtures must not exceed the following criteria:

- 1. range of pH: 6 - 9;
- 2. total metals content (ppm):

Parameter	Limitation
Arsenic	10
Barium	
Submerged Wetland Area	20,000
Elevated Wetland Area	20,000
Upland Area	40,000
Cadmium	10
Chromium	500
Lead	500
Mercury	10
Selenium	10
Silver	200
Zinc	500

D. Land Treatment. Pits containing NOW may be closed onsite by mixing wastes with soil from pit levees or walls and adjacent areas provided waste/soil mixtures at completion of closure operations do not exceed the following criteria, as applicable, unless the operator can show that higher limits for EC, SAR, and ESP can be justified for future land use or that background analyses indicate that native soil conditions exceed the criteria.

1. In addition to the pH and metals criteria listed in §313.C above, land treatment of NOW in submerged wetland, elevated wetland, and upland areas is permitted if the oil and grease content of the waste/soil mixture after closure is < 1 percent (dry weight).

2. Additional parameters for land treatment of NOW in elevated, freshwater wetland areas where the disposal site is not normally inundated:

- a. electrical conductivity (EC-solution phase): < 8 mmhos/cm;
- b. sodium adsorption ratio (SAR-solution phase): < 14;
- c. exchangeable sodium percentage (ESP-solid phase): 25 percent.

3. Additional parameters for land treatment of NOW in upland areas:

- a. electrical conductivity (EC-solution phase): < 4 mmhos/cm;
- b. sodium adsorption ratio (SAR-solution phase): < 12;
- c. exchangeable sodium percentage (ESP-solid phase): < 15 percent.

E. Burial or Trenching. Pits containing NOW may be closed by mixing the waste with soil and burying the mixture onsite, provided the material to be buried meets the following criteria:

- 1. the pH and metals criteria in §313.C above;
- 2. moisture content: < 50 percent by weight;
- 3. electrical conductivity (EC): < 12 mmhos/cm;
- 4. oil and grease content: < 3 percent by weight;
- 5. top of buried mixture must be at least 5 feet below ground level and then covered with 5 feet of native soil;

6. bottom of burial cell must be at least 5 feet above the seasonal high water table.

F. Solidification. Pits containing NOW may be closed by solidifying wastes and burying it onsite provided the material to be buried meets the following criteria:

1. pH range: 6 - 12;
2. Leachate testing* for oil and grease: < 10.0 mg/l and chlorides < 500.0 mg/l

*Note: The leachate testing method for oil and grease is included in the Laboratory Manual for the Analysis of Oilfield Waste (Department of Natural Resources, August 9, 1988, or latest revision).

3. Leachate testing* for the following metals:

- a. Arsenic < 0.5 mg/l
- b. Barium < 10.0 mg/l
- c. Cadmium < 0.1 mg/l
- d. Chromium < 0.5 mg/l
- e. Lead < 0.5 mg/l
- f. Mercury < 0.02 mg/l
- g. Selenium < 0.1 mg/l
- h. Silver < 0.5 mg/l
- i. Zinc < 5.0 mg/l

*Note: The leachate testing method for metals is included in the Laboratory Manual for the Analysis of Oilfield Waste (Department of Natural Resources, August 9, 1988, or latest revision).

4. top of buried mixture must be at least five feet below ground level and covered with five feet of native soil;

5. bottom of burial cell must be at least five feet above the seasonal high water table;

6. solidified material must meet the following criteria*:

- a. unconfined compressive strength (Qu): > 20 lbs/in² (psi);
- b. permeability: <1 x 10⁻⁶ cm/sec;
- c. wet/dry durability: > 10 cycles to failure.

*Note: Testing must be conducted according to ASTM or other approved methods prior to pit closure by solidification processes.

G. Passive Closure

1. The Office of Conservation will consider requests for passive pit closure provided one of the following conditions exists:

a. where pit closure would create a greater adverse environmental impact than if the pit were allowed to remain unreclaimed;

b. where pit usage can be justified for agricultural purposes or wildlife/ecological management.

2. Operators requesting passive pit closure shall submit the following:

a. an affidavit requesting passive pit closure for one of the reasons contained in §313.G.1;

b. a copy of Form UIC-15 or UIC-15-CP with pit identification number shown thereon;

c. an affidavit of no objection from the Louisiana Department of Wildlife and Fisheries obtainable by contacting:

La. Department of Wildlife & Fisheries
P.O. Box 9800
Baton Rouge, LA 70898
Telephone: (225) 765-2367

d. where applicable, an affidavit of no objection from the Department of Natural Resources, Coastal Management Division, obtainable by contacting:

Department of Natural Resources

Coastal Management Division
P.O. Box 44487

Baton Rouge, LA 70804-4487

Telephone: (225) 342-7591

e. an affidavit of no objection from the landowner endorsing operator's request for passive pit closure;

f. a photograph of the pit in question;

g. an inspection of the pit signed by a conservation enforcement agent and a representative of the operator. The operator shall contact the applicable conservation district office to arrange date and time for inspection;

h. analytical laboratory reports of the pit bottoms and pit levees indicating conformance with applicable land treatment criteria set forth in §313.C and D;

i. an analytical laboratory report of the fluid contents of the pit indicating conformance with applicable state and federal discharge regulatory program. Contact the Department of Environmental Quality, Water Pollution Control Division, (225) 342-6363 for information regarding effluent limitations.

3. The Commissioner of Conservation retains the right to grant exceptions to the requirements of §313.G.2 as he deems appropriate.

H. Offsite Disposal of NOW

1. Except for produced water, drilling, workover and completion fluids, and rainwater which may be transported by an oil and gas operator to a community well or an operators permitted Class II disposal well or discharged to surface waters where authorized, nonhazardous oilfield waste shall not be moved offsite for storage, treatment, or disposal unless transported to an approved commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5 or under the direction of the commissioner.

2. The criteria for land treatment, burial, or solidification listed above will apply, as appropriate, to the onsite disposal of any nonhazardous oilfield waste remaining onsite.

3. NOW that fails to meet the criteria of this Paragraph for onsite disposal shall be moved offsite by the operator to a permitted commercial facility or transfer station in accordance with the requirements of LAC 43:XIX, Chapter 5.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2804 (December 2000).

§315. Disposal of Reserve Pit Fluids by Subsurface Injection

A. General Provisions

1. The disposal (subsurface injection) of drilling and workover waste fluids (including reserve pit fluids) into (1) a newly drilled well which is to be plugged and abandoned or (2) into the casing annulus of a well being drilled, a recently completed well, or a well which has been worked over is prohibited, except when such injection is conducted in accordance with the requirements of this Subparagraph.

2. Injection of drilling and workover waste fluids shall not commence until approval has been granted by the Office of Conservation. Operators may apply for approval when applying for a drilling permit. Approval for injection into a

well will remain valid for subsequent workovers provided the criteria in §315.C below continue to be met.

3. Injection of drilling and workover waste fluids (including reserve pit fluids) shall be limited to injection of only those fluids generated in the drilling, stimulation or workover of the specific well for which authorization is requested. Reserve pit fluids may not be transported from one well location to another for injection purposes.

4. Injection of drilling and workover waste pit fluids into zones that have been tested for hydrocarbons or are capable of hydrocarbon production is prohibited, except as otherwise provided by the commissioner.

5. Pump pressure shall be limited so that vertical fractures will not extend to the base of the USDW and/or groundwater aquifer.

6. A drilling and workover waste fluids injection site may be inspected by a duly authorized representative of the commissioner prior to approval.

7. Drilling and workover waste fluids to be injected pursuant to the provisions of this Section are exempt from the testing requirements of §311.C.

B. Application Requirements

1. Prior to the onsite injection of reserve pit fluids, an application shall be filed by the well operator on the appropriate form. The original and one copy of the application (with attachments) shall be submitted to the Office of Conservation for review and approval.

2. An application for approval of reserve pit fluid injection shall include:

- a. schematic diagram of well showing:
 - i. total depth of well;
 - ii. depths of top and bottom of all casing strings and the calculated top of cement on each;
 - iii. size of casing; and
 - iv. depth of the deepest USDW;
- b. operating data:
 - i. maximum pressure anticipated; and
 - ii. estimated volume of fluids to be injected;
- c. a copy of the electric log of the well (if run) or a copy of the electric log of a nearby well;
- d. additional information as the commissioner may require.

C. Criteria for Approval

1. Casing string injection may be authorized if the following conditions are met and injection will not endanger underground sources of drinking water.

a. Surface casing annular injection may be authorized provided the surface casing is set and cemented at least 200 feet below the base of the lowermost USDW, except as otherwise provided by the commissioner; or

b. Injection through perforations in the intermediate or production casing may be authorized provided that intermediate or production casing is set and cemented at least 200 feet below the base of the lowermost USDW, except as otherwise provided by the commissioner.

2. Surface casing open hole injection may be approved provided the surface casing is set and cemented at least 200 feet below the lowermost USDW and a cement plug of at least 100 feet has been placed across the uppermost potential hydrocarbon bearing zone.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2805 (December 2000).

§317. Requirements for Community Saltwater Disposal Wells and Systems

A. The use of a legally permitted saltwater disposal well and system for community saltwater disposal purposes is prohibited unless the disposal well system operator submits a statement of noncommercial operation and the information requested in §317.B below to the Office of Conservation. Such statement must indicate that the operators using the community saltwater disposal system share only in the cost of operating and maintaining the well and related storage tanks and equipment (system).

B. The operator of an existing or proposed community saltwater disposal well and system must submit the following information to the Office of Conservation:

1. the name of the community saltwater disposal system including the disposal well name(s) and number(s), serial number(s), field, and section, township, and range;
2. a list of the operators using the community saltwater disposal system;
3. a list of the producing wells (well name, number, and serial number) from which saltwater going into the community saltwater system is generated;
4. the approximate number of barrels per month of saltwater received from each producing well;
5. the method of transportation of the saltwater to the community system (i.e., truck, pipeline, etc.).

C. Within six months of the effective date of this amendment and annually thereafter, the operator of an existing community saltwater disposal system shall report the information required in §317.B above to the Office of Conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2806 (December 2000).

§319. Exceptions

A. The commissioner may grant an exception to any provision of this amendment upon proof of good cause. The operator must show proof that such an exception will not endanger USDW's.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2806 (December 2000).

§321. Effect on Existing Special Orders

A. This Order shall supersede §129 of Office of Conservation Statewide Order No. 29-B (effective November 1, 1967). Any existing special orders authorizing disposal of saltwater under conditions which do not meet the requirements hereof shall be superseded by this amendment and the operator shall obtain authority for such disposal after complying with the provisions hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2806 (December 2000).

§323. Applicability

A. All oil and gas and commercial facility operators shall be required to comply with applicable portions of this amendment within 90 days of the effective date, provided that all existing commercial facility operators shall be exempt from all permit application and public hearing requirements under §507 of this Order. Failure to comply with this requirement in a timely manner will subject an operator to the suspension or revocation of his permit and/or the imposition of penalties pursuant to R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2807 (December 2000).

Chapter 4. Pollution Control (Class II Injection/Disposal Well Regulations)

§401. Definitions (reserved)

§403. Permits Required

A. Permits are required for wells which inject fluids:

1. which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;

2. for enhanced recovery of oil and natural gas; and

3. for storage of hydrocarbons which are liquid at standard temperature and pressure.

B. Sub-surface injection or disposal by use of a well as described in §403.A.1 above is prohibited unless authorized by permit or rule. This authorization shall be conditioned upon the applicant taking necessary or corrective action to protect underground sources of drinking water as specified by the commissioner. *Underground source of drinking water (USDW)* means an aquifer or its portion:

1. which supplies any public water system; or

2. which contains a sufficient quantity of ground water to supply a public water system; and

a. currently supplies drinking water for human consumption; or

b. contains fewer than 10,000 mg/1 total dissolved solids; and

3. which is not an exempted aquifer (see LAC 43:XVII.103.H).

C. Existing enhanced recovery, saltwater disposal, and liquid hydrocarbon storage wells are authorized by rule and are not required to reapply for a new permit. However, they are subject to the provisions of Subsection 419.C.

D. The provisions and requirements of this Section shall apply to underground injection by federal agencies or any other person whether or not occurring on property owned or leased by the United States.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2807 (December 2000).

§405. Application Requirements for New Enhanced Recovery Injection and New Saltwater Disposal Wells

A. Each application for the approval of a new enhanced recovery injection well or disposal well shall be filed on Form MD-10-R and shall be verified by a duly authorized

representative of the operator. The original and one copy of the application and two complete sets of attachments shall be furnished to the commissioner. An application for the approval of an injection well which is a part of a proposed enhanced recovery operation may be consolidated with the application for the approval of the enhanced recovery project (see §407.B.4).

B. The application for the approval of an enhanced recovery injection or disposal well or wells shall be accompanied by:

1. a map showing the disposal well or enhanced recovery project area for which a permit is sought and the applicable area of review (for individual wells **3** mile radius; for enhanced recovery projects **3** mile radius plus a circumscribing area the width of which is **3** mile) and the following information:

a. within the area of review, the map must show the number or name and location of all existing producing wells, injection wells, abandoned wells and dry holes;

b. identification of the surface owner of the land on which the enhanced recovery injection or disposal is to be located within the area of review;

c. identification of each operator of a producing leasehold within the area of review;

d. the map may also show surface bodies of water, mines (surface and subsurface), quarries and other pertinent surface features including residences and roads, and faults if known or projected; and

e. only information on file with the Office of Conservation and pertinent information known to the applicant is required to be included on this map;

2. if the well has been drilled, a copy of the Well History and Work Resume Report (WH-1) and any available electric or radioactive log of the well. A descriptive statement of the proposed zone to be used for injection or disposal. The approximate depth of said zone in the case of undrilled wells along with an electric or radioactive log of a nearby well, if available;

3. a schematic diagram of the well showing:

a. the total depth, drilled out depth or plugged back depth of the well;

b. the depth of the top of the injection or disposal interval;

c. the geological name of the injection or disposal zone;

d. the depths of the tops and bottoms of the casing and amount of cement used to cement each string of casing (Every well used for injection shall be cased, cemented and tested in accordance with Subsections 415 and 419 of this Order.);

e. the size of the casing and tubing, and the depth of the packer; and

f. the depth of the base of the deepest USDW;

4. information showing that injection into the proposed zone will not initiate fractures through the overlying strata which could enable the injection fluid or formation fluid to enter an underground source of drinking water. This requirement will be satisfied upon proper demonstration by the applicant that the pressure in the well at the depth of injection shall not exceed 75 percent of the pressure needed to fracture the formation;

5. proposed operating data:

- a. daily injection rates and pressures;
- b. geologic names, depths and location of injection fluid sources;
- c. qualitative and quantitative analysis of water from two or more existing water wells within one-quarter mile of proposed enhanced recovery injection or disposal well or wells. Give location of said water wells and date(s) samples were taken, or statement why samples were not submitted;
- d. qualitative and quantitative analysis of representative sample of water to be injected;
- e. geological name of injection zone and vertical distance separating top of injection zone from base of the deepest USDW, and a geological description of each major separating bed including individual bed thickness; and
- f. geological name, if known, and depth of the base of the deepest USDW.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2807 (December 2000).

§407. Application Requirements for Enhanced Recovery Projects

A. An enhanced recovery project shall be permitted only by order of the commissioner after notice and public hearing.

B. The application for a permit authorizing an enhanced recovery project shall contain the following:

- 1. the names and addresses of the operator or operators of the project;
- 2. in addition to the information on the map required in §405.B.1 above, show the lease, group of leases, unit or units included within the proposed project;
- 3. the common source or sources of supply in which all wells are currently completed;
- 4. the name, description and depth of each common source of supply to be affected;
- 5. a log of a representative well completed in the common source or sources of supply;
- 6. a description of the existing or proposed casing programs for injection wells, and the proposed method of testing all casing;
- 7. a description of the injection medium to be used, its source or sources and the estimated amounts to be injected daily;
- 8. for a project within an allocated pool, a tabulation showing recent gas-oil ratios and oil and water production tests for each of the producing oil and/or gas wells;
- 9. the proposed plan of development of the area included within the project; and
- 10. a schematic diagram of existing and/or proposed injection well(s) as set out in §405.B.3 of this Order.

C. A copy of the application shall be mailed to each operator offsetting the project as shown on the application within five days after the application is filed. An affidavit of compliance with this rule shall be filed on or before the hearing.

D. Injectivity Tests and Pilot Projects

1. Injectivity Test. The commissioner may administratively approve for a period of one week an injectivity test in order to determine the injection rate,

injectivity index, and/or pressure analysis of a well for enhanced recovery.

a. Requests for injectivity tests must include the following:

- i. well name and number;
- ii. serial number;
- iii. Form WH-1 of the well;
- iv. schematic diagram of the well;
- v. sand, reservoir, and field;
- vi. brief discussion of the proposed test.

b. The commissioner must be provided with the results of the injectivity test after completion.

2. Pilot Projects. The commissioner may administratively approve pilot projects for enhanced recovery for a period of six months from the date of initiation of injection.

a. Requests for pilot projects must include Form UIC-2 EOR for each well to be used for injection within the project and such additional information the commissioner deems necessary to justify the approval of the pilot project.

b. Wells used for injection within the pilot project are exempt from the provisions of §409 of this Order.

c. Within 10 days of initiation of injection the operator must notify the commissioner in writing the date injection actually commenced.

d. To continue operation beyond the six-month pilot project approval, the operator must obtain approval of an enhanced recovery project (prior to the expiration date of the administratively approved six-month pilot project) pursuant to the rules of procedure for conducting hearings before the Commissioner of Conservation, R.S. 30:5(C), R.S. 30:6, and §405.A and B, §407.A, B, and C of this Order.

e. In the event the pilot project is unsuccessful, the operator must submit a letter to the commissioner requesting termination of such project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2808 (December 2000).

§409. Permit Notice Requirements

A. Applications for saltwater disposal, enhanced recovery wells or projects, and other Class II facilities shall be advertised in the official state journal.

B. Notice requirements for commercial saltwater facilities can be found in LAC 43:XIX, Chapter 5 of this Order.

C. Public Hearings

1. If any person protests the application for a saltwater disposal or other Class II facility by filing written comments with the commissioner within 15 days following publication of notice, the application shall be set for public hearing at the election of the applicant or the commissioner.

2. All enhanced recovery well or project applications shall be approved only after a 30-day comment period and public hearing. The notice of hearing shall be mailed out to each interested owner and to each interested party.

D. The commissioner may administratively approve or deny the application for a Class II well other than an enhanced recovery well or project, after review, without a public hearing if there are no comments received during the application comment period. If the commissioner denies

administrative approval, the operator shall have a right to a public hearing on the decision.

E. Response to Comments

1. At the time that any final permit is issued, following a public hearing, the commissioner shall issue a response to comments. This response shall briefly describe and respond to all significant comments on the permit application raised during the public comment period, or during any hearing.

2. The response to comments shall be available to the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2808 (December 2000).

§411. Duration of Permits

A. Permits authorizing injection into enhanced recovery injection wells and disposal wells shall remain valid for the life of the well, unless revoked by the commissioner for just cause.

B. A permit granting underground injection may be modified, revoked and reissued, or terminated during its term for cause. This may be at the request of any interested person or at the commissioner's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

C. A permit may be modified, revoked and reissued, or terminated after notice and hearing, if:

1. there is a substantial change of conditions in the enhanced recovery injection well or the disposal well operation, or there are substantial changes in the information originally furnished;

2. information as to the permitted operation indicates that the cumulative effects on the environment are unacceptable, such as pollution of USDW's;

3. there are substantial violations of the terms and provisions of the permit; and

4. the operator has misrepresented any material facts during the permit issuance process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2809 (December 2000).

§413. Transfer of Permits.

A. A permit authorizing an enhanced recovery injection well or disposal well shall not be transferred from one operator to another without the approval of the commissioner (Form MD-10-R-A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2809 (December 2000).

§415. Construction Requirements For New Wells

A. Each new enhanced recovery injection well or disposal well shall be completed, equipped, operated and maintained in a manner that will prevent endangerment of USDW's or damage to sources of oil or gas and will confine injected fluids to the interval or intervals approved.

B. The casing and cementing program shall conform to the following requirements:

1. surface casing set through the base of the deepest USDW and cemented back to the surface in accordance with §109.B.1 of this Order; and

2. long string casing shall be cemented above the injection zone in accordance with §109.D.3 of this Order.

C. Tubing and Packer. New wells drilled or existing wells converted for disposal after the effective date of this rule shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 150 feet above the top of the disposal zone.

D. Pressure Valves. The wellhead shall be equipped with aboveground pressure observation valves on the tubing and for each annulus of the well; said valves will be equipped with 2-inch female fittings. Operators of existing wells shall comply with this requirement by no later than six months after adoption of this amendment.

E. Well History. Within 20 days after the completion or conversion of a disposal well, the owner or operator shall file in duplicate to the commissioner a completed form WH-1.

§417. Monitoring and Reporting Requirements

A. The operator shall monitor injection pressure and injection rate of each enhanced recovery injection well or disposal well on a monthly basis with the results reported annually on Form UIC-10.

B. The operator shall report on Form UIC-10 any casing annulus pressure monitoring used in lieu of pressure testing and any other casing annulus pressure test performed.

C. All reports submitted to the Office of Conservation shall be signed by a duly authorized representative of the operator.

D. The operator of an enhanced recovery injection well or disposal well shall, within 30 days, notify the commissioner of the date upon which injection or disposal commenced.

E. The operator shall request permission from the commissioner for suspension of injection if an injection well or project is to be removed from service for a period of six months or more, and give reasons or justification for such suspension of injection. Said permission shall not exceed one year. After one year, the well or well(s) in a project shall be plugged and abandoned as outlined in §137 of this Order. The operator may request a hearing for an extension exceeding one year. Wells required for standby service, provided they meet all requirements for wells in active service, are exempt from the plugging requirements of this Subsection.

F. The operator shall, within 30 days notify the commissioner of the date injection into an enhanced recovery injection well, enhanced recovery injection project or disposal well is terminated permanently and the reason therefore; at which time the permit authorizing the well or project shall expire. Notification of project injection termination must be accompanied by an individual well status report for all project injection wells.

G. Mechanical failures or downhole problems which indicate an enhanced recovery injection well or disposal well is not, or may not be, directing the injected fluid into the permitted or authorized injection zone may be cause to shut-in the well. If said condition may endanger a USDW, the operator shall orally notify the commissioner within 24 hours at (225) 342-5515. Written notice of this failure shall

be submitted to the Office of Conservation within five days of the occurrence together with a plan for testing and/or repairing the well. Results of such testing and well repair shall be included in the annual monitoring report to the commissioner. Any mechanical downhole well repair performed on the well not previously reported shall also be included in the annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2809 (December 2000).

§419. Logging and Testing Requirements

A. New Wells

1. Before operating a new well drilled for enhanced recovery injection or saltwater disposal, the casing outside the tubing shall be tested under the supervision of the Office of Conservation at a pressure not less than the maximum authorized injection pressure, or at a pressure of 300 psi, whichever is greater.

2.a. If open-hole logs of a nearby well were not run through the lowermost USDW, a new well shall be logged from the surface to the total depth before casing is set.

b. If such logs exist for a nearby well, the new well need only be logged electrically below the surface casing before the long string is set.

3. After cementing the casing, a cement bond log, temperature survey, xray log, density log or some other acceptable test shall be run to assure there are no channels adjacent to the casing which will permit migration of fluids up the wellbore from the disposal formation to the lowermost USDW. The casing program shall be designed for the lifetime of the well.

B. Converted Wells. Before operating an existing well newly converted to enhanced recovery injection or disposal, the casing outside the tubing shall be tested under supervision of the Office of Conservation at a pressure of 1000 psi or maximum authorized injection pressure, whichever is less, provided no testing pressure shall be less than 300 psi.

C. Existing Wells

1. An injection well has mechanical integrity if:

a. there is no significant leak in the casing, tubing or packer; and

b. there is no significant fluid movement into an underground source of drinking water through vertical channels adjacent to the injection wellbore.

2. One of the following methods must be used to evaluate the absence of significant leaks under §419.C.1.a above:

a. monitoring of annulus pressure; or

b. pressure test with liquid; or

c. records of monitoring showing the absence of significant changes in the relationship between injection pressure and injection flow rate for the following enhanced recovery wells:

i. existing wells completed without a packer provided that a pressure test has been performed and the data is available and provided further that one pressure test shall be performed at a time when the well is shut down and if the running of such a test will not cause further loss of significant amounts of oil or gas; or

ii. existing wells constructed without a longstring casing, but with surface casing which terminates at the base of the lowest USDW provided that local geological and hydrological features allow such construction and provided further that the annular space shall be visually inspected. For these wells, the commissioner shall prescribe a monitoring program which will verify the absence of significant fluid movement from the injection zone into an USDW.

3. One of the following methods must be used to determine the absence of significant fluid movement under §419.C.1.b above:

a. cementing records demonstrating the presence of adequate cement to prevent such migration; or

b. the results of a temperature or noise log.

4. The commissioner may approve a request for the use of a test to demonstrate mechanical integrity other than those listed in §419.C.2 and 3 above, if the proposed test will reliably demonstrate the mechanical integrity for wells for which its use is proposed.

5. Each disposal and enhanced recovery well shall demonstrate mechanical integrity at least once every five years. The commissioner will prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with this requirement.

D. The operator shall notify the commissioner at least 48 hours prior to the testing. Testing shall not commence before the end of the 48-hour period unless authorized by the commissioner. The commissioner may authorize or require alternative tests or surveys as is deemed appropriate and necessary.

E. A complete record of all mechanical integrity pressure tests shall be made out, verified and filed in duplicate on the Form PLT# 1 within 30 days after the testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2810 (December 2000).

§421. Confinement of Fluids.

A. If the operator or the commissioner determines that the disposal operation is causing fluid to enter an unauthorized stratum or to escape to the land surface, the operator shall shut-in the disposal well immediately and notify the commissioner by telephone within 24 hours at (225) 342-5515. Injection into the disposal well shall not be resumed until the commissioner has determined that the well is in compliance with all material permit conditions. If the certificate of compliance is not issued within 90 days, the permit shall be canceled and the disposal well shall be plugged and abandoned in accordance with §137.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2810 (December 2000).

§423. Plugging Requirements

A. Enhanced recovery injection wells and disposal wells shall be plugged in accordance with the provisions of the commissioner's rules governing the plugging of oil and gas wells, as found in §137.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2810 (December 2000).

§425. Liquid Hydrocarbon Storage Wells

A. Authorization for the use of salt dome cavities for storage of liquid hydrocarbons is provided in Statewide Order No. 29-M.

B. Authorization for all other liquid hydrocarbon storage wells will be granted by the commissioner after notice and hearing, provided there is a finding that the proposed operation will not endanger USDW's.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000).

§427. Filing Fee

A. A filing fee of \$100 shall be attached to each application for a saltwater disposal well or enhanced recovery project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000).

§429. Annular Disposal

A. The commissioner may approve annular disposal of saltwater for a period of one year. The applicant shall provide the commissioner a radioactive tracer survey (accompanied by an interpretation of the survey by the company who performed the test) to prove that the injected fluid is entering the correct zone and there are no leaks in the casing. The applicant shall furnish the commissioner an economic study of the well and the economics of alternative methods for disposal of the produced saltwater.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000).

§431. Exceptions

A. The commissioner may grant an exception to any provision of this amendment upon proof of good cause. The operator must show proof that such an exception will not endanger USDW's.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000).

§433. Reserved

§435. Reserved

§437. Reserved

§439. Reserved

§441. Effect on Existing Special Orders

A. This Order shall supersede §129 of Office of Conservation Statewide Order No. 29-B (effective November 1, 1967). Any existing special orders authorizing disposal of saltwater under conditions which do not meet the requirements hereof shall be superseded by this amendment and the operator shall obtain authority for such disposal after complying with the provisions hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000).

§443. Applicability

A. All oil and gas and commercial facility operators shall be required to comply with applicable portions of this amendment within 90 days of the effective date, provided that all existing commercial facility operators shall be exempt from all permit application and public hearing requirements under §507 of this Order. Failure to comply with this requirement in a timely manner will subject an operator to the suspension or revocation of his permit and/or the imposition of penalties pursuant to R.S. 30:18.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000).

Chapter 5. Off-site Storage, Treatment and/or Disposal of Nonhazardous Oilfield Waste Generated From Drilling and Production of Oil and Gas Wells

(Note: Onsite disposal requirements are listed in LAC 43:XIX, Chapter 3)

§501. Definitions

Application Phase Can identifiable period of time during which NOW waste receipts are applied to a land treatment cell.

Cell Can earthen area constructed within a land treatment facility used for the placement, treatment, disposal and degradation of nonhazardous oilfield waste.

Closed System Ca system in which nonhazardous oilfield waste is stored in enclosed tanks or barges prior to being treated and/or disposed of. Pits are not utilized in a closed system.

Commercial Facility Ca legally permitted waste storage, treatment and/or disposal facility which receives, treats, reclaims, stores, or disposes of nonhazardous oilfield waste for a fee or other consideration.

Commissioner Cthe commissioner of Conservation of the state of Louisiana.

Community Saltwater Disposal Well or System Ca saltwater disposal well within an oil or gas field which is used by operators in the field or adjacent fields for disposal of their produced water.

Generator Cany person or entity who generates or causes to be generated any nonhazardous oilfield waste (NOW), sometimes referred to as "operator."

Groundwater Aquifer Cas defined in §301.

Inactive Cell Ca land treatment cell which is not used for NOW receipts or has been taken out of service by a land treatment facility. Such cell may be considered inactive only if it is a new cell which has not yet received waste or an existing cell which is in compliance with the applicable testing criteria of this Chapter.

Land Treatment Ca dynamic process involving the controlled application of nonhazardous oilfield waste onto or into the aerobic surface soil horizon by a commercial facility, accompanied by continued monitoring and management, to alter the physical, chemical, and biological state of the waste. Site, soil, climate, and biological activity interact as a system to degrade and immobilize waste constituents thereby rendering the area suitable for the

support of vegetative growth and providing for beneficial future land use.

Offsite Cfor purposes of this Section, outside the confines of a drilling unit for a specific well or group of wells, or in the absence of such a unit, outside the confines of a lease or contiguous property owned by the lessor upon which a well is drilled.

NOW Cnonhazardous oilfield waste.

Nonhazardous Oilfield Waste (NOW) Cwaste generated by the drilling and production of oil and gas wells and which is not regulated by the provisions of the Louisiana Hazardous Waste Regulations. Such wastes include the following:

1. salt water (produced brine or produced water), except for salt water whose intended and actual use is in drilling, workover or completion fluids or in enhanced mineral recovery operations;
2. oil-base drilling mud and cuttings;
3. water-base drilling mud and cuttings;
4. drilling, workover and completion fluids;
5. production pit sludges;
6. production storage tank sludges;
7. produced oily sands and solids;
8. produced formation fresh water;
9. rainwater from ring levees and pits at production and drilling facilities;
10. washout water generated from the cleaning of vessels (barges, tanks, etc.) that transport nonhazardous oilfield waste and are not contaminated by hazardous waste or material;
11. washout pit water from oilfield related carriers that are not permitted to haul hazardous waste or material;
12. nonhazardous natural gas plant processing waste which is or may be commingled with produced formation water;
13. waste from approved salvage oil operators who only receive waste oil (BS&W) from oil and gas leases;
14. pipeline test water which does not meet discharge limitations established by the appropriate state agency, or pipeline pig water, i.e., waste fluids generated from the cleaning of a pipeline;
15. wastes from permitted commercial facilities;
16. material used in crude oil spill clean-up operations.

Oil-Based Drilling Muds Cany oil-based drilling fluid composed of a water in oil emulsion, organophillic clays, drilled solids and additives for down-hole rheology and stability such as fluid loss control materials, thinners, weighting agents, etc.

Pit Can earthen surface impoundment constructed to retain nonhazardous oilfield waste, often referred to as a pond or lagoon.

Reusable Material Ca material that would otherwise be classified as nonhazardous oilfield waste, but which is capable of resource conservation and recovery and has been processed in whole or in part for reuse. To meet this definition, the material must have been treated physically, chemically, or biologically or otherwise processed so that the material is significantly changed (i.e., the new material is physically, chemically, or biologically distinct from the original material), and meets the criteria of §515.F.

Salt Water (Produced Brine) Cproduced water from an oil or gas well with a chloride content greater than 500 ppm.

Transfer Station Ca nonhazardous oilfield waste receiving and storage facility, located offsite, but operated at an approved location in conjunction with a permitted commercial facility, which is used for temporary storage of manifested nonhazardous oilfield waste for a period of 30 days or less.

Transporter Ca legally permitted carrier of nonhazardous oilfield waste contained in trucks, barges, boats, or other transportation vessels.

Treatment Phase Cthe period of time during which NOW in a land treatment cell is physically manipulated and/or chemically altered (through the addition of chemical amendments, etc.) to bring the cell into compliance with the testing criteria or reuse criteria of this Chapter.

Treatment Zone Cthe soil profile in a land treatment cell that is located wholly above the saturated zone and within which degradation, transformation, or immobilization of NOW waste constituents occurs. The treatment zone is subdivided as follows.

a. **Waste Treatment Zone (WTZ)** Cthe active waste treatment area consisting solely of the NOW solids applied to a land treatment cell during the application phase, exists entirely above grade (original cell bottom), and whose actual depth depends on the solids content of the NOW applied. For monitoring purposes the WTZ represents the 0-12" depth increment.

b. **Upper Treatment Zone (UTZ)** Cthe waste/native soil (original cell bottom) interface in a land treatment cell where some disturbance occurs as a result of waste treatment/manipulation. For monitoring purposes, the UTZ represents the 12-24" depth increment.

c. **Lower Treatment Zone (LTZ)** Cthe zone beneath the UTZ in a land treatment cell from approximately 24-54" (or to the top of the subsurface drainage system) which remains undisturbed throughout the life of a land treatment cell.

Type A Facility Ca commercial oilfield waste disposal facility within the state that utilizes technologies appropriate for the receipt, treatment, storage or disposal of oilfield waste solids and liquids for a fee or other consideration. Such facility may include not more than three underground injection wells at the permitted facility.

Type B Facility Ca commercial oilfield waste disposal facility within the state that utilizes underground injection technology for the receipt, treatment, storage and disposal of only produced saltwater, oilfield brine, or other oilfield waste liquids for a fee or other consideration. Such facility may include not more than three underground injection wells at the permitted facility.

Water-Based Drilling Muds Cany water-based fluid composed of fresh water, naturally occurring clays, drilled solids and additives for fluid loss control, viscosity, thinning, pH control, weight control, etc., for down-hole rheology and stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2811 (December 2000).

§503. Offsite Storage, Treatment, and/or Disposal of Nonhazardous Oilfield Waste at Commercial Facilities

A. Generators of Nonhazardous Oilfield Waste

1. For NOW taken offsite for storage, treatment, or disposal, the generator is responsible for the proper handling and transportation of such waste to assure its proper delivery to an approved commercial facility. Failure to properly transport such waste shall subject the generator to penalties provided for in R.S. 30:18. Each shipment must be documented as required by §511.

2. Any spills which occur during the offsite transportation of NOW shall be reported to the Office of Conservation, including the appropriate state and federal agencies, within 24 hours of the spill.

3. Operators (generators) are required to report the discovery of any unauthorized disposal of NOW by transporters, pit treaters, or any other oilfield contracting company.

4. Within six months of the completion of the drilling or workover of any permitted well, the operator (generator) shall certify to the commissioner the type(s) and number of barrels of NOW generated, the disposition of such waste, and certify further that such disposition was in accordance with applicable rules and regulations of this office. Such certification shall become part of the well's permanent history.

B. Approval of Commercial Facility Required. The storage, treatment, and/or disposal of NOW by a commercial facility must be approved by the commissioner as provided in this Section. Subsurface disposal of salt water is required and regulated by LAC 43:XIX, Chapter 4. The requirements of this Section do not apply to either lease saltwater disposal wells or to community saltwater disposal wells. The unpermitted or authorized storage, treatment, disposal or discharge of NOW is prohibited and is a violation of these rules.

C. Approval of Transfer Station Required. The construction and operation of a transfer station must be approved by the commissioner upon submission of a permit application according to the requirements of §505.G.

D. Location Criteria. Commercial facilities and associated saltwater disposal wells may not be located in any area:

1. where the disposal well or related storage tanks, pits, treatment facilities or other equipment are within 500 feet of a residential, commercial, or public building, unless adherence to this requirement is waived by the owner of the building, or in the case of a public building, by the responsible administrative body. Any such waiver shall be in writing and must be made part of the permit application;

2. where the subsurface geology of any proposed injection zone (reservoir) does not exhibit the following characteristics:

a. adequate thickness and areal extent of the proposed injection zone; and

b. adequate clay confining beds separating the top of the proposed injection zone and the base of the lowermost underground source of drinking water;

3. where pits or land treatment cells and facilities are located in a "V" or A zone as determined by flood hazard boundary or rate maps and other information published by

the Federal Emergency Management Agency (FEMA) unless adequate levees are constructed to at least one foot above the 100-year flood elevation as certified by a professional engineer or surveyor and able to withstand the velocity of the 100-year flood. Said maps and data are on file and may be viewed by interested parties at the Office of Conservation, Injection and Mining Division, Baton Rouge, La. Existing facilities located in a "V" or A zone will be required to build facility levees above the 100-year flood elevation as certified by a professional engineer or land surveyor. As conditions change and new data is made available by FEMA, owners of existing commercial facilities will be required to update their facilities accordingly;

4. where such area, or any portion thereof, has been designated as wetlands by the U.S. Corps of Engineers during, or prior to, initial facility application review;

5. where other surface or subsurface conditions exist which in the determination of the Commissioner of Conservation would cause the location to pose a threat of substantial, adverse effects on the environment at or near the location.

E. Design Criteria

1. Commercial facilities, associated saltwater disposal wells, and transfer stations shall be designed in such a manner as to prevent the movement of waste materials into groundwater aquifers or underground sources of drinking water (USDW's) or to prevent the discharge of waste materials into man-made or natural drainage or directly into state waters unless a discharge permit has been received from the appropriate state or federal agency.

2. Commercial facilities and transfer stations shall be designed and constructed in accordance with, but not limited to, the following requirements:

a. this Chapter and other applicable Sections of this order;

b. retaining walls (levees) shall be built around all above-ground storage tanks to a level that will provide sufficient capacity to retain the contents of each tank and prevent the escape of stored wastes due to tank leakage, or some other cause;

c. spill containment systems shall be built around unloading areas to prevent the escape of any wastes spilled during off-loading; and

d. limited access shall be provided by a lockable gate system. In addition, the need for a 6-foot chain-link fence around an entire facility or any portion of a facility will be determined after a site investigation by the commissioner or his designated representative. Gates shall be locked except during the hours a facility is permitted to receive nonhazardous oilfield waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000).

§505. Permit Application Requirements for Commercial Facilities and Transfer Stations

A. Application and Permit Required. Every person who intends to construct and operate a new offsite commercial facility, or make a major modification to an existing facility, shall file a permit application with the Office of Conservation.

B. Notice of Intent

1. At least 30 days prior to filing such application, the applicant shall publish a notice of intent to apply. Such notice shall contain sufficient information to identify the following:

- a. name and address of the applicant;
- b. the location of the proposed facility;
- c. the nature and content of the proposed waste stream(s);
- d. the method(s) of storage, treatment, and/or disposal to be used.

2. The notice of intent shall be published in both the official state journal, *The Advocate*, and the official journal of the parish in which the proposed facility will be located.

3. Such notice shall be in bold-face type and not less than one-quarter page in size and shall be published on three separate days in each journal.

C. General Information. Except for the filing and hearing fees, the following general information must be provided in duplicate in each application for approval to operate a commercial facility:

1. a \$500 nonrefundable filing fee;
2. a \$600 nonrefundable hearing fee;
3. a list of names and addresses of the principal officers of the company or corporation;
4. documentation of compliance with the location criteria of §503.D.1. Provide a list of the names and addresses of all property owners, residents, off-set operators and industrial facilities within one-quarter mile of the proposed facility or disposal well. Include copies of waivers where applicable. Names and addresses of local governing authorities must also be included. Attached to this list must be a simplified drawing (map) showing the following information:
 - a. property boundaries of the commercial facility;
 - b. the boundaries and ownership of all land adjacent to the commercial facility;
 - c. the location and identification of all storage tanks and/or pits, treatment facilities, the disposal well, and all residential, commercial, or public buildings within one-quarter mile of the facility;
5. for operators proposing the construction and operation of a disposal well, complete the appropriate application form, including all required attachments;
6. a copy of the title to the property upon which the facility will be located. If a lease or other agreement is in effect on the property, a copy of this instrument shall be included in the application;
7. a parish map of sufficient scale to identify the location of the proposed facility;
8. a detailed statement of the proposed method of operation of the facility, including procedures for the receipt, storage, treatment and/or disposal of wastes. This statement shall include a complete explanation of procedures for witnessing the receipt, sampling, and testing of wastes to assure that only permitted nonhazardous oilfield wastes are accepted;
9. documentation that the facility and/or disposal well will have limited access through a lockable gate system with appropriate fencing.
10. Financial Responsibility (Insurance)

a. Evidence of financial responsibility for any liability for damages which may be caused to any party by the escape or discharge of any material or waste from the commercial facility or transfer station must be provided by the applicant prior to issuance of a permit.

b. Financial responsibility may be evidenced by filing a certificate of insurance (indicating the required coverage is in effect and all deductible amounts applicable to the coverage), letter of credit, bond, certificate of deposits issued by and drawn on Louisiana banks, or any other evidence of equivalent financial responsibility acceptable to the commissioner.

c. In no event shall the amount and extent of such financial responsibility be less than the face amounts per occurrence and/or aggregate occurrences as set by the commissioner below:

- i. \$1,000,000 minimum coverage for facilities which operate open pits; or
- ii. \$500,000 minimum coverage for any other commercial facility which stores, treats or disposes of nonhazardous oilfield waste solids (i.e. oil- or water-base drilling fluids, etc.); or
- iii. \$250,000 minimum coverage for a commercial salt water disposal facility which utilizes underground injection and a closed storage system; and
- iv. \$100,000 minimum coverage for each transfer station operated in conjunction with a legally permitted commercial facility subject to the guidelines of this Paragraph.

Note: The commissioner retains the right to increase the face amounts set forth above as needed in order to prevent waste and to protect the public health, safety, and welfare.

d. If insurance coverage is used to meet the financial responsibility requirement, it must be provided by a company licensed to operate in the state of Louisiana.

e. For a commercial facility which operates open earthen pits, such insurance must provide sudden and accidental pollution liability coverage as well as environmental impairment liability coverage.

f. For any commercial facility or transfer station which does not operate open earthen pits, such insurance must provide sudden and accidental pollution liability coverage.

g. The application shall contain documentation of the method by which proof of financial responsibility will be provided by the applicant. Where applicable, include copies of a draft letter of credit, bond, or any other evidence of financial responsibility acceptable to the commissioner.

h. Prior to making a final permit decision, final (official) documentation of financial responsibility must be submitted to and approved by the commissioner.

i. A copy of the insurance policy subsequently issued in conjunction with any certificate of insurance is to be immediately filed with the Office of Conservation upon receipt by the operator.

j. Such documentation of financial responsibility must be renewable on April 1 of each year. Existing facilities must comply with this requirement upon the next renewal date.

11. Provisions for Adequate Closure (Bonding)

a. Documentation that a bond or irrevocable letter of credit will be provided for adequate closure of the facility. Such documentation shall be provided as follows:

i. Submission of a detailed cost estimate for adequate closure of the proposed facility. This cost estimate must include a detailed description of proposed future closure procedures including, but not limited to, plugging and abandonment of the disposal well(s) (if applicable), plugging of any monitor wells according to applicable state regulations, closing out any pits or land treatment cells, removing all surface equipment, and returning the environment as close as possible to its natural state. The closure plan and cost estimate must be prepared by an independent professional consultant, must include provisions for closure acceptable to the commissioner, and must be designed to reflect the costs to the commissioner to complete the approved closure of the facility.

ii. Submission of a draft irrevocable letter of credit or bond in favor of the state of Louisiana and in a form which includes wording acceptable to the commissioner.

b. Upon completion of the application review process, the commissioner will set the amount of the required bond or irrevocable letter of credit.

c. The bond or letter of credit must then be submitted to and approved by the commissioner prior to issuance of a final permit decision.

d. The bond or letter of credit must be renewable on October 1 of each year. Existing facilities must comply with this requirement upon the next renewal date.

12. Verification that a discharge permit has been obtained from the appropriate state or federal agencies or copies of any applications submitted to such agencies. If a facility does not intend to discharge treated waste water or other water, a completed and notarized Affidavit of No Discharge must be provided.

13. In order to document compliance with the location criteria of §503.D.2, commercial facilities which propose to permit a disposal well must provide strike and dip geologic cross sections intersecting at the location of the disposal well for which a permit is sought. These cross sections must include, at a minimum, available log control, geologic units, and lithology from the surface to the lower confining bed below the injection zone. The sections shall be on a scale sufficient to show the local geology in at least a two-mile radius from the proposed disposal well. The following information must be included on these cross-sections:

- a. the base of underground sources of drinking water (USDW's);
- b. the vertical and lateral limits of the proposed injection zone (reservoir);
- c. the vertical and lateral limits of the upper and lower confining beds; and
- d. the location of faults or other geologic structures.

14. A list of all other licenses and permits needed by the applicant to conduct the proposed commercial activities. Include identification number of applications for those permits or licenses or, if issued, the identification numbers of the permits or licenses.

D. Additional Permit Application Requirements for Closed Systems

1. In addition to the information requested in §505.C above, the following information must be provided in duplicate in each application for approval of a closed system: A detailed schematic diagram of the proposed facility of sufficient scale to show placement of access roads, buildings, unloading areas, storage tanks or barges (including design capacities), treatment system, levees, flow lines, filters, the injection well and all other equipment and operational features of the storage, treatment and/or disposal system.

2. Documentation of compliance with the location criteria of §503.D.4.

E. Additional Permit Application Requirements for Commercial Facilities Utilizing Pits for Temporary Storage of NOW Solids. Pits will not be approved for the permanent disposal of NOW. The construction and use of a receiving pit for temporary storage of NOW may be approved if the requirements of this Subparagraph are met. A receiving pit for temporary storage will only be approved for use as a gathering, collection, and/or temporary storage location if specifically designed for use in connection with a NOW treatment system (i.e. land treatment, chemical fixation, physical dewatering, incineration, etc.). Any proposed pit for temporary storage is not to be constructed until a permit for the NOW treatment system has been issued. Such temporary storage pit must be located on the site of the permitted NOW treatment system and such pit may not exceed a design capacity of more than 50,000 barrels. In addition to the information requested in §505.C above, the following information must be provided in duplicate in each application for approval of a commercial facility incorporating the use of a pit.

1. A detailed schematic diagram of the proposed facility of sufficient scale to show placement of access roads, buildings, unloading areas, monitor well(s), pits, storage tanks, treatment system, flow lines, filters, the injection well and all other equipment and operational features of the storage, treatment, and/or disposal system. The diagram must include the dimensions and design capacity (in barrels) of each proposed pit, tank or barge. The diagram shall also include the following information:

- a. the location and elevation of each soil boring required in §505.E.4 below;
- b. the location and elevation of each monitor well required in §505.E.6 below;
- c. the elevation for the top of each levee;
- d. the elevation of the bottom (base) of each pit;
- e. the elevation of the 100-year flood level;
- f. the general location of groundwater aquifers and USDW's under the site and general direction(s) of area groundwater flow.

2. Documentation of compliance with the location criteria of §503.D.3 and 4.

3. Documentation must be presented which indicates that groundwater and USDW protection shall be provided by one of the following:

- a. a liner along the bottom and sides of pits which has the equivalent of 5 continuous feet of recompacted or natural clay having a hydraulic conductivity no greater than 1×10^{-7} cm/sec. Such liners include, but are not limited to the following:

i. *Natural Liner*—recompacted natural clay having a hydraulic conductivity meeting the requirements of §505.E.3.a above;

ii. *Soil Mixture Liner*—soil mixed with cement, clay-type, and/or other additives to produce a barrier which meets the hydraulic conductivity requirements of §505.E.3.a above;

iii. *Recompacted Clay Liner*—in situ or imported clay soils which are compacted or restructured to meet the hydraulic conductivity requirement of §505.E.3.a above;

iv. *Manufactured Liner*—synthetic material that meets the definition of §301 and is equivalent to or exceeds the hydraulic conductivity requirements of §505.E.3.a above. Pits constructed with a manufactured liner must have side slopes of 3:1 and the liner at the top of the pit must be buried in a 1' wide and 1' deep trench. A sufficient excess of liner material shall be placed in the pit to prevent tearing when filled with NOW;

v. *Combination Liner*—a combination of two or more types of liners described in this Section which meets the hydraulic conductivity requirements of §505.E.3.a above;

b. any other alternate groundwater aquifer and USDW protection system acceptable to the Office of Conservation.

4. The determination of near-surface geological conditions shall be made by soil borings. These borings shall be made prior to construction of any proposed pit. Specific requirements for soil borings and soil testing according to ASTM methods are as follows.

a. Soil borings and soil testing shall be performed by an independent engineering or geotechnical soil testing company or laboratory.

b. The number and locations of borings shall be sufficient to develop an accurate representation of the subsurface conditions at all points beneath the pit(s) and shall be determined in consultation with the commissioner.

c. The soil borings shall be sampled to at least 10 feet below the bottom of the maximum pit excavation, and they must be continuously sampled to at least five feet below maximum excavation.

d. Upon completion of the borings, groundwater levels should be obtained and the boreholes shall be adequately sealed by plugging with a cement/bentonite slurry from the bottom up to the ground surface.

e. The logs of all borings made on-site, together with associated laboratory testing to classify soils and to measure soil strength, permeability and other related parameters, shall be submitted.

5. A cross section showing the proposed placement and type of materials to be used in the construction of the pit levees. The levees must be constructed of soils which are placed and compacted in such a manner as to produce a barrier to horizontal movement of fluids. The levees must be properly tied into the barrier along the bottom and sides of the pits. Actual construction of the levees must be monitored and documented by a professional engineering or geotechnical soil testing company. Documentation that a barrier exists within the levee which consists of at least three feet of soil with a hydraulic conductivity of 1.0×10^{-7} cm/sec or less must be provided. All levees must be provided with a means to prevent erosion and other degradation.

6. A schematic diagram depicting the proposed or actual construction of each monitor well. A minimum of three monitor wells will be required to insure that any seepage into a groundwater aquifer or USDW beneath the pit(s) will be detected prior to leaving the disposal site's perimeter. Monitor wells shall be certified by a professional engineer, hydrologist or geologist as adequate to detect any contamination. Additional monitor wells may be required; the number and location of additional wells will be determined upon review of the pit size(s) and configuration(s) and base line water quality data.

F. Additional Permit Application Requirements for Land Treatment Systems. In addition to the information requested in §505.C, the following information must be provided in duplicate in each application for approval of a commercial facility incorporating the use of land treatment cells:

1. include a detailed description of the site considered for land treatment with relation to the following:

- a. past and present land use;
- b. geology/soil properties/hydrogeology;
- c. drainage and flood control;
- d. hydrologic balance; and
- e. highest seasonal groundwater level;

2. provide a detailed description of the facility design including maps and drawings and a discussion of the following:

- a. site layout;
- b. proposed waste application technique;
- c. drainage control;
- d. proposed waste loading rate; and
- e. expected facility life;

3. submit an explanation of the proposed management plan with reference to the following topics:

- a. sampling and testing of incoming waste;
- b. method of receiving waste;
- c. waste segregation;
- d. application scheduling;
- e. waste-soil mixing; and
- f. proposed land treatment cell and groundwater monitoring plan;

4. provide detailed information concerning closure and post-closure activities and monitoring as follows:

- a. proposed closure procedures;
- b. post-closure maintenance; and
- c. closure and post-closure monitoring;

5. documentation of compliance with the location criteria of §503.D.3 and 4;

6. documentation shall be provided that indicates compliance with the requirements of §513.

G Permit Application Requirements for a Transfer Station

1. The application for construction and operation of a transfer station by an existing Louisiana commercial facility permitted by the Office of Conservation shall include, but may not be limited to the following information:

a. a statement of the proposed method of operation of the transfer station, including, but not limited to, the following:

- i. a description of the storage system;
- ii. a statement as to the method of transportation of waste to and from the transfer station; and

- iii. a statement as to the final disposition of the waste;
- b. documentation that sudden and accidental pollution coverage (liability insurance) in the amount of \$100,000 is in effect for the transfer station;
- c. documentation of compliance with the bonding requirements of §505.C.11;
- d. a parish map of sufficient scale upon which the location of the proposed transfer station is identified;
- e. a schematic drawing showing the following:
 - i. the boundaries of the land, owned or leased, upon which the transfer station is operated;
 - ii. the location and identification of all storage tanks or barges (including design capacities), access roads, buildings, unloading areas, levees, flow lines, filters, and other operational equipment;
- f. a copy of the title of the property upon which the transfer station will be located, or if a lease or other agreement is in effect on the property, a copy must be included in the application;
- g. documentation of compliance with the location criteria of §503.D.1.

2. The application for construction and operation of a transfer station by the operator of an out-of-state, legally permitted commercial facility shall consist of the following:

- a. compliance with the notice of intent requirements of §505.B;
- b. submission of the information required in §505.C;
- c. a detailed schematic diagram of the proposed transfer station of sufficient scale to show the location of access roads, buildings, unloading areas, storage tanks or barges (including design capacities), any treatment system, levees, flow lines, filters, and all other equipment and operational features of the transfer facility;
- d. submission of a copy of any permits issued by the appropriate regulatory agencies of the state in which the out-of-state commercial facility is located.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2813 (December 2000).

§507. Permitting Procedures

A. The Office of Conservation will review a new commercial facility application or transfer station application within 90 days of receipt and inform the applicant of its completeness.

B. If the application is not complete, the applicant shall be advised of additional information to be submitted for approval or the application shall be returned and the applicant will be required to resubmit the application.

C. Upon acceptance of the application as complete, the Office of Conservation shall set a time and date and secure a location for the required public hearing to be held in the affected parish.

D. At least 30 days prior to the hearing, the applicant is required to file six copies of the complete application with the local governing authority of the parish in which the proposed facility is to be located to be made available for public review.

E. Public Hearing Notice Requirements

1. Upon acceptance of the application as complete, the Office of Conservation shall publish in the next available issue of the *Louisiana Register*, a notice of the filing and the location, date and time of the public hearing to be held in the affected parish. Such public hearing shall not be less than 30 days from the date of notice in the *Louisiana Register*.

2. At least 30 days prior to the scheduled public hearing, the Office of Conservation shall publish in *The Advocate* a notice of the filing of the application and the location, date and time of the hearing.

3. The applicant shall publish a substantially similar notice in the official journal of the affected parish on three separate days at least 15 days prior to the date of the hearing. Such notice shall not be less than one-quarter page in size and printed in bold-face type.

F. The public hearing shall be fact finding in nature and not subject to the procedural requirements of the Louisiana Administrative Procedure Act. All interested persons shall be allowed the opportunity to present testimony, facts, or evidence related to the application or to ask questions.

G Permit Issuance

1. The commissioner shall issue a final permit decision within 90 days of the closing of the public comment period.

2. A final permit decision shall become effective on the date of issuance.

3. Approval or the granting of a permit to construct a commercial facility (and any associated disposal well) shall be valid for a period of one year and if construction is not completed in that time, the permit shall be null and void. Requests for an extension of this one year requirement may be approved by the commissioner for extenuating circumstances only.

H. The application for construction and operation of a new or additional transfer station by an existing commercial facility permitted by the Office of Conservation shall either be administratively approved or denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2817 (December 2000).

§509. Criteria for the Operation of Commercial Facilities and Transfer Stations

A. Commercial facilities and transfer stations shall be operated in compliance with, but not limited to, the following.

1. The area within the confines of tank retaining walls (levees) shall be kept free of debris, trash, and accumulations of oil or other materials which may constitute a fire hazard. Portable gasoline powered engines and pumps must be supervised at all times of operation and stored at least 50' from tank battery firewalls when not in use. Vent lines must be installed on all NOW storage tanks and must extend outside of tank battery firewalls.

2. The area within the confines of tank retaining walls (levees) must be kept free of accumulations of water. This water shall be properly disposed of or discharged in accordance with the conditions of a discharge permit granted by the appropriate state agency.

3. Pit and land treatment cell levees shall be kept free of debris, trash, or overgrowth which would constitute a fire hazard or hamper or prevent adequate inspection.

4. Pit surfaces shall at no time have an accumulation of oil of more than two inches.

5. Pit levels shall be maintained with at least two feet of freeboard at all times.

6. Tank retaining walls (levees) must be constructed of soils which are placed and compacted in such a manner as to produce a barrier to horizontal movement of fluids. The levees must be properly tied into the barrier along the bottom and sides of the levees. All levees must be provided with a means to prevent erosion and other degradation.

B. All facilities and systems of treatment, control, and monitoring (and related appurtenances) which are installed or used to achieve compliance with the conditions of a permit shall be properly operated and maintained at all times.

C. Inspection and entry by Office of Conservation personnel shall be allowed as prescribed in R.S. 30:4.

D. Notification Requirements

1. Any change in the principal officers, management, or ownership of an approved commercial facility must be reported to the commissioner in writing within 10 days of the change.

2. Transfer of Ownership

a. A commercial facility permit may be transferred to a new owner or operator only upon approval by the commissioner.

b. The current permittee shall submit an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

- i. name and address of the proposed new owner (permittee);
- ii. date of proposed transfer; and
- iii. a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, insurance coverage, and liability between them.

c. If no agreement described in §509.D.2.b.iii above is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation will shift from the existing permittee to the new permittee on the date the transfer is approved.

3. Commercial facility and transfer station operators shall give written notice to the commissioner of any planned physical or operational alterations or additions to a permitted facility or proposed changes in the waste management plan. Requests to make such changes must be submitted to and approved by the commissioner prior to beginning construction or accomplishing the change by other means.

4. The operator of a newly approved commercial facility, transfer station, and/or disposal well must notify the commissioner when construction is complete. The operator shall not commence receiving nonhazardous oilfield waste or injecting salt water until the facility has been inspected for compliance with the conditions of the permit and the disposal well has been tested for mechanical integrity.

5. An operator of a commercial facility or transfer station shall report to the commissioner any noncompliance, including but not limited to those which may endanger public health or safety or the environment. Such notice shall be made orally within 24 hours of the noncompliance and followed by written notification within five days explaining details and proposed methods of corrective action.

6. When a commercial facility or transfer station operator refuses to accept a load of waste (other than nonhazardous oilfield waste), he shall notify the Office of Conservation immediately, providing the names of the generator and transporter of the waste.

E. Hours of Receiving

1. Commercial facilities and transfer stations shall be adequately manned during hours of receiving and shall receive nonhazardous oilfield waste by truck during daylight hours only. Daylight hours shall be defined as the daily hours for sunrise and sunset as listed in table Number 1119 entitled "Sunrise and Sunset at Baton Rouge, Louisiana," prepared by the Nautical Almanac Office, United States Naval Observatory, Washington, DC 20390.

2. The commissioner may grant approval for after hours (nighttime) receipt of nonhazardous oilfield waste by a commercial facility or transfer station (by truck) when an emergency condition exists which may endanger public health or safety or the environment. Generators shall be responsible for obtaining prior approval for nighttime hauling by calling the Office of Conservation at (225) 342-5515. When such approval has been granted, the Office of Conservation shall notify both the commercial facility which will receive the waste and the state police.

3. Commercial facilities or transfer stations with barge terminals may receive NOW transported by barge on a 24-hour a day basis.

F. Monitoring of Injection Wells

1. Except during approved workover operations, a positive pressure of no less than 100 psi shall be maintained on the well annulus at all times. In addition, an injection volume recorder (tamper proof meter) must be installed and properly maintained on the injection line of each disposal well system. Injected volumes must be recorded monthly and reported annually on the annual injection well report.

2. Except during approved workover operations, wells shall be equipped with pressure gauges located on the wellhead, and situated so as to monitor the pressure of the injection stream and the pressure of the annular space between the casing and the injection string.

3. The pressure gauges shall have half-inch fittings, be scaled in increments of not more than 10 psi, and be maintained in good working order at all times.

4. A daily pressure monitoring log shall be maintained by the operator of the facility and shall contain the following information:

- a. the date;
- b. the operator's name and address;
- c. the well name, number and serial number;
- d. the monitored injection pressure;
- e. the monitored annulus pressure;
- f. whether or not the well was injecting at the time the pressures were recorded; and
- g. the name or initials of the person logging the information.

5. The pressure gauges shall be read and pressures recorded in the daily log.

6. The daily log information shall be recorded on the appropriate form and submitted to the Office of Conservation within 15 days of the end of each month.

7. Any discrepancies in the monitored pressures, which would indicate a lack of mechanical integrity and

constitute noncompliance with applicable sections of this order, shall be reported to the Office of Conservation within 24 hours.

G Discharges from land treatment cells, pits, tanks, and/or barges into man-made or natural drainage or directly into state waters will be allowed only after the necessary discharge permit has been obtained from the appropriate state and/or federal agencies and in accordance with the conditions of such permit.

H. Monitor Well Sampling and Testing Requirements for Facilities with Temporary Storage Pits

1. Water samples from monitor wells shall be sampled by an independent professional consultant and analyzed by an independent testing laboratory. Samples shall be analyzed for pH, electrical conductivity (EC), chloride (Cl), sodium (Na), total dissolved solids (TDS), total suspended solids (TSS), oil and grease (percent), As, Ba, Cd, Cr, Pb, Hg, Se, Ag, and Zn.

2. Water from newly constructed monitor wells on new facilities shall be sampled and analyzed prior to receipt of waste materials by the facility to provide baseline data for the monitoring system. This data shall be submitted to the Office of Conservation to be made part of the facility's permanent file.

3. Water from monitor wells on existing facilities shall be sampled and analyzed on a quarterly basis, with a copy of the analysis submitted to the Office of Conservation within 15 days of the end of each quarter.

I. Receipt, Sampling and Testing of Nonhazardous Oilfield Waste

1. Only NOW (as defined in §501) from approved generators of record may be received at commercial facilities or transfer stations. Other generators of NOW must receive written approval of the Office of Conservation in order to dispose of approved waste at a commercial facility.

2. Before offloading at a commercial facility or transfer station, each shipment of nonhazardous oilfield waste shall be sampled and analyzed (by facility personnel) for pH, conductivity, and chloride (Cl) content. Records of these tests shall be kept on file at each facility for a period of three years and be available for review by the commissioner or his designated representative.

3. An 8-ounce sample (minimum) of each load must be collected and labeled with the date, operator and manifest number. Each sample shall be retained for a period of 30 days.

J. Renewal of Insurance Coverage. Documentation that the required liability insurance coverage for a commercial facility or transfer station has been renewed must be received by March 15 of each year or procedures to initiate permit suspension will be initiated. Any such permit suspension will remain in effect until insurance coverage has been confirmed.

K. A sign shall be prepared and displayed at the entry of each permitted commercial facility or transfer station. Such sign shall utilize a minimum of 1-inch lettering to state the facility name, address, and phone number and shall be made applicable to the activities of each facility according to the following example:

"This waste (storage, treatment and/or disposal) facility has been approved for (temporary storage, treatment and/or disposal) of nonhazardous

oilfield waste only and is regulated by the Office of Conservation. Violations shall be reported to the Office of Conservation at (225) 342-5515."

L. A vertical aerial color photograph (or series of photographs) with stereoscopic coverage of each Type A facility must be obtained during the month of October each year and provided to the Office of Conservation by November 30 of each year. Such photograph(s) must be taken at an original photo scale of 1" = 1000' to 1" = 500' depending on the size of the facility. Photo(s) are to be provided as prints in either 8" x 10" or 9" x 9" formats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2817 (December 2000).

§511. Manifest System

A. In order to adequately monitor the movement and disposal of nonhazardous oilfield waste, every shipment of waste transported to a commercial facility shall be accompanied by a manifest entitled "Oil Field Waste Shipping Control Ticket." It is expressly forbidden to transport or accept such waste without a properly completed manifest form.

B. At the time of transport, the generator shall initiate the manifest by completing and signing Part I. After the transporter completes and signs Part II, the generator shall retain Generator Copy No. 1 (green) for his files. All other copies shall accompany the waste shipment.

C. Upon delivery of the waste, the commercial facility shall complete and sign Part III of the manifest. The transporter shall then retain the Transporter's Copy (pink) for his files.

D. Upon completion of the manifest, the commercial facility operator shall retain the Commercial Facility Copy (yellow) for his files, mail Generator Copy No. 2 to the generator, and mail the Conservation Copy (original) to the Office of Conservation no later than the next working day.

E. The generator, transporter and commercial facility operator shall maintain file copies of completed manifests for a period of not less than three years.

F. Oil and gas, commercial facility, and transfer station operators who transport NOW out-of-state to a permitted disposal facility or receive NOW from out-of-state must comply with the manifest system requirements of this Subsection.

G. A monthly report of waste receipts shall be completed by each commercial facility on the appropriate form and submitted to the Office of Conservation within 15 days of the end of each month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2819 (December 2000).

§513. Land Treatment Facility Requirements

A. Land treatment facilities shall be isolated from contact with public, private, or livestock water supplies, both surface and underground.

B. The siting, design, construction, operation, testing and closure of land treatment facilities shall be approved only after an application is submitted to and approved by the commissioner pursuant to the requirements of §505.

C. General Requirements

1. The soil shall contain a slowly permeable horizon no less than 12 inches thick containing enough fine grained material within 3 feet of the surface to classify it as CL, OL, MH, CH, or OH under the Unified Soil Classification System.

2. The seasonal high water table shall be maintained throughout the facility's operational life at least 36" below the soil surface, either as a result of natural or artificial drainage.

3. Throughout the operational life of a land treatment cell, in order to end the treatment phase and re-enter the application phase, a cell must be shown to comply with the following criteria:

Parameter	Limitation
pH	6.5-9
EC	10 mmhos/cm
SAR	12
ESP	15 percent
Oil and Grease	5 percent (by weight)
Metals:	
Arsenic	40
Total Barium	100,000
Cadmium	10
Chromium	1,000
Lead	1,000
Mercury	10
Selenium	10
Silver	200
Zinc	500

4. The concentration of measured constituents in any groundwater aquifer shall at no time significantly exceed background water quality data.

5. An unsaturated zone monitoring system shall be installed to provide early warning of possible migration of mobile waste constituents. The unsaturated zone shall be defined in the permit application.

6. An independent professional consultant and laboratory shall perform the necessary monitoring to assure adherence to the requirements of this Section.

7. Application Phase

a. NOW may be applied to active land treatment cells during the application phase only. An application phase begins only under the following conditions:

i. a new constructed and approved cell begins receipt of NOW;

ii. a cell containing treated NOW has been shown to meet the testing criteria of §513.C and is utilized for the application of new waste receipts;

iii. a cell from which treated oilfield waste has been removed (after meeting the reuse testing criteria of §515) is utilized for the application of new waste receipts.

b. An application phase ends when either of the following occurs:

i. three months have elapsed since the date application first began; or

ii. 15,000 bbls/acre of waste has been applied to a cell.

c. In order to document the amount of waste applied to each land treatment cell, facilities are required to:

i. indicate on each manifest (oilfield waste shipping control ticket) the number of the cell onto which each load of waste is applied;

ii. maintain a daily or weekly log of type and volume of wastes applied to each land treatment cell;

iii. include in the quarterly report the amount of each type of waste applied to each cell during the quarter.

8. Treatment Phase. Upon completion of the application phase, land treatment cells enter the treatment phase. Remedial action (treatment) must be actively performed in order to bring a cell into compliance with this Section. Cells must reach compliance status within 12 months of the end of the application phase.

9. Land treatment cell levees must be constructed of soils which are placed and compacted in such a manner as to produce a barrier to horizontal movement of fluids. Levee construction material shall be compacted in a maximum of 8" lifts to > 90 percent standard proctor test. The levees must be properly tied into the barrier along the bottom and sides of the cells. Actual construction of the levees must be monitored and documented by professional engineering or geotechnical soil testing company. All levees must be provided with a means to prevent erosion and other degradation.

10. Rainwater and other NOW fluids are not to be stored on land treatment cells. Such fluids are to be removed from cells in a timely manner and stored in appropriate facilities.

D. Monitoring Requirements

Note: References for the parameters required in this Subparagraph are listed as follows:

EC Electrical conductivity (millimhos/cm for soil, micromhos/cm for water)

SAR sodium adsorption ratio

ESP exchangeable sodium percentage (percent)

CEC cation exchange capacity (milliequivalents/100 gm soil)

TOC total organic carbon (percent)

Total metals as follows:

As Arsenic

Ba Barium

Cd Cadmium

Cr Chromium

Pb Lead

Hg Mercury

Se Selenium

Ag Silver

Zn Zinc

TDSS total dissolved solids

TSS total suspended solids

O&G Oil and grease (percent)

Soluble cations:

Na Sodium

Ca Calcium

Mg Magnesium

Soluble anions:

CO₃ Carbonate

HCO₃ Bicarbonate

Cl Chloride

SO₄ Sulfate

1. Prior to the receipt of NOW in a newly permitted and constructed land treatment system or cell, baseline data must be provided by the following sampling and testing program.

a. Soil in the treatment zone (0-24") of each cell must be sampled and tested for the following parameters: pH, EC, SAR, ESP, CEC, TOC, O&G, As, Ba, Cd, Cr, Pb, Hg, Se, Ag, and Zn.

b. Groundwater must be sampled and tested for the following parameters: pH, EC, TDS, TSS, O&G, Cl, Na, As, Ba, Cd, Cr, Pb, Hg, Se, Ag, and Zn.

2. The following monitoring program must be conducted during the active life of a permitted NOW land treatment system:

a. Soil in the treatment zone (waste treatment zoneCWTZ, and upper treatment zoneCUTZ) must be sampled and tested quarterly to determine waste degradation and accumulation of metals and oil and grease. Samples must be analyzed for the following: As, Ba, Cd, Cr, Pb, Hg, Se, Ag, Zn, TOC, and O&G.

b. Soil in the treatment zone (waste treatment zoneCWTZ, and upper treatment zoneCUTZ) must be sampled and tested quarterly to determine the accumulation of salts and to provide data for determining necessary soil amendments. Samples must be analyzed for the following: pH, EC, SAR, ESP, CEC, soluble cations (Na, Ca, Mg), and soluble anions (CO₃, HCO₃, Cl, SO₄).

c. Discharge Water. A copy of each discharge monitoring report made in conformance with any applicable state and/or federal regulatory program shall be furnished to the Office of Conservation on a timely basis.

d. The unsaturated zone must be sampled as soon as practicable following significant precipitation events (within 90 days) to determine the presence of mobile constituents. If "free drainage" soil solution samplers are utilized, sampling and testing shall be performed on a quarterly basis. A composite of at least three samples per management unit (or cell if applicable) are to be analyzed for the following: TDS, pH, Na, Cl, EC, O&G, Ba, Pb, and Zn.

e. Groundwater levels in monitor wells shall be measured monthly for a period of two years to determine seasonal fluctuation in water table. Water level shall be measured quarterly each year thereafter.

f. Groundwater from monitor wells shall be sampled quarterly to determine the impact of facility operation on groundwater. A composite of at least two samples per well shall be tested for the following: TDS, TSS, pH, Cl, Na, EC, O&G, As, Ba, Cr, Pb, and Zn.

g. Quarterly monitoring reports must be submitted to the Office of Conservation according to the following schedule: 1st QuarterCdue March 31st; 2nd QuarterCdue June 30th; 3rd QuarterCdue September 30th; 4th QuarterCdue December 31st. Each quarterly report must contain the following information:

i. the status of each cell at the time of the sampling event (application phase, treatment phase, inactive, etc.), the date(s) sampling took place, and a diagram indicating sample locations for each cell;

ii. the amounts and types of oilfield waste applied to each cell during the application phase, including the beginning and ending dates of application;

iii. a brief description of treatment activities undertaken to bring each cell into compliance with LAC 43:XIX, Chapter 5, Statewide Order No. 29-B;

iv. a compilation (chart) of test results for the present and past three quarterly sampling events;

v. copies of current laboratory test data;

vi. the size of each land treatment cell (in acres).

h. The Office of Conservation may approve an alternative monitoring program upon receipt of evidence that such procedure shall provide adequate monitoring during the active life of a facility.

3. Sampling and Testing Requirements

a. A stratified random sampling system shall be used to determine soil sampling locations in land treatment cells. All cells and monitor wells are to be sampled and tested for all parameters unless otherwise approved by the commissioner. Facilities are required to notify the Office of Conservation at least one week in advance of each quarterly sampling event in order for a representative of this office to be present.

b. Soil samples in land treatment cells shall be taken in the waste treatment zone (WTZ) and the upper treatment zone (UTZ). Over time, the depth of the treatment zone sampled may need to be increased due to solids buildup on land treatment cells. The degree of waste incorporation shall be noted at the time of sampling.

c. At least two samples must be taken from WTZ and UTZ for each acre of cell area. For cells # 6.4 acres in size, all samples from the WTZ and the UTZ are to be composited for one representative analysis for each zone. Cells # 6.5 acres in size must be subdivided for random sample acquisition and compositing.

d. Soil samples are to be analyzed using standard soil testing procedures as presented in the Laboratory Manual for the Analysis of Oilfield Waste (Department of Natural Resources, August 9, 1988, or latest revision).

e. Water samples are to be analyzed for required parameters according to acceptable EPA guidelines and/or the laboratory procedures as presented in the Laboratory Manual for the Analysis of Oilfield Waste (Department of Natural Resources, August 9, 1988, or latest revision).

f. The soil in an inactive cell may not be required to be tested for certain quarterly monitoring parameters only after two consecutive quarterly tests indicate compliance and upon receipt of written approval of this office.

E. Closure and Post-Closure Monitoring

1. Operators of land treatment systems shall submit closure and post-closure maintenance and monitoring programs to the Office of Conservation for approval. The monitoring program shall address sampling and testing schedules for soil in the treatment zone, water collected from the unsaturated zone monitoring system, surface runoff water, and groundwater.

2. Sampling and testing must be performed during the entire closure and post-closure periods. To certify closure of a land treatment system, water collected from the unsaturated zone monitoring system and groundwater must meet background water quality values; in addition, soils in the treatment zone and surface runoff water must meet the following criteria:

Parameter	Criteria	No. of Consecutive Samples
Soils in the Treatment Zone		
pH	6.5-9	2
O&G	# 3.0 percent	2
EC	# 10 mmhos/cm	2
SAR	# 12	2
ESP	# 15 percent	2
Metals (ppm)		
As	# 10	2
Ba	# 100,000	2
Cd	# 10	2
Cr	# 1000	2
Pb	# 1000	2
Hg	# 10	2
Se	# 10	2
Ag	# 200	2
Zn	# 500	2
Runoff Water		
pH	6.5-9.0	4
O&G	# 15 ppm	4
EC	# 0.75 mmhos/cm	4
SAR	# 10	4
TSS	# 60 ppm	4
COD	# 125 ppm	4
Chloride	500 ppm	4
Metals (ppm)		
As	# 0.2	4
Ba	# 10	4
Cd	# 0.05	4
Cr	# 0.15	4
Hg	# 0.01	4
Pb	# 0.10	4
Se	# 0.05	4
Zn	# 1.0	4

3. Post-closure monitoring shall be performed on intervals of 6 months, 1, 2 and 5 years following certification that closure is complete.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2819 (December 2000).

§515. Resource Conservation and Recovery of Nonhazardous Oilfield Waste

A. In order to encourage the conservation and recovery of resources in the oilfield industry, the processing of nonhazardous oilfield waste into reusable materials, in addition to or beyond extraction and separation methods which reclaim raw materials such as crude oil, diesel oil, etc., is recognized as a viable alternative to other methods of disposal.

B. Commercial facilities may function for the purpose of generating reusable material only, or they may generate reusable material in conjunction with other storage, treatment or disposal operations.

C. Commercial facilities that produce reusable material are subject to all of the permitting requirements imposed on other commercial facilities. They are also subject to the same operational requirements without regard to the distinction between waste and reusable material. Existing permits may

be amended to allow re-use activities at commercial facilities which acquire the capability to engage in processing for re-use. Commercial facilities which utilize extraction or separation methods to reclaim raw materials such as crude oil, diesel oil, etc. may do so without amendment of existing permits.

D. The onsite generation of reusable material by pit treating companies or other companies which do not hold a legal commercial facility permit is prohibited unless the company desiring to perform such activities complies with the requirements of this Subparagraph and submits the following information to the commissioner for approval:

1. the names, addresses, and telephone numbers of the principal officers of the company;

2. a detailed description of the process by which the company will treat pit fluids and/or solids (NOW), including the types of chemicals and equipment used in the process, diagrams, test data, or other information;

3. a description of the geographical area in which the company expects to do business (i.e., statewide, north Louisiana, southwest Louisiana, etc.).

E. In addition to other applicable requirements, companies seeking to be permitted for the production of reusable materials from nonhazardous oilfield waste shall have the following obligations.

1. Prior to permit approval or permit amendment approval, applicants must submit the following information:

a. a detailed description of the process to be employed for generation of reusable material;

b. types of facilities and/or equipment to be constructed (or added);

c. identification of the proposed uses for the reusable material; and

d. a description of the proposed monitoring plan to be utilized.

2. All proposed uses of reusable material must be approved by the commissioner in writing.

3. The production of reusable material must be conducted in accordance with a monitoring plan approved by the commissioner with issue of the permit for each facility or process.

4. For purposes of regulatory authority only by the Office of Conservation and the establishment of reusable material, compliance with the testing criteria of §515.F below allows permitted companies to offer the material for the following uses:

a. daily cover in sanitary landfills which are properly permitted by state and/or local authorities. The use of reusable material in a sanitary landfill will require written approval of the Department of Environmental Quality; and

b. various types of construction material (fill) on a case-by-case basis. The commissioner may approve such use only after submission and review of an application for the intended use. Approval will be dependent upon the composition of the material and the proposed location of use. Reusable material may not be used as fill for construction purposes unless the specific use has been approved in writing by the Commissioner of Conservation.

F. Testing Criteria for Reusable Material

Parameter	Limitation
moisture content	< 50% (by weight) or zero free moisture
pH*	6.5 - 9.0
electrical conductivity (EC)	8 mmhos/cm
sodium adsorption ratio (SAR)	12
exchangeable sodium percentage (ESP)	15%
total barium:	
reuse/stockpile at commercial facility -	100,000 ppm
reuse at location other than commercial facility -	40,000 ppm
Leachate testing** for:	
oil and grease	10.0 mg/l
chlorides	500.0 mg/l
Leachate testing** for:	
arsenic	0.5 mg/l
barium	10.0 mg/l
cadmium	0.1 mg/l
chromium	0.5 mg/l
lead	0.5 mg/l
mercury	0.02 mg/l
selenium	0.1 mg/l
silver	0.5 mg/l
zinc	5.0 mg/l

* Non-hazardous oilfield waste when chemically treated (fixated) shall, in addition to the criteria set forth be acceptable as reusable material with a pH range of 6.5 to 12 and an electrical conductivity of up to 50 mmhos/cm, provided such reusable material passes leachate testing requirements for chlorides in §515.F above and Extraction Procedure for Toxicity (EP) tests for metals in §515.F above.

** The leachate testing method for oil and grease, chlorides and metals is included in the Laboratory Manual for the Analysis of Oilfield Waste (Department of Natural Resources, August 9, 1988, or latest revision).

G. The Commissioner of Conservation, the secretary of the Department of Natural Resources, and the state of Louisiana upon issuance of a permit to a company facility under this Subsection shall be held harmless from and indemnified for any and all liabilities arising from the operation of such facilities and use of their products, and the company shall execute such agreements as the commissioner requires for this purpose.

H. Reporting. Each company which generates reusable material must furnish the commissioner a monthly report showing the disposition of all such material.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2822 (December 2000).

§517. Closure

A. All offsite commercial facilities and transfer stations under the jurisdiction of the Office of Conservation shall be closed in a manner approved by the commissioner to insure protection of the public, the environment, groundwater aquifers and underground sources of drinking water. A plan for closure must be developed in accordance with the requirements of the commissioner.

B. Closure bond or letter of credit amounts will be reviewed each year prior to the renewal date according to the following process:

1. A detailed cost estimate for adequate closure of each permitted commercial facility and transfer station shall be prepared by a independent professional consultant and submitted to the commissioner on or before February 1 of each year.

2. The closure plan and cost estimate must include provisions or closure acceptable to the commissioner and must be designed to reflect the costs to the Office of Conservation to complete the approved closure of the facility.

3. Upon review of the cost estimate, the commissioner may increase, decrease or allow the amount of the bond or letter of credit to remain the same.

4. Documentation that the required closure bond or letter of credit has been renewed must be received by September 15 of each year or the commissioner shall initiate procedures to take possession of the funds guaranteed by the bond or letter of credit and suspend or revoke the permit under which the facility is operated. In addition, procedures to initiate permit suspension will be initiated. Any such permit suspension will remain in effect until renewal is documented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2823 (December 2000).

§519 Exceptions

A. The commissioner may grant an exception to any provision of this amendment upon proof of good cause. The operator must show proof that such an exception will not endanger USDW's.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2823 (December 2000).

§521. Effect on Existing Special Orders

A. This Order shall supersede §129 of Office of Conservation Statewide Order No. 29-B (effective November 1,1967). Any existing special orders authorizing disposal of saltwater under conditions which do not meet the requirements hereof shall be superseded by this amendment and the operator shall obtain authority for such disposal after complying with the provisions hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2823 (December 2000).

§523. Applicability

A. All oil and gas and commercial facility operators shall be required to comply with applicable portions of this amendment within 90 days of the effective date, provided that all existing commercial facility operators shall be exempt from all permit application and public hearing requirements under §507 of this Order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2823 (December 2000).

If you have any questions concerning this reorganization, please contact Carroll Wascom, Director, Injection and Mining Division, Office of Conservation, P.O. Box 94275, Baton Rouge, Louisiana 70804-9275 or by calling (225) 342-5515.

Philip N. Asproditis
Commissioner

0012#025

RULE

Department of Public Safety and Corrections Gaming Control Board

Assisting in Violations (LAC 42:XIII.2931)

The Louisiana Gaming Control Board hereby amends LAC 42:VII.2931, 42:IX.2927 and 42:XIII.2931 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part VII. Pari-Mutuel Live Racing Facility

Slot Machine Gaming

Chapter 29. Operating Standards

§2931. Assisting in Violations

A. No employee, agent, or representative of a licensee or permittee shall intentionally assist another person in violating any provisions of the act, rules adopted pursuant to the act, any orders of the board or division, or the licensee's internal controls. Such assistance shall constitute a violation of these rules. It is incumbent upon an employee, agent, or representative of a licensee or permittee to promptly notify the division of any possible violation of any Federal, State or Municipal Law, the Act, rules adopted pursuant to the act, any orders of the board or division, or the licensee's internal controls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:767 (April 2000), amended LR 26:2824 (December 2000).

Part IX. Landbased Casino Gaming

Chapter 29. Operating Standards

§2927. Assisting in Violations

A. No employee, agent or representative of the casino operator or a permittee shall intentionally assist another person in violating any provision of the act, rules adopted pursuant to the act, the casino operating contract, any orders of the board or division, or the casino operator's internal controls. Such assistance shall constitute a violation of these rules. It is incumbent upon an employee, agent or representative of the casino operator or permittee to promptly notify the board and the division of any possible violation of any federal, state or municipal law, the act, the rules adopted pursuant to the act, the casino operator's internal controls or any order of the division or the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:1953 (October 1999), amended LR 26:2824 (December 2000).

Part XIII. Riverboat Gaming

Chapter 29. Operating Standards

§2931. Assisting in Violations

A. No employee, agent, or representative of a licensee or permittee shall intentionally assist another person in violating any provisions of the act, rules adopted pursuant to the act, any orders of the board or division, or the licensee's internal controls. Such assistance shall constitute a violation of these rules. It is incumbent upon an employee, agent, or representative of a licensee or permittee to promptly notify the division of any possible violation of any federal, state or municipal law, the act, rules adopted pursuant to the act, any orders of the board or division, or the licensee's internal controls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), amended LR 26:2824 (December 2000).

Hillary J. Crain
Chairman

0012#018

RULE

Department of Public Safety and Corrections Gaming Control Board

Riverboat Gaming Commission; Licenses and Permits;
Passenger Embarkation and Disembarkation
(LAC 42:XIII.Chapters 3, 5, 7, 9,
2118, 2123, 2156 and 2910)

The Louisiana Gaming Control Board hereby repeals LAC 42:XIII.Chapters 3, 5, 9, and §§701-709 and 713-717, and adopts LAC 42:XIII.2118, 2156 and 2910, and amends XIII.2123 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part XIII. Riverboat Gaming

Subpart 1. Riverboat Gaming Commission

Chapters 3, 5 and 9

Repealed

Chapter 7. Operating Standards

§701. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Riverboat Gaming Commission, LR 19:895 (July 1993), repealed LR 26:2824 (December 2000).

§703. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Riverboat Gaming Commission, LR 19:895 (July 1993), repealed LR 26:2824 (December 2000).

§704. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Riverboat Gaming Commission, LR 20:672 (June 1994), repealed LR 26:2824 (December 2000).

§705. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Riverboat Gaming Commission, LR 19:895 (July 1993), repealed LR 26:2825 (December 2000).

§707. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Riverboat Gaming Commission, LR 19:895 (July 1993), repealed LR 26:2825 (December 2000).

§709. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department Public Safety and Corrections, Riverboat Gaming Commission, LR 19:895 (July 1993), amended LR 20:672 (June 1994), repealed LR 26:2825 (December 2000).

§713. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Riverboat Gaming Commission, LR 19:895 (July 1993), repealed LR 26:2825 (December 2000).

§715. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Riverboat Gaming Commission, LR 19:895 (July 1993), repealed LR 26:2825 (December 2000).

§717. Repealed

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Riverboat Gaming Commission, LR 19:895 (July 1993), repealed LR 26:2825 (December 2000).

Chapter 21. Licensees and Permits

§2118. Indemnification

A. Every contract for construction of a riverboat shall contain an indemnification provision for the protection of the state, the board and division and their agents and employees against claims for personal injury or property damage arising out of errors and omissions in the:

1. approval of riverboat or support facility plans, designs and specifications;
2. granting of approval or licensure;
3. issuance of emergency orders;
4. denial, suspension or revocation of a license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:2825 (December 2000).

§2123. Additional Application Information Required

A.1 - 11. ...

12. a description of planned excursions including all proposed designated waterways and routes, frequency and approximate schedule of excursions, projected passenger load, admission charges, and a proposed general location of the berth;

13. a general promotion and advertising plan. A general description of the amounts, kinds and types of general

promotion and advertising campaign(s) which will likely be undertaken by the applicant or operator including information whether any national or regional advertising will occur, the medium(s) which may be used, the proposed market and whether any other facility or activity except the riverboat will be included in such advertising;

14. a feasibility study. Each applicant shall submit or make available to division or board personnel a feasibility study performed by an independent or approved applicant's staff consultant, which study shall examine, evaluate and attest to the feasibility of the applicant's proposed operation and shall describe or list the evaluation methodology used. The feasibility study shall include a list of the consultant's qualifications, a discussion of the overall market for riverboat gaming operations and the effect of the proposed riverboat on the market. In addition, the feasibility study shall address possible competition from other riverboat gaming and other forms of gaming in all areas of Louisiana and other states;

15. an economic development and utilization plan. Each applicant shall submit an economic development plan addressing the purchasing of or utilization of goods and services in the construction and operation of proposed operations. The plan shall include a list and offer of voluntary conditions by the applicant regarding the following procurement:

- a. an estimated procurement budget for resources and goods to be used in the operation of a riverboat listing the amount of the proposed utilization of Louisiana resources, goods and services in the operation of the riverboat and the area from which they will be procured;
- b. a list of employees which the applicant anticipates employing in the riverboat operation, including job classifications and total estimated salaries;
- c. the percentage of Louisiana residents projected to be hired and the percentage of minorities projected to be employed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 19:1176 (September 1993), amended LR 21:703 (July 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:2825 (December 2000).

§2156. Modifications of Routes, Excursion Schedules and Berth

A. Except for emergency orders and applications therefor, all proposed modifications to routes, excursion schedules, and berth shall be submitted by the applicant or licensee for prior approval by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:2825 (December 2000).

§2910. Passenger Embarkation and Disembarkation

A. Except in the case of emergencies, passengers and crew may embark and disembark from a riverboat only at its authorized berth.

B. In the event that the vessel master, pursuant to the provisions to R.S. 27:65 (B)(1)(a), certifies in writing that weather or water conditions make it unsafe for a riverboat to

commence or continue on its authorized excursion, and gaming activities are conducted while the vessel is at dockside, there shall be no restriction on the embarking or disembarking of passengers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 26:2825 (December 2000).

Hillary J. Crain
Chairman

0012#017

RULE

Department of Social Services Office of Community Services

Relinquishment of Newborns (LAC 67:V.1505)

The Department of Social Services, Office of Community Services, adopts a Rule entitled "Relinquishment of Newborns" for the implementation of the provisions of Title XVII of the Louisiana Children's Code. This Rule is mandated by Article 1706 of the Louisiana Children's Code.

Title 67

SOCIAL SERVICES

Part V. Office of Community Services

Subpart 3. Child Protective Services

Chapter 15. Conducting Investigation in Families

§1505. Relinquishment of Newborns

A. The Department of Social Services, Office of Community Services, establishes procedures for implementation of Title XVII, Relinquishment of Newborns, of the Louisiana Children's Code, for the initial agency response within the Child Protection Investigation Program.

1. Reports that a newborn has been relinquished at a designated emergency care facility will be accepted as a report of child abuse/neglect and immediately assigned to a Child Protection Investigation worker. The worker will respond to secure the safety of the child and obtain immediate medical care if the child is at a location other than a medical facility able to provide the child with immediate medical care.

2. The worker will contact the appropriate court with juvenile jurisdiction and request an instant order placing the child in the custody of the Department of Social Services as a child in need of care.

3. The worker will contact local law enforcement agencies to request their assistance to determine if the relinquished child may have been reported missing. The agency will also contact the national registry for missing and exploited children to determine if the child has been reported missing to that registry.

B. Once any necessary medical care has been received and the child discharged from the medical facility providing emergency and/or other medical care, OCS will place the child in the foster home which can best provide for his needs. Efforts for the continuance of custody as a child in need of care and the procedure for a termination of parental rights will begin immediately and proceed in accordance

with the provisions of Titles VI, Child in Need of Care, and XVII, Relinquishment of Newborns. The child will receive services through the OCS Foster Care and Adoption Programs until the parental rights are terminated and an adoption is finalized or the mother and/or father establish parental rights.

AUTHORITY NOTE: Promulgated in accordance with Article 1705 of the Louisiana Children's Code, Title XVII, Relinquishment of Newborns.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 26:2196 (September 2000), LR 26:2826 (December 2000).

J. Renea Austin-Duffin
Secretary

0012#077

RULE

Department of Social Services Office of Family Support

Child Care Assistance Program Eligibility, Payments and Providers (LAC 67:III.Chapter 51)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 12, the Child Care Assistance Program.

With the rapid growth of the Child Care Assistance Program, these actions were designed to streamline the program and help reduce current levels of spending.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

§5102. Definitions

Case Head Can individual who may apply for child care assistance for a child who customarily resides with him/her for more than half the time, including the child's parent, or an adult household member with primary responsibility for the child's financial support and care if the child's parent is not living in the home or living in the home but is under age 18 and not emancipated by law.

Full-Time Care Authorized child care calculated to be 30 or more hours per week that is paid in units of days with a maximum of 22 days per month.

Household A group of individuals who live together, consisting of the case head, that person's legal spouse or non-legal spouse, (if the parent of a child in the household), and all children under the age of 18 who are dependent on the case head and/or spouse, including the minor unmarried parent (MUP) who is not legally emancipated and the minor unmarried parent's children.

Part-Time Care Authorized child care calculated to be less than 30 hours per week, paid in units of hours (total per day may not exceed daily rate) up to a maximum of 129 hours per month.

Training or Employment Mandatory Participant (TEMP) A household member who is required to be employed or attending a job training or educational program, including the case head, the case head's spouse, and the

minor unmarried parent of children who need child care assistance.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2826 (December 2000).

§5103. Conditions of Eligibility

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Family Independence Work Program (FIND Work), as determined by the Case Manager, are categorically eligible. The program will pay 100 percent of the FITAP/FIND Work participant's child care costs.

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. The household must reside in Louisiana to be eligible for Child Care Assistance.

2. The household must include a child in current need of child care services who is under the age of 13, or age 13 through 17 and physically or mentally incapable of caring for himself or herself, as verified by a physician or certified psychologist, or is under court supervision.

3. ...

4. The case head, that person's legal spouse, or non-legal spouse (if the parent of a child in the household), including any minor unmarried parent who is not legally emancipated, and whose children are in need of Child Care Assistance, unless disabled as established by receipt of Social Security Administration Disability benefits, Supplemental Security Income, or Veteran's Administration Disability benefits for a disability of at least 70 percent, must be:

a. employed a minimum average of 20 hours per week and all countable work hours must be paid at least at the Federal minimum hourly wage; or

b. ...

c. engaged in some combination of employment which is paid at least at the Federal minimum hourly wage, or job training, or education as defined in §5103.B.4.b, that averages at least 20 hours per week.

d. ...

5. Household income does not exceed 60 percent of the state median income for a household of the same size. Income is defined as the gross earnings of the case head, that person's legal spouse, or non-legal spouse (if the parent of a child in the household), and any minor unmarried parent who is not legally emancipated and whose children are in need of child care assistance, from all sources of employment and from the following types of unearned income of all household members: Social Security Administration benefits, Supplemental Security Income, Veteran's Administration benefits, retirement benefits, disability benefits, child support/alimony, unemployment compensation benefits, adoption subsidy payments, and worker's compensation benefits.

6. - 7. ...

C. Cases eligible for payment shall be assigned a certification period of up to six months. The household is required to report any changes that could affect eligibility or benefit amount within 10 days of knowledge of the change.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193.

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).

§5105. Funding Availability

A. Louisiana's share of the national total of available funds for child care programs is based on factors determined by federal law and regulation. Funds are appropriated by Congress and allocated on an annual basis so that a limited amount of federal funding is available each year through the Child Care and Development Fund (CCDF). Therefore, a determination will be made of the number of children, or slots, that the CCDF can pay for based on available funding.

1. A certain number of slots will be set aside for the children of FIND Work participants and for the children of those participants whose FIND Work eligibility has been terminated due to earned income. When the remaining slots are filled, all funds for the current year shall be considered as obligated, and no payments may be made for any additional children determined to be eligible.

2. After all available slots are filled, a waiting list of cases/eligible children will be established and maintained for each parish in chronological order by date of application. As slots become available, cases will be removed from the waiting list and considered for current eligibility.

a. To facilitate maintaining an active waiting list in each parish, open enrollment will be scheduled for a limited time in the months of October, January, April, and July. During open enrollment periods, children determined eligible will be added to the waiting list. At the agency's discretion additional enrollment periods may be designated.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 26:2827 (December 2000).

§5107. Child Care Providers

A. The case head, or parent/caretaker relative in the case of a FIND Work participant, shall be free to select a child care provider of his/her choice including center-based child care (licensed Class A day care centers and licensed Class A head start centers which provide before-and-after school care and/or summer programs), registered family child day care homes, in-home child care, and public and non-public BESE-regulated schools which operate kindergarten, pre-kindergarten, and/or before- and after- school care programs.

B. A family child day care home shall be registered and entered into the provider directory by the Child Care Assistance Program before payments can be made to that provider.

1. To be eligible for participation, a family child day care home provider must sign a provider agreement, complete a request for registration and Form W-9, pay appropriate fees, furnish verification of Social Security number and residential address, provide proof that he/she is at least 18 years of age, and meet all registration requirements including:

a. current certification in infant/child or infant/child/adult cardiopulmonary resuscitation (CPR);

b. criminal background check on all adults living at the provider's residence or employed by the provider and working in the provider's home or on the provider's home property, including the provider;

c. furnish verification of 12 clock hours of training in pediatric first aid and other job-related subject areas approved by the Department of Social Services by the provider's renewal date beginning January 1, 2002, and every year thereafter;

d. retain a statement of good health signed by a physician or his designee and proof of a clear tuberculin test, both of which must have been obtained/performed within the past three years and must be repeated every three years thereafter; and

e. pass an inspection by the Office of State Fire Marshal.

2. All registration functions for family child day care homes, as provided in R.S. 46:1441 et seq. and as promulgated in the *Louisiana Register*, September 20, 1991, previously exercised by the bureau of licensing, shall be carried out by the Office of Family Support, Child Care Assistance Program.

C. An in-home child care provider must show proof that he/she is at least 18 years of age, verify Social Security number and residence, and complete the Health and Safety Standards Form, the Provider Agreement, and form W-9. An in-home provider may not live at the same residence as the child who is being cared for and may not use the participant's residence address or post office box as his/her mailing address.

D. Under no circumstance can the following be considered an eligible child care provider:

1. a person living at the same residence as the child;
2. the child's parent or guardian, or parent/caretaker relative in the case of a FIND Work participant, regardless of whether that individual lives with the child (if the child's non-custodial parent is residing in the Family Child Day Care Home (FCDCH) in which the child receives care and is not working during the hours that care is needed, the FCDCH provider is ineligible to receive Child Care Assistance payments for that child);
3. Class B child care centers;

4. persons who have been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1(C) or who reside with or employ a person who has been convicted of such an offense;

5. persons/centers providing care outside of the state of Louisiana.

E. Providers must certify that neither they, nor any person employed by or residing with them, have been the subject of a validated complaint of child abuse or neglect, nor have they, or any person employed by or residing with them, been convicted of, or pled no contest to, a crime listed in R.S. 15:587.1(C). Providers, other than an in-home child care provider, unless the agency is aware of a possible criminal offense, must certify that a criminal background check has been requested from the Louisiana State Police to verify this information with respect to above providers and employees of Class A centers. Results of the criminal background check must be received annotating "no hits" prior to being licensed/registered as an eligible provider or certified as an in-home provider if the agency is aware of a possible criminal offense.

1. Providers shall be disqualified from further participation in the program if the agency determines that a condition exists which threatens the physical or emotional health or safety of any child in care. (Examples: a complaint of child abuse or neglect is validated by authorities, the provider breaks the terms of the provider agreement, or a family child day care home fails the Fire Marshal inspection.)

F. - H. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

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).

§5109. Payment

A. The sliding fee scale used for non-FITAP recipients is subject to adjustment based on the state median income and poverty levels which are published annually. A non-FITAP household shall pay a portion of its child care costs in accordance with the sliding fee scale, and this shall be referred to as a **Acopayment**. The sliding fee scale is as follows.

**Sliding Fee Scale For Non-Fitap Child Care Assistance Recipients
60 Percent Of Projected Median Income**

Number in Household	2	3	4	5	6	7	DSS %
Monthly Household Income	0 - 922	0 - 1157	0 - 1392	0 - 1627	0 - 1862	0 - 2097	85%
	923 - 1084	1158 - 1352	1393 - 1620	1628 - 1889	1863 - 2157	2098 - 2351	70%
	1085 - 1245	1353 - 1547	1621 - 1848	1890 - 2150	2158 - 2452	2352 - 2604	55%
	1246 - 1406	1548 - 1742	1849 - 2076	2151 - 2412	2453 - 2747	2605 - 2858	40%
	1407 - 1567	1743 - 1936	2077 - 2304	2413 - 2673	2748 - 3042	2859 - 3111	25%
	ABOVE 1567	ABOVE 1936	ABOVE 2304	ABOVE 2673	ABOVE 3042	ABOVE 3111	0%

Number in Household	8	9	10	11	12	13	DSS %
Monthly Household Income	0 - 2332	0 - 2567	0 - 2802	0 - 3037	0 - 3272	0 - 3507	85%
	2333 - 2544	2568 - 2738	2803 - 2931	3038 - 3125	3273 - 3319	3508 - 3512	70%
	2545 - 2756	2739 - 2908	2932 - 3060	3126 - 3212	3320 - 3365	3513 - 3517	55%
	2757 - 2968	2909 - 3079	3061 - 3189	3213 - 3300	3366 - 3411	3518 - 3522	40%
	2969 - 3180	3080 - 3249	3190 - 3318	3301 - 3387	3412 - 3457	3523 - 3526	25%
	ABOVE 3180	ABOVE 3249	ABOVE 3318	ABOVE 3387	ABOVE 3457	ABOVE 3526	0%

Number in Household	14	15	16	17	18	19	20	DSS %
Monthly Household Income	0 - 3595	0 - 3644	0 - 3733	0 - 3802	0 - 3871	0 - 3940	0 - 4010	85%
	ABOVE 3595	ABOVE 3644	ABOVE 3733	ABOVE 3802	ABOVE 3871	ABOVE 3940	ABOVE 4010	0%

B. Determination of Payments

1. Payments to providers on behalf of non-FITAP recipients will be a percentage of the lesser of:

- a. the providers actual charge multiplied by authorized service days or authorized service hours; or
- b. the State Maximum Rate for authorized services as indicated below.

Class A Centers

Regular Care	Special Needs Care
Daily \$15.00	\$18.75
Hourly \$ 1.87	\$ 2.34

All Other Provider Types

Regular Care	Special Needs Care
Daily \$12.00	\$15.00
Hourly \$ 1.50	\$ 1.87

c. The number of hours authorized for payment is based on the lesser of the following:

- i. the number of hours the child is actually in care each week; or
- ii. the number of hours the case head, the case head's spouse, or the minor unmarried parent is working and/or attending a job training or educational program each week, plus one hour per day for travel to and from such activity. For households with more than one TEMP, the hours of the TEMP with the smallest number of activity hours are used.

2. Payments to providers on behalf of FITAP recipients will be the lesser of:

- a. the providers actual charge multiplied by authorized service days or authorized service hours, or
- b. the State Maximum Rate for authorized services as indicated below:

Class A Centers

Regular Care	Special Needs Care
Daily \$15.00	\$18.75
Hourly \$ 1.87	\$ 2.34

All Other Provider Types

Regular Care	Special Needs Care
Daily \$12.00	\$15.00
Hourly \$ 1.50	\$ 1.87

c. The number of hours authorized for payment is based on the lesser of the following:

- i. the number of hours the child is actually in care each week; or
- ii. the number of hours the head of household, head of household's spouse, or the minor unmarried parent is working and/or attending a job training or educational program each week, plus one hour per day for travel to and from such activity. For households with more than one TEMP, the hours of the TEMP with the smallest number of activity hours are used.

C. Payment is made to the eligible child care provider on a monthly basis following the month in which services are provided.

D. Payment may be made to more than one provider for the same child if providers are not paid for the same day, and the combined payment does not exceed the maximum allowable per child.

E. Payment will not be made for a child who is absent from day care more than five days in a calendar month or for an extended closure by a provider of more than five consecutive days in any calendar month.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193.

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 26:2829 (December 2000).

§5111. Ineligible Payments

A. All ineligible benefits are subject to action to recover such benefits.

B. When a participant is suspected of Intentional Program Violation (IPV), appropriate referral and forms shall be submitted to the Fraud and Recovery Section. The Fraud and Recovery Section may then:

1. refer the case for prosecution; or
2. refer the case to the Appeals Bureau for a Disqualification Hearing if the participant does not sign the Waiver of Right to an Administrative Hearing and the facts of the case do not warrant civil or criminal prosecution through the appropriate court systems; or the case was previously referred for prosecution and was declined by the appropriate legal authority; or the case was previously referred for prosecution and no action was taken within a reasonable period of time and the referral was formally withdrawn by Fraud and Recovery.

C. If an Intentional Program Violation is established, Fraud and Recovery will send a notice to the person to be disqualified and a copy of the notice to the parish office. The parish office will take action to disqualify for the appropriate situations:

1. 6 months for the first violation;
2. 12 months for the second violation;
3. 24 months for the third violation and for any additional violations.

Exception: The disqualification process will be waived for FIND Work participants and for participants in federally - or state-funded work or training programs.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2830 (December 2000).

J. Renea Austin-Duffin
Secretary

0012#076

RULE

**Department of Social Services
Office of Family Support**

Child Support Enforcement Program
Delinquent Child Support Payments (LAC 67:III.2303, 2304, 2579, 2801)

The Department of Social Services, Office of Family Support, has changed the Louisiana Administrative Code, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program.

Pursuant to R.S. 46:236.6(F) the agency has changed the criteria from 12 months to 6 months for including a noncustodial parent's name in the publication of names of delinquent payors who have not paid court-ordered child support.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 23. Single State Agency Organization

Subchapter A. Designation, Authority, Organization and Staffing

§2303. State Plan

A. The Louisiana Health and Human Resources Administration, Division of Youth Services, first adopted the State Plan for Child Support Collection and Establishment of Paternity effective August 1, 1975. Support Enforcement Services is now the single-state agency operating under the federally-approved State Plan for Child Support Enforcement Services.

B. The State Plan is available for review at the Office of Family Support Planning Section, A.Z. Young Building, 755 Third Street, Room 321, Baton Rouge, LA 70802.

AUTHORITY NOTE: Promulgated in accordance with Title IV-D of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Louisiana Health and Human Resources Administration, Division of Youth Services, LR 11:495 (November 1975), amended by the Department of Social Services, Office of Family Support, LR 26:2830 (December 2000).

§2304. Expedited Administrative Process

- A.1. - 5. ...
6. freeze and seize assets;
7. - 11. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:747 (June 1997), amended LR 26:2830 (December 2000).

Chapter 25. Single State Agency Organization

Subchapter A. Designation, Authority, Organization and Staffing

§2579. Publication of Names

- A. ...
- B. Information to be released includes the name, date of birth, last known address, and the total amount of past-due support owed by the noncustodial parent. Persons to be listed are those who have made no payments within the last six months, excluding payments received through IRS, state tax, or lottery intercepts. Noncustodial parents who are incarcerated or who cannot pay because of a proven disability will not be listed. If a noncustodial parent is listed on the DSS Homepage the name will be removed only upon written request of the noncustodial parent and proof that the arrears have been reduced to less than six months support.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:236.6(F).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2457, (December 1999), amended LR 26:2830 (December 2000).

Chapter 28. Non-IV-D Program

Subchapter A. Non-IV-D Case Administration

§2801. General Provisions

A. In all new child support orders not being enforced by the Department of Social Services, payments for immediate income assignment orders shall be made payable through the Department of Social Services, Office of Family Support, Support Enforcement Services. Services provided are limited to accepting payments through immediate income

assignment, distributing those payments, maintaining payment history records, and retaining records in the same manner as IV-D cases. Enforcement services are not provided. Case records are determined confidential as per R.S. 46:56.

B. Payments shall be made payable to Department of Social Services. When a payment is received from the noncustodial parent or that parent's employer, a new check for the same amount will be issued to the custodial parent. Payments will be distributed in accordance with the agency's non-FITAP distribution schedule. The clerks of court will provide information to identify a case if requested by the Department of Social Services.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR 303.100, P.L. 100-485 and R.S. 9:303; 42 U.S.C. Section 654(b) and R.S. 46:236.11.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 19:1527 (December 1993), amended LR 20:449 (April 1994); LR 26:2830 (December 2000).

J. Renea Austin-Duffin
Secretary

0012#073

RULE

**Department of Social Services
Office of Family Support**

Family Independence Temporary Assistance
Program (FITAP)C Crime Victim Compensation
(LAC 67:III.1229)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP).

Pursuant to 42 U.S.C. 10602(c), the agency has amended §1229 to add a crime victim compensation program payment as an exclusion from income for purposes of determining eligibility and payment amounts. The U.S. Department of Health and Human Services, Administration for Children and Families, recently advised the agency of the need to include this regulation in its Temporary Assistance for Needy Families (TANF) State Plan.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

**Subpart 2. Family Independence Temporary Assistance
Program (FITAP)**

**Chapter 12. Application, Eligibility, and Furnishing
Assistance**

Subchapter B. Conditions of Eligibility

§1229. 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 eligibility and payment amounts except income from:

1. - 27. ...

28. crime victim compensation program payments to an applicant/recipient whose assistance is necessary, in full or in part, because of the commission of a crime against the applicant, and to the extent it is sufficient to fully

compensate the applicant for losses suffered as a result of the crime.

B. - 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.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:2831 (December 2000).

J. Renea Austin-Duffin
Secretary

0012#074

RULE

**Department of Social Services
Office of Family Support**

Family Independence Temporary Assistance
Program (FITAP)C Flat Grant Amount
(LAC 67:III.1229)

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP).

Pursuant to the authority granted to the Department by the Louisiana Temporary Assistance to Needy Families Block Grant, the agency has amended §1229 by increasing the FITAP grant amount for all assistance units in the amount of \$50 per month. Grants were increased beginning July 2000 in an Emergency Rule signed on July 14, 2000.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

**Subpart 2. Family Independence Temporary Assistance
Program (FITAP)**

**Chapter 12. Application, Eligibility, and Furnishing
Assistance**

Subchapter B. Conditions of Eligibility

§1229. Income

A. - C. ...

D. Flat Grant Amounts

Number of Persons	Flat Grant Amount
1	\$ 122
2	188
3	240
4	284
5	327
6	366
7	402
8	441
9	477
10	512
11	551
12	590
13	630
14	670
15	712
16	757
17	791
18	839

18+

See Note 1

Note 1: To determine the amount for households exceeding 18 persons, add the flat grant amount for the number in excess of 18 to the flat grant amount for 18 persons and subtract \$50.

E. - G ...

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. 46:231.2, R. S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:2831 (December 2000).

J. Renea Austin-Duffin
Secretary

0012#078

RULE

**Department of Social Services
Office of Family Support**

**Kinship Care Subsidy Program (KCSP)C Crime
Victim Compensation (LAC 67:III.5329)**

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 13, the Kinship Care Subsidy Program (KCSP).

Pursuant to 42 U.S.C. 10602(c), the agency has amended §5329 to add a crime victim compensation program payment as an exclusion from income for purposes of determining eligibility and payment amounts. The U.S. Department of Health and Human Services, Administration for Children and Families, recently advised the agency of the need to include this regulation in its Temporary Assistance for Needy Families (TANF) State Plan.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§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. - 26. ...

27. crime victim compensation program payments to an applicant/recipient whose assistance is necessary, in full or in part, because of the commission of a crime against the applicant, and to the extent it is sufficient to fully compensate the applicant for losses suffered as a result of the crime.

B. - D. ...

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.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000).

J. Renea Austin-Duffin
Secretary

0012#075

RULE

**Department of Social Services
Office of Family Support**

**Kinship Care Subsidy Program (KCSP)C Increased
Grant Amount (LAC 67:III.5329)**

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 13, the Kinship Care Subsidy Program (KCSP).

Pursuant to the authority granted to the department by the Louisiana Temporary Assistance to Needy Families Block Grant, the agency has amended §5329 by increasing the KCSP grant amount for eligible children by the amount of \$50 per month Beginning July 2000, grants were increased in an Emergency Rule signed on July 26, 2000.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§5329. Income

A. - B. ...

C. Income After Pretest. The child is determined eligible for KCSP if the child's countable income is less than \$222. If the child's countable income is \$222 or more the child is ineligible.

D. Payment Amount. Payment amount is \$222 a month for each eligible child.

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.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:353 (February 2000), amended LR 26:2832 (December 2000).

J. Renea Austin-Duffin
Secretary

0012#079

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**Daily Take and Possession Limits of King Mackerel,
Spanish Mackerel and Cobia (LAC 76:VII.327)**

The Wildlife and Fisheries Commission does hereby promulgate a Rule, LAC 76:VII.327, changing the possession limit for the recreational harvest of Spanish mackerel from 10 to 15 fish per person per day. Authority for adoption of this Rule is included in R.S. 56:325.1 and R.S. 56:326.3.

**Title 76
WILDLIFE AND FISHERIES**

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery
§327. Daily Take and Possession Limits of King and Spanish Mackerel and Cobia

A. The recreational bag limit for possession of Spanish mackerel (*Scomberomorus maculatus*) whether caught within or without the territorial waters of Louisiana shall be 15 fish per person, per day.

B. - E.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:325.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 15:868 (October 1989), amended LR 17:207 (February 1991), LR 19:513 (April 1993), LR 26:2633 (November 2000), LR 26:2833 (December 2000).

Thomas M. Gattle, Jr.
Chairman

0012#038

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Reef Fish Harvest Regulations (LAC 76:VII.335)

The Wildlife and Fisheries Commission does hereby promulgate a Rule, LAC 76:VII.335, increasing the commercial and recreational minimum size limits for gag and black grouper, prohibiting the commercial harvest and sale or purchase of gag, black, and red grouper from February 15 to March 15 each year, and general reorganization of the rule. Authority for adoption of this Rule is included in R.S. 56:6(25)(a) and R.S. 56:326.3.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery
§335. Reef Fish Harvest Regulations

A. Recreational bag limits regarding the harvest of reef fish: triggerfishes, amberjacks, grunts, wrasses, snappers, groupers, sea basses, tilefishes, and porgies, within and without Louisiana's territorial waters:

Species	Recreational Bag Limits
1. Red Snapper	4 fish per person per day
2. Queen, mutton, school-master, blackfin, cubera, gray, dog, mahogany, silk, yellowtail snappers, and wenchman	10 fish per person per day (in aggregate)
3. Vermilion snapper, lane snapper, gray triggerfish, almaco jack, goldface, tilefish, tilefish, blackline tilefish, anchor tilefish, blue line tilefish	20 per person per day (in aggregate)
4. Red hind, rock hind, speckled hind, black grouper, misty grouper, red grouper, snowy grouper, yellowedge grouper, yellowfin grouper, yellowmouth grouper, warsaw grouper, gag grouper, scamp	5 fish per person per day (in aggregate) with not more than 1 speckled hind and 1 warsaw grouper per vessel

- 5. Greater amberjack 1 fish per person per day
- 6. Banded rudderfish and lesser amberjack 5 fish per person per day (in aggregate)
- 7. Hogfish 5 fish per person per day
- 8. No person shall possess jewfish or Nassau grouper whether taken from within or without Louisiana territorial waters per LAC 76:VII.337.

B. Reef Fish Permits

1. All persons who do not possess a permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the harvest of Gulf of Mexico Reef Fish resources are limited to the recreational bag limit. To commercially harvest, sell, barter, trade or exchange or possess for commercial purposes all species of reef fish including dwarf sand perch and sand perch, but (excluding queen triggerfish, black seabass, porgies, and grunts) requires a valid Federal Reef Fish Vessel Permit be on board the vessel and in the immediate possession.

2. Charter vessels and headboats harvesting all species of reef fish including dwarf sand perch and sand perch, but (excluding queen triggerfish, black seabass, porgies, and grunts) are required to have a valid federal charter vessel/headboat reef fish permit on board the vessel and in immediate possession.

3. Persons who are limited to a recreational bag limit shall not sell, barter, trade, exchange or attempt to sell, barter, trade or exchange any reef fish.

4. A person subject to a bag limit may not possess during a single day, regardless of the number of trips or the duration of a trip, any reef fish in excess of the bag limits.

5. No person aboard any commercial vessel shall transfer or cause the transfer of reef fish between vessels on state or federal waters.

C. Charter Vessels and Headboats

1. For charter vessels and headboats as defined in Federal Regulations 50 CFR Part 622.2, there will be an allowance for up to two daily bag limits on multi-day trips provided the vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours, and each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

2. Any fish taken from charter vessels or headboats as defined in Federal Regulations 50 CFR Part 622.2 or any charter vessel as described in R.S. 56:302.9 shall not be sold, traded, bartered or exchanged or attempted to be sold, traded, bartered or exchanged. The provisions of §335 apply to fish taken within or without Louisiana's territorial waters.

D. Red Snapper

1. All persons who do not possess a class 1 or class 2 red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit for red snapper. Those persons

possessing a Class 2 red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to a daily take and possession limit of 200 pounds of red snapper per vessel.

2. Those persons possessing a class 1 red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to a daily take and possession limit of 2,000 pounds of red snapper per vessel.

3. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any red snapper in excess of any possession limit for which a commercial license or permit was issued.

E. Recreational and commercial minimum and maximum size limits, unless otherwise noted.

Species	Minimum Size Limits
1. Red Snapper	16 inches total length (Recreational) 15 inches total length (Commercial)
2. Gray, yellowtail, cubera, dog, mahogany snapper, and schoolmaster	12 inches total length
3. Lane snapper	8 inches total length
4. Mutton snapper	16 inches total length
5. Vermilion snapper	10 inches total length
6. Red and yellowfin grouper	20 inches total length
7. Gag and black grouper	22 inches total length (Recreational) 24 inches total length (Commercial)
8. Scamp	16 inches total length
9. Greater amberjack	28 inches fork length (Recreational) 36 inches fork length (Commercial)
10. Black seabass	8 inches total length
11. Hogfish	12 inches fork length
12. Banded rudderfish and lesser amberjack	14 inches fork length (minimum size); 22 inches fork length (maximum size)
13. Gray triggerfish	12 inches total length

F. Definitions. Federal regulations 50 CFR Part 622.2 defines charter vessels and headboats as follows.

Charter Vessel—A vessel less than 100 gross tons that meets the requirements of the U.S. Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year. A charter vessel with a commercial permit is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

Headboat—A vessel that holds a valid Certificate of Inspection issued by the U.S. Coast Guard to carry passengers for hire. A headboat with a commercial vessel permit is considered to be operating as a headboat when it carries a passenger who pays a fee or, in the case of persons aboard fishing for or possessing coastal migratory pelagic fish or Gulf reef fish, when there are more than three persons aboard, including operator and crew.

G Seasons

1. The season for the commercial harvest of greater amberjack shall be closed during the months of March through May of each year. Possession of greater amberjack in excess of the daily bag limit while on the water is prohibited during the closed season. Any greater amberjack harvested during the closed season shall not be purchased, sold, traded, bartered or exchanged or attempted to be

purchased, sold, traded, bartered or exchanged. The provisions of §335.G apply to fish taken within or without Louisiana's territorial waters.

2. The commercial season for gag, black, and red grouper shall be closed from February 15 to March 15 of each year. During this closed season no person shall commercially harvest, sell, purchase, barter, trade or exchange or attempt to sell, purchase, trade, barter or exchange gag, black, or red grouper whether taken from within or without Louisiana territorial waters. This prohibition on sale/purchase does not apply to gag, black grouper, or red grouper that were harvested, landed ashore, sold and purchased prior to February 15.

3. Persons aboard a vessel for which the permits indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain gag, red grouper, and black grouper under the recreational take and possession limits specified in §335.A, provided the vessel is operating as a validly licensed charter vessel or headboat with prepaid recreational charter fishermen aboard the vessel. During the closed commercial season gag, red grouper or black grouper shall not be purchased, sold, traded, bartered or exchanged or attempted to be purchased, sold, traded, bartered or exchanged. The provisions of §335.G.3 apply to fish taken within or without Louisiana's territorial waters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:1138 (June 1998), LR 24:1139 (June 1998), LR 24:1972 (October 1998), LR 26:793 (April 2000), LR 26:1505 (July 2000), LR 26:2833 (December 2000).

James H. Jenkins, Jr.
Secretary

0012#037

RULE

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Tuna Harvest Regulations (LAC 76:VII.361)

The Wildlife and Fisheries Commission does hereby promulgate a Rule, LAC 76:VII.361, establishing regulations for the take of yellowfin tuna and bigeye tuna. Authority for adoption of this Rule is included in R.S. 56:325.1 and R.S. 56:326.3.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§361. Tuna Harvest Regulations

A. Bag and possession limits, recreational.

Species	Bag and Possession Limit
1. Yellowfin Tuna	3 fish per person

B. Size limits, Recreational and Commercial

Species	Minimum Size Limit
1. Yellowfin Tuna	27 inches curved fork length (CFL)
2. Bigeye Tuna	27 inches curved fork length (CFL)

Note: Curved fork length (CFL): the length of a fish measured from the tip of the upper jaw to the fork of the tail along the contour of the body in a line that runs along the top of the pectoral fin and the top of the caudal keel.

C. No person shall take or have in their possession any species of tuna, less than the minimum size or in excess of the take or possession limits. The possession limit on tunas applies to tuna taken within or outside Louisiana territorial waters.

D. Permits

1. Recreational. Persons aboard a vessel whether within or outside Louisiana territorial waters possessing any of the following tuna species: Atlantic bluefin tuna, yellowfin tuna, bigeye tuna, skipjack tuna, albacore, and Atlantic bonito are required to have a valid federal recreational tuna permit in their immediate possession on board the vessel.

2. Commercial. Persons harvesting the following tuna species: Atlantic bluefin tuna, yellowfin tuna, bigeye tuna, skipjack tuna, albacore, and Atlantic bonito whether within or outside Louisiana state territorial waters for commercial

purposes or possessing such tuna species in excess of a recreational take limit are required to have a valid federal commercial tuna permit in their immediate possession on board the vessel. No person shall sell, barter, trade or exchange or attempt to sell, barter, trade or exchange any species of tuna without a valid federal permit. No person shall purchase, barter, trade or exchange or attempt to purchase, barter, trade or exchange any species of tuna from any person who harvested tuna without a valid federal commercial permit.

3. No person aboard any commercial vessel shall transfer or cause the transfer of fish between vessels on state or federal waters.

4. No person shall possess any species of tuna without tail intact or skinned or scaled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), R.S. 56:326.1 and R.S. 56:326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:2834 (December 2000).

James H. Jenkins, Jr.
Secretary

0012#036

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Agricultural Commodities Commission

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

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

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

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

Title 7

AGRICULTURE AND ANIMALS

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

Chapter 1. Agricultural Commodities Commission

Subchapter E. Assessments and Fees

§128. Fees: Amount, Time of Payment

A. - B. ...

C. Schedule of Fees

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

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

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

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

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

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

D. - D.2. ...

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

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

Family Impact Statement

The proposed amendments to rules XXVII. §128 regarding the Agricultural Commodities Commission; Grain grading and inspection fees. The amendments to these regulations should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on the stability of the family, the authority and rights of parents regarding the education and supervision of their children, the functioning of the family, family earnings and family budget, the behavior and personal responsibility of children, the ability of the family or a local government to perform the function as contained in the proposed rule.

All interested persons may submit written comments on the proposed rules through January 25, 2001, to William Boudreaux, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806. All interested persons will be afforded an opportunity to submit data, views or arguments in writing at the address above. No preamble concerning the proposed rules is available

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Fees C Amount, Time of Payment

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no estimated effect on competition and employment.

Bob Odom
Commissioner
0012#031

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

Title 25

CULTURAL RESOURCES

Part IX. Office Of State Parks

Chapter 3. Rules and Regulations

§303. Park Property and Environment

A. - F. ...

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

H. - J. ...

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

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

§321. Fines and Enforcement of the Rules and Regulations

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

B. - E. ...

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

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

§331. Overnight Use

A. - A.13. ...

B. Camping

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

2. - 4. ...

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

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

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

6. Beach campsites cannot be reserved.

C. - C.3. ...

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

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

Chapter 5. Procedures and Fees

§503. Fees and Exemptions; Day-Use

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

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

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

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

H. Exemptions

1. repealed.

H.2. - J. ...

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

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

§504. Fees and Exemptions C Overnight Use

A. - B.3. ...

C. repealed.

D. - F.2. ...

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

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

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

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

H. - H.8. ...

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

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

§505 Reservation Policy

A. General Provisions

1. - 4. ...

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

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

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

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

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

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

§507. Special Uses and Restrictions

A. - C.5. ...

D. Passenger Bus Restrictions

1. ...

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

E. ...

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

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

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

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

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

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

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

Dwight Landreneau
Assistant Secretary
0012#021

Robert Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

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

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

Mark S. Riley
Assistant Executive Director

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

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

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

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

Mark S. Riley
Assistant Executive Director
0012#039

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.Chapters 1, 3, 9, 11, 13, 15, 22, 30, 38, 39, 40, 41, 43, and 49 (Log #HW075F).

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental

QualityC Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

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

* * *

[See Prior Text in A - D.5]

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. LAC 33:V.1103;

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

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

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

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

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

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

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

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

f. a facility which:

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

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

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

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

1. LAC 33:V.1103;

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

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

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

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

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

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

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

f. a facility that:

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

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

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

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

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

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

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

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

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise:

* * *

[See Prior Text]

*Empty Container*C

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

* * *

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

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

* * *

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 19:626 (May 1993), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998), LR 24:1101 (June 1998), LR 24:1688 (September 1998), LR 25:433 (March 1999), repromulgated LR 25:853 (May 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:269 (February 2000),), LR 26:2465 (November 2000), LR 27:

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

§303. Overview of the Permit Program

* * *

[See Prior Text in A - E]

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

* * *

[See Prior Text in E.2 - Q]

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

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

§305. Scope of the Permit

* * *

[See Prior Text in A - C.1]

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

* * *

[See Prior Text in C.3]

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

* * *

[See Prior Text in C.5 - H]

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

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

Chapter 9. Manifest System for TSD Facilities

§909. Unmanifested Waste Report

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

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

* * *

[See Prior Text in A - G]

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

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

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

Chapter 11. Generators

§1101. Applicability

* * *

[See Prior Text in A - H]

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

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

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

§1107. The Manifest System

* * *

[See Prior Text in A - A.3]

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

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

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

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

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

* * *

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

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

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

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

§1109. Pre-Transport Requirements

* * *

[See Prior Text in A - E.6]

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

* * *

[See Prior Text in E.7.a]

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

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

* * *

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

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

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

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

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

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

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

' 1111. Recordkeeping and Reporting

* * *

[See Prior Text in A - B.2]

C. Exception Reporting

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

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

* * *

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

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

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

* * *

[See Prior Text in D]

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

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

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

3. Subsection D of this Section, additional reporting.

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

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

§1113. Exports of Hazardous Waste

* * *

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

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

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

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

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

[See Prior Text in H - I.2]

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

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

Chapter 13. Transporters

§1307. The Manifest System

[See Prior Text in A - G.4]

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

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

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

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

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

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

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

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

Chapter 15. Treatment, Storage, and Disposal Facilities

§1501. Applicability

[See Prior Text in A - C]

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

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

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

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

Chapter 22. Prohibitions on Land Disposal

Subchapter A. Land Disposal Restrictions

§2201. Purpose, Scope, and Applicability

[See Prior Text in A - I.3]

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

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

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

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

§2205. Storage of Prohibited Wastes

[See Prior Text in A]

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

[See Prior Text in A.2 - H]

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

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

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

[See Prior Text in A - F]

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

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

[See Prior Text in I - K]

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

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

Subchapter B. Hazardous Waste Injection Restrictions

§2249. Purpose, Scope, and Applicability

[See Prior Text in A - C.2]

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

[See Prior Text in D - D.2]

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

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

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3001. Applicability

[See Prior Text in A - B.2]

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

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

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

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

§3017. Small Quantity On-Site Burner Exemption

[See Prior Text in A - A.4]

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

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

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

where:

n = the number of stacks;

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

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

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

[See Prior Text in D - E]

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

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

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

Chapter 38. Universal Wastes

Subchapter A. General

§3801. Scope and Applicability

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

* * *

[See Prior Text in B]

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

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

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

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

Chapter 39. Reserved

§3901. Repealed

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

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

§3903. Repealed

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

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

§3907. Repealed

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

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

§3911. Repealed

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

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

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

§3913. Repealed

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

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

§3915. Repealed

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

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

Chapter 40. Used Oil

Subchapter A. Materials Regulated as Used Oil

§4003. Applicability

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

* * *

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

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

* * *

[See Prior Text in C - I]

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

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

Chapter 41. Recyclable Materials

§4105. Requirements for Recyclable Material

Recyclable materials are subject to additional regulations as follows:

* * *

[See Prior Text in A - B.6]

7. Reserved

* * *

[See Prior Text in B.8 - 10]

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

* * *

[See Prior Text in C - F]

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

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

Chapter 43. Interim Status

§4301. Purpose and Applicability

* * *

[See Prior Text in A - D]

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

* * *

[See Prior Text in F - I]

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

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

§4313. General Waste Analysis

* * *

[See Prior Text in A]

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

* * *

[See Prior Text in Comment- F.3]

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

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

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

Subchapter I. Tanks

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[See Prior Text in A - Comment]

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

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

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

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

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

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

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

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

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

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

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

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

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

§4907. Criteria for Listing Hazardous Waste

[See Prior Text in A - B]

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

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

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

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

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

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

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

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

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Small Quantity Generator Revisions

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

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

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

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

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.Chapters 1, 11, and 51 (Log #HW075L).

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

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

regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental

QualityC Hazardous Waste

Chapter 1. General Provisions and Definitions

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

* * *

[See New Text in F Package in A]

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

* * *

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

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

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

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

* * *

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

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

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

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

* * *

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

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

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

Chapter 11. Generators

§1109. Pre-Transport Requirements

* * *

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

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

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

* * *

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

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

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

Chapter 51. Fee Schedules

§5137. Conditionally Exempt Small Quantity Generator Fee

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

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

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

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

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

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

James H. Brent, Ph.D.
Assistant Secretary

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

RULE TITLE: Small Quantity Generator Revisions

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

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

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

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

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

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

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

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

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

Title 33

ENVIRONMENTAL QUALITY

Part IX. WATER QUALITY REGULATIONS

Chapter 11. Surface Water Quality Standards

§1113. Criteria

* * *

[See Prior Text in A – C.6.e]

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

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

[See Prior Text in A - C.2]

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

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

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

§1123 Numerical Criteria and Designated Uses

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

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

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

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

Endnotes:

[See Prior Text in [1] – [16]]

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

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

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

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

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

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

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

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

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

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

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

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

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

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

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

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

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

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

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

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to adopt the Inactive and Abandoned Sites regulations, LAC 33:VI.Chapter 9 (Log #IA003).

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

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

Title 33

ENVIRONMENTAL QUALITY

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

Chapter 9. Voluntary Remediation

§901. Authority and Purpose

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

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

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

§903. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§905. Eligibility

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

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

B. Eligible Persons

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

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

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

§907. Liability and Exemptions from Liability

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

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

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

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

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

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

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

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

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

§909. Voluntary Remedial Investigation and Remedial Action Requirements

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

processes provided by RECAP. Voluntary remedial investigations must include:

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

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

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

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

§911. Application Process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Acceptance for Public Review

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

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

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

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

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

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

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

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

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

F. Public Hearing and Comment

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

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

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

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

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

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

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

§913. Completion of Voluntary Remedial Actions

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

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

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

C. Completion of Voluntary Remedial Actions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§915. Additional Requirements for Partial Voluntary Remedial Actions

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

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

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

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

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

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

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

4. Modification or Removal of Use Restrictions

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

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

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

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

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

§917. Fees and Direct Cost Recovery

A. Fees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§919. Record Retention

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

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

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

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

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

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

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

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

James H. Brent, Ph.D.
Assistant Secretary

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

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

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

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

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

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

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

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

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

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

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

Title 33

ENVIRONMENTAL QUALITY

Part XI. Underground Storage Tank

Chapter 1. Program Applicability and Definitions

§103. Definitions

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

* * *

[See Prior Text]

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

* * *

[See Prior Text]

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

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

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

* * *

[See Prior Text]

Specialized Services—response action activities associated with the preparation of a reimbursement application, laboratory analyses, or any construction activity, construction of trenches, excavations, installing monitoring wells, conducting borings, heavy equipment work, surveying, plumbing, and electrical work that are carried out by a subcontractor hired or retained by a response action contractor in response to a discharge or release or threatened release of motor fuels into the groundwater or subsurface soils.

* * *

[See Prior Text]

Technical Services—assessment field activities oversight; all reporting, planning, designing, and operating of corrective action and remedial systems; specialized services oversight; and other services that require geological and engineering expertise carried out in response to a discharge or release of motor fuel from UST systems into soils, groundwater, or surface water.

* * *

[See Prior Text]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:

Chapter 11. Financial Responsibility

§1121. Use of the Motor Fuel Underground Storage Tank Trust Fund

The administrative authority was authorized by R.S. 30:2194 - 2195.10 to receive and administer the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF) to provide financial responsibility for owners or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner or operator who is eligible for participation in the MFUSTTF may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner or operator must be an "eligible participant," as defined in Subsection A of this Section. In addition, the owner or operator must use one of the other

mechanisms described in LAC 33:XI.1111-1119 or 1123-1125 to demonstrate financial responsibility for the amounts specified in Subsection C of this Section, which are the responsibility of the participant and not covered by the MFUSTTF.

A. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

* * *

[See Prior Text]

Eligible Participant—any owner of an underground storage tank who has registered said tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, and has met the financial responsibility requirements imposed by Subsection B of this Section.

Motor Fuel Underground Storage Tank Ca UST used only to contain an accumulation of motor fuels

Substantial Compliance—the owner or operator of a UST system shall be considered to be in substantial compliance when he or she has registered that tank with the department in accordance with LAC 33:XI.301, has complied with the state and federal laws and regulations applicable to USTs and the rules and regulations adopted pursuant thereto, has met the financial responsibility requirements specified in Subsection B of this Section, and has promptly notified the administrative authority of any third-party claim or suit made against him or her.

Third-Party Claim—any civil action brought or asserted by any person against the secretary of the department and any owner of any underground storage tank for damages to person or property when damages are the direct result of the contamination of groundwater and/or subsurface soils by motor fuels released during operation of storage tanks that were being operated in substantial compliance as provided for in this Section. The term *damages to person* shall be limited to damages arising directly out of the ingestion or inhalation of petroleum constituents from water well contamination or inhalation of petroleum constituents seeping into homes or buildings, and the term *damages to property* shall be limited to the unreimbursed costs of a response action and the amount by which property is proven to be permanently devalued as a result of the release.

B. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(3), MFUSTTF participants taking response actions must pay the following amounts before any disbursements are made from the fund:

* * *

[See Prior Text in B.1.a-4]

C. Conditions for Use of the MFUSTTF. Funds in the MFUSTTF shall be used under the following conditions:

1. Whenever the administrative authority determines that an incidence of groundwater or subsurface soils contamination resulting from the storage of motor fuels may pose a threat to the environment or to public health, safety, or welfare, and the owner or operator of the UST system has been found to be an eligible participant (as defined in LAC 33:XI.1121.A), the department shall obligate monies available in the MFUSTTF to provide for the following response actions:

* * *

[See Prior Text in C.1.a-c.i]

ii. Subject to the provisions of Subsection C.2 and 3 of this Section, the funds in the MFUSTTF shall be used to replace leaking USTs and attendant product piping if the tanks are of double-wall construction of continuous glass filament winding, are manufactured in Louisiana by a corporation whose domicile and corporate headquarters are in Louisiana, and comply with all applicable state and federal standards. Said funds shall be allocated on a match basis of 25 percent of the replacement cost of the leaking tanks and piping.

iii. The monies expended from the MFUSTTF for any of the above approved costs shall be spent only up to such sum as that which is necessary to satisfy petroleum UST financial responsibility requirements specified in LAC 33:XI.1107.

2. Whenever the department has incurred costs for taking response actions with respect to the release of motor fuels from a UST system, or the department has expended funds from the MFUSTTF for response costs or third-party liability claims, the owner or operator of the underground motor fuel storage tank shall be liable to the department for such costs only if the owner or operator was not in substantial compliance on the date of discharge of the motor fuels that necessitated the cleanup. Otherwise, liability is limited to the provisions contained in LAC 33:XI.1121.B. Nothing contained herein shall be construed as authorizing the expenditure from the MFUSTTF on behalf of any owner or operator of a UST system who is not an eligible participant on the last anniversary date of the MFUSTTF for any third-party liability.

3. If the administrative authority has expended funds on behalf of an owner or operator who was not in substantial compliance, and the MFUSTTF is entitled to reimbursement of those funds so expended, the administrative authority shall have the authority to, and is obligated to, use any and all administrative and judicial remedies that might be necessary for recovery of the expended funds plus legal interest from the date of payment by the administrative authority and all costs associated with the recovery of the funds.

4. The MFUSTTF may be used for reimbursement of any costs associated with the review of applications for reimbursement from the MFUSTTF, legal fees associated with the collection of costs from parties not in substantial compliance, audits of the MFUSTTF, and accounting and reporting regarding the uses of the MFUSTTF.

5. The MFUSTTF may be used to make payments to a third party who brings a third-party claim against any owner or operator of an underground motor fuel storage tank because of damages caused by a release into the groundwater or subsurface soils and who obtains a final judgment in said action enforceable in Louisiana against the owner or operator only if it has been satisfactorily demonstrated that the owner or operator was an eligible participant as defined in LAC 33:XI.1121.A when the release occurred. The indemnification limit of the MFUSTTF with respect to satisfaction of third-party claims shall be that which is necessary to satisfy the requirements of LAC 33:XI.Chapter 11.

D. Procedures for Disbursements from the MFUSTTF

1. Monies held in the MFUSTTF are disbursed by the administrative authority in the following manner:

* * *

[See Prior Text in D.1.a]

b. Cost-effective procedures, as established by the administrative authority, shall be implemented by eligible participants using MFUSTTF monies.

2. Payments are made to third parties who bring suit against the administrative authority in his or her official capacity as representative of the MFUSTTF and the owner or operator of an underground motor fuel storage tank who is an eligible participant as defined in LAC 33:XI.1121.A and such third party obtains a final judgment in that action enforceable in Louisiana. The owner or operator stated above shall pay the amount required by LAC 33:XI.1121.B toward the satisfaction of said judgment, and after that payment has been made, the MFUSTTF will pay the remainder of said judgment. The attorney general of the state of Louisiana is responsible for appearing in said suit for and on behalf of the administrative authority as representative of the MFUSTTF. The administrative authority as representative of the MFUSTTF is a necessary party in any suit brought by any third party that would allow that third party to collect from the MFUSTTF, and the administrative authority must be made a party to the initial proceedings. Payment shall be made to the third-party claimant only if the judgment is against an owner or operator who was an eligible participant on the date that the incident that gave rise to the claim occurred. The costs to the attorney general of defending these suits, or to those assistants that the administrative authority employs or the attorney general appoints to assist, shall be recovered from the MFUSTTF. If the MFUSTTF is insufficient to make payments when the claims are filed, such claims shall be paid in the order of filing when monies are paid into the MFUSTTF. Neither the amount of money in the MFUSTTF, the method of collecting it, nor any of the particulars involved in setting up the MFUSTTF shall be admissible as evidence in any trial in which suit is brought when the judgment rendered could affect the MFUSTTF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194 – 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:

Chapter 12. Requirements for Response Action Contractors who Assess and Remediate Motor Fuel Contaminated Sites Eligible for Cost Reimbursement in Accordance with the Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF)

§1201. Scope

A. These requirements apply to persons engaged in release response action activities including, but not limited to, assessment, remedial planning, design, engineering, construction, and the operation of recovery systems or ancillary services that are carried out in response to any discharge or release or threatened release of motor fuel into the groundwater or subsurface soils, and who have been hired by an owner or operator who seeks and is eligible for

reimbursement for such services under the MFUSTTF, hereinafter referred to as the Tank Trust Fund (TTF).

B. Effective July 15, 1988, the Tank Trust Fund required that Response Action Contractors (RACs) be approved by the department. Any RAC performing UST site work due to a release eligible for Tank Trust Fund participation must meet standards approved by the department, and its name must appear on the RAC list maintained by the department. Only RACs appearing on the list at the time the work was performed are eligible for reimbursement from the TTF.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1203. Prohibitions

A. Twelve months after promulgation of these regulations, [date to be inserted], no person shall conduct a response action at a UST site unless the person has met the standards for the qualification of a RAC, as defined herein, and appears on the approved current RAC listing. These RACs shall be approved for RAC listing by the administrative authority. The MFUSTTF Advisory Board (hereinafter referred to as the "Board") may recommend to the administrative authority at any time that RACs be added or deleted from the list.

B. Persons performing technical services, as defined in LAC 33:XI.103, must be RACs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1205. Qualifications

A. In order to be listed by the department as an approved RAC for work that is eligible for Tank Trust Fund reimbursement, persons must submit, on a department-prescribed application form, documentation demonstrating and verifying that they meet the following minimum requirements:

1. the applicant must be licensed by the State of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities. A copy of the valid, unexpired license must be provided in the name of the applicant to be placed on the RAC list;

2. the applicant must have a minimum of \$1 million of contractor's general liability insurance and a minimum of \$1 million of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities. A valid, unexpired copy of the certificates of insurance coverage must be provided in the name of the applicant to be placed on the RAC list and with the department listed as an additional insured. Certificate of insurance shall provide that the insurer shall give 30 days notice of cancellation to all insured;

3. the applicant's employees must comply with applicable Occupational Safety and Health Administration (OSHA) training and certification requirements. A written statement indicating compliance must be provided;

4. the applicant must have either a geologist or a Louisiana registered professional engineer on staff;

5. the applicant's employees must be able to begin work at any site within 72 hours of authorization from an eligible Tank Trust Fund participant. A written statement indicating compliance must be provided; and

6. the applicant must provide a job history and adequately demonstrate relevant experience in environmental subsurface investigation and remediation at sites exhibiting subsurface motor fuels contamination. A minimum of five jobs must be documented, and the applicant must adequately demonstrate the following:

a. experience in oversight of installation of groundwater monitoring wells and soil borings;

b. experience in developing and sampling/monitoring groundwater monitoring wells;

c. experience in the oversight of physical removal, treatment, and/or proper disposal of soils contaminated with hydrocarbons or motor fuels;

d. experience in the removal of free phase hydrocarbons from the subsurface; and

e. proficiency with projects that require design and installation/implementation of corrective action programs for the purpose of remediating contaminated soils and/or groundwater sites impacted by USTs.

B. In order to adequately demonstrate required experience, as provided in Subsection A.6.a-e of this Section, only the applicant's experience, or the experience of a full-time employee of the applicant, shall be considered. The experience of a subcontractor or person(s) on retainer shall not be considered, and therefore, will not meet the requirements of this Section.

C. The RAC List will be updated once per quarter to include applicants who have met the requirements of this Section. All new applications or annual updates shall be submitted to the Office of Environmental Services, Permits Division by 4:30 p.m. on or before the fifteenth day of March, June, September, and December.

D. Applicants who submit applications lacking the documentation required in Subsection A of this Section shall be notified in writing of the deficiencies.

E. Any application that adequately demonstrates the requirements of Subsection A of this Section shall be submitted to the administrative authority for approval. Upon approval by the administrative authority the applicant shall be included on the approved RAC list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1207. RAC Listing

A. Notification Requirements. Notification in writing shall be made to the department within 30 days by a RAC who no longer meets the qualification requirements of LAC 33:XI.1205.A.

B. Annual Update Requirements. No later than March 1 of each year, each RAC shall submit the following information to the department:

1. a copy of a valid, unexpired license by the State of Louisiana Licensing Board for Contractors with a specialty compatible with UST assessment/remedial activities in the name of the RAC identified on the RAC listing;

2. a copy of a valid, unexpired certificate bearing the name of the person identified on the RAC listing indicating a

minimum of \$1 million contractor's general liability insurance and a minimum of \$1 million of coverage for an accidental and/or unexpected release(s) from a UST system(s) and/or any other accidental releases related to site-specific RAC activities; and

3. a copy of a certificate or documentation showing current OSHA compliance for HAZWOPER training, as defined in 29 CFR 1910.120, for at least one full-time employee of the RAC.

C. Failure to submit the documentation required in this Section shall result in removal from the RAC listing until such time as the required information is submitted and reviewed by the department and the administrative authority approves the RAC listing.

D. A RAC shall notify the owner/operator within 24 hours of receiving notice of a RAC listing removal, suspension, and/or revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

§1209. Suspension/Revocation from RAC Listing

A. The administrative authority may suspend or revoke a RAC from the listing based on the following:

1. evidence of fraud or deceit with respect to any documentation submitted to the department; or

2. willful violation of the laws and regulations of Louisiana regarding site assessment or remediation.

B. The administrative authority may revoke a RAC's listing when the RAC or its employees have been convicted of a felony related to response action activities. This revocation is not subject to the RAC listing revocation procedures provided for in this Section.

C. The suspension or revocation of a RAC listing will depend upon seriousness of the offense(s).

1. After a suspension period of 90-365 days as specified by the department, a RAC may petition the department in accordance with the requirements of LAC 33:XI.1205 for relisting.

2. After a period of five years, a RAC whose listing has been revoked may reapply. If a RAC listing is revoked a second time, the revocation shall be permanent.

D. Written Notice

1. When the department determines that a RAC listing should be suspended or revoked, the department shall notify that RAC by certified mail. Such written notice shall contain the following:

a. facts that will justify a recommendation to the administrative authority for suspension or revocation from the RAC listing;

b. a description of the general nature of the evidence supporting the recommendation; and

c. unless the RAC, within 30 days after receipt of the notice, submits a request for an informal hearing before the board, the department shall recommend to the administrative authority that the RAC's listing be suspended or revoked. The request for informal hearing shall be submitted to the Office of Management and Finance, Financial Services Division. A written statement giving the RAC's view of the circumstances shall accompany the request for hearing.

2. If the RAC does not mail a request for hearing and a statement of the circumstances within the time frame specified, the department shall recommend to the administrative authority the suspension for a specified period of time or revocation from the RAC listing.

E. Hearings Before the Board

1. At least 20 days prior to a hearing, the department shall provide the RAC with a notice of the hearing. The notice shall be sent by certified mail and include the time, date, and location of the hearing.

2. All hearings on suspension or revocation from the RAC listing held before the board shall not be an adjudicatory hearing as provided for in the Administrative Procedure Act and shall be conducted with rapidity and without the observance of all formalities. All hearings conducted by the board shall be recorded and a transcript prepared.

3. Within 90 days after conducting an informal hearing, the board shall forward its recommendation to the administrative authority for a decision.

4. Upon receiving notice of a RAC listing removal, suspension, and/or revocation, a RAC shall notify the owner/operator within 24 hours.

F. Record of Hearing. The record of proceedings conducted under this Section shall consist of the following:

1. the RAC's certified request for hearing and statement of the circumstances;
2. the notice of the hearing;
3. all documentary evidence and written comments received;
4. the recording of the hearing; and
5. written recommendations from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2194.C and 2195.10.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:

A public hearing will be held on January 25, 2001, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (225) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Persons commenting should reference this proposed regulation by UT007. Such comments must be received no later than February 1, 2001, at 4:30 p.m., and should be sent to Patsy Deaville, Regulation Development Section, Box 82178, Baton Rouge, LA 70884-2178 or to fax (225) 765-5095. Copies of this proposed regulation can be purchased at the above referenced address. Contact the Regulation Development Section at (225) 765-0399 for pricing information. Check or money order is required in advance for each copy of UT007.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.state.la.us/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Requirements for Response
Action Contractors**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There is no anticipated increase or decrease in costs to implement the proposed action.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this rule will affect persons or firms who are engaged in underground storage tank release response action activities that are eligible for reimbursement under the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF). The department believes that persons or firms that conduct this type work will meet the qualifications and requirements of this proposed regulation. A draft rule was distributed to firms who currently do Responsive Action Contractor (RAC) work requesting comments on the proposed language. Many comments were received and addressed in this proposed rule. Most RACs who responded did not indicate that the rule would add any additional financial burden. The department anticipates that firms which are currently on the department's RAC list will be the same firms on the list under the proposed rule, and therefore, no expanded economic benefit opportunities will be realized.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The qualifications stipulated by the rule are considered to be necessary for firms to competently conduct environmental response/remediation work. Firms that currently conduct underground storage tank environmental response/remediation activities are expected to be able to qualify for status as a RAC. Companies who choose not to apply will be negatively affected since only RACs are eligible for work that is reimbursable under the MFUSTTF.

James H. Brent, Ph. D.
Assistant Secretary
0012#029

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Division of Administration Office of the Commissioner

Electronic Signatures (LAC 4:I:Chapter 7)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Division of Administration hereby gives notice of its intent to promulgate rules and regulations relative to the implementation of electronic signatures.

Title 4

ADMINISTRATION

Part I. General Provisions

Chapter 7. Implementation of Electronic Signatures in Global and National Commerce Act- P.L. 106-229

§701. Short Title

A. These procedures are in response to the Federal "Electronic Signatures in Global and National Commerce Act" (e-sign) effective October 1, 2000. Esign applies only to the use of electronic records and signatures in interstate or foreign commerce. These rules may be referred to as the "E-Sign Rules."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§703. Exemptions

A. State agency transactions that are not governed by the Electronic Signatures in Global and National Commerce Act, PL 106-229, hereinafter referred to as the Ae-sign,@are not subject to these procedures.

B. State agency transactions that have electronic record and signature technology procedures that have been established by statutory and/or regulatory authority approval and do not conflict with e-sign, shall remain in effect.

C. State agency transactions that have electronic record and signature technology procedures that have been established by statutory and/or regulatory authority approval with sections that are in conflict with e-sign, shall have all sections of these procedures remain in effect that are not in conflict with e-sign.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§705. General

A. This section applies to all written electronic communications which are sent to a state agency over the Internet or other electronic network or by another means that is acceptable to the state agency, for which the identity of the sender or the contents of the message must be authenticated, and for which no prior agreement between the sender and the receiving state agency regarding message authentication existed as of the effective date of this section. This section does not apply to or supersede the use and expansion of existing systems which are not in conflict with the Federal "Electronic Signatures in Global and National Commerce Act:"

1. for the receipt of electronically filed documents pursuant to applicable Louisiana statutory law and promulgated rules and regulations, where the purpose of the written electronic communication is to comply with statutory filing requirements and the receiving state agency or local government is not a party to the underlying transaction which is the subject of the communication; or

2. for the electronic approval of payment vouchers under rules adopted by the State Treasurer pursuant to applicable law.

B. Prior to accepting a digital signature, a state agency shall ensure that the level of security used to identify the signer of a message and to transmit the signature is sufficient for the transaction being conducted. A state agency that accepts digital signatures may not effectively discourage the use of digital signatures by imposing unreasonable or burdensome requirements on persons wishing to use digital signatures to authenticate written electronic communications sent to the state agency.

C. A state agency that accepts digital signatures shall not be required to accept a digital signature that has been created by means of a particular acceptable technology described in Subsection D of this section if the state agency:

1. determines that the expense that would necessarily be incurred by the state agency in accepting such a digital signature is excessive and unreasonable;

2. provides reasonable notice to all interested persons of the fact that such digital signatures will not be accepted, and of the basis for the determination that the cost of acceptance is excessive and unreasonable; and

3. files an electronic copy (in html format) of the notice with the Division of Administration. The Division of Administration shall make a copy of such notice available to the general public via the World Wide Web.

D. A state agency shall ensure that all written electronic communications received by the state agency and authenticated by means of a digital signature in accordance with this section, as well as any information resources necessary to permit access to the written electronic communications, are retained by the state agency as necessary to comply with applicable law pertaining to audit and records retention requirements.

E. Guidelines Agencies Should Use in Adopting an Electronic Signature Technology

1. An agency's determination of which technology is appropriate for a given transaction must include a risk assessment, and an evaluation of targeted customer or user needs. The initial use of the risk assessment is to identify and mitigate risks in the context of available technologies and their relative total costs and effects on the program being analyzed. The assessment also should be used to develop baselines and verifiable performance measures that track the agency's mission, strategic plans, and performance objectives. Agencies must strike a balance, recognizing that achieving absolute security is likely to be in most cases highly improbable and prohibitively expensive.

2. The identity of participants to a transaction may not need to be authenticated. If authentication is required, several options are available: ID and Passwords for a web-based transaction may be sufficient, however the user login session should be encrypted using either Secured

Sockets Layer (SSL) or Virtual Private Networks (VPN) or an equivalent encryption technology.

3. Digital Signatures/Certificates may offer increased security (positive ID), however this will vary depending on:

- a. who issues the certificates;
- b. what is the identity-proofing process (e.g., are you using Social Security Number, photo IDs, biometrics); and

c. is the certificate issued remotely via software or mail, or is "in person" identification required?

4. In determining whether an electronic signature is required or is sufficiently reliable for a particular purpose, agencies should consider the relationships between the parties, the value of the transaction, and the likely need for accessible, persuasive information regarding the transaction at some later date (e.g., audit or legal evidence). The types of transactions may require different security control measures, based on security risks and legal obligations:

- a. transactions involving the transfer of funds;
- b. transactions where the parties commit to actions or contracts that may give rise to financial or legal liability;
- c. transactions involving information protected under state or federal law or other agency-specific statutes obliging that access to the information be restricted;
- d. transactions where the party is fulfilling a legal responsibility which, if not performed, creates a legal liability (criminal or civil);
- e. transactions where no funds are transferred, no financial or legal liability is involved and no privacy or confidentiality issues are involved.

5. Agency transactions fall into five general categories, each of which may be vulnerable to different security risks:

- a. intra-agency transactions;
- b. inter-agency transactions (i.e., those between state agencies);
- c. transactions between a state agency and federal or local government agencies;
- d. transactions between a state agency and a private organization-contractor, non-profit organization, or other entity;
- e. transactions between an agency and a member of the general public.

6. Agencies should follow several privacy tenets:

- a. electronic authentication should only be required where needed. Many transactions do not need, and should not require, detailed information about the individual;
- b. when electronic authentication is required for a transaction, do not collect more information from the user than is required for the application;
- c. the entity initiating a transaction with a state agency should be able to decide the scope of their electronic means of authentication.

7. When agencies evaluate the retention requirements for specific records, they should consider the following if the record was signed with an electronic signature.

- a. *Low Risk* simple electronic signature (e.g., typed name on an e-mail message)
- b. *High Risk* digitally-signed communication message that has been processed by a computer in such a manner that ties the message to the individual that signed the message. The digital signature must be linked to the message

of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

8. If the record contains a digital signature, the following additional documents may be required:

- a. a copy of the *Public Key*;
- b. a copy of the Certificate Revocation List (CRL) showing the validity period of the certificate or a copy of the On-line Certificate Status Protocol (OCSP) results;
- c. Certification Practice Statement (CPS).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§707 Definitions

A. The following words and terms, when used in this section, shall have the following meanings unless the context expressly indicates otherwise:

Asymmetric Cryptosystem a computer-based system that employs two different but mathematically related keys with the following characteristics:

- a. one key encrypts a given message;
- b. one key decrypts a given message; and
- c. the keys have the property that, knowing one key, it is computationally infeasible to discover the other key.

Certificate a message which:

- a. identifies the certification authority issuing it;
- b. names or identifies its subscriber;
- c. contains the subscriber's public key;
- d. identifies its operational period;
- e. is digitally signed by the certification authority issuing it; and
- f. conforms to ISO X.509 Version 3 standards.

Certificate Manufacturer a person that provides operational services for a Certification Authority or PKI Service Provider. The nature and scope of the obligations and functions of a Certificate Manufacturer depend on contractual arrangements between the Certification Authority or other PKI Service Provider and the Certificate Manufacturer.

Certificate Policy a document prepared by a Policy Authority that describes the parties, scope of business, functional operations, and obligations between and among PKI Service Providers and End Entities who engage in electronic transactions in a Public Key Infrastructure.

Certification Authority a person who issues a certificate.

Certification Practice Statement documentation of the practices, procedures, and controls employed by a Certification Authority.

Digital Signature an electronic identifier intended by the person using it to have the same force and effect as the use of a manual signature, and that complies with the requirements of this section.

Digitally-Signed Communication a message that has been processed by a computer in such a manner that ties the message to the individual that signed the message.

End Entities subscribers or Signers and Relying Parties.

Escrow Agent a person who holds a copy of a private key at the request of the owner of the private key in a trustworthy manner.

Handwriting Measurements the metrics of the shapes, speeds and/or other distinguishing features of a signature as

the person writes it by hand with a pen or stylus on a flat surface.

Key PairCa private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify a digital signature that the private key creates.

Local GovernmentCa parish, municipality, special district, or other political subdivision of this state, or a combination of two or more of those entities.

MessageCa digital representation of information.

PersonCan individual, state agency, local government, corporation, partnership, association, organization, or any other legal entity.

PKIPublic Key Infrastructure.

PKI Service ProviderCa Certification Authority, Certificate Manufacturer, Registrar, or any other person that performs services pertaining to the issuance or verification of certificates.

Policy AuthorityCa person with final authority and responsibility for specifying a Certificate Policy.

Private KeyCa the key of a key pair used to create a digital signature.

Proof of IdentificationCa the document or documents or other evidence presented to a Certification Authority to establish the identity of a subscriber.

Public KeyCa the key of a key pair used to verify a digital signature.

Public Key CryptographyCa type of cryptographic technology that employs an asymmetric cryptosystem.

RegistrarCa person that gathers evidence necessary to confirm the accuracy of information to be included in a Subscriber's certificate.

Relying PartyCa state agency that has received an electronic message that has been signed with a digital signature and is in a position to rely on the message and signature.

Role-Based KeyCa key pair issued to a person to use when acting in a particular business or organizational capacity.

Signature DigestCa the resulting bit-string produced when a signature is tied to a document using Signature Dynamics.

SignerCa the person who signs a digitally signed communication with the use of an acceptable technology to uniquely link the message with the person sending it.

State AgencyCa department, commission, board, office, council, or other agency in the executive branch of state government that is created by the constitution, Executive Order, or a statute of this state. Higher education, the legislature and the judiciary are to be considered State agencies to the extent that the communication is pursuant to a state law applicable to such entities.

SubscriberCa person who:

- a. is the subject listed in a certificate;
- b. accepts the certificate; and
- c. holds a private key which corresponds to a public key listed in that certificate.

TechnologyCa the computer hardware and/or software-based method or process used to create digital signatures.

Written Electronic CommunicationCa message that is sent by one person to another person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§709. Digital Signatures Must be Created by an Acceptable Technology

A. For a digital signature to be valid for use by a state agency, it must be created by a technology that is accepted for use by the Division of Administration pursuant to guidelines listed in §711 of this document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§711. Acceptable Technology

A. The technology known as Public Key Cryptography is an acceptable technology for use by state agencies, provided that the digital signature is created consistent with the following.

1. A public key-based digital signature must be unique to the person using it. Such a signature may be considered unique to the person using it if:

a. the private key used to create the signature on the message is known only to the signer or, in the case of a role-based key, known only to the signer and an escrow agent acceptable to the signer and the state agency; and

b. the digital signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetric cryptosystem and the signer's private key; and

c. although not all digitally signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and

d. it is computationally infeasible to derive the private key from knowledge of the public key.

2. A public-key based digital signature must be capable of independent verification. Such a signature may be considered capable of independent verification if:

a. the relying party can verify the message was digitally signed by using the signer's public key to decrypt the message; and

b. if a certificate is a required component of a transaction with a state agency, the issuing PKI Service Provider, either through a certification practice statement, certificate policy, or through the content of the certificate itself, has identified what, if any, proof of identification it required of the signer prior to issuing the certificate.

3. The private key of public-key based digital signature must remain under the sole control of the person using it, or in the case of a role-based key, that person and an escrow agent acceptable to that person and the state agency. Whether a signature is accompanied by a certificate or not, the person who holds the key pair, or the subscriber identified in the certificate, must exercise reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature.

4. The digital signature must be linked to the message of the document in such a way that it would be computationally infeasible to change the data in the message or the digital signature without invalidating the digital signature.

5. Acceptable PKI Service Providers

a. The Division of Administration shall maintain an "Approved List of PKI Service Providers" authorized to issue certificates for digitally signed communications sent to state agencies or otherwise provide services in connection with the issuance of certificates. The list may include, but shall not necessarily be limited to, Certification Authorities, Certificate Manufacturers, Registrars, and/or other PKI Service Providers accepted and approved for use in connection with electronic messages transmitted to other state or federal governmental entities. A copy of such list may be obtained directly from the Division of Administration, or may be obtained electronically via the World Wide Web.

b. State agencies shall only accept certificates from PKI Service Providers that appear on the "Approved List of PKI Service Providers."

c. The Division of Administration shall place a PKI Service Provider on the "Approved List of PKI Service Providers" after the PKI Service Provider provides the Division of Administration with a copy of its current certification practice statement, if any, and a copy of an unqualified performance audit performed in accordance with standards set in the American Institute of Certified Public Accountants (AICPA) Statement on Auditing Standards No. 70 (S.A.S. 70) to ensure that the PKI Service Provider's practices and policies are consistent with the requirements of the PKI Service Provider's certification practice statement, if any, and the requirements of this section.

d. In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for one year or less shall undergo a SAS 70 Type One audit - A Report of Policies and Procedures Placed in Operation, receiving an unqualified opinion.

e. In order to be placed on the "Approved List of PKI Service Providers" a PKI Service Provider that has been in operation for longer than one year shall undergo a SAS 70 Type Two audit CA Report of Policies and Procedures Placed in Operation and Test of Operating Effectiveness, receiving an unqualified opinion.

f. In lieu of the audit requirements of Subparagraphs d and e above, a PKI Service provider may be placed on the "Approved List of PKI Service Providers" upon providing the Division of Administration with documentation issued by a person independent of the PKI Service Provider that is indicative of the security policies and procedures actually employed by the PKI Service Provider and that is acceptable to the Division of Administration in its sole discretion. The Division of Administration may request additional documentation relating to policies and practices employed by the PKI Service Provider indicating the trustworthiness of the technology employed and compliance with applicable guidelines published by the Division of Administration.

g. To remain on the "Approved List of PKI Service Providers" a Certification Authority must provide proof of compliance with the audit requirements or other acceptable documentation to the Division of Administration every two years after initially being placed on the list. In addition, a Certification Authority must provide a copy of any changes to its certification practice statement to the Division of

Administration promptly following the adoption by the Certification Authority of such changes.

h. If the Division of Administration is informed that a PKI Service Provider has received a qualified or otherwise unacceptable opinion following a required audit or if the Division of Administration obtains credible information that the technology employed by the PKI Service Provider can no longer reasonably be relied upon, or if the PKI Service Provider's certification practice statement is substantially amended in a manner that causes the PKI Service Provider to become no longer in compliance with the audit requirements of this section, the PKI Service Provider may be removed from the "Approved List of PKI Service Providers" by the Division of Administration. The effect of the removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall be to prohibit state agencies from thereafter accepting digital signatures for which the PKI Service Provider issued a certificate or provided services in connection with such issuance for so long as the PKI Service Provider is removed from the list. The removal of a PKI Service Provider from the "Approved List of PKI Service Providers" shall not, in and of itself, invalidate a digital signature for which a PKI Service Provider issued the certificate prior to its removal from the list.

B. The state may elect to enact or adopt the Federal Uniform Electronic Transactions Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

§713. Provisions for Adding New Technologies to the List of Acceptable Technologies

A. Any person may, by providing a written request that includes a full explanation of a proposed technology which meets the requirements of §709 in this Rule, petition the Division of Administration to review the technology. If the Division of Administration determines that the technology is acceptable for use by state agencies, the Division of Administration shall draft proposed administrative rules which would add the proposed technology to the list of acceptable technologies in §711 of this Rule.

B. The Division of Administration has 90 days from the date of the request to review the petition and either accept or deny it. If the Division of Administration does not approve the request within 90 days, the petitioner's request shall be considered denied. If the Division of Administration denies the petition, it shall notify the petitioner in writing of the reasons for denial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:4(c).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 27:

Any person may submit data, views or positions, in writing, to the Division of Administration, State of Louisiana, P. O. Box 94095, Baton Rouge, Louisiana 70804-9095. Such comments must be received no later than February 1, 2001, at 4:30 p.m.

Family Impact Statement

This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Electronic Signatures**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
No attributable costs or savings as a result of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No attributable effect on Revenue Collections as a result of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No attributable costs as a result of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No attributable effect as a result of this rule.

Whitman J Kling, Jr.
Deputy Undersecretary
0012#093

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Veterinary Medicine**

Preceptorship Program
(LAC 46:LXXXV.700 and 1101-1123)

The Louisiana Board of Veterinary Medicine proposes to amend LAC 46:LXXXV.700 and 1101 through 1123 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Louisiana Veterinary Practice Act, R.S. 37:1518 et seq.

The proposed rule amendments have no known impact on family formation, stability, and autonomy as described in R.S. 49:972. The proposed amendments to the rule are set forth below.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXXXV. Veterinarians

Chapter 7. Veterinary Practice

§700. Definitions

* * *

Preceptee Individuals who are unlicensed veterinarians or who are full time, fourth-year students of an accredited college of veterinary medicine and who are in a board-approved preceptorship program.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 19:1328, amended LR 20:1381 (December, 1994), LR 24:940 (May 1998), LR 24:1932 (October 1998), LR 24:2257 (December 1998), LR 27:

Chapter 11. Preceptorship Program

§1103. Definitions

* * *

Limited Approval Ca specialty facility, such as but not limited to, referral clinics, research facilities, and humane societies, may be approved by the board for a preceptee to perform no more than one-half the required preceptorship program.

Preceptor Ca practitioner who is a licensed veterinarian, a member in good standing of his or her state association of the American Veterinary Medical Association and whose facility or practice has been approved by the board as a preceptorship host.

* * *

Preceptorship Program Ca preceptorship program approved by the Louisiana Board of Veterinary Medicine.

1. The program shall consist of not less than eight calendar weeks in training in a program approved by the board.

2. For students graduating in calendar year 2001 and thereafter, the program must be performed after January of the fourth year of study.

* * *

Week in Training Ca week in training shall consist of a minimum of 40 hours earned during a maximum of six calendar days. A calendar day shall not exceed nine hours in duration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 19:208 (February 1993); LR 23:968 (August 1997); LR 24:1293 (July, 1998); LR 27:

§1105. Applicants

A. Every applicant for a license to practice veterinary medicine in the state of Louisiana must successfully complete, during the fourth year in an accredited school of veterinary medicine or after graduation, a preceptorship program at a board-approved facility. Only one board-approved preceptorship program will be allowed to be performed by a preceptee.

B. Every applicant for a preceptorship program must:

1. choose a facility that has been pre-approved by the board or preceptorship committee. If the subject facility has not been pre-approved, the applicant or facility may request an assessment questionnaire;

2. complete an agreement form provided by the board in which the proposed start date and end date of the preceptorship is indicated. Said agreement form must be agreed upon and signed by both the applicant and preceptor. The completed agreement form must be submitted to the board two weeks prior to the start of the preceptorship.

C. An applicant may divide the preceptorship program into two sessions at two different approved facilities. However, a session must consist of no less than three consecutive weeks in training.

D. A preceptee may perform no more than one-half of the preceptorship program at a specialty facility, such as, but not limited to, referral clinics, research facilities, and humane societies, which have received limited approval by the board.

E. The board shall have the discretionary right to waive compliance with the preceptorship program when the applicant has been licensed in another state or is eligible for a license without examination and provides written proof of

employment or a licensed veterinarian in a clinical practice for a minimum of 90 consecutive days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 23:1686 (December 1997), LR 24:942 (May 1998); LR 27:

§1109. Preceptor's Responsibilities

A. The preceptor shall have the following responsibilities:

1. to assume the responsibility of an instructor during the training period with the primary objective of training the preceptee under direct supervision as set forth in rules 700 and 702.B;

2. - 5. ...

6. to provide a written job description on forms provided by the board with the practice assessment questionnaire. A copy of said job description will be distributed to the preceptee upon applying for preceptorship at the facility, so that the preceptee will have an understanding of his/her responsibilities;

7. to assure that the preceptee's assignments, as much as possible, cover all aspects of the practice including office management, bookkeeping, and economics unless the facility holds a limited approval by the board as a specialty facility;

8. - 9. ...

10. to verify the preceptee's preceptorship log as requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1111. Preceptee's Responsibilities

A. The failure of the preceptee to comply with all requirements of preceptorship assignment, can result in an additional preceptorship assignment and/or delay in licensure.

B. The preceptee's responsibilities are the following:

1. - 5. ...

6. to be responsible for the completion and timely submission to the board of all required preceptorship documents, such as the agreement form, attendance log, and evaluation sheets;

7. to comply with the requirement of direct supervision set forth in rules 700 and 702.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1113. Practice Assessment Forms and Job Description Forms

A. ...

1. Practice Assessment Form. This form is used to determine if the practice facility meets the standards required by the American Veterinary Medical Association; and

2. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1115. Preceptorship Practice Requirements

A. A completed Practice Assessment Questionnaire and Job Description Form shall be submitted to the board, at least two weeks prior to the start of a preceptorship, to provide adequate time for board review and approval of the facility and for applicant-practitioner negotiations prior to time the preceptorship begins.

B. A firm commitment must not be made between the preceptee and the preceptor before the practice is approved by the board or preceptorship committee.

C. Approval of a preceptor shall include the following:

1. practices providing small animal services must adhere to high standards of surgical service including a separate prep room; availability of gas anesthesia; and use of gowns, caps and masks for orthopedic and other involved surgeries;

2. standards for large animal surgery must be consistent with good modern surgical techniques and provide for the performance of aseptic operative procedures;

3. - 6. ...

D. Specialty facilities, such as but not limited to, referral clinics, research facilities, and humane societies, may receive limited approval by the board to allow for no more than one-half of the required preceptorship program to be performed by a preceptee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1117. Financial Arrangements and Other Agreements

A. ...

B. A written agreement between the preceptee and preceptor setting forth the responsibilities of the student and the practitioner should be agreed to by both parties at the time the commitment is made. The agreement should include the starting and termination dates, duty hours, after duty hours, free time, salary and fringe benefits. This type of written agreement reduces possible misunderstandings and enhances the learning experience.

C. All written agreements are carried out between the preceptee and the preceptor. A firm commitment must not be made between the preceptee and the preceptor before the practice is approved by the committee or the board. Premature commitments to practices that were not approved will not be tolerated. When this occurs in the future, that particular practitioner will be denied for the applicant involved.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 27:

§1119. Preceptorship Attendance Log

A. Each preceptee shall be required to keep a daily log on a form provided by the board of his/her attendance for the duration of the program. The attendance log form shall be reviewed and signed by the preceptor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 23:968 (August 1997); LR 27:

§1121. Evaluations

A. At the conclusion of the preceptorship program, the preceptor and preceptee shall complete an evaluation form provided by the board. The completed evaluation forms must be submitted to the board within a 20-day time period to begin with the conclusion of the preceptorship program. No preceptorship program is complete until all required documentation is received by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:232 (March 1990), amended LR 23:968 (August 1997); LR 27:

§1123. Effective Date

A. These rules and regulations shall take effect upon publication in the March 20, 1990 issue of the *Louisiana Register* and as amended thereafter, and shall be complementary to all other rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1518.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Veterinary Medicine, LR 16:234 (March 1990), amended LR 27:

Interested parties may submit written comments to Kimberly B. Barbier, Administrative Director, Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, LA 70801. Comments will be accepted through the close of business on January 18, 2001. If it becomes necessary to convene a public hearing to receive comments in accordance with the Administrative Procedure Act, the hearing will be held on January 25, 2001, at 10 a.m., at the office of the Louisiana Board of Veterinary Medicine, 263 Third Street, Suite 104, Baton Rouge, Louisiana.

Kimberly B. Barbier
Administrative Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Preceptorship Program**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units, except for those associated with publishing the amendment (estimated at \$280). Licensees will be informed of this rule change via the board's regular newsletter or other direct mailings, which result in minimal costs to the board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collections of state or local governmental units as no increase in fees will result from the amendment.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no anticipated costs and/or economic benefits to directly affected persons or nongovernmental groups. All applicants for a veterinary license are currently required to perform a preceptorship program at a board-approved facility as a prerequisite to licensure.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed rule change.

Kimberly B. Barbier
Administrative Director
0012#083

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Community Supports and Services**

**Home and Community Based Services Waiver
ProgramC Children's ChoiceC Provider Requirements and
Reimbursement Methodology**

The Department of Health and Hospitals, Bureau of Community Supports and Services proposes to adopt the following Rule under the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted a rule implementing a Home and Community Based Services waiver called Children's Choice effective January 15, 2001 (*Louisiana Register*, Volume 26, Number 12). Children's Choice provides up to \$7,500 per year per child for waiver services for children with developmental disabilities who live with their families. Waiver recipients also receive all medical services covered by Medicaid, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. In order to facilitate the operations of the Children's Choice waiver, the Bureau of Community Supports and Services (BCSS) proposes to amend the January 15, 2001 Rule to include provider qualifications for participation in Children's Choice.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services proposes to adopt the following provisions governing provider participation in Children's Choice.

General Requirements for Medicaid Enrollment

In order to participate in the Medicaid Program, a provider must meet all of the following requirements.

1. The provider must meet all the requirements for licensure as established by state laws and rules promulgated by the Department of Health and Hospitals (DHH) or the Department of Social Services (DSS).

2. The provider must agree to comply with all the terms and conditions for Medicaid enrollment as contained in the provider enrollment packet; the Medical Assistance Program Integrity Law (MAPIL), R.S. 46:437.1 - 440.3; the provider agreement; the standards for participation contained

in the Children's Choice and Case Management Services provider manuals; and all other applicable federal and state laws, regulations and policies.

3. All services must be appropriately documented in the providers' records.

Children's Choice Enrollment Requirements

Both case management and direct services providers must comply with the following requirements in order to participate as Children Choice providers. Agencies will not be added to the Freedom of Choice (FOC) list of available providers maintained by BCSS until they have received a Medicaid provider number.

1. Providers shall attend all mandated meetings and training sessions as directed by BCSS as a condition of enrollment and continued participation as waiver providers. For initial enrollment, providers shall attend the pre-application orientation conducted by BCSS prior to receiving a Provider Enrollment Packet.

2. A separate Provider Enrollment Packet must be completed for each site in each DHH Administrative Region where the agency will provide services.

3. Recipient case records and billing records shall be housed at the site in the DHH Administrative Region where the recipient resides.

4. Providers may not refuse to serve any waiver participant that chooses their agency to provide services.

5. Providers shall have available computer equipment and software necessary to participate in prior authorization and data collection as described in the Children's Choice provider manual.

6. Providers shall participate in initial training for prior authorization and data collection. This initial training and any DHH scheduled subsequent training addressing program changes is to be provided at no cost to the agency. Repeat training must be paid for by the requesting agency.

7. Providers shall develop a Quality Improvement Plan which must be submitted for approval within 60 days after the DHH training. Self assessments are due six months after approval of the plan and yearly thereafter.

8. The agency must not have been terminated or actively sanctioned by Medicaid, Medicare or other health related programs in Louisiana or any other state.

9. The agency must not have an outstanding Medicaid Program audit exception or other unresolved financial liability owed to the state.

10. Providers shall be certified for a period of one year. Re-certification must be completed no less than 60 days prior to the expiration of the certification period.

11. Waiver services are to be provided only to persons who are waiver participants, and strictly in accordance with the provisions of the approved comprehensive plan of care.

12. Changes in the following areas are to be reported to both BCSS and the Provider Enrollment Section in writing at least 10 days prior to any change: ownership, physical location, mailing address, telephone number, and account information affecting electronic funds transfer.

13. The provider must complete a new provider enrollment packet when a change in ownership of 5 percent to 50 percent of the controlling interest occurs, but may continue serving recipients. When 51 percent or more of the controlling interest is transferred, a complete re-certification

process must occur and the agency shall not continue serving recipients until the re-certification process is complete.

Requirements for Case Management Providers

Case management providers must also comply with the following two requirements in order to participate as Children Choice providers.

1. Providers of case management services for the Children's Choice Program must have a contract with DHH to provide services to waiver participants.

2. Case management agencies must meet all requirements of their contract in addition to the requirements contained in the Children's Choice and Case Management Services provider manuals.

Requirements for Direct Service Providers

Direct service providers must also comply with the following requirements in order to participate as Children Choice providers.

1. The provider must be licensed as a Personal Care Attendant Agency by the DSS Bureau of Licensing.

2. Direct service providers must provide, at a minimum, family support and crisis support services.

3. The following services may either be provided directly by the direct service provider or by written agreement (subcontract) with other agents. The actual provider of the service, whether it is the direct service provider or a subcontracted agent, shall meet the following licensure or other qualifications.

a. Center-based respite must be provided by a facility licensed by DSS Bureau of Licensing as a Center-based Respite Agency.

b. Family training must be provided at approved events.

c. Diapers must be provided by the enrolled direct service provider.

d. Environmental adaptations must be provided by an individual/agency deemed capable to perform the service by the recipient's family and the direct service provider agency. When required by state law, the person performing the service must meet applicable requirements for a professional license. When building code standards are applicable, modifications to the home shall meet such standards.

4. Providers shall maintain a 24-hour toll-free telephone number manned by a person and shall provide a written plan to the recipients, families and case managers that explains how workers can be contacted and the expected response time.

5. Providers shall develop and provide brochures to interested parties that documents the agency's experience, toll-free telephone number, BCSS information, Helpline, and other pertinent information. All brochures are subject to BCSS approval prior to distribution.

6. Agencies must provide services consistent with the personal outcomes identified by the child and his/her family.

7. All personnel who are at a supervisory level must have a minimum of one year verifiable work experience in planning and providing direct services to people with mental retardation or other developmental disabilities.

8. The agency shall document that their employees and the employees of subcontractors do not have a criminal record as defined in 42 CFR 441.404(b) which states:

Providers of community supported living arrangements services:

a. do not use individuals who have been convicted of child abuse, neglect, or mistreatment, or of a felony involving physical harm to an individual; and

b. take all reasonable steps to determine whether applications for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment, or a criminal record involving physical harm to an individual.

9. Direct service providers who contract with other agencies to provide waiver services shall maintain copies of such contracts signed by both agencies. Such contracts must state that the subcontractor may not refuse to serve any waiver participant referred to them by the enrolled direct service provider agency.

10. Direct service providers and subcontractors shall maintain written internal policy and procedure manuals that comply with the requirements contained in the Children's Choice provider manual.

11. Enrollment of direct service providers is contingent on the submission of a complete application packet, verified by a site visit conducted by BCSS staff as described in the Children's Choice provider manual.

12. Service delivery shall be documented with progress notes on recipient status, supports provided that address personal outcomes, recipient responses, etc. Progress notes shall be dated and signed in ink. Whiteout is not to be used in making corrections.

Reimbursement Methodology

Case management services shall be reimbursed at a flat monthly rate billed for each waiver participant served in accordance with the conditions and procedures contained in the Case Management Services provider manual.

Direct service providers shall be reimbursed according to the following reimbursement methodology. Actual rates will be published in the Children's Choice provider manual and will be subsequently amended by direct notification to the affected providers. For services provided by a subcontractor agency, the enrolled direct service provider shall reimburse the subcontractor according to the terms of the contract and retain the administrative costs.

1. Family support, crisis support and center-based respite services shall be reimbursed at a flat rate per half-hour unit of service, which covers both service provision and administrative costs.

2. Family training shall be reimbursed at cost plus a set administrative add-on per training session.

3. Environmental modifications shall be reimbursed at cost plus a set administrative add-on per project.

4. Diapers shall be reimbursed at cost plus a set monthly administrative add-on.

Interested persons may submit written comments to: Barbara Dodge, Bureau of Community Supports and Services, P.O. Box 91030, Baton Rouge, LA 70821-9030. She is the person responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, January 25, 2001, at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data,

views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Home and Community Based Services Waiver Program Children's Choice Provider Requirements and Reimbursement Methodology

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2000-01, 2001-02, and 2002-03. It is anticipated that \$400 (\$200 SGF and \$200 FED) will be expended in SFY 2000-01 for the states administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will not impact federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Ben A. Bearden
Director
0012#055

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of the Secretary Bureau of Health Services Financing

Nursing Homes Minimum Licensure Standards
Alzheimer's Special Care Disclosure
(LAC 48:I.9704)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following Rule as authorized by R.S. 40:2009.1 - 2116.4. This proposed Rule is adopted in accordance with the Administrative Procedure Act, R. S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a rule effective January 20, 1998, which repealed the previous regulations governing the licensure of nursing homes and established new regulations (*Louisiana Register*, Volume 24, Number 1). The purpose of the nursing home licensing law and requirements is to provide for the development, establishment and enforcement of standards of care for individuals residing in nursing homes which will promote

safe and adequate treatment for these individuals. The licensing law also provides regulations for the construction, maintenance and operation of nursing homes.

Act 909 of the 1997 Regular Session of the Louisiana Legislature directed the department to develop disclosure standards for certain health care providers who offer a special program or special unit for the care of persons with Alzheimer's disease or a related disorder. In compliance with Act 909, the department proposes to amend the minimum licensing standards for nursing homes to include regulations for Alzheimer's Special Care Disclosure.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability, and autonomy as described in R.S. 49:972 by ensuring that adequate information is available for persons who are considering nursing home placement for a family member with Alzheimer's disease or a related disorder.

Title 48

PUBLIC HEALTH - GENERAL

Part I General Administration

Subpart 3. Licensing

Chapter 97. Nursing Homes

Subchapter A. General Provisions

§9704. Alzheimer's Special Care Disclosure

A. Any provider offering a special program for persons with Alzheimer's disease or a related disorder must disclose the form of care or treatment that distinguishes it as being especially applicable to or suitable for such persons. For the purpose of this section, a related disorder means progressive, incurable dementia.

B. Prior to entering into any agreement to provide care, a provider must make the disclosure to (1) any person seeking services within an Alzheimer's special care program or (2) any person seeking such services on behalf of a person with Alzheimer's disease or a related disorder within an Alzheimer's special care program. A provider must make the disclosure upon characterizing programs or services as specially suited for persons with Alzheimer's disease or a related disorder. Additionally, a provider must give copies of current disclosure forms to all designees, representatives or sponsors of persons receiving treatment in an Alzheimer's special care program.

C. A provider must furnish the disclosure to the department when applying for a license, renewing an existing license, or changing an existing license. Additional disclosure may be made to the state ombudsman. During the licensure or renewal process, the department will examine all disclosures to verify the accuracy of the information. Failure to provide accurate or timely information constitutes non-compliance with this section and may subject the provider to standard administrative penalties or corrective actions. Distributing an inaccurate or misleading disclosure form constitutes deceptive advertising and may subject a provider to prosecution under LA R.S. 51:1401 *et seq.* In such instances, the department will refer the matter to the Attorney General's Division of Consumer Protection for investigation and possible prosecution.

D. Within seven working days of a significant change in the information submitted to the department, a provider must furnish an amended disclosure form reflecting the change to the following parties:

- a. the department;
- b. any clients with Alzheimer's disease or a related disorder currently residing in the nursing home;
- c. any designee, representative or sponsor of any such client;
- d. any person seeking services in an Alzheimer's special care program; and
- e. any person seeking services on behalf of a person with Alzheimer's disease or a related disorder in an Alzheimer's special care program.

E. A provider must use the Alzheimer's Special Care Disclosure Form developed by the department. The disclosure form shall contain the following information:

1. a written statement of the overall philosophy and mission of the Alzheimer's special care program which reflects the needs of residents afflicted with dementia;
2. a description of the criteria and process for admission to, transfer, or discharge from the program;
3. a description of the process used to perform an assessment as well as to develop and implement the plan of care, including the responsiveness of the plan of care to changes in condition;
4. a description of staff training and continuing education practices;
5. a description of the physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;
6. a description of the frequency and types of resident activities;
7. a statement of philosophy on the family's involvement in care and a statement on the availability of family support programs;
8. a list of the fees for care and any additional program fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1300.121-1300.125.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 27:

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is the person responsible for responding to all inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, January 25, 2001, at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, Louisiana. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Nursing Homes C Minimum Licensure
Standards C Alzheimer-s Special Care Disclosure**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2000-01, 2001-02, and 2002-03. It is anticipated that \$240 (\$120 SGF and \$120 FED) will be expended in SFY 2000-01 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

It is anticipated that the implementation of this proposed rule will have no programmatic fiscal impact for SFY 2000-01, 2001-02, and 2002-03. It is anticipated that \$240 (\$120 SGF and \$120 FED) will be expended in SFY 2000-01 for the state's administrative expense for promulgation of this proposed rule and the final rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Implementation of this proposed rule will not have estimable costs and/or economic benefits for directly affected persons or non-governmental groups. However, a nursing facility that fails to provide timely or accurate information may be subject to standard administrative penalties (including civil monetary penalties ranging from \$50 for the first violation to \$100 per day for each subsequent violation) or corrective actions (citations requiring a corrective action plan from the facility).

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no known effect on competition and employment.

Ben A. Bearden
Director
0012#054

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

**Regulation 76 C Privacy of Consumer Financial Information
(LAC 37:XIII.Chapter 99)**

As authorized by Title 22:1, et seq. and in accordance with the provisions of R.S. 49:950 et seq. of the Administrative Procedure Act, the Commissioner of Insurance proposes to adopt Regulation 76 of the Louisiana Department of Insurance, which will govern the privacy of consumer financial information in this state.

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Family Impact Statement

I. Describe the effect of the proposed rule on the stability of the family. The proposed rule should have no measurable impact upon the stability of the family.

II. Describe the effect of the proposed on the authority and rights of parents regarding the education and supervision of their children. The proposed rule should have no impact upon the rights and authority of children regarding the education and supervision of their children.

III. Describe the effect of the proposed rule on the functioning of the family. The proposed rule should have no direct impact on the functioning of the family.

IV. Describe the effect of the proposed rule on family earnings and budget. The proposed rule should have no direct impact upon family earnings and budget.

V. Describe the effect of the proposed rule on the behavior and personal responsibility of children. The proposed rule should have no impact upon the behavior and personal responsibility of children.

VI. Describe the effect of the proposed rule on the ability of the family or a local governmental unit to perform the function as contained in the rule. The proposed rule should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in this rule.

J. Robert Wooley
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Regulation 76 C Privacy of Consumer
Financial Information**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

It is not anticipated that the adoption of Regulation 76 would result in any implementation costs or savings to local or state governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The adoption of Regulation 76 should have no effect on revenue collections of local or state governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There will be costs to insurance companies as a result of Regulation 76 because they must provide to consumers notifications of their rights to privacy and allow consumers to opt out of having their financial information sold or provided to other entities; however, DOI has no way of estimating what those costs would be.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The adoption of Regulation 76 should have no impact on competition and employment.

Ronald Couvillion
Assistant Commissioner
Management and Finance
0012#087

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 77C Medical Necessity Review Determinations (LAC 37:XII:Chapter 62)

In accordance with the provisions of R.S. §49:953 of the Administrative Procedure Act, the Department of Insurance is proposing to adopt the following rule regarding standards for determining the necessity of medical care or services recommended by health care providers. This Rule is necessary to establish reasonable requirements for limiting covered services included in a policy or contract of insurance coverage that do not misrepresent the benefits, advantages, conditions, or terms of the policy issued or to be issued based on medical necessity determinations. This Rule establishes the statutory requirements for health insurance issuers who seek to make such limitations in products sold in this state and establish the standards for Medical Necessity Review Organizations seeking licensure under Title 22 of the Louisiana Revised Statutes of 1950.

Title 37

INSURANCE

Part XII. Regulations

Chapter 62. Medical Necessity Review Determinations

§6201. Purpose

A. The purpose of this regulation is to enforce the statutory requirements of Title 22 of the Louisiana Revised Statutes of 1950 that require health insurance issuers who seek to establish exception criteria or limitations on covered benefits that are otherwise offered and payable under a policy or certificate of coverage sold in this state, by requiring a medical necessity determination to be made by the health insurance issuer. The statutory requirements also apply to any health benefit plan that establishes exception criteria or limitations on covered benefits that are otherwise offered and payable under a non-federal government benefit plan. Additionally, the statute establishes a process for Medical Necessity Review Organizations to qualify for state licensure and Independent Review Organizations to become certified by the Department of Insurance. The statutory requirements establish the intent of the legislature to assure licensed health insurance issuers and non-federal government benefit plans meet minimum quality standards and do not utilize any requirement that would act to impinge on the ability of insureds or government employees to receive appropriate medical advice and/or treatment from a health care professional.

B. This regulation implements the statutory requirements of R.S. 22:2021, and Chapter 7 of Title 22 of the Louisiana Revised Statutes regarding the use of medical necessity to limit stated benefits in a fully insured health policy or HMO certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6203. Definitions

Adverse Determination Ca determination that an admission, availability of care, continued stay, or other health care service that is a covered benefit has been reviewed and denied, reduced, or terminated by a reviewer based on medical necessity, appropriateness, health care setting, level of care, or effectiveness.

Ambulatory Review Creview of health care services performed or provided in an outpatient setting.

Appropriate Medical Information Call outpatient and inpatient medical records that are pertinent to the evaluation and management of the covered person and that permit the Medical Necessity Review Organization to determine compliance with the applicable clinical review criteria. In the review of coverage for particular services, these records may include, but are not necessarily limited to, one or more of the following portions of the covered person's medical records as they relate directly to the services under review for medical necessity: admission history and physical examination report, physician's orders, progress notes, nursing notes, operative reports, anesthesia records, hospital discharge summary, laboratory and pathology reports, radiology or other imaging reports, consultation reports, emergency room records, and medication records.

Authorized Representative Ca person to whom a covered person has given written consent to represent the covered person in an internal or external review of an adverse determination of medical necessity. "Authorized representative" may include the covered person's treating provider, if the covered person appoints the provider as his authorized representative and the provider agrees and waives in writing, any right to payment from the covered person other than any applicable copayment or coinsurance amount. In the event that the service is determined not to be medically necessary by the MNRO/IRO, and the covered person or his authorized representative thereafter requests the services, nothing shall prohibit the provider from charging the provider's usual and customary charges for all MNRO/IRO determined non-medically necessary services provided when such requests are in writing.

Case Management Ca coordinated set of activities conducted for individual patient management of serious, complicated, protracted, or other health conditions.

Certification or Certify Ca determination by a reviewer regarding coverage of an admission, continued stay, or other health care service for the purpose of determining medical necessity, appropriateness of the setting, or level of care.

Clinical Peer Cphysician or other health care professional who holds an unrestricted license in the same or an appropriate specialty that typically manages the medical condition, procedure, or treatment under review. Non-physician practitioners, including but not limited to nurses, speech and language therapists, occupational therapists, physical therapists, and clinical social workers, are not considered to be clinical peers and may not make adverse determinations of proposed actions of physicians (medical doctors shall be clinical peers of medical doctors, etc.).

Clinical Review Criteria Cthe written screening procedures, decision abstracts, clinical protocols, and practice guidelines used by a reviewer to determine the necessity and appropriateness of covered health care services.

Commissioner C the commissioner of insurance.

Concurrent Review C a review of medical necessity, appropriateness of care, or level of care conducted during a patient's stay or course of treatment.

Covered Benefits or *Benefits* C those health care services to which a covered person is entitled under the terms of a health benefit plan.

Covered Person C a policyholder, subscriber, enrollee, or other individual covered under a policy of health insurance or HMO subscriber agreement.

Discharge Planning C the formal process for determining, prior to discharge from a facility, the coordination and management of the care that a patient receives following discharge from a facility.

Disclose C to release, transfer, or otherwise divulge protected health information to any individual, entity, or person other than the individual who is the subject of the protected health information.

Emergency Medical Condition C a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson, acting reasonably and possessing an average knowledge of health and medicine, to believe that the absence of immediate medical attention could reasonably be expected to result in any of the following:

1. placing the health of the individual in serious jeopardy;
2. with respect to a pregnant woman, placing the health of the woman or her unborn child in serious jeopardy;
3. serious impairment to bodily function; or
4. serious dysfunction of any bodily organ or part.

Entity C an individual, person, corporation, partnership, association, joint venture, joint stock company, trust, unincorporated organization, any similar entity, agent, or contractor, or any combination of the foregoing.

External Review Organization C an independent review organization that conducts independent external reviews of adverse determinations and final adverse determinations and whose accreditation or certification has been reviewed and approved by the Department of Insurance.

Facility C an institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing facilities, inpatient hospice facilities, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

Final Adverse Determination C an adverse determination that has been upheld by a reviewer at the completion of the medical necessity review organization's internal review process as set forth in this Chapter.

Health Benefit Plan C group and individual health insurance coverage, coverage provided under a group health plan, or coverage provided by a nonfederal governmental plan, as those terms are defined in R.S. 22:250.1. *Health Benefit Plan* shall not include a plan providing coverage for excepted benefits as defined in R.S. 22:250.1(3).

Health Care Professional C a physician or other health care practitioner licensed, certified, or registered to perform specified health services consistent with state law.

Health Care Provider or *Provider* C a health care professional, the attending, ordering, or treating physician, or a facility.

Health Care Services C services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

Health Information C information or data, whether oral or recorded in any form or medium, and personal facts or information about events or relationships that relates to any of the following:

1. the past, present, or future physical, mental, or behavioral health or condition of a covered person or a member of the covered person's family;
2. the provision of health care services to a covered person; or
3. payment for the provision of health care services to a covered person.

Health Insurance Coverage C benefits consisting of medical care provided or arranged for directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer.

Health Insurance Issuer C an insurance company, including a health maintenance organization, as defined and licensed pursuant to Part XII of Chapter 2 of this Title, unless preempted as an employee benefit plan under the Employee Retirement Income Security Act of 1974.

Medical Necessity Review Organization or *MNRO* C a health insurance issuer or other entity licensed or authorized pursuant to this Chapter to make medical necessity determinations for purposes other than the diagnosis and treatment of a medical condition.

Prospective Review C a review conducted prior to an admission or a course of treatment.

Protected Health Information C health information that either identifies a covered person who is the subject of the information or with respect to which there is a reasonable basis to believe that the information could be used to identify a covered person.

Retrospective Review C a review of medical necessity conducted after services have been provided to a patient, but shall not include the review of a claim that is limited to an evaluation of reimbursement levels, veracity of documentation, accuracy of coding, or adjudication for payment.

Second Opinion C an opportunity or requirement to obtain a clinical evaluation by a provider other than the one originally making a recommendation for a proposed health service to assess the clinical necessity and appropriateness of the initial proposed health service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6205. Authorization or Licensure as an MNRO

A. No health insurance issuer or health benefit plan, as defined in this chapter, shall act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar medical determinations unless authorized to act as an MNRO by the commissioner

as provided in this Chapter. Benefits covered under a health benefit plan sold or in effect in this state on or after January 1, 2001 shall be limited, excluded, or excepted from coverage under any medical necessity determination requirement, appropriateness of care determination, level of care needed, or any other similar determination only when such determination is made by an authorized or licensed MNRO as provided in this Chapter.

B. No entity acting on behalf of or as the agent of a health insurance issuer may act as an MNRO for the purpose of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations unless licensed as an MNRO by the commissioner as provided in this Chapter.

C. Any other entity may apply for and be issued a license under this Chapter to act as an MNRO for the purposes of determining medical necessity, determining the appropriateness of care, determining the level of care needed, or making other similar determinations on behalf of a health benefit plan.

D. Any entity licensed or authorized as an MNRO shall be exempt from the requirements of R.S. 40:2721 through 2736.

E. An integrated health care network or other entity contracting with a health insurance issuer for provision of covered services under a risk sharing arrangement, shall be allowed to make initial adverse medical necessity determinations provided the health insurance issuer remains responsible for provision of internal and external review requirements and has submitted the information required under §6205.B.5 for review and approval. In such instances, a covered person's request for an internal or external appeal of an adverse determination shall not require concurrence by a provider reimbursed under a risk sharing arrangement with the health insurance issuer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6207. Procedure for Application to Act as an MNRO

A. Any applicant for licensure other than a health insurance issuer shall submit an application to the commissioner and pay an initial licensure fee as specified in §6211.D. The application shall be on a form and accompanied by any supporting documentation required by the commissioner and shall be signed and verified by the applicant. The information required by the application shall include:

1. The name of the entity operating as an MNRO and any trade or business names used by that entity in connection with making medical necessity determinations.

2. The names and addresses of every officer and director of the entity operating as an MNRO, as well as the name and address of the corporate officer designated by the MNRO as the corporate representative to receive, review, and resolve all grievances addressed to the MNRO.

3. The name and address of every person owning, directly or indirectly, five percent or more of the entity operating as an MNRO.

4. The exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations.

5. A general description of the operation of the MNRO, which includes a statement that the MNRO does not engage in the practice of medicine or acts to impinge or encumber the independent medical judgment of treating physicians or health care providers.

6. A description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. Such program description shall evidence compliance with requirements of §6213 of this Chapter.

7. A sample copy of any contract, absent fees charged, with a health insurance issuer, nonfederal government health benefit plan, or other group health plan for making determinations of medical necessity.

8. For each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations; and

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

B. A health insurance issuer holding a valid certificate of authority to operate in this state may be authorized to act as an MNRO under the requirements of this Chapter following submission to the commissioner of appropriate documentation for review and approval that shall include, but need not be limited, to the following:

1. the exact street and mailing address of the principal place of business where the MNRO will operate and conduct medical necessity review determinations;

2. a general description of the operation of the MNRO which includes a statement that the MNRO does not engage in the practice of medicine or act to impinge upon or encumber the independent medical judgment of treating physicians or health care providers;

3. a description of the MNRO's program that evidences it meets the requirements of this Chapter for making medical necessity determinations and resolving disputes on an internal and external basis. Such program description shall evidence compliance with requirements of §6213 of this Chapter;

4. a sample copy of any contract, absent fees charged, with another health insurance issuer for making determinations of medical necessity;

5. for each individual that will be designated to make adverse medical necessity determinations pursuant to this Chapter:

a. a description of the types of determinations that will be made by the individual and the type of license that will be required to support such determinations;

b. a written policy statement that the individual shall have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character; and

c. a written policy statement that the individual will be required to attest that no adverse determination will be made regarding any medical procedure or service outside the scope of such individual's expertise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6211. Expiration and Renewal of License for Entities other than Health Insurance Issuers

A. Licensure pursuant to this Chapter shall expire two years from the date approved by the commissioner unless the license is renewed for a two-year term as provided in this Section.

B. Before a license expires, it may be renewed for an additional two-year term if the applicant pays a renewal fee as provided in this Section and submits to the commissioner a renewal application on the form that the commissioner requires.

C. The renewal application required by the commissioner shall include, but need not be limited to, the information required for an initial application.

D. The fee for initial licensure and the fee for renewal of licensure shall each be \$1,500.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the La. Department of Insurance, Office of the Commissioner, LR 27:

§6213. Scope and Content of Medical Necessity Determination process

A. An MNRO shall implement a written medical necessity determination program that describes all review activities performed for one or more health benefit plans. The program shall include the following:

1. the methodology utilized to evaluate the clinical necessity, appropriateness, efficacy, or efficiency of health care services;

2. data sources and clinical review of criteria used in decision-making. The appropriateness of clinical review criteria shall be fully documented;

3. the process for conducting appeals of adverse determinations including informal reconsiderations;

4. mechanisms to ensure consistent application of review criteria and compatible decisions;

5. data collection processes and analytical methods used in assessing utilization of health care services;

6. provisions for assuring confidentiality of clinical and proprietary information;

7. the organizational structure, including any review panel or committee, quality assurance committee, or other committee that periodically accesses health care review activities and reports to the health benefit plan;

8. the medical director's responsibilities for day-to-day program management;

9. any quality management program utilized by the MNRO.

B. An MNRO shall file with the commissioner an annual summary report of its review program activities that includes a description of any substantive changes that have been implemented since the last annual report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the La. Department of Insurance, Office of the Commissioner, LR 27:

§6215. Medical Necessity Review Organization Operational Requirements

A. An MNRO shall use documented clinical review criteria that are based on sound clinical evidence. Such criteria shall be evaluated at least annually and updated if necessary to assure ongoing efficacy. An MNRO may develop its own clinical review criteria or it may purchase, license or contract for clinical review criteria from qualified vendors. An MNRO shall make available its clinical review criteria upon request to the commissioner who shall be authorized to request affirmation of such criteria from other appropriate state regulatory agencies.

B. An MNRO shall have a medical director who shall be a duly licensed physician. The medical director shall administer the program and oversee all adverse review decisions. Adverse determinations shall be made only by a duly licensed physician or clinical peer. An adverse determination made by an MNRO in the second level review shall become final only when a clinical peer has evaluated and concurred with such adverse determination.

C. An MNRO shall issue determination decisions in a timely manner pursuant to the requirements of this Chapter. At the time of the request for review, an MNRO shall notify the requestor of all documentation required to make a medical review determination. The requestor may include the covered person, an authorized representative, or a provider. In the event that the MNRO determines that additional information is required, it shall notify the requestor by telephone, within one workday of such determination, to request any additional appropriate medical information required. An MNRO shall obtain all information required to make a medical necessity determination, including pertinent clinical information, and shall have a process to ensure that qualified health care professionals performing medical necessity determinations apply clinical review criteria consistently.

D. At least annually, an MNRO shall routinely assess the effectiveness and efficiency of its medical necessity determination program and report any deficiencies or changes to the commissioner. Deficiencies shall include complaint investigations by the department or grievances filed with the MNRO that prompted the MNRO to change procedures or protocols.

E. An MNRO's data systems shall be sufficient to support review program activities and to generate management reports to enable the health insurance issuer or other contractor to monitor its activities.

F. Health insurance issuers who delegate any medical necessity determination functions to an MNRO shall be responsible for oversight, which shall include, but not be limited to, the following:

1. a written description of the MNRO's activities and responsibilities, including reporting requirements;
2. evidence of formal approval of the medical necessity determination program by the health insurance issuer;
3. a process by which the health insurance issuer monitors or evaluates the performance of the MNRO.

G. Health insurance issuers who perform medical necessity determinations shall coordinate such program with other medical management activities conducted by the health insurance issuer, such as quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for assessing member satisfaction, and risk management.

H. An MNRO shall provide health care providers with access to its review staff by a toll-free number that is operational for any period of time that an authorization, certification, or approval of coverage is required.

I. When conducting medical necessity determinations, the MNRO shall request only the information necessary to certify an admission to a facility, procedure or treatment, length of stay, frequency, level of care or duration of health care services.

J. Compensation to individuals participating in a medical necessity determination program shall not contain incentives, direct or indirect, for those individuals to make inappropriate or adverse review determinations. Compensation to any such individuals shall not be based, directly or indirectly, on the quantity or type of adverse determinations rendered.

K. An adverse determination shall not be based on the outcome of care or clinical information not available at the time the certification was requested, regardless of whether the covered person or provider assumes potential liability for the cost of such care while awaiting a coverage determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6217. Procedures for Making Medical Necessity Determinations

A. An MNRO shall maintain written procedures for making determinations and for notifying covered persons and providers and other authorized representatives acting on behalf of covered persons of its decisions.

B.1. In no less than eighty percent of initial determinations, an MNRO shall make the determination within two working days of obtaining any appropriate medical information that may be required regarding a proposed admission, procedure, or service requiring a review determination. In no instance shall any determination of medical necessity be made later than thirty days from receipt

of the request unless the patient's physician or other authorized representative has agreed to an extension.

2. In the case of a determination to certify a nonemergency admission, procedure, or service, the MNRO shall notify the provider rendering the service within one work day of making the initial certification and shall provide documented confirmation of such notification to the provider within two working days of making the initial certification.

3. In the case of an adverse determination of a nonemergency admission, the MNRO shall notify the provider rendering the service within one workday of making the adverse determination and shall provide documented confirmation of the notification to the provider within two working days of making the adverse determination.

C.1. For concurrent review determinations of medical necessity, an MNRO shall make such determinations within one working day of obtaining the results of appropriate medical information that may be required.

2. In the case of a determination to certify an extended stay or additional services, the MNRO shall notify the provider rendering the service within one working day of making the certification and shall provide documented confirmation to the provider within two working days of the authorization. Such documented notification shall include the number of intended days or next review date and the new total number of days or services approved.

3. In the case of an adverse determination, the MNRO shall notify the provider rendering the service within one working day of making the adverse determination and shall provide documented notification to the provider within one workday of such notification. The service shall be authorized and payable by the health insurance issuer without liability, subject to the provisions of the policy or subscriber agreement, until the provider has been notified in writing of the adverse determination. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider unless notified of such liability in advance.

D.1. For retrospective review determinations, the MNRO shall make the determination within 30 working days of obtaining the results of any appropriate medical information that may be required, but in no instance later than 180 days from the date of service. The MNRO shall not subsequently retract its authorization after services have been provided or reduce payment for an item or service furnished in reliance upon prior approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider or unless the coverage was duly canceled for fraud, misrepresentation, or nonpayment of premiums.

2. In the case of an adverse determination, the MNRO shall notify in writing the provider rendering the service and the covered person within five working days of making the adverse determination.

E. A written notification of an adverse determination shall include the principal reason or reasons for the determination, the instructions for initiating an appeal or reconsideration of the determination, and the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination. An MNRO shall provide the clinical rationale

in writing for an adverse determination, including the clinical review criteria used to make that determination, to any party who received notice of the adverse determination and who follows the procedures.

F. An MNRO shall have written procedures listing the health or appropriate medical information required from a covered person or health care provider in order to make a medical necessity determination. Such procedures shall be given verbally to the covered person or health care provider when requested. The procedures shall also outline the process to be followed in the event that the MNRO determines the need for additional information not initially requested.

G. An MNRO shall have written procedures to address the failure or inability of a provider or a covered person to provide all necessary information for review. In cases where the provider or a covered person will not release necessary information, the MNRO may deny certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6219. Informal Reconsideration

A. In a case involving an initial determination or a concurrent review determination, an MNRO shall give the provider rendering the service an opportunity to request, on behalf of the covered person, an informal reconsideration of an adverse determination by the physician or clinical peer making the adverse determination. Allowing a 10-day period following the date of the adverse determination for requesting an informal reconsideration shall be considered reasonable.

B. The informal reconsideration shall occur within one working day of the receipt of the request and shall be conducted between the provider rendering the service and the MNRO's physician authorized to make adverse determinations or a clinical peer designated by the medical director if the physician who made the adverse determination cannot be available within one working day.

C. If the informal reconsideration process does not resolve the differences of opinion, the adverse determination may be appealed by the covered person or the provider on behalf of the covered person. Informal reconsideration shall not be a prerequisite to a standard appeal or an expedited appeal of an adverse determination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6221. Appeals of Adverse Determinations; Standard Appeals

A. An MNRO shall establish written procedures for a standard appeal of an adverse determination, which may also be known as a first level internal appeal. Such procedures shall be available to the covered person and to the provider acting on behalf of the covered person. Such procedures shall provide for an appropriate review panel for each appeal that includes health care professionals who have appropriate expertise. Allowing a 60-day period following the date of the

adverse determination for requesting a standard appeal shall be considered reasonable.

B. For standard appeals, a duly licensed physician shall be required to concur with any adverse determination made by the review panel.

C. The MNRO shall notify in writing both the covered person and any provider given notice of the adverse determination, of the decision within thirty working days following the request for an appeal, unless the covered person or authorized representative and the MNRO mutually agree that a further extension of the time limit would be in the best interest of the covered person. The written decision shall contain the following:

1. the title and qualifying credentials of the physician affirming the adverse determination;
2. a statement of the reason for the covered person's request for an appeal;
3. an explanation of the reviewers' decision in clear terms and the medical rationale in sufficient detail for the covered person to respond further to the MNRO's position;
4. if applicable, a statement including the following:
 - a. a description of the process to obtain a second level review of a decision;
 - b. the written procedures governing a second level review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6223. Second Level Review

A. An MNRO shall establish a second level review process to give covered persons who are dissatisfied with the first level review decision the option to request a review at which the covered person has the right to appear in person before authorized representatives of the MNRO. An MNRO shall provide covered persons with adequate notice of this option, as described in §6221.C. Allowing a 30-day period following the date of the notice of an adverse standard appeal decision shall be considered reasonable.

B. An MNRO shall conduct a second level review for each appeal. Appeals shall be evaluated by an appropriate clinical peer or peers in the same or similar specialty as would typically manage the case being reviewed. The clinical peer shall not have been involved in the initial adverse determination. A majority of any review panel used shall be comprised of persons who were not previously involved in the appeal. However, a person who was previously involved with the appeal may be a member of the panel or appear before the panel to present information or answer questions. The panel shall have the legal authority to bind the MNRO and the health insurance issuer to the panel's decision.

C. An MNRO shall ensure that a majority of the persons reviewing a second level appeal are health care professionals who have appropriate expertise. An MNRO shall issue a copy of the written decision to a provider who submits an appeal on behalf of a covered person. In cases where there has been a denial of service, the reviewing health care professional shall not have a material financial incentive or interest in the outcome of the review.

D. The procedures for conducting a second level review shall include the following.

1. The review panel shall schedule and hold a review meeting within 45 working days of receiving a request from a covered person for a second level review. The review meeting shall be held during regular business hours at a location reasonably accessible to the covered person. In cases where a face-to-face meeting is not practical for geographic reasons, an MNRO shall offer the covered person and any provider given a notice of adverse determination the opportunity to communicate with the review panel, at the MNRO's expense, by conference call, video conferencing, or other appropriate technology. The covered person shall be notified of the time and place of the review meeting in writing at least fifteen working days in advance of the review date; such notice shall also advise the covered person of his rights as specified in Paragraph (3) of this Subsection. The MNRO shall not unreasonably deny a request for postponement of a review meeting made by a covered person.

2. Upon the request of a covered person, an MNRO shall provide to the covered person all relevant information that is not confidential or privileged.

3. A covered person shall have the right to the following:

- a. attend the second level review;
- b. present his case to the review panel;
- c. submit supporting material and provider testimony or affidavit both before and at the review meeting;
- d. ask questions of any representative of the MNRO.

4. The covered person's right to a fair review shall not be made conditional on the covered person's appearance at the review.

5. For second level appeals, a duly licensed and appropriate clinical peer shall be required to concur with any adverse determination made by the review panel.

6. The MNRO shall issue a written decision to the covered person within five working days of completing the review meeting. The decision shall include the following:

- a. the title and qualifying credentials of the appropriate clinical peer affirming an adverse determination;
- b. a statement of the nature of the appeal and all pertinent facts;
- c. the rationale for the decision;
- d. reference to evidence or documentation used in making that decision;
- e. the instructions for requesting a written statement of the clinical rationale, including the clinical review criteria used to make the determination;
- f. notice of the covered person's right to an external review, including the following:
 - i. a description of the process to obtain an external review of a decision;
 - ii. the written procedures governing an external review, including any required time frame for review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6225. Request for External Review

A. Each health benefit plan shall provide an independent review process to examine the plan's coverage decisions based on medical necessity. A covered person, with the concurrence of the treating health care provider, may make a request for an external review of a second level appeal adverse determination.

B. Except as provided in this Subsection, an MNRO shall not be required to grant a request for an external review until the second level appeal process as set forth in this Chapter has been exhausted. A request for external review of an adverse determination may be made before the covered person has exhausted the MNRO's appeal, if any of the following circumstances apply:

1. the covered person has an emergency medical condition, as defined in this Chapter;
2. the MNRO agrees to waive the requirements for the first level appeal, the second level appeal, or both.

C. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.1 of this Section, the covered person's treating health care provider may request an expedited external review. If the requirement to exhaust the MNRO's appeal procedures is waived under Paragraph B.2 of this Section, a standard external review shall be performed.

D. Nothing in this Section shall prevent an MNRO from establishing an appeal process, approved by the commissioner, that provides persons who are dissatisfied with the first level review decision an external review in lieu of requiring a second level review prior to requesting such external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6227. Standard External Review

A. Within sixty days after the date of receipt of a notice of a second level appeal adverse determination, the covered person whose medical care was the subject of such determination may, with the concurrence of the treating health care provider, file a request for an external review with the MNRO. Within seven days after the date of receipt of the request for an external review, the MNRO shall provide the documents and any information used in making the second level appeal adverse determination to its designated independent review organization. The independent review organization shall review all of the information and documents received and any other information submitted in writing by the covered person or the covered person's health care provider. The independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;
2. the treating health care professional's recommendation;
3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, covered person, or the covered person's treating provider;
4. any applicable generally accepted practice guidelines, including but not limited to those developed by

the federal government or national or professional medical societies, boards, and associations;

5. any applicable clinical review criteria developed exclusively and used by MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation unless the criteria had been reviewed and certified by the appropriate licensing board of this state.

B. The independent review organization shall provide notice of its recommendation to the MNRO, the covered person or his authorized representative and the covered person's health care provider within thirty days after the date of receipt of the second level determination information subject to an external review, unless a longer period is agreed to by all parties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6229. Expedited Appeals

A. An MNRO shall establish written procedures for the expedited appeal of an adverse determination involving a situation where the time frame of the standard appeal would seriously jeopardize the life or health of a covered person or would jeopardize the covered person's ability to regain maximum function. An expedited appeal shall be available to and may be initiated by the covered person, with the consent of the treating health care professional, or the provider acting on behalf of the covered person.

B. Expedited appeals shall be evaluated by an appropriate clinical peer or peers in the same or a similar specialty as would typically manage the case under review. The clinical peer or peers shall not have been involved in the initial adverse determination.

C. An MNRO shall provide an expedited appeal to any request concerning an admission, availability of care, continued stay, or health care service for a covered person who has received emergency services but has not been discharged from a facility. Such emergency services may include services delivered in the emergency room, during observation, or other setting that resulted in direct admission to a facility.

D. In an expedited appeal, all necessary information, including the MNRO's decision, shall be transmitted between the MNRO and the covered person, or his authorized representative, or the provider acting on behalf of the covered person by telephone, telefacsimile, or any other available expeditious method.

E. In an expedited appeal, an MNRO shall make a decision and notify the covered person or the provider acting on behalf of the covered person as expeditiously as the covered person's medical condition requires, but in no event more than seventy-two hours after the appeal is commenced. If the expedited appeal is a concurrent review determination, the service shall be authorized and payable, subject to the provisions of the policy or subscriber agreement, until the provider has been notified of the determination in writing. The covered person shall not be liable for the cost of any services delivered following documented notification to the provider until documented notification of such liability is provided to the covered person.

F. An MNRO shall provide written confirmation of its decision concerning an expedited appeal within two working days of providing notification of that decision if the initial notification was not in writing. The written decision shall contain the information specified in R.S. 22:3079(C)(1) through (3).

G. An MNRO shall provide reasonable access, within a period of time not to exceed one workday, to a clinical peer who can perform the expedited appeal.

H. In any case where the expedited appeal process does not resolve a difference of opinion between the MNRO and the covered person or the provider acting on behalf of the covered person, such provider may request a second level appeal of the adverse determination.

I. An MNRO shall not provide an expedited appeal for retrospective adverse determinations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6231. Expedited External Review of Urgent Care Requests

A. At the time that a covered person receives an adverse determination involving an emergency medical condition of the covered person being treated in the emergency room, during hospital observation, or as a hospital inpatient, the covered person's health care provider may request an expedited external review. Approval of such requests shall not unreasonably be withheld.

B. For emergency medical conditions, the MNRO shall provide or transmit all necessary documents and information used in making the adverse determination to the independent review organization by telephone, telefacsimile, or any other available expeditious method.

C. In addition to the documents and information provided or transmitted, the independent review organization may consider the following in reaching a decision or making a recommendation:

1. the covered person's pertinent medical records;
2. the treating health care professional's recommendation;
3. consulting reports from appropriate health care professionals and other documents submitted by the MNRO, the covered person, or the covered person's treating provider;
4. any applicable generally accepted practice guidelines, including but not limited to those developed by the federal government or national or professional medical societies, boards, and associations;

5. any applicable clinical review criteria developed exclusively and used by the MNRO that are within the appropriate standard for care, provided such criteria were not the sole basis for the decision or recommendation, unless the criteria had been reviewed and certified by the appropriate state licensing board of this state.

D. Within seventy-two hours after receiving appropriate medical information for an expedited external review, the independent review organization shall do the following:

1. make a decision to uphold or reverse the adverse determination;
2. notify the covered person, the MNRO, and the covered person's health care provider of the decision. Such

notice shall include the principal reason or reasons for the decision and references to the evidence or documentation considered in making the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6233. Binding Nature of External Review Decisions

A. Coverage for the services required under this Chapter shall be provided subject to the terms and conditions generally applicable to benefits under the evidence of coverage under a health insurance policy or HMO subscriber agreement. Nothing in this Chapter shall be construed to require payment for services that are not otherwise covered pursuant to the evidence of coverage under the health insurance policy or HMO subscriber agreement or otherwise required under any applicable state or federal law.

B. An external review decision made pursuant to this Chapter shall be binding on the MNRO and on any health insurance issuer or health benefit plan that utilizes the MNRO for making medical necessity determinations. No entity shall hold itself out to the public as following the standards of a licensed or authorized MNRO that does not adhere to all requirements of this Chapter including the binding nature of external review decisions.

C. An external review decision shall be binding on the covered person for purposes of determining coverage under a health benefit plan that requires a determination of medical necessity for a medical service to be covered.

D. A covered person or his representatives, heirs, assigns, or health care providers shall have a cause of action for benefits or damages against an MNRO, health insurance issuer, health benefit plan, or independent review organization for any action involving or resulting from a decision made pursuant to this Chapter if the determination or opinion was rendered in bad faith or involved negligence, gross negligence, or intentional misrepresentation of factual information about the covered person's medical condition. Causes of action for benefits or damages for actions involving or resulting from a decision made pursuant to this Chapter shall be limited to the party acting in bad faith, or involved in negligence, gross negligence or intentional misrepresentation of factual information about the covered person's medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6235. Minimum Qualifications for Independent Review Organizations

A. To qualify to conduct external reviews for an MNRO, an independent review organization shall meet the following minimum qualifications:

1. Develop written policies and procedures that govern all aspects of both the standard external review process and the expedited external review process that include, at a minimum, the following:

a. procedures to ensure that external reviews are conducted within the specified time frames and that required notices are provided in a timely manner.

b. procedures to ensure the selection of qualified and impartial clinical peer reviewers to conduct external reviews on behalf of the independent review organization and suitable matching of reviewers to specific cases.

c. procedures to ensure the confidentiality of medical and treatment records and clinical review criteria.

d. procedures to ensure that any individual employed by or under contract with the independent review organization adheres to the requirements of this Chapter.

2. Establish a quality assurance program.

3. Establish a toll-free telephone service to receive information related to external reviews on a 24-hour day, 7-day-a-week basis that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers during other than normal business hours.

B. Any clinical peer reviewer assigned by an independent review organization to conduct external reviews shall be a physician or other appropriate health care provider who meets the following minimum qualifications:

1. be an expert in the treatment of the covered person's medical condition that is the subject of the external review;

2. be knowledgeable about the recommended health care service or treatment through actual clinical experience that may be based on either of the following:

a. the period of time spent actually treating patients with the same or similar medical condition of the covered person;

b. the period of time that has elapsed between the clinical experience and the present;

3. hold a nonrestricted license in a state of the United States and, in the case of a physician, hold a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review;

4. have no history of disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, that have been taken or are pending by any hospital, governmental agency or unit, or regulatory body that raise a substantial question as to the clinical peer reviewer's physical, mental, or professional competence or moral character.

C. In addition to the requirements of Subsection A of this Section, an independent review organization shall not own or control, be a subsidiary of, in any way be owned or controlled by, or exercise control with a health insurance issuer, health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers.

D. In addition to the other requirements of this Section, in order to qualify to conduct an external review of a specified case, neither the independent review organization selected to conduct the external review nor the clinical peer reviewer assigned by the independent organization to conduct the external review shall have a material professional, familial, or financial interest with any of the following:

1. the MNRO that is the subject of the external review;

2. any officer, director, or management employee of the MNRO that is the subject of the external review;

3. the health care provider or the health care provider's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review;

4. the facility at which the recommended health care service or treatment would be provided;

5. the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose treatment is the subject of the external review;

6. the covered person who is the subject of the external review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6237. External Review Register

A. An MNRO shall maintain written records in the aggregate and by health insurance issuer and health benefit plan on all requests for external review for which an external review was conducted during a calendar year, hereinafter referred to as the "register". For each request for external review, the register shall contain, at a minimum, the following information:

1. a general description of the reason for the request for external review;

2. the date received;

3. the date of each review;

4. the resolution;

5. the date of resolution;

6. except as otherwise required by state or federal law, the name of the covered person for whom the request for external review was filed.

B. The register shall be maintained in a manner that is reasonably clear and accessible to the commissioner.

C. The register compiled for a calendar year shall be retained for the longer of three years or until the commissioner has adopted a final report of an examination that contains a review of the register for that calendar year.

D. The MNRO shall submit to the commissioner, at least annually, a report in the format specified by the commissioner. The report shall include the following for each health insurance issuer and health benefit plan:

1. the total number of requests for external review;

2. the number of requests for external review resolved and their resolution;

3. a synopsis of actions being taken to correct problems identified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6239. Emergency Services

A. Emergency services shall not be limited to health care services rendered in a hospital emergency room.

1. When conducting medical necessity determinations for emergency services, an MNRO shall not disapprove

emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of such services if a prudent lay person acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from a non-contracting provider within the service area of a managed care plan, an MNRO shall not disapprove emergency services necessary to screen and stabilize a covered person and shall not require prior authorization of the services if a prudent lay person would have reasonably believed that use of a contracting provider would result in a delay that would worsen the emergency or if a provision of federal, state, or local law requires the use of a specific provider.

2. If a participating provider or other authorized representative of a health insurance issuer or health benefit plan authorizes emergency services, the MNRO shall not subsequently retract its authorization after the emergency services have been provided or reduce payment for an item, treatment, or service furnished in reliance upon approval, unless the approval was based upon a material omission or misrepresentation about the covered person's health condition made by the provider of emergency services.

3. Coverage of emergency services shall be subject to state and federal laws as well as contract or policy provisions, including co-payments or coinsurance and deductibles.

4. For immediately required post-evaluation or post-stabilization services, an MNRO shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the La. Department of Insurance, Office of the Commissioner, LR 27:

§6241. Confidentiality Requirements

A. An MNRO shall annually provide written certification to the commissioner that its program for determining medical necessity complies with all applicable state and federal laws establishing confidentiality and reporting requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

§6243. Effective Date

A. This regulation shall become effective upon final publication in the Louisiana Register.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:3, 22:2014; and 22:3090, to implement and enforce the following provisions: R.S. 22:2021 and Chapter 7 of Title 22 of the Revised Statutes of 1950.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 27:

A public hearing on this proposed regulation will be held on January 25, 2001 at 9 a.m. in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, Louisiana. All interested persons will be afforded an opportunity to make comments.

Interested persons may obtain a copy of this proposed regulation, and may submit oral or written comments to

Claire Lemoine, Senior Attorney, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, telephone (225) 342-4242. Comments will be accepted through the close of business at 4:30 p.m. January 25, 2001.

The acting commissioner of Insurance hereby adopts this regulation.

J. Robert Wooley
Acting Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Regulation 77C Medical Necessity
Review Determinations**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS(Summary)
It is not anticipated that Regulation 77 would result in any implementation costs or savings to local or state governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule is estimated to increase self generated revenue by approximately \$150,000.00 in FY01 and every two years thereafter.
Regulation 77 calls for an initial licensing fee of \$1,500 and a renewal fee every other year of \$1,500 for each Medical Necessity Review Organization (MNRO). The department of Insurance estimates that about 100 MNROs will seek licensure in FY 2000/01. There will be some initial licenses issued the following fiscal year; DOI has no way to estimate how many MNROs would seek licenses in the second year, but expects the number to be small.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Regulation 77 calls for an initial licensing fee of \$1,500 and a bi-annual renewal fee of \$1,500 from Medical Necessity Review Organizations seeking licensure in the state.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Regulation 77 may result in some additional employment in the state as MNROs are licensed and may have to hire additional employees. DOI has no way of estimating the net new employment that may result this rule change.

Gillis C. Hill
Deputy Commissioner
0012#007

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Insurance
Office of the Commissioner**

Rule 10C Continuing Education
(LAC 37:XI.703-731)

Under the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Insurance gives notice that it intends to amend and re-enact its existing Rule 10. On January 26, 2001, at 10:00 a.m., the Department of Insurance will hold a

public hearing in the Plaza Hearing Room of the Insurance Building located at 950 North Fifth Street, Baton Rouge, Louisiana, 70804 to discuss the proposed amendments as set forth below. This intended action complies with the statutory law administered by the Department of Insurance.

The proposed amendments are needed to make certain changes, clarify the current language and to implement the Midwest Zone Continuing Education Reciprocity Agreement which will further the National Association of Insurance Commissioners' (NAIC) drive toward reciprocity between the states. The proposed amendments affect the following sections: 10.3, 10.4, 10.6, 10.9, 10.11, and 10.17. In the past, the Rule, as published in the *Louisiana Register*, showed the text of seven forms labeled and referenced as Appendices 1-7. These forms were not intended to be part of the Rule proper and are readily available to Continuing Education providers through the Department of Insurance. These forms will be removed from the Rule when republished in the *Louisiana Register*.

**TITLE 37
Insurance**

Part XI. Rules

Chapter 7. Rule 10-Continuing Education

§703. Rule 10.3 Basic Requirements

A. As a condition for the continuation of a license, a licensee must furnish the Department of Insurance, prior to the licensing renewal date, proof of satisfactory completion of approved subjects or courses having the required minimum hours of continuing education credit during each two-year licensing period.

1. - 4. ...

B. Failure to fulfill the continuing education requirements prior to the filing date for license renewal shall cause the license to write insurance to lapse. For a period of three years from the date of lapse of the license, the license may be renewed upon proof of fulfilling all continuing education requirements through the date of reinstatement and payment of all fees due. If the license has lapsed for more than three years, the license may be renewed only by fulfilling the requirements for issuance of a new license.

C. Property-casualty insurance agents shall complete 24 hours of approved instruction prior to each license renewal. Life-health insurance agents shall complete 16 hours of approved instruction prior to each license renewal. Each course to be applied toward satisfaction of the continuing education requirement must have been completed within the two-year period immediately preceding renewal of the license.

D. Agents authorized to write both life-health and property-casualty insurance shall complete 20 hours of approved property-casualty instruction prior to each property-casualty license renewal. These agents shall also complete 12 hours of approved life-health instruction prior to each life-health license renewal. Each course to be applied toward satisfaction of the continuing education requirements must have been completed within the two-year period immediately preceding renewal of the license.

E. Duplication of the same courses offered by the same provider will not be accepted as proof of compliance for continuing education requirements during the same renewal period.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 20:1391 (December 1994), LR 27:

§705. Rule 10.4 Applicability

A. - C. ...

1. Specialty classes of licenses including industrial fire, industrial life and health, credit life, credit health and accident, credit property, accidental death and dismemberment and/or vendor single interest which is written solely in connection with credit transactions, title, travel, baggage, auto clubs, home service, and other limited licenses.

2. ...

a. no longer actively engaged in the insurance business as an agent, broker or solicitor and who is receiving social security benefits, if eligible; or

b. actively engaged in the insurance business as an agent, broker or solicitor and who represents or operates through a licensed Louisiana insurer.

3. ...

D. If a licensee is unable to comply with continuing education requirements during the licensing period because of a disability, medical condition or similar reason, the commissioner may waive the continuing education requirements or may require the licensee to complete the required number of credit hours through correspondence courses. The following is necessary to request a waiver:

1. a current physician's statement supporting the licensee's disability/illness;

2. a description, in the licensee's own words of the disability/illness and the reason said disability/illness prevented the licensee from attending a classroom or completing a home study (correspondence) course;

E. The Department of Insurance anticipates and expects that licensees will maintain high standards of professionalism in selecting quality education programs to fulfill the continuing education requirements.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 20:1391 (December 1994), LR 27:

§709. Rule 10.6 Program Requirements

A. - D.2.a.iii ...

iv. Any other such subjects which may be related to the insurance industry. This may include but will not be limited to subjects such as securities and finance.

D.2.b. - E. ...

1. Any course used to prepare for taking an insurance or securities licensing examination.

E.2 - F.2. ...

a. Instructors must be qualified, both with respect to programs content and teaching methods. Instructors will be considered qualified if, through formal training or experience, they have obtained sufficient knowledge to instruct the course competently.

F.2.b. - G.4. ...

a. If a provider submits a course with materials published by a recognized publisher of insurance education materials, each and every student must be provided with a complete original text from that publisher as part of the registration fee for the approved continuing education course. This text shall be retained by the student and shall not be returned or resold to the provider. No substitute texts, outlines, summaries or copyright infringements will be allowed.

G.4.b. - M. ...

N. The Department of Insurance may accept the Midwest Zone Standard Continuing Education Filing Forms or any other uniform, standardized forms approved by the Department of Insurance and the necessary attachments as the forms required for approval of courses submitted by a nonresident continuing education provider, for courses previously awarded credit by the continuing education provider's home state. Courses that have not previously been awarded credit in the provider's home state must be approved pursuant to all other provisions of this Rule.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 20:1391 (December 1994), LR 27:

§715. Rule 10.9 Training Facility Requirements

A. - E. ...

F. Training aids, overhead viewing equipment availability and a proper visual layout of the classrooms should be addressee.

G ...

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), LR 27:

§719. Rule 10.11 Controls And Reporting

A. ...

B. Licensees must submit with the application for renewal of a license a signed continuing education statement, under oath, on a form prescribed by the department (Appendix 6 to this regulation), listing the courses that have been taken in compliance with this regulation copies of their certificate of completion (Appendix 5 to this regulation) for each of the courses completed.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), LR 27:

§731. Rule 10.17 Periodic Review

A. The Rule set forth herein shall be reviewed by the Insurance Education Advisory Council every three years to determine if modifications to the Rule are necessary.

B. In the event modification of this Rule is thought to be necessary, a notice of a meeting to consider the

modifications recommended by the Insurance Education Advisory Council shall be given in accordance with the provisions of R.S. 22:1354.C.

AUTHORITY NOTE: Promulgated in accordance with Act 428 of the 1989 Louisiana Regular Legislative Session; R.S. 22:1193; and the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of Licensing and Compliance, LR 16:855 (October 1990), amended LR 20:1391 (December 1994), LR 27:

Persons interested in obtaining copies of the Rule or in making comments relative to these proposals may do so at the public hearing or by writing to Barry E. Ward, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214. Comments will be accepted through the close of business at 4:30 p.m. January 26, 2001.

Family Impact Statement

1. Describe the effect of the proposed rule on the stability of the family. The proposed rule should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed rule on the authority and rights of parents regarding the education and supervision of their children. The proposed rule should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed rule on the functioning of the family. The proposed rule should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed rule on family earnings and budget. The proposed rule should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed rule on the behavior and personal responsibility of children. The proposed rule should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed rule on the ability of the family or a local government to perform the function as contained in the rule. The proposed rule should have no impact upon the ability of the family or a local government unit to perform the function as contained in the rule.

J. Robert Wooley
Acting Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Rule 10C Continuing Education

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is not anticipated that the amendments and re-enactment of Rule 10 would result in any implementation costs or savings to local or state governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed amendments and re-enactment of Rule 10 should have no effect on revenue collections of local or state governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments and re-enactment of Rule 10 should have no impact on competition and employment.

J. Robert Wooley
Acting Commissioner
0012#086

Robert E. Hossee
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

Crime Victims Services Bureau
(LAC 22:I.Chapter 23)

In accordance with the Administrative Procedures Act, R.S. 49:950, et seq., the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to promulgate new rules and regulations with regard to the operation of the Crime Victim Services Bureau.

In accordance with the Administrative Procedure Act, LSA-R.S. 49:953(A)(1)(a)(viii) and LSA-R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of this rule will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Part I. Corrections

Chapter 23. Crime Victims Services Bureau

§2301. Purpose

A. To establish the primary functions of the Crime Victims Services Bureau (Program Summary attached) and the Department's broad response to victims, witnesses, and others directly injured by the criminal acts of persons under the state's authority.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2303. Applicability

A. Deputy Secretary, Undersecretary, Assistant Secretaries, Director/Division of Probation and Parole, Director/Division of Youth Services, Board of Parole, Board of Pardons, and all Wardens.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2305. Definitions

Designated Family Member—a family member or legal guardian of a minor victim, a homicide victim, or a person who is disabled—such designation usually made by local authorities.

Inmate—in this context, anyone committed to the custody of the Department whether as an adult or a juvenile.

Victim—a person against whom a felony offense or a felony-grade delinquent offense has been committed.

Victim's Family—spouse, parent, child, stepchild, sibling, or legal representative of the victim, except when the person is in custody for an offense or is the defendant.

Victim Notice and Registration Form—a form promulgated by the Louisiana Commission on Law Enforcement (LCLE) and provided by a judicial or law enforcement agency, or a form available from the Department (attached), on which a person may indicate a request to be afforded the rights prescribed in law and/or policy for victims, witnesses, and other designated persons. In the context of this regulation, the term also includes letters requesting notification about an inmate's movement through the system and can include victim requests identified in presentence, preparole, or other investigative reports prepared by the Division of Probation and Parole.

Witness—a person who has relevant information about a crime that was committed and who, consequently, could be or has been called as a witness for the prosecution.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2309. Policy

A. The Crime Victims Services Bureau was created in the Office of the Secretary to facilitate access to information regarding victims' rights and responsibilities as participants in the criminal justice system. It is the Secretary's policy to ensure compliance with applicable laws concerning the rights of victims and witnesses, to facilitate access to information and appropriate assistance through the operations of the Crime Victims Services Bureau, and to encourage programming throughout the agency to enhance awareness of victim issues among staff and inmates.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2309. General Procedures

A. The Department will maintain a toll-free telephone line as part of the Crime Victims Services Bureau to facilitate access to registration and information. The bureau will help persons register for notification and will answer questions about the Department's policies and programs and related laws. Referrals will be made, as appropriate, to other units within the agency, the Board of Parole, the Board of Pardons, the prosecuting district attorney, and/or other crime victim programs and agencies. Notifications will be handled by the field units.

B. When a victim notice and registration form is received in any unit of the Department, staff will respond timely and in a manner consistent with the requirements of the Crime Victims Services Bureau and department regulations governing release of information and victims' and witnesses' rights. However, the filing of a victim notice and registration form by an incarcerated adult or a juvenile in secure care shall not enable that individual to receive information about another individual incarcerated or in secure care under the Department's authority.

C. As provided by law, a victim or a designated family member must use the victim notice and registration form promulgated by LCLE to indicate their wish to review and comment on information in the postsentence report relating

to the crime against the victim. The Division of Probation and Parole will oversee access to this information.

D. Additional assistance is available to employees who are victimized while on duty or on personal time, as described in Department Regulation A-02-024 "Critical Incident Stress Debriefing."

E. Persons receiving unsolicited communications by telephone or mail from inmates in state custody may contact the Crime Victims Services Bureau for assistance in having the contacts stopped. The bureau will work with the appropriate Warden to see that reasonable and necessary steps are taken to address the situation. This may involve disciplinary action, including loss of good time.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2311. Confidentiality

A. Both the information contained in a victim notice and registration form and the fact that a notification request has been made are confidential. Any questions from outside the Department about whether particular persons have requested notification or whether there has been a notification request for particular inmates should be referred to the Crime Victims Services Bureau.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2313. Restitution

A. When restitution is required as a condition of probation, parole, or work release, such cash or service shall be monitored and/or collected by the Division of Probation and Parole or the Division of Youth Services, as appropriate.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2315. Parole and Pardon Hearings and Related Matters

A. The Board of Parole and the Board of Pardons will comply with all laws regarding written notification prior to scheduled hearings, including the requirement that notice be given to persons who file a victim notice and registration form and to the appropriate district attorney. Notifications regarding pending hearings shall be made through action of the Division of Probation and Parole or directly, as appropriate.

B. When a hearing is scheduled by either board, the victim or victim's family shall be allowed to make written and oral statements concerning the impact of the crime and to rebut statements or evidence introduced by the inmate. The victim or victim's family, a representative of a victim advocacy group, and the district attorney or his representative may appear before the boards in person or by telephone from the district attorney's office.

C. As required by law, the Pardon Board will notify the Crime Victims Services Bureau before hearing an applicant.

D. Wherever Parole Board or Pardon Board hearings are held, all reasonable steps will be taken to see that victims and their family members and inmates and their family members do not have direct contact before or after the hearing. This practice should, where possible, begin at the

entrance to the hearing site and include provision of a separate waiting area and access to separate restroom facilities.

E. Hearing sites are encouraged to provide victim access to a staff person who can explain the hearing process and answer other questions.

Note: Parole Board and Pardon Board procedures provide detailed information about each board's policies and practices.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2317. Notifications Regarding Adult Inmates

A. When victim notice and registration form is received at an institution, it shall become part of the inmate's permanent record, and the Notes section of the stamp format shall be marked to indicate the existence of a notification request.

B. The Crime Victim Services Bureau will acknowledge receipt of each victim notice and registration form with a letter that includes the possible release dates of the inmate named on the form. If release dates have not been calculated at the time a form is received, the bureau will acknowledge the form, and the unit that calculates release dates will send them to the victim.

C.1. When the Department receives a victim notice and registration form for an inmate sentenced on or after August 15, 1997, the Department is required to provide the inmate's projected release dates to the victim and the sentencing court within 90 days from the inmate's commitment date.

2. If the dates are available when the bureau receives the form, the bureau will send the information to the victim and the sentencing court. Otherwise, staff who calculate release dates and maintain the inmate's file are responsible for providing the required information to the victim and the court.

3. If a mistaken calculation is discovered after projected release dates have been sent to a victim, corrected release dates should be sent by the unit that makes the correction. This provision does not include changes to an inmate's diminution of sentence date resulting from earning or losing good time credits. However, if educational good time is credited after letters have been sent to inform registered victims of an inmate's imminent release, a second letter should be sent to inform them of the new, closer release date. The second letter need not be certified.

D. In the event an inmate named on a victim notice and registration form makes a court appearance that subsequently affects sentence length or is approved for furlough, transferred to work release, or released from prison, persons who have filed a victim notice and registration form shall be notified by certified mail. Release from prison includes parole, diminution of sentence to parole supervision, diminution of sentence, full term, court ordered release (including release on appeal bond and release to another jurisdiction), and death while incarcerated.

1. Notice of transfer to work release should be mailed on the day of the inmate's transfer.

2. Notice of furlough and scheduled release from prison should be mailed prior to that event.

E.1. R.S. 15:574.4(B) requires the Department to notify the victim or the victim's family about the release of any inmate who is required to serve at least 85 percent of his

sentence for a crime of violence committed on or after January 1, 1997. (The victim does not have to make this request or provide an address.)

2. If there is not a registered victim or sufficient information in the file to locate the victim, the probation and parole district of the parish where the crime occurred will be contacted and asked to provide the name and address of the victim or of a family member, if the victim is a minor or deceased. The process of identifying victims should begin ninety days prior to the inmate's projected release on diminution of sentence as if on parole supervision whenever possible.

F. In the event that an inmate named on a victim notice and registration form escapes from institutional custody, the persons who filed the forms shall be notified immediately at the most current address or phone number on file by the most reasonable and expedient means possible. When the inmate is recaptured, written notice shall be sent within 48 hours of regaining custody. (Notifications required by Department Regulation No. C-02-001 "Reporting and Documenting Escapes" also apply.)

G Responsibility for notifications included in Subsections D.-F. above shall be as follows:

1. The Warden of the institution where the inmate is assigned.

2. The Warden of Elayn Hunt Correctional Center if the inmate is assigned to the State Police Barracks, a local detention facility (including their work release programs, a correctional institution in another jurisdiction, or a contract community rehabilitation center (CRC).

3. The Probation and Parole Director when an inmate is assigned to a non-contract bed in the Orleans Parish Prison work release program or in the Lafayette Community Corrections Center or City of Faith.

Exception: The Probation and Parole Director shall provide notice when any inmate is granted a furlough from Orleans Parish Prison Work Release, Rapides Parish Sheriff's Work Release, West Baton Rouge Parish Sheriff's Work Release, Lafayette Parish Sheriff's Work Release, St Tammany Parish Sheriff's Work Release, CINQ-Lake Charles, and City of Faity.

H. In the event that an inmate is recommended for a regular or a medical furlough, medical parole, or work release, the Warden shall determine whether there is a victim notice and registration form on file and shall so note when submitting a recommendation to the Secretary for review. The Warden should indicate the city or town of residence of any registered victim.

I. If an inmate named in a victim notice and registration form was sentenced for a sex offense, the provisions of Department Regulation No. B-08-009 "Sex Offender Notification and Registration Requirements" also apply.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2319. CAJUN II Procedures C Adult Inmates

A. Any addition of or modification to a victim record in CAJUN where a victim notice and registration form exists must be supported by written documentation filed with the Crime Victims Services Bureau and included in the inmate's institutional record or, if the inmate is under supervision when a new form or a revision is received, in the inmate's master record in the supervising district.

B. The unit or office that receives an initial victim notice and registration form or a revision shall be responsible for entering the victim information in CAJUN and for sending a copy of the form to the Crime Victims Services Bureau. Forms received first by the Crime Victims Services Bureau or directed there from the Parole Board will be entered by the bureau and copied to the appropriate units.

C. Any victim notice and registration form, promulgated by LCLE and received by the bureau, will also be copied by the bureau to the probation and parole district serving the court in which the inmate was sentenced.

D. If a person who has previously filed a victim notice and registration form withdraws his request, he must do so in writing, after which his individual victim record in CAJUN will be modified so that CAJUN will not generate notification letters.

E. When there is a victim notice and registration form on record, the following applies:

1. The request will remain active until expiration of sentence.

2. If an inmate is released before FTD and subsequently returned to institutional custody, the victim will not be notified of the return but will be notified of subsequent changes as provided in Section 11. of this regulation.

NOTE: A blank instead of a "Y" in the CVNR field means that a victim's name and contact information have not been entered in CAJUN.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2321. Rights of Victim's Family When an Inmate's Sentence is Death

A. At least ten days prior to an execution, the Secretary shall give written notice or verbal notice (followed by written notice placed in the United States mail within five days thereafter) of the time, date and place of the execution to the victim's parents or guardian, spouse, and any adult children who have indicated they desire notice. A minimum of two representatives of the victim's family shall have the right to be present.

B. A complete explanation of victims' rights and the Department's responsibilities in instances where an inmate has been sentenced to death appears in Department Regulation No.C-03-001 "Death Penalty."

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2323. Processing of Requests for Notification Regarding Juveniles

A. General

1. Victim notification laws apply only when a juvenile is in secure care.

2. A request for notice involving an inmate adjudicated as a juvenile must be filed using a victim notice and registration form promulgated by LCLE, in compliance with La. Ch. C. Art. 811.1 and La. R.S. 46:1842(8) and 1844(N)(2).

B. When the Crime Victims Services Bureau receives a victim notice and registration form regarding a juvenile, the bureau will retain a copy and forward the original to the Office of Youth Development(OYD). OYD will verify the offender information in the juvenile database tracking system (JIRMS), enter the victim request in JIRMS, and forward the request to the juvenile institution where the inmate is housed.

C. When an institution receives a victim request involving a juvenile, staff will file it in the inmate's case file and track the case according to regulation and policy.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

§2325. Notifications Concerning Juvenile Inmates in Secure Care

A. In the event of an escape, the assigned institution shall notify the registered victim immediately by the most reasonable and expedient means possible.

B. In the event of early release, either by successful appeal or discharge, the assigned institution shall notify the registered victim by certified mail.

C. The Warden of the institution where the inmate is assigned is responsible for required notifications.

AUTHORITY NOTE: Secretary of the Department of Public Safety and Corrections as contained in Chapter 9, Title 36.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 27:

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Post Office Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., January 20, 2001.

Program Summary

The Crime Victims Services Bureau (CVSB) is a public service of the Department of Public Safety and Corrections, Corrections Services. It was established to offer victims and their families a central place to contact through which they can register for victim notice, ask questions about the correctional system and particular inmates in the system, and learn more about their rights and responsibilities as participants in the criminal justice system.

The CVSB provides information about the following: notification options available to victims and witnesses after an inmate has been sentenced to state custody; participation in the parole and pardon processes; location, release dates, and other facts allowed by law regarding specific inmates. The Bureau answers questions about the Department's policies and programs and the laws that govern them and makes referrals to other agencies and crime victims programs as appropriate. The bureau will assist persons who wish to stop unsolicited communications from inmates.

Where not prohibited by law, the Department will respond to notification requests made by letter and telephone or submitted on its own or on other jurisdictions' victim notice forms.

Due to confidentiality laws protecting juvenile records, the Department will notify a victim directly when a juvenile offender named on a crime victim notice form is discharged from institutional custody. The Department does not, however, have the authority to provide direct notice of a juvenile offender's escape, reassignment, or furlough; therefore, the Department will notify the prosecuting district attorney instead. Victims (or their families) should notify the district attorney of their wish to be notified of these matters.

The following are examples of issues within the scope of the Crime Victims Services Bureau:

1. Notification about an adult inmate's successful court appeal, furlough, release from custody, escape and/or recapture.
2. Information about parole and pardon eligibility and hearing processes.
3. Inquiries about the Crime Victims Reparations Fund and restitution, required as a condition of probation, parole, or work release.
4. Diminution of sentence ("good time") issues and their affect on sentence length.
5. Sex offender reporting and related requirements.
6. Requests from persons who wish to halt unsolicited communications from inmates in state custody.

The bureau maintains a toll-free telephone number: 888-342-6110. Using that number or, in the Baton Rouge calling area, 342-1056, callers can speak with someone about their concerns or make an appointment to come to the agency. The office is open during regular business hours, and voice mail enables callers to leave messages at any time.

Victim/Witness Notification Request Form

As an individual affected by the criminal acts of another person, you have a right to participate in the criminal justice system. If the individual who committed the crime has been sentenced to state custody and you want information about his status or the Department's policies and programs or your rights and responsibilities, you may contact the Crime Victims Services Bureau.

If you would like to be notified in case (1) an adult inmate who committed the crime that involved you makes a successful court appeal, is furloughed, is released to the community, escapes, or is scheduled for a parole or pardon hearing or (2) a juvenile offender who committed the crime makes a successful court appeal or is discharged, paroled, or released, complete this form and mail it to the address below. (Please notify the Department of subsequent changes in address and telephone numbers.)

Crime Victims Services Bureau
P.O. Box 94304, Baton Rouge, LA 70804-9304
Telephone Numbers: in Baton Rouge area - 342-1056; long distance, toll-free – 888-342-6110
Your request will be kept confidential.

Name of person requesting notification: _____
Address: _____ Telephone Nos. (____) _____
(____)

You are (check one): _____ Direct victim of offense _____ Witness to offense _____ Parent/Guardian of victim
_____ Other (explain): _____ Relationship to inmate (if any): _____

Was the person who committed the crime sentenced as an adult or a juvenile? _____

If a juvenile, signature of District Attorney's representative: _____

Inmate name: _____ Inmate /DOC # _____

Inmate DOB: _____ Offense** _____

Length of Sentence/Commitment: _____ Sentencing Date: _____

Parish of Conviction /Judicial District/and Court Docket No.: _____

** If the offense was a sex offense, was the victim under age 18 at the time the crime was committed?

_____ No. _____ Yes. If Yes, give victim's DOB (/ /) & age at the time of the crime: _____

Are you or any of your family members employed by the Department of Public Safety and Corrections at a state prison?

If yes, please indicate which facility: _____

----- (for agency use) -----

Date request received in DPS&C: _____ By whom? _____

Richard L. Stalder
Secretary

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

**Disciplinary Rules and Procedures for
Adult Inmates (LAC 22:I.341-365)**

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Crime Victims Services Bureau**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
the Crime Victims Services Bureau (CVSB) has been operational within the Department of Public Safety and Corrections since 1993. Publication of this rule will not affect current operations, affect staffing or have any additional costs over what is currently budgeted for operation.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no additional costs or economic benefits directly affecting persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated impact on competition and employment.

Robert B. Barbor
Executive Counsel
0012#092

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., and in order to comply with the Louisiana Supreme Court Ruling in *Tony Giles v. Cain*, 1999-2328 (La. 6/2/00), 762 So.2d 1116, rehearing denied 1999-2328 (La. 8/31/00), 766 So.2d 1269, the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to repeal in their entirety LAC 22:I.341-365 and to promulgate new rules and regulations, all relative to the manual of Disciplinary Rules and Procedures of Adult Inmates.

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit oral or written comments to Richard L. Stalder, Secretary, Department of Public Safety and Corrections, Post Office Box 94304, Capitol Station, Baton Rouge, Louisiana 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., January 18, 2001.

In accordance with the Administrative Procedures Act, LSA-R.S. 49:953(A)(1)(a)(viii) and LSA-R.S. 49:972, the Department of Public Safety & Corrections, Corrections Services, hereby provides the Family Impact Statement.

Adoption of these disciplinary rules and procedures for adult inmates will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal responsibility of children or on the ability of the family or a local government to perform the function as contained in the proposed rule amendment.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Disciplinary Rules and Procedures for
Adult Inmates**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no estimated costs associated with implementation of the revised Disciplinary Rules and Procedures for Adult Inmates. The primary purpose for the revisions is to clarify what are prohibited activities and put the inmate population on notice thereof. It is not anticipated that these revisions will significantly increase or decrease the level of disciplinary proceedings in the institutions so as to affect operational costs.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There will be no effect on revenue collections of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There are no additional costs or economic benefits directly affecting persons or nongovernmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no anticipated impact on competition and employment.

Robert B. Barbor
Executive Counsel
0012#091

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

Expiration of Permit
(LAC 55:IX.121)

In accordance with the provisions of R. S. 49:950 et seq., the Administrative Procedure Act, and R. S. 40:1846 relative to the authority of the Liquefied Petroleum Gas Commission to make and enforce reasonable rules and regulations governing the storage, sale, and transportation of liquefied petroleum gases, notice is hereby given that the Commission proposes to amend its rules. The proposed rule changes have no known impact on family formation, stability, and autonomy as described in R. S. 49:972.

The proposed rule changes will do four things:

1. will establish a time on the expiration of a permit or registration;
2. will establish an administrative penalty of 5 percent per month or fraction thereof up to a maximum of 25 percent, on a permit or registration fee for which a permit or registration was not renewed prior to its expiration;
3. will establish an administrative interest charge of 1 percent per month or fraction thereof, on the permit or registration fee for which a permit or registration was not renewed prior to its expiration;
4. will provide for a civil violation of the Revised Statutes and the Liquefied Petroleum Gas Commission rules and regulations after the expiration of a permit or registration renewal date by five days.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

Chapter 1. General Requirements

Subchapter B. Dealers

§121. Expiration of Permit

A. All permits or registrations shall expire at midnight on the date of their expiration.

B. All permits or registrations renewed after their expiration date shall have an administrative penalty of 5 percent of the permit or registration fee due added for each month or fraction thereof, not to exceed 25 percent of the amount of the permit or registration fee due.

C. All permits or registrations renewed after their expiration date shall have administrative interest of 1 percent of the permit or registration fee due added for each month or fraction thereof to the amount of the permit or registration fee due.

D. After the expiration of a permit or registration fee renewal date, by five days, any dealer continuing in operation without the payment of the fee, any administrative penalty, and any administrative interest due, shall be considered as operating in violation of R.S. 40:1841-1853 of the Revised Statutes and the rules and regulations of the Liquefied Petroleum Gas Commission. The commission may assess a civil penalty as provided in R.S. 40:1846.1.E or invoke any applicable provision of LAC 55:IX.117.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1846

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Liquefied Petroleum Gas Commission, November 1972, amended December 1974, amended by the Department of Public Safety and Corrections, Liquefied Petroleum Gas Commission, LR 16:1063 (December 1990), LR 24:464 (March 1998), amended LR 26:

The commission will hold a public hearing January 25, 2001, 1723 Dallas Drive, Baton Rouge, LA, at 8:30 a.m. in regard to these changes.

Written comments will be accepted through January 15, 2001 and should be sent to Charles M. Fuller at P.O. Box 66209, Baton Rouge, LA 70896. All interested persons will be afforded an opportunity to be heard at the public hearing. A preamble has not been prepared for the intended actions.

Charles M. Fuller
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Expiration of Permit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation cost to the Department of Public Safety IN FY 00-01. There will be no implementation cost to any local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No significant increase or decrease in revenues to the Liquefied Petroleum Gas Commission is anticipated in FY00-01 not for each future year as a result of the proposed action. However, there could be an increase in revenues to the state governmental unit associated with the proposed rule changes. This possible increase in revenues cannot be calculated because there is no method to determine the amounts of the permits or registrations that would be subject to the proposed changes. It is anticipated that if there were increases, any increase would be minimal. there will be no increase or decrease in revenues to any local governmental unit.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No significant increase or decrease in costs or benefits to the affected persons or groups in FY00-01 or future FYs is anticipated. There will be no costs or economic benefit to any other group, person, or non-governmental unit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact or effect on competition and employment because of the proposed actions.

Charles M. Fuller
Director
0012#063

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Liquefied Petroleum Gas Commission**

**Requirements, Classes of Permits, Expiration of Permit
(LAC 55:IX.1501, 1513 and 1519)**

In accordance with the provisions of R. S. 49:950 et seq., the Administrative Procedure Act, and R. S. 3:1354 relative to the authority of the Liquefied Petroleum Gas Commission to promulgate rules and regulations governing the storage, utilization, sale or transportation of anhydrous ammonia, the fabrication and installation of systems for the storage and utilization of anhydrous ammonia, and installation of all other anhydrous ammonia equipment, notice is hereby given that the Commission proposes to amend its rules. The proposed rule changes have no known impact on family formation, stability, and autonomy as described in R. S. 49:972.

The proposed rule changes will do seven things:

1. will make a technical change in the current rules by adding an (X) after Class A-3 in ' 1507.H;
2. will make a technical change in the current rules by deleting reference to one-half of one percent of the gross annual sales of anhydrous ammonia;

3. will establish a time on the expiration of a permit or registration;

4. will establish an administrative penalty of 5 percent per month or fraction thereof up to a maximum of 25 percent, on a permit or registration fee for which a permit or registration was not renewed prior to its expiration;

5. will establish an administrative interest charge of 1 percent per month or fraction thereof, on the permit or registration fee for which a permit or registration was not renewed prior to its expiration;

6. will provide for a civil violation of the Revised Statutes and the Liquefied Petroleum Gas Commission rules and regulations after the expiration of a permit or registration renewal date by five days;

7. will delete the words "or should know" from ' 1531.

Title 55

PUBLIC SAFETY

Part IX. Liquefied Petroleum Gas

**Chapter 15. Sale, Storage, Transportation and
Handling of Anhydrous Ammonia**

Subchapter A. New Dealers

§1501. Requirements

H. All service and installation personnel, anhydrous ammonia transfer personnel and tank truck drivers must have a card of competency from the office of the director. All permit holders, except Class A-3X permit holders, must have at least one card of competency issued to their permit. A card of competency will be issued to an applicant upon receipt of a \$20 examination fee and successfully passing the competency test, providing the applicant holds some form of identification acceptable to the commission. The commission may accept as its own a reciprocal states examination which contains substantially equivalent requirements. This must be evidenced by a letter from the issuing authority or a copy of a valid card issued by the reciprocal state. All applicable fees must be paid prior to issuing the card.

H. - L. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department Public Safety, Liquefied Petroleum Gas Commission, LR 19:898 (July 1993), LR 25:2413 (December 1999), amended LR 27:

§1513. Classes of Permits

A. - A.1.c.vi. ...

d. Must pay permit for first years operation in the amount of \$300 to the Liquefied Petroleum Gas Commission of the state of Louisiana. For succeeding years the permit fee shall be \$300.

A.1.e. - 6.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department Public Safety, Liquefied Petroleum Gas Commission, LR 19:899 (July 1993), LR 25:2413 (December 1999), amended LR 27:

Subchapter B Dealers

§1519. Expiration of Permit

A. All permits or registrations shall expire at midnight on the date of their expiration.

B. All permits or registrations renewed after their expiration date shall have an administrative penalty of 5 percent of the permit or registration fee due added for each month or fraction thereof, not to exceed 25 percent of the amount of the permit or registration fee due.

C. All permits or registrations renewed after their expiration date shall have administrative interest of 1 percent of the permit or registration fee due added for each month or fraction thereof to the amount of the permit or registration fee due.

D. After the expiration of a permit or registration fee renewal date, by five days, any dealer continuing in operation without the payment of the fee, any administrative penalty, and any administrative interest due, shall be considered as operating in violation of R.S. 3:1356(A) of the Revised Statutes and the rules and regulations of the Liquefied Petroleum Gas Commission. The commission may assess a civil penalty as provided in R.S. 3:1357 or may suspend, cancel or revoke said permit or registration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354.

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department Public Safety, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 26:

§1531. Improper Installation

A. A dealer shall not serve any anhydrous ammonia system which the dealer knows is not installed pursuant to the Liquefied Petroleum Gas Commission regulations or is in a dangerous condition. All new installations or reinstallations must be checked by the dealer for tightness of lines, poor workmanship, use of unapproved pipe or equipment or use of poor piping design. All improper installations shall be corrected before the dealer services such installation or reinstallation with anhydrous ammonia for the first time. Any subsequent servicing dealer shall not be responsible for unauthorized changes in or failures of an existing system or connected equipment.

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1354

HISTORICAL NOTE: Adopted by the Department of Agriculture, Anhydrous Ammonia Commission (January 1967), amended by the Department Public Safety, Liquefied Petroleum Gas Commission, LR 19:902 (July 1993), amended LR 27:

The commission will hold a public hearing January 25, 2001, 1723 Dallas Drive, Baton Rouge, LA, at 8:30 a.m. in regard to these changes.

Written comments will be accepted through January 15, 2001 and should be sent to Charles M. Fuller at P.O. Box 66209, Baton Rouge, LA 70896. All interested persons will be afforded an opportunity to be heard at the public hearing. A preamble has not been prepared for the intended actions.

Charles M. Fuller
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Requirements, Classes of Permits, Expiration of Permit

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs to the Department of Public Safety in FY 00-01. There will no implementation costs to any local governmental unit.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No significant increase or decrease in revenues to the Liquefied Petroleum Gas Commission is anticipated in FY 00-01 nor for each future year as a result of the proposed action. However, there could be an increase in revenues to the state governmental unit associated with the proposed rule changes. This possible increase in revenues cannot be calculated because there is no method to determine the amounts of the permits or registrations that would be subject to the proposed changes. It is anticipated that if there were increases, any increase would be minimal. There will be no increase or decrease in revenues to any local governmental unit.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No significant increase or decrease in costs or benefits or the affected persons or groups in FY 00-01 or future FYs is anticipated. There will be no costs or economic benefit to any other group, person, or non-governmental unit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no impact or effect on competition and employment because of the proposed actions.

Charles M. Fuller
Director
0012#064

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Office of State Police

Weights and Standard's Mobile Police Force
(LAC 55:I.Chapter 23)

The Department of Public Safety and Corrections, Office of State Police, in accordance with R.S. 49:950 et seq. and R.S. 32:384(E) gives notice of its intent to enact LAC 55, Part I Chapter 23, §2323, the rule creating the approval process by State Police of a safety device to be used in lieu of safety chains.

The full text of these proposed rules may be viewed in the Emergency Rule section of this issue of the *Louisiana Register*.

Interested persons may submit written comments to Paul Schexnayder, Post Office Box 66614, Baton Rouge, Louisiana 70896. Written comments will be accepted through January 15, 2001.

Family Impact Statement For Administrative Rules

The effect of these rules on the stability of the family.

These rules will have no effect on the stability of the family.

The effect of these rules on the authority and rights of parents regarding the education and supervision of their children.

These rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

The effect of these rules on the functioning of the family.

These rules will have no effect on the functioning of the family.

The effect of these rules on family earnings and family budget.

These rules will have no effect on family earnings and family budget.

The effect of these rules on the behavior and personal responsibility of children.

These rules will have no effect on the behavior and personal responsibility of children.

The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed rules.

These rules will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Jerry Jones
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Weights and Standard's Mobile Police Force

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There should be no additional costs nor savings regarding the adoption of these rules as very similar rules were previously administered by the Department of Transportation. The last section of the rules is being submitted by the Department because of the mandate in R.S. 40:1321.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no effect on revenue or costs as the Department was previously enforcing similar Department of Transportation rules.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no costs or economic benefits to an person or group.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition or employment.

Jill P. Boudreaux
Deputy Undersecretary
0012#061

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Tax Commission**

Ad Valorem Taxation
(LAC 61:V.309, 703, 907, 1103,
1307, 1503, 2503, 2705 and 2707)

In accordance with provisions of the Administrative Procedure Act (R.S. 49:950, et seq.), and in compliance with statutory law administered by this agency as set forth in R.S. 47:1837, notice is hereby given that the Tax Commission intends to adopt, amend and/or repeal sections of the Louisiana Tax Commission Real/Personal Property Rules and Regulations for use in the 2001 (2002 Orleans Parish) tax year.

The full text of these proposed rules may be viewed in the Emergency Rule Section of this issue of the Louisiana Register.

Interested persons may submit written comments on the proposed rules until 4 p.m., January 4, 2001, to E.W. "Ed" Leffel, Property Tax Specialist, Louisiana Tax Commission, Box 66788, Baton Rouge, LA 70896.

Malcolm B. Price, Jr.
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Ad Valorem Taxation

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Implementation costs to the agency are the costs of preparation, reproduction and distribution of updated regulations and complete manuals. These costs are estimated to be \$7,500 for the 2000-2001 fiscal year and are being reimbursed through an existing user service fee of \$15 per update set.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

These revisions will generally increase 2001 certain personnel property assessments for property of similar age and condition in comparison with equivalent assessments in 2000. Composite multiplier tables for assessment of most personal property will decrease by 1.1%. Specific valuation tables for assessment of oil and gas wells will generally increase by an estimated 11.4%, drilling rigs by an estimated 23.5% and pipelines by 10%. The net effect of these revisions is estimated to increase assessments by 0.5% and tax collections by \$2,067,000 on the basis of existing statewide average millage. However, these revisions will not necessarily effect revenue collections of local government units as any net increase or decrease in assessed valuations are authorized to be offset by millage adjustment provisions of Article VII, Section 23 of the state Constitution.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Under authority granted by R.S. 47:1838, the Tax Commission will receive state revenue collections generated by assessment service fees estimated to be \$319,000 from public service companies, and \$97,000 from financial institutions and insurance companies all of which are assessed by the Tax Commission.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The affects of these new rules on assessments of individual items of equivalent personal property will generally be higher in 2001 than in 2000. Specific assessments will depend on the age and condition of the property subject to assessment.

The estimated costs that will be paid by affected persons as a result of the assessment and user service fees as itemized above total \$416,000 to be paid by public service property owners, financial institutions and insurance companies for 2000/2001.

James D. Peters
Administrator
0012#033

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Family Independence Temporary Assistance (FITAP) and Kinship Care Subsidy (KCSP) Programs CRecovery in Administrative Error (LAC 67:III.1503, 1505 and 5383)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP) and Subpart 13, the Kinship Care Subsidy Program (KCSP).

Pursuant to the authority granted to the Department by the Louisiana Temporary Assistance to Needy Families Block Grant, the agency proposes that it shall no longer recover FITAP or KCSP grant amounts which are overpaid as a result of administrative error. Implementation of this change will relieve the financial strain on affected families as the Agency will not seek repayment of benefits erroneously paid as a result of agency error and through no error or fault of the recipients. With the action amending §1503, §1505 is no longer applicable and will be repealed.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 15. General Program Administration

Subchapter B. Recovery

§1503. Recovery of Overpayments

A. All FITAP overpayments shall be subject to collection either by recoupment or recovery with the exception of:

1. inadvertent household error claims of \$250.00 or less; and
2. administrative error claims.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:1030 (December 1984), amended by the Department of Social Services, Office of Family Support, LR 24:353 (February 1998), LR 27:

§1505. Adjustments for Incorrect Payments

Repealed

AUTHORITY NOTE: Promulgated in accordance with P.L. 97-35, P.L. 100-485 (Section 402) and 45 CFR 205-206, 233-234.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 8:8 (January 1982), repealed by the Department of Social Services, Office of Family Support, LR 27:

**Subpart 13. Kinship Care Subsidy Program (KCSP)
Chapter 53. Application, Eligibility, and Furnishing Assistance**

Subchapter C. Recovery

§5383. Recovery of Overpayments

A. All KCSP overpayments shall be subject to collection either by recoupment or recovery with the exception of:

1. inadvertent household error claims of \$250.00 or less; and
2. administrative error claims.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

Interested persons may submit written comments by January 25, 2001, to the following: Vera W. Blakes, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, Louisiana, 70804-9065. She is the person responsible for responding to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on January 25, 2001, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code (225) 342-4120 (Voice and TDD).

Family Impact Statement

1. What effect will this rule have on the stability of the family? This change could have a positive impact on the stability of eligible families because it will relieve the financial strain which may have been caused by the requirement to repay these grants.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? There will be no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? The functioning of the family could be positively impacted due to a reduction in the financial strain created by the recovery action.

4. What effect will this have on family earnings and family budget? This will favorably impact the family budget.

5. What effect will this have on the behavior and personal responsibility of children? The rule has no impact on a child's behavior and personal responsibility.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, these programs are the sole function of the agency.

J. Renea Austin-Duffin
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Family Independence Temporary
Assistance (FITAP) and Kinship Care Subsidy (KCSP)
Programs C Recovery in Administrative Error**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

The estimated implementation cost to state government is the cost of publishing the rule and printing revisions to policy. This cost is minimal and funds for such actions are included in the program's annual budget. There are no costs or savings to local governmental units.

Family Independence Temporary Assistance Program (FITAP) and Kinship Care Subsidy Program (KCSP) benefits are paid with funds from the federal Temporary Assistance for Need Families (TANF) Block Grant. The agency is not required to recover these payments, and the elimination of the recovery requirement on administrative error cases does not reduce the amount of Louisiana's block grant.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The repayment of administrative error claims is voluntary. In the 12-month period prior to October 2000, the agency recovered only \$12,000 from overpayments due to administrative error. As a result of this rule, these amounts will represent lost revenue: \$2,000 in FY 00/01 and \$12,000 per subsequent year.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

Affected families will benefit from the proposed action. Those who have been overpaid either remain eligible for assistance, and therefore have limited income, or are attempting to make the transition from dependency on welfare to self-sufficiency. In an attempt to relieve further financial strain on these families, the agency will not seek repayment of benefits which were paid to them as a result of agency error and through no fault of that family.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There will be no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
0012#071

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Food Stamps Certification of Eligible Households
(LAC 67:III.2005 and 2007)

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps.

Pursuant to changes in 7 CFR Parts 272 and 273, Department of Agriculture, Food and Nutrition Service, the agency will collect claims for trafficking, in addition to other types of overissuances. The agency also proposes to increase the amount of the household's monthly allotment reduction from \$10 to \$20 for intentional program violation. Revisions at §2009.A.4. reflect that the various programs under the Department of the Treasury which served as a means to

collection are now administered under the "Treasury Offset Program."

The agency has also taken this opportunity to reorganize regulations on the recovery of overissued food stamp benefits into one, more coherent subchapter: current language at §2005 was divided and moved to proposed §2007 and §2009 with all three sections under Subchapter P, current Subchapter R. becomes "reserved," and the regulation at current §2009 was moved to proposed §2005 which now include claims threshold information.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

**Subchapter P. Claims and Recovery of Overissued Food
Stamp Benefits**

§2005. Claims Against Households

A. All adult household members are jointly and severally liable for the value of any overissuance of benefits to the household. This is true regardless of whether the overissuance resulted from inadvertent error, an administrative error or an intentional program violation.

B. Action will not be taken to recover claims which are less than:

1. \$35 for inadvertent household error for participating households;
2. \$100 for administrative error for participating households; and
3. \$250 for non-participating households.

These thresholds do not apply to claims which are determined to be the result of intentional program violation or errors which are discovered in a quality control review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.B., 7 CFR 273.18.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:323 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 18:1133 (October 1992), LR 20:391 (April 1994), LR 20:780 (July 1994), LR 20:899 (August 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:189 (February 1995), LR 22:584 (July 1996), LR 23:83 (January 1997), LR 23:1710 (December 1997), LR 25:2326 (December 1998), LR 27:

§2007. Penalties

A. The Food Stamp Program shall maintain provisions relating to the disqualification penalties for intentional program violations. These provisions are aimed at deterring Food Stamp Program abuse and improving recovery of overpayments.

B. The basis for disqualification includes the intentional making of false or misleading statements, misrepresentations, or the concealment or withholding of facts, as well as the commission of any act that constitutes a violation of any state food stamp statute, and the use of food stamps in certain illegal purchases. The program will not increase the benefits to the household of a disqualified person because of the disqualification.

1. Mandatory disqualification periods of one year for the first offense, two years for the second offense, and permanently for the third offense will be imposed against any individual found to have committed an intentional program violation, regardless of whether the determination was arrived at administratively or through a court of law.

2. Individuals will be disqualified for two years for a first finding by a court that the individual used or received food stamps in a transaction involving the sale of a controlled substance, and permanently for a second such finding. Permanent disqualification will also result for the first finding by a court that an individual used or received food stamps in a transaction involving the sale of firearms, ammunition or explosives with food stamps.

3. An individual convicted of trafficking food stamp benefits of \$500 or more shall be permanently disqualified.

4. An individual shall be ineligible to participate for ten years if found to have made a fraudulent statement or representation with respect to identity or residence in order to receive multiple benefits simultaneously.

C. A loss of benefits penalty shall be imposed on those food stamp recipients who fail to report earned income in a timely manner. When determining the amount of benefits the household should have received, the Office of Family Support shall not apply the 20 percent earned income deduction to the income of the household which did not timely report. By doing this, the household that benefitted from the failure to timely report is penalized since the amount it has to repay in overissuance will be increased. This provision shall be applied to allotments issued for October 1996 and all allotments issued for subsequent months.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272, 273, 276 and 277, P.L.103-66, P.L. 104-193, P.L. 104-134, 7 CFR 3 Subpart B, and FR 65:41752 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 3:738 (December 1987), LR 14:150 (March 1988), amended by the Department of Social Services, Office of Family Support, LR 23:84 (January 1997), LR 27:

§2009. Collection Methods

A. The agency is required to collect any overissuance as well as claims for trafficking. Collection of overissued benefits may be accomplished using various methods including, but not limited to, the following methods:

1. reducing future allotments unless a repayment schedule has been established. The amount by which the agency can reduce the household's monthly allotment in the collection of overissuances which are the result of intentional program violation is limited to 20 percent of the household's entitlement or \$20 per month, whichever is greater, and 10 percent of the allotment or \$10, whichever is greater, for all other overissuances;

2. return of benefits;
3. cash repayment;

4. referral of delinquent food stamp claims to the Department of the Treasury for collection through the Treasury Offset Program. The Treasury Offset Program is the withholding of federal income tax returns, federal salaries or other funds payable by the federal government which may include, but not be limited to, federal retirement payments, military retirement, contractor/vendor payments, Railroad Retirement and Social Security payments. The Financial Management Service of the Treasury Department will charge an administrative fee for all collection services, and this fee will be added to the claim and deducted with any federal offset; or

5. withholding of unemployment compensation benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272, 273, 276 and 277, P.L.103-66, P.L. 104-193, P.L. 104-134, 7 CFR 3 Subpart B, and FR 65:41752 et seq..

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:768 (November 1986), amended by the Department of Social Services, Office of Family Support, LR 27:

Subchapter Q. Reserved

Subchapter R. Reserved

Interested persons may submit written comments on the proposed rule by January 25, 2001, to the following person: Vera W. Blakes, Assistant Secretary, Office of Family Support, Post Office Box 94065, Baton Rouge, LA 70804-9065.

A public hearing on the proposed rule will be held on January 25, 2001, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call Area Code 225-342-4120 (Voice and TDD).

Family Impact Statement

1. What effect will this rule have on the stability of the family? This rule should have no effect on family stability.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule should have no effect on the functioning of the family.

4. What effect will this have on family earnings and family budget? This rule would decrease the monthly food stamp allotment of a family/household found to have intentionally violated Food Stamp Program requirements.

5. What effect will this have on the behavior and personal responsibility of children? This rule should have no effect on the behavior and personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed rule? No, the Food Stamp Program is strictly a state/federal function.

J. Renea Austin-Duffin
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Food Stamps C Certification of Eligible Households

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated implementation cost to state government is the cost of publishing the rule and printing revisions to policy. This cost is minimal and funds for such actions are included in the programs' annual budget. There are no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The impact on revenue resulting from the \$10 to \$20 increased allotment reduction cannot be projected. Trafficking claims are new and since no data is available, collections also cannot be projected.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be an impact on a small number of Food Stamp recipients who were overissued benefits as a result of intentional program violation. The recipient's monthly allotment can be reduced by 20 per cent of the household's entitlement or \$20, whichever is greater. The agency cannot anticipate these cases, but currently affected households represent a very small number. (In most instances, the 20 per cent figure is used and this did not change.)

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
0012#070

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

**Wrap-Around Child Care Program
(LAC 67:III.Chapter 52)**

The Department of Social Services, Office of Family Support, proposes to amend the Louisiana Administrative Code, Title 67, Part III, to add the Wrap-Around Child Care Program.

The purpose of this program is to provide very low income, working families with quality, full-day/full-year child care services. The need for full-time and part-time child care services for children of very low income, working parents is increasing. The agency's Child Care Assistance Program has reached its capacity and is unable to meet this growing area of need. In order to assure the care level of a major population of these children, the Office of Family Support, through certain contracted, Head Start Program grantees, has established the Wrap-Around Child Care Program which is funded through Louisiana's Temporary Assistance for Needy Families Block Grant. A second Emergency Rule has extended the original Emergency Rule which established the program effective June 1, 2000.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 12. Child Care Assistance

Chapter 52. Wrap-Around Child Care Program

§5201. Authority

A. The Wrap-Around Child Care Program is established effective June 1, 2000 and is administered under the authority of state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5202. Definitions

Head of Household The individual who may apply for Wrap-Around Child Care services for a child who customarily resides more than half the time with him/her, that is, the child's parent or the adult with primary responsibility for the child's care and financial support if the child's parent is not living in the home or is living in the home but under age 18 and not emancipated by law.

Household A group of individuals who live together consisting of the head of household, the spouse of the head of household, and all children under the age of 18, including the minor unmarried parent of any dependent children who need child care services (unless the minor unmarried parent has been emancipated by law).

Training and Employment Mandatory Participant Each household member who is required to be employed, or in a combination of employment and attendance at a job training or educational program, including the head of household, spouse of head of household, and the minor unmarried parent of a child who needs Wrap-Around Child Care services.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5203. Conditions of Eligibility

A. A household must meet all of the following eligibility criteria:

1. all children receiving services must reside with a parent or adult head of household;

2. any child receiving Wrap-Around Child Care Program services must not be receiving assistance from the Family Independence Temporary Assistance Program (FITAP) or the Child Care Assistance Program (CCAP) to ensure that Wrap-Around services are not considered assistance according to 45 CFR 260.31 and that there will be no duplication of services;

3. the head of household, that person's spouse, or non-legal spouse (if the parent of a child in the household), including any minor unmarried parent who is not legally emancipated and whose child(ren) are in need of Wrap-Around Child Care services, must be;

a. employed a minimum average of 20 hours per week and all countable work hours must be paid at least at the federal minimum hourly wage; or

b. engaged in a combination of employment, which is paid at least at the federal minimum hourly wage, and job training or an educational program, for a combined average of at least 20 hours per week;

4. each parent and/or adult household member must be working, or engaged in a combination of working and attending a job training or educational program, during the hours that child care is needed, that is, child care will only be provided during hours that parents and/or adult household members are actually at work, job training, an educational program, or commuting to, or from, these activities;

5. the household must include at least one child with a need for Wrap-Around Child Care services defined as full-day/full-year child care, that is, full-time (30 or more hours per week) or part-time (less than 30 hours per week) and holiday care provided in conjunction with part-time care during the school year, who is:

- a. under age 13; or
- b. age 13 through age 17, with a physical, mental, or emotional disability rendering him incapable of caring for himself, as verified by a physician or licensed psychologist;

6. the child needing care must customarily reside more than half of the time with the head of household who is applying for child care services, ensuring that only one household can receive child care service for that child;

7. the head of household or another adult household member must be responsible for the payment of child care costs for a child who lives in the household. A need for child care services does not exist if child care costs will be paid by a third party who is not a household member. However, this will not apply if a third party, not legally obligated to make child care payments, is temporarily doing so until payments begin; and

8. there must be a current need for child care at the time of application.

B. The household must qualify under the income guidelines set forth in §5205, based on the following income sources:

- 1. gross earnings from all sources of employment and the profit from self-employment; and
- 2. any unearned income, such as child support, alimony, retirement and disability benefits, Social Security, SSI, unemployment compensation benefits, adoption subsidy, or veteran's benefits, that is received by any household member.

C. A slot must be available with the selected Head Start grantee.

D. The child in need of care must be either a citizen or a qualified alien. Program policy on qualified aliens is the same as policy defined in LA C 67:III.1223.

E. The household must provide the information and verification necessary for determining eligibility and payment amount. Required verification includes:

- 1. proof of social security numbers for all household members;
- 2. birth or baptismal certificates for all children in need of care;
- 3. proof of all countable household income;
- 4. proof of the hours of all employment; and
- 5. proof of hours at a job training or educational program, as well as anticipated date of program completion.

F. Eligible cases may be assigned a certification period of up to 12 months.

G. The household is required to report any changes that could affect eligibility or payment amount within 10 days of the change. Failure to report a change that affects eligibility or payment amount may result in action to recover any ineligible payment.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5205. Income Limits

A. A household must have total countable income of no greater than 130 percent of the Federal poverty level. These amounts are updated annually.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5207. Rights and Responsibilities

A. The head of the household applying for, or receiving, Wrap-Around Child Care services shall have certain rights and responsibilities.

1. Information provided by the household will not be released without written consent, except to agencies and officials as allowed by law (LAC 67:III.101-103).

2. The household is entitled to receive timely, written notification of action taken on applications or reported changes in household circumstances.

3. The head of household is responsible for reporting the following within 10 days of the change:

- a. termination of employment or attendance at a job training or educational program;
- b. reduction to less than an average of 20 hours per week of employment or a combination of employment and job training or educational program;
- c. an eligible child moves out of the home;
- d. household composition;
- e. earned and unearned income; and
- f. number of days or hours that a child is in care.

4. Any applicant or recipient who has been denied services under the program may appeal the denial by filing a written request within 10 days of receipt of the written notice of denial. The request must contain a copy of the notice of denial and must state the reason(s) the applicant believes services were wrongfully denied. Notice of denial is deemed received on the seventh calendar day after it is mailed to the applicant or recipient with correct postage paid at the address listed on his most recent application.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5209. Head Start Grantees

A. The agency will provide services to eligible individuals through contracts with some Head Start Program grantees for a designated number of slots. Available slots will be filled on a first-come, first-served basis.

B. The contracted Head Start grantee will establish a child care program that consists of full-day/full-year child care, that is, full-time (30 or more hours per week) or part-time (less than 30 hours per week) and holiday care provided in conjunction with part-time care during the school year.

C. The center shall maintain the following child/staff ratios:

- 1. 4:1 up to age 12 months;
- 2. 6:1 from age 12 months to age 24 months;
- 3. 8:1 from age 24 months to age 36 months;
- 4. 10:1 from age 36 months to age 60 months;
- 5. 16:1 from age 5 years to age 12 years;
- 6. children with disabilities will have a child/staff

ratio sufficient to provide adequate care but under no circumstances shall the child/staff ratio exceed 16:1.

D. Each group/class shall consist of two staff members for the appropriate number of children. In mixed-age groups, the ratio and group size for the youngest child shall be used.

E. Each group/class shall be supervised by one teacher and one aide, or by two teachers. All teachers at each facility must have at least a CDA (Child Development Associate credential) for the appropriate age of children.

F. The grantee shall ensure that procedures are in place to prevent, identify, and report suspected abuse or neglect of children as required by Children's Code Articles 601-610 and 45 CFR 1301.31.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

§5211. Payment

A. The Head Start grantee will be paid a weekly rate of \$85 per week (\$17 per day) per child for full-day, full-time child care.

B. The Head Start grantee will be paid \$2.12 per hour per child for part-time care.

C. The Head Start grantee will be paid \$2.12 per hour for up to a maximum of eight hours per child (\$17 per day) for allowable holiday care provided in conjunction with part-time care during the school year.

D. Payment will not be made for a child who is absent from day care more than five days in a calendar month or for an extended closure by a provider of more than five consecutive days in a calendar month.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:

Interested persons may submit written comments by January 25, 2001, to: Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA, 70804-9065. She is the responding authority to inquiries regarding this proposed Rule.

A public hearing on the proposed Rule will be held on January 25, 2001, at the Department of Social Services, A.Z. Young Building, Second Floor Auditorium, 755 Third Street, Baton Rouge, Louisiana at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (Voice and TDD).

Family Impact Statement

1. What effect will this rule have on the stability of the family? This rule will have a positive effect on families, as child care services will be available to more low income working families.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The availability of the program will expand the choices of some persons with regard to education and supervision of their children.

3. What effect will this have on the functioning of the family? This rule should have a positive effect on the functioning of the family as it will make available more quality child care for low income working families or those families working and attending a job training or educational program.

4. What effect will this have on family earnings and family budget? This rule should have a positive effect on family earnings as the entire cost of child care is paid by the agency.

5. What effect will this have on the behavior and personal responsibility of children? Quality child care helps

children to be more socially and intellectually prepared and ready to learn. Studies show that high-quality child care may prevent children from committing crimes.

6. Is the family or local government able to perform the function as contained in this proposed rule? The function as contained in this proposed rule can only be performed by the Head Start Centers/grantees and the agency.

J. Renea Austin-Duffin
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Wrap-Around Child Care Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated cost to the state as a result of this rule is \$24,000,000 for FY 00/01, 01/02, and 02/03. The cost will provide various types of child care services to as many as 8,000 children and will be paid with 100% federal funds from the Temporary Assistance for Needy Families (TANF) Block Grant to Louisiana. Other costs include the cost of publishing the rule, related policy, and forms. These costs are minimal and included in the budget.

There are no costs or savings to local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no impact on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Head Start grantees will have increased costs in their expansion to provide full-time and part-time child care services. Wrap-Around Child Care payments are expected to compensate grantees for their increased costs to the extent that these TANF Block Grant funds continue to be available.

Households eligible for Wrap-Around Child Care will benefit in having their child care costs paid by the program. Head Start Centers will receive payments (income) for these children directly from the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The program will increase the availability of quality child care services for working families whose incomes are at or below 130% of the federal poverty level. In addition, it will increase participation by the Head Start Centers and allow for year-round employment for employees with the many Head Start Centers.

Vera W. Blakes
Assistant Secretary
0012#072

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT Department of Treasury

Credit Card Acceptance by State Agencies
(LAC 71:I.Chapter 9)

In accordance with the applicable provisions of the Administrative Procedures Act, R.S. 49:950, et seq., notice is hereby given that the Department of the Treasury intends

to promulgate a rule entitled "Credit Card Acceptance by State Agencies," in accordance with R.S. 49:316.1.

Title 71
TREASURY
Part I. Treasurer

Chapter 9. Credit Card Acceptance by State Agencies

§901. Purpose

A. It is the intent of the state to accept payment of any obligation including, but not limited to, taxes, fees, charges, licenses, service fees or charges, fines, penalties, interest, sanctions, stamps, surcharges, assessments, obligations or any other similar charges by credit cards, debit cards or similar payment devices approved by the treasurer. The state recognizes the expanding role of electronic commerce ("e-commerce") in conducting business and the state is taking steps to become an active participant with the development of the "E-Mall", the state's one-stop shopping internet web site. Electronic payment methods, including credit cards, debit cards and similar devices is a vital link in "e-commerce". In order to incorporate these payment methods, Treasury must develop and promulgate guidelines in accordance with R.S. 49:316.1.

§903. Definitions

Payment Card—a valid credit or debit card or similar payment device which is designated by the treasurer as acceptable by any state entity to make payment for any state obligations.

Card Provider—the issuer of a credit card, debit card or similar device who has contracted with Treasury for acceptance of their payment card or a financial institution which has contracted with Treasury for processing of card payments.

Card Holder—the person a credit card, debit card or similar device has been issued or an authorized user of a payment card.

Obligation—taxes, fees, charges, licenses, service fees or charges, fines, penalties, interest, sanctions, stamps, surcharges, assessments, obligations and any other similar charges or obligations.

Provider billings—the manner in which the card providers will bill the state for the settled card payment transactions.

State Charge—a fee established by the treasurer in the form of a uniform dollar amount or percentage assessed for all types of cards or devices accepted by state entities.

Merchant Account Number—the account number assigned by the Card Provider to the state entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§905. Application for Credit Card or Similar Devices

A. The treasurer will negotiate and enter into contracts, with card provider(s) not to exceed five years, for acceptance of credit card, debit card and similar payment devices. The treasurer will seek to achieve uniform implementation and standard terms and provisions with

respect to the acceptance of payments by state entities. A state entity may recommend that the treasurer consider a specific credit or debit card for approval. Annually, the treasurer will publish on the treasurer's website a list of approved credit card, debit card or similar devices by which any state entity will be authorized to accept for payment of any obligation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§907. Acceptance of Cards by the State Entities

A. The state, through any department, agency, board or commission or other state entity, may accept payment of any obligation by credit card, debit card and similar payment devices approved by the Treasurer. Each entity will apply for participation by completing a merchant service agreement. The original completed application must be delivered to treasury. Treasury will review the application for correctness and forward the application to the card provider for processing.

B. The agency may not set a per order minimum and/or maximum dollar transaction amount that an agency may accept payment by a payment card in compliance with card service agreements. State entities shall not institute or adopt any practice that discriminates or provides unequal treatment for any payment card versus any other payment card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§909. Operating Procedures

A. Treasury will determine procedures that state entities must comply with to accept payment by payment card(s). These procedures, may be modified from time to time, to accommodate the state's accounting policies or treasury contract(s) for acceptance of payment card(s). Treasury will provide written procedures to participating state entities. These procedures will provide uniform implementation and standard terms and conditions for acceptance of payments by state entities. These procedures will determine:

1. the manner in which authorization is obtained by state agencies prior to making the card sales;
2. preparation of sales slips;
3. handling of card member refunds and credits;
4. settlement of transactions;
5. charge back rights;
6. card member disputes;
7. billing inquires;
8. retention of records; and
9. any other contract matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§911. State Charge

A. Treasury, from time to time, will negotiate with card providers for a fee for processing payment card transactions with state entities. Treasury will seek to achieve a reasonable fee that reflects the economies of scale achieved by negotiation for a statewide fee applicable to all state entities. The fee may be composed of a percentage and/or a specific dollar amount as determined by treasury and the card provider.

B. The state charge shall encompass these various fees charged by card providers and include other applicable fees including fees by third party processors, or fees assessed by providers of Internet payment processing services. The state charge shall be a uniform dollar amount and/or percentage designated by the treasurer for all card types. The state charge will be revised from time to time and the state treasurer shall notify state entities of the revised state charge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

§913. Fees

A. Each state entity shall assess a state charge for each payment transaction a payment card is accepted.

B. The state charge will be classified by the state entity into a fund designated by the treasurer. Each card issuer will provide to the treasurer and the entity a monthly billing detailing the amount of charges by merchant name and merchant account number. The entity will review the monthly billing and pay the invoice from the fund pursuant to an appropriation for this purpose by the legislature.

C. Each state entity will review the monthly billings and resolve discrepancies directly with the card provider(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:316.1.

HISTORICAL NOTE: Promulgated by the Department of Treasury, LR 27:

Interested parties may submit written comments to Gary K. Hall, Financial Officer, Department of the Treasury, P.O. Box 44154, Baton Rouge, LA 70804, or by facsimile to (225) 342-5008. All comments must be submitted by 4:30 p.m., February 26, 2001.

Ron Henson
First Assistant

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Credit Card Acceptance
by State Agencies**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no direct implementation costs or savings to state or local governmental units to implement this proposed rule that currently accept payment by credit card. As additional state agencies begin accepting payment by credit card there is an implementation cost to obtain a card swipe machine(s) (electronic data capture equipment). Under the central banking services agreement with Treasury, a swipe machine can be either purchased at a cost of \$600 per swipe machine or rented at \$30 per month.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Currently, credit card provider discount fees are paid from state agency revenue collections; thus, state agencies which accept credit cards for payment realize a net revenue for the goods sold or services provided. The adoption of this proposed rule will allow each agency to collect the discount fee at the time of sale from the credit card holder as a "state charge." The projected increase in revenue collections for the state is \$125,000 annually. This collection will increase in proportion to the increase in state agency acceptance of credit cards as a payment method.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

State agency acceptance of payment by credit/debit cards is a tremendous customer convenience. The discount fees associated with payment by credit/debit cards is a cost to the customers for this convenience. Currently, the discount rate for acceptance for Mastercard and Visa processing is 2.45 percent for keyed transactions. The annual estimated cost is \$125,000 to persons and groups who pay with credit/debit cards.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment by the adoption of this proposed rule.

Gary K. Hall
Financial Officer
0012#035

H. Gordon Monk
Staff Director
Legislative Fiscal Office

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Economic Development Office Financial Institutions

Judicial Interest Rate Calculation C2001

As required by R.S. 13:4202(B), the commissioner of Financial Institutions has determined that the rate of judicial interest for the period beginning January 1, 2001, and ending December 31, 2001, will be 8.241 percent per annum, in accordance with the formula mandated by R.S. 13:4202(B)(1).

The commissioner ascertained on October 2, 2000, the first business day of October, that the last auction of fifty-two week U. S. Treasury Bills prior to October 1, 2000 was held on August 29, 2000. As published in the August 29, 2000 *Public Debt News*, a U. S. Department of the Treasury, Bureau of Public Debt publication, the investment rate, or "equivalent coupon-issue yield", was 6.241 percent per annum.

R.S. 13:4202(B)(1) mandates that "On and after January 1, 1998, the rate shall be equal to the rate as published annually, ... by the commissioner of financial institutions. The commissioner of financial institutions shall ascertain, on the first day of October of each year, the coupon issue yield equivalent, as determined by the secretary of the United States Treasury, of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the first day of October of each year. The effective judicial interest rate for the calendar year following the calculation date shall be two percentage points above the coupon issue yield equivalent as ascertained by the commissioner."

The effective judicial interest rate for the calendar year beginning on January 1, 2001 shall be 8.241 percent per annum.

This calculation and its publication in the *Louisiana Register* shall not be considered rule-making, within the intentment of R.S. 49:950 et seq., the Administrative Procedure Act, particularly R.S. 49:953, thus, neither a fiscal impact statement nor a notice of intent is required.

John D. Travis
Commissioner

0012#022

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Department of Environmental Quality Office of Environmental Assessment

Amendment to the Waste Tire Regulations SW029 Risk/Cost Benefit Statement

Introduction

The Louisiana Department of Environmental Quality (LDEQ) has amended the Waste Tire Regulations that

increases the fees on the sale of tires. These fees, designated for the Waste Tire Management Fund, are collected by retailers and remitted to the department. The increase in fees was authorized by Act 1015 of the 1999 Louisiana Legislature.

The fee increase will provide funding to address the proper collection, processing, and marketing of off-road tires. The rule will affect all retailers selling tires that weigh in excess of 100 pounds. The rule will also affect any consumer who purchases a tire weighing in excess of 100 pounds. Previously, only passenger and truck tires were included in the Waste Tire Program.

This statement is prepared to satisfy the requirements of R.S. 30:2019(D) and R.S. 49:953(G)(Acts 600 and 642 of the 1995 Louisiana Legislature, respectively). However, this document is not a quantitative analysis of cost, risk, or economic benefit, although costs of implementation were identified to the extent practical. The statutes allow a qualitative analysis of economic and environmental benefit where a more quantitative analysis is not practical. The department asserts that the benefits of a rule designed to support a legislatively-passed broadening of the Waste Tire Program justify the costs associated with the fee increases.

Therefore, the qualitative approach is taken with this risk/cost benefit statement. As discussed further in this document, these amendments to the Waste Tire Regulations provide environmental and economic benefits. Assessing dollar benefits of avoided environmental risk or economic benefits of this rule is not practicable. In addition, the department asserts that the indirect and direct environmental and economic benefits to be derived from this rule will, in the judgment of reasonable persons, outweigh the costs associated with the implementation of the rule and that the rule is the most cost-effective alternative to achieve these benefits.

Risks Addressed by the Rule

The fee portion of the rule addresses the risks associated with the pollution caused by improper disposal of off-road tires to include unauthorized waste tire piles consisting of this type tire. The rule does this by bringing off-road tires into the Waste Tire Program with the addition of a fee. The fee will allow the department, through the Waste Tire Management Fund, to pay waste tire processors for the processing of off-road tires and the marketing of the resulting waste tire material. The payment incentive will encourage waste tire processors to seek out this type tire rather than only accepting passenger tires for processing and marketing.

Numerous risks are associated with the improper disposal of tires, including off-road tires. Unprocessed tires hold water that provides a fertile breeding ground for mosquitoes, which provide an excellent vector for diseases. Unprocessed tires also provide shelter for vermin, such as rats, that are another vector for disease in addition to being a destructive pest. Tire piles may catch fire under certain circumstances.

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Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

These fires are extremely difficult to extinguish, and they emit noxious gases and thick smoke. Lastly, individual tires or tire piles that litter the landscape are unsightly. Waste tires do not degrade which provides a long-lasting hazard to the environment.

Environmental and Health Benefits of the Rule

The additional money collected through this rule will provide an incentive for waste tire processors to process and market off-road tires. This will result in the removal of off-road tires from parish collection centers, Department of Transportation and Development collection centers, and from private residences and farms. The removal, processing, and marketing of these tires will eliminate potential breeding places of disease-spreading insects and mammals. The removal of these tires would eliminate the possibility of tire pile fires. The rule would also lead to the removal, either to a collection center or processor, of off-road tires stored on farms, as no entity was willing to accept farm tires for disposal or processing previously.

Social and Economic Costs

This rule is an amendment to raise fees that are already assessed in some cases and as such there are no significant costs to implement the rule. The only new fees are on off-road tires that constitute only one percent of the tires sold at the retail level in Louisiana. The rule increases fees on truck tires and places a fee on off-road tires, while retaining the same fee for passenger tires.

Persons purchasing truck tires that weigh in excess of 100 pounds will pay an additional fee of \$4 to \$6, depending on weight, for every truck tire. Persons purchasing off-road tires will pay an average fee of \$20 for a retail purchase. These new fees will generate an estimated \$3,080,000 for the Waste Tire Management Fund. In conjunction with this fee increase, waste tire processors will receive a payment increase from \$1.00 to \$1.50 for every 20 pounds of waste tire material processed and marketed. This will result in an estimated \$3,646,697 of additional funds paid from the Waste Tire Management Fund. The difference in funds received and paid will be made up with waste tire remediation funds. More than 98 percent of the waste tire sites in the state have been remediated, freeing funds for additional processor payments.

Persons purchasing truck tires will pay additional fees, and persons purchasing off-road tires will pay fees for the first time; however, these fees will provide benefits in excess of the fees. Health hazards will be removed in the form of unauthorized tire piles. The fire hazard associated with unauthorized piles will also be removed. Lastly, the removal of tire piles and individual off-road tires will aesthetically enhance the state for the benefit of its citizens.

Conclusion

The department believes that the benefits of enhanced environmental and public health protection, as well as other benefits, outweighs the costs of implementation of the rule. Therefore, the rule is obviously the most cost-effective alternative to achieve these benefits.

James H. Brent, Ph.D.
Assistant Secretary

Revision 7 of the Title V Permit General Conditions
40 CFR Part 70, LAC 33:III.507

The Louisiana Department of Environmental Quality (LDEQ) has revised the Part 70 General Conditions included in every Title V permit. Approximately 500 Title V permits were issued in Louisiana prior to the most recent set of general conditions. Through discussions with trade groups representing various Louisiana industries, several permittees holding Title V permits with older versions of these conditions have expressed interest in incorporating the most recent set into their permits.

Because LDEQ anticipates that other permittees may also be interested, an abbreviated Application for Reopening a Part 70 Permit Pursuant to LAC 33:III.529.A has been made available for this purpose. Interested parties should complete this application and submit it, along with the appropriate fee, to the address given at the end of this notice. The fee has been determined to be the lesser of \$1,000 or the minor modification fee as specified in LAC 33:III.Chapter 2.

Revisions to the Part 70 General Conditions have been approved by the U.S. Environmental Protection Agency (EPA) and are discussed below.

Per 40 CFR 70.6(a)(3)(iii), the federal air quality operating permits program requires that facilities operating under a Part 70 Operating Permit submit prompt reports of all permit deviations. Per ' 70.6(a)(3)(iii)(B), the permitting authority must "define 'prompt' in relation to the degree and type of deviation likely to occur and the applicable requirements." In implementing the operating permits program (LAC 33:III.507), LDEQ defined "prompt" through Part 70 General Condition R. Permits issued prior to the incorporation of the most recent conditions contain a different General Condition R, which defines "prompt" without regard "to the degree and type of deviation likely to occur" as required by Part 70. The revised language outlines a specific reporting timeframe with respect to the severity and/or length of the deviation, and makes this condition consistent with the written reporting requirements of the Louisiana Right-to-Know Law and LAC 33:I.Chapter 39, "Notification Regulations and Procedures for Unauthorized Discharges."

Additionally, Part 70 General Condition N was modified to more closely parallel 40 CFR 70.6(g)(3) and LAC 33:III.507.J.2. The requirement to "notify the permitting authority within two working days of the time when emissions limitations were exceeded due to the occurrence of an upset" was conditioned to be necessary only "if the permittee seeks to reserve a claim of affirmative defense as provided in LAC 33:III.507.J.2." Per ' 70.6(g)(5) and LAC 33:III.507.J.4, language was also added to clarify that the submittal shall be in addition to notification or reporting requirements of "any emergency or upset provisions in any applicable regulation."

Finally, Part 70 General Condition V will be deleted, as the Clean-fuel Fleet Program (LAC 33:III.Chapter 19, Subchapter B) was repealed March 30, 2000.

The application and most recent set of Part 70 General Conditions have been made available to download on the department's website, <http://www.deq.state.la.us>.

Per LAC 33:III.529.A.1.b, the requested reopening and subsequent incorporation of the most recent set of general conditions will allow owners and/or operators to streamline their various reporting obligations regarding permit deviations. The reopening should not place an undue burden on the permitting authority. The new reporting system will benefit LDEQ by allowing the agency to prioritize deviations to facilitate appropriate responses, and the quarterly reporting component will allow less significant deviations to be assessed in a single report.

Applications are due no later than 4:30 p.m. CST on Friday, March 2, 2001, and should be submitted to Bliss M. Higgins, Assistant Secretary, Office of Environmental Services, Box 82135, Baton Rouge, LA 70884-2135; or hand-delivered to 7290 Bluebonnet Boulevard, Second Floor, Baton Rouge, LA 70810.

James H. Brent, Ph.D.
Assistant Secretary

Louisiana Application for Reopening a Part 70 Permit Pursuant to LAC 33:III.529.A

Incorporation of Revision 7 of the 40 CFR Part 70 and Louisiana Air Permit General Conditions

A. Facility Information

Company Name	
Parent Company (if Company Name given above is a division)	
Plant name (if any)	
Nearest town	Parish where located
CDS Number	Agency Interest (AI) Number
Affected Permit Number(s)	

B. Proposed Action

Pursuant to LAC 33:III.529.A, the permittee hereby requests that the Louisiana Department of Environmental Quality reopen and revise the referenced facility's Part 70 Operating Permit(s) to incorporate Revision 7 of the 40 CFR Part 70 and Louisiana Air Permit General Conditions, dated November 9, 2000. Pursuant to LAC 33:III.529.A.2, this reopening affects only those parts of the permit for which cause to reopen exists.

C. Certification of Compliance with Applicable Requirements

Statement for Applicable Requirements for Which the Source Is In Compliance

Based on information and belief, formed after reasonable inquiry, the company and facility referenced in this application is in compliance with and will continue to comply with all applicable requirements pertaining to the sources covered by the above Part 70 Operating Permit(s) and that the information contained in the application upon which this permit is based continues to be correct.

For requirements promulgated as of the date of this certification with compliance dates effective during the permit term, I further certify that the company and facility referenced in this application will comply with such requirements on a timely basis and will continue to comply with such requirements.

Certification. I certify, under provisions in Louisiana and United States law which provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information contained in this Application for Approval of Emissions of Air Pollutants, including all attachments thereto and the compliance statement above, are true, accurate, and complete.

D. Responsible Official

Name		
Title		
Company		
Suite, mail drop, or division		
Street or P.O. Box		
City	State	Zip
Business phone		
Signature of responsible official(s)		
Date		

0012#067

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**Department of Health and Hospitals
Board of Veterinary Medicine**

Spring/Summer Examination Dates

The Louisiana Board of Veterinary Medicine will administer the State Board Examination (SBE) for licensure to practice veterinary medicine on the first Tuesday of every month. Deadline to apply for the SBE is the third Friday

prior to the examination date desired. SBE dates are subject to change due to office closure (i.e., holiday, weather).

The board will accept applications to take the North American Veterinary Licensing Examination (NAVLE) which will be administered through the National Board Examination Committee (NBEC) as follows:

Test Window Date	Deadline to Apply
April 9 through April 21, 2001	Tuesday, February 6, 2001

The NAVLE is the computerized national examination for licensure to practice veterinary medicine which has replaced the National Board Examination (NBE) and the Clinical Competency Test (CCT).

The board will also accept applications for and administer the Veterinary Technician National Examination (VTNE) for state registration of veterinary technicians as follows:

Test Date	Deadline to Apply
Friday, June 15, 2001	Friday, April 27, 2001

Applications for all examinations must be received on or before the deadline. Applications and information may be obtained from the board office at 263 Third Street, Suite 104, Baton Rouge, LA 70801, or requested by calling (225) 342-2176, or by e-mail at LBVM@eatel.net.

Kimberly B. Barbier
Administrative Director

0012#082

POTPOURRI

**Department of Health and Hospitals
Office of the Secretary
Bureau of Health Services Financing**

Solicitation for Suggestions and Participation

The Department of Health and Hospitals is continuing to work toward the development of a system of high-quality, cost-effective long-term care options to meet the needs of individuals with disabilities. To this end, the department is seeking input from stakeholders as DHH develops a long term strategy. The department seeks volunteers to participate in one of five working groups that will make recommendations. These groups include: people who are elderly in need of assistance, people with mental illness, those with mental retardation/developmental disabilities, people with physical disabilities, and those with substance abuse/addictive disorders.

Those seeking to participate should attend a meeting to be held at the State Police Training Academy, 7901 Independence Boulevard, Baton Rouge, Louisiana, on January 25, 2001, from 10 am until 2:30 pm. Participants will break into separate working groups after an initial meeting of all volunteers. Volunteers will be asked to participate in any one of the five working groups. Subsequent meetings will be scheduled by the individual working groups. The department is also contemplating establishing a Coordinating Committee representative of

stakeholder diversity to review and consolidate input from the individual groups and develop recommendations for the department by March 8, 2001. Individuals should also advise the department if they will need assistance because of a disability to make possible their participation in the meeting.

Those who are unable to attend, or choose not to participate, may submit their views and recommendations to the following address by January 15, 2001: Raymond A. Jetson, P.O. Box 629, Baton Rouge, LA 70821-0629. He is the person responsible for receiving suggestions.

David W. Hood
Secretary

0012#053

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**Department of Insurance
Office of the Commissioner**

Compliance Date of Privacy Provisions of Title V
of the Gramm-Leach-Bliley Act

Congress' passage of the Gramm-Leach-Bliley Act (GLBA) in November 1999 requires financial institutions, including insurers and agents, to protect the privacy of consumers. Title V of the Act sets forth these new federal requirements and provides that regulations be established by federal and state agencies to implement the Act's privacy protections.

Federal financial regulators are responsible for promulgating and implementing privacy regulations for the banking and securities industries, and state insurance regulators are responsible for promulgating and implementing privacy regulations for insurers and agents.

The privacy regulations promulgated by the federal financial regulators retain the GLBA November 13, 2000 effective date but delay the compliance date until July 1, 2001 for the enforcement of these regulations for the banking and securities industries.

Insurers and other potentially affected persons have expressed concerns that, unless states have regulations in place prior to the effective date for federal agencies, that the GLBA's November 13, 2000 effective date for federally regulated financial institutions would apply to insurers as well and that the provisions of Title V could be enforced against them.

The purpose of this Bulletin is to ensure a uniform compliance date for enforcement of GLBA privacy regulations in the state of Louisiana and to prevent a different standard for the insurance industry from that imposed on the banking and securities industries.

Accordingly, this bulletin advises insurers and other licensees that any regulations that the Louisiana Department of Insurance proposes to implement the privacy provisions of Title V of GLBA will require compliance by all affected entities no earlier than July 1, 2001.

J. Robert Wooley
Acting Commissioner

0012#085

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Docket No. IMD 2001-02

Pursuant to the provisions of the laws of the state of Louisiana, and particularly Title 30 of the Louisiana Revised Statutes of 1950 as amended, and the provisions of the Statewide Order No. 29-B, notice is hereby given that the commissioner of Conservation will conduct a hearing at 6 p.m., Wednesday, January 31, 2001, in Courtroom No. 1 on the Second Floor of the Vermilion Parish Courthouse Building located at 100 North State Street in Abbeville, Louisiana.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of Thermo-Cuttings, L.L.C., 13801 Veterans Memorial Drive, Kaplan, LA 70548. The applicant requests authorization to operate a commercial nonhazardous oilfield (exploration and production) waste (E&P waste) treatment facility in Vermilion Parish, Louisiana. Applicant requests authorization to receive, store, treat, reclaim and recycle RCRA-exempt E&P waste generated from the drilling and production of oil and gas wells. Applicant intends to reclaim and recycle RCRA-exempt exploration and production waste by means of thermal treatment. The proposed facility will be located in Section 91, Township 14 South, Range 3 East near Intracoastal City in Vermilion Parish, Louisiana.

The application is available for inspection by contacting Mr. Gary Snellgrove, Office of Conservation, Injection and Mining Division, Room 225 of the State Land and Natural Resources Building, 625 North Fourth Street, Baton Rouge, LA, or by visiting the Vermilion Parish Police Jury Office in Abbeville, Louisiana. Verbal information may be received by calling Mr. Snellgrove at (225) 342-5515.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Wednesday, February 7, 2001, at the Baton Rouge Office. Comments should be directed to:

Office of Conservation
Injection and Mining Division
P.O. Box 94275
Baton Rouge, Louisiana 70804
Re: Docket No. IMD 2001-02
Commercial Facility
Vermilion Parish

Philip N. Asprodites
Commissioner of Conservation

0012#065

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
Sam Barnwell et al	Bellevue	S	Wurtsbaugh Knighton et al	007	105233
J. O. Brown	Wildcat	S	Ford E Stinson	003	136910
Gordon M. Cone	Pendleton-Many	S	Phares	002	092307
Delta Production Co.	Bellevue	S	Lodwick Lumber Co	002	059310
L. W. Dennis	Wildcat	S	Ford E Stinson	002	136474
L. W. Dennis	Wildcat	S	Ford E Stinson	001	136095
J. P. Owen - Whitestone Petr.	Buck Point	L	SL 4375	001	115566
SMC Oil & Gas, Inc.	Stella	L	SL 458 SWD	001	039390
SMC Oil & Gas, Inc.	Stella	L	Numa Hero et al	004	057208
SMC Oil & Gas, Inc.	Stella	L	CIB OP RA SUC; Hero et al	002	184866
SMC Oil & Gas, Inc.	Stella	L	CIB OP RA SUB; Hero et al	003	193214
Sam Seigel, Trustee	Bellevue	S	Lodwick Lumber Co	001	035911
Spartan Drilling Company	Buck Point	L	La Furs Corporation	1-A	071983
Trice Production Company	Buck Point	L	Louisiana Furs Corporation	001	076841
Geo. W. Wetherbee	Bellevue	S	Fee	F-2	008114

Philip N. Asprodites
Commissioner of Conservation

0012#084

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 nine claims in the amount of \$31,396.91 were received for payment during the period November 1,

2000 through November 30, 2000. There were eight claims paid and one claim denied.

Loran Coordinates of reported underwater obstructions are:

27640	46914	St. Mary
27919	46851	Terrebonne
28291	46846	Lafourche
29145	46986	St. Bernard

Latitude/Longitude Coordinates of reported underwater obstructions are:

2914.90	8964.84	Jefferson
2915.58	8955.88	Jefferson
2917.58	8944.48	Plaquemines
2925.48	8957.84	Jefferson
3003.09	8938.92	St. Bernard

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 94396, Baton Rouge, LA 70804, or you can call (225) 342-0122.

Jack C. Caldwell
Secretary

0012#032

POTPOURRI

**Department of Revenue
Office of the Secretary**

**Policy Statement / Family Impact Statement
(LAC 61:III.101)**

Editor's Note: The Family Impact Statement was inadvertently omitted in the original printing of the Policy Statement Notice of Intent that ran in the November 20, 2000 edition of the Louisiana Register.

Family Impact Statement

1. The effect of these rules on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect of these rules on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect of these rules on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect of these rules on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect of these rules on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The effect of these rules on the ability of the family or local government to perform the function as contained in the proposed rules. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Cynthia Bridges
Secretary

0012#094

POTPOURRI

**Department of Social Services
Office of Community Services**

**Louisiana's Child and Family Services Plan and
Annual Progress and Services Report**

The Louisiana Department of Social Services (DSS) announces opportunities for public review of the state's Child and Family Services Plan and 2000 Annual Progress and Service Report. The Child and Family Services Plan is a planning document which outlines the goals and objectives for the Office of Community Services for the time period of October 1, 1999 through September 30, 2004 with regard to the use of Title IV-B, Subpart 1 and Subpart 2, Title IV-E Independent Living Initiative and Child Abuse Prevention and Treatment Act (CAPTA) funds. The Annual Progress and Service Report is the report on the achievement of goals and objectives and amends any changes to the agency's plan in the provision of services. It is completed on an annual basis for each year of the Child and Family Services Plan. The 2000 Annual Progress and Service Report provides information on the achievement of goals and objectives for year one of the Child and Family Services Plan.

Louisiana, through the DSS Office of Community Services (OCS), provides services which include Child Protection Investigations, Family Services, Foster Care, Adoption and Independent Living Services. 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. Title IV-E Independent Living Initiative funds provide services to assist foster children, at least 16 years old, in transition from foster care to independent living. The services include basic living skills, training and education, and employment initiatives. Child Abuse Prevention and Treatment Act funding is used to compliment and support the overall mission of OCS with emphasis on developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

We are encouraging public participation in the planning of services and the writing of this document. The Child and Family Services Plan and Consolidated Plan and the Annual Progress and Services Report is available for public review

at OCS parish and regional offices Monday through Friday from 8:30 a.m. to 4 p.m. Copies are available for review in the state library located at 701 North Fourth Street, Baton Rouge, LA and its repositories statewide. Inquiries and comments on the plan may be submitted to the OCS Assistant Secretary, P.O. Box 3318, Baton Rouge, LA 70821.

A public hearing on the Child and Family Service Plan and the Annual Progress and Services Report is scheduled for January 16, 2001, 10 a.m., at the Office of Community

Services, Room 732, Laurel Street, Baton Rouge, LA. At the public hearing, all interested persons will have the opportunity to provide recommendations on the plan, orally or in writing.

J. Renea Austin-Duffin
Secretary

0012#080

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