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V. INDEX 707

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

Alternative Livestock-Imported Exotic Deer and Imported Exotic Antelope, Elk, and Farm-Raised White-Tailed Deer (LAC 7:XXI.1507 and 1509)

In accordance with the Administrative Procedures Act, specifically R.S. 49:953(B), and R.S. 3:3101 the Commissioner of Agriculture and Forestry finds that these emergency amendments to the permanent rules regulating imported exotic deer and antelope, elk and farm-raised white-tailed deer for commercial purposes in the state of Louisiana are necessary to prevent imminent peril to the health, safety and welfare of the citizens of Louisiana.

The Commissioner of Agriculture and Forestry finds that it is necessary to prohibit "canned hunts" and to increase the acreage of farms upon which farm-raised white-tailed deer may be harvested. The harvesting of alternative livestock requires licensees to plan such harvesting months in advance of the actual harvesting. Failure to immediately make these changes to the permanent rules and regulations would deprive licensees of sufficient lead time to make adequate plans for harvesting in a manner that would not be prohibited under these rules and regulations as a "canned hunt" and would deprive potential licensees of adequate time to establish farms with the minimum acreage being required under these amendments. Such deprivation may lead to severe economic instability of the alternative livestock industry and subsequent economic demise of that industry.

Permanent amendments to the regulations are being promulgated. However, the time delay required by the Administrative Procedure Act precludes adoption of permanent amendments to the regulations in a timely fashion.

These emergency amendments to the permanent regulations become effective upon signature. These emergency amendments to the permanent regulations shall remain in effect 120 days from this day, March 20, 2004, or until the final amendments become effective whichever may occur first.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 15. Alternative Livestock? Imported Exotic Deer and Imported Exotic Antelope, Elk and Farm-Raised White-Tailed Deer

§1507. Fees

A. - C.3. ...

4. No harvesting shall occur and no harvesting permit shall be issued if the area of the relevant farm within the enclosure system is less than 200 acres in size unless good cause is shown by the applicant to the commissioner why the issuance of a harvesting permit for an enclosure of a

different size is not inconsistent with the intent of Part I of Chapter 19-A of Title 3 of the Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1672 (September 1998), LR 30:

§1509. Farm-Raising Licensing Requirements

A. - B.2.a. ...

b. enclose an area of not less than 200 acres that is densely forested with an abundance of trees, brush, undergrowth and/or other cover sufficient to allow animals to hide or obscure their location, to be eligible for harvesting as provided by §1507.B of these rules and regulations. Applicants seeking eligibility to harvest on farms with enclosures of less than 200 acres must demonstrate good cause why an enclosure of a different size is not inconsistent with the intent of Part I of Chapter 19-A of Title 3 of the Revised Statutes;

2.c. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:282 (February 1998), amended LR 24:1673 (September 1998), LR 30:

Bob Odom
Commissioner

0403#072

DECLARATION OF EMERGENCY

Department of Economic Development Office of the Secretary

Capital Companies Tax Credit Program (LAC 10:XV.331)

The Department of Economic Development, Office of the Secretary, pursuant to the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), adopts the following Section to the rules of the Capital Companies Tax Credit Program as authorized by R.S. 51:1929. This Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., shall become effective March 20, 2004, and shall remain in effect for the maximum period allowed under the Act or until adoption of a permanent Rule, whichever occurs first.

The Department of Economic Development, Office of the Secretary, has found an immediate need to provide rules regarding the formation and regulation of "qualified technology funds" to provide for the expeditious formation of such funds to direct investment capital into "qualified Louisiana-based technology businesses. Without these Emergency Rules the public welfare may be harmed as a result of a reduction of capital available to be invested in qualified Louisiana technology-based businesses.

Title 10

FINANCIAL INSTITUTIONS, CONSUMER CREDIT, INVESTMENT SECURITIES, AND UCC

Part XV. Other Regulated Entities

Chapter 3. Capital Companies Tax Credit Program

§331. Qualified Technology Funds

A. An applicant seeking designation as a qualified technology fund shall provide to the secretary the following information along with the request for this designation:

1. the charter documents for the entity that will constitute the qualified technology fund;

2. copies of any management agreements to which the qualified technology fund contemplates being a party, and a description of any contemplated comparable arrangement;

3. a reasonably detailed description of how the qualified technology fund meets and will continue to meet the criteria of R.S. 51:1923(16);

4. a copy of the qualified technology fund's investment policy;

5. evidence in form and substance acceptable to the secretary by which the qualified technology fund agrees to make all of the investments made by it with the proceeds of any investment from a certified Louisiana capital company in qualified Louisiana technology-based businesses, as required by R.S. 51:1923(16)(b);

6. a written undertaking of the qualified technology fund in form and substance acceptable to the secretary by which the qualified technology fund agrees that the commissioner shall regulate the investment of the certified capital received by the qualified technology fund as required by R.S. 51:1923(16)(d);

7. a written undertaking of the qualified technology fund in form and substance acceptable to the secretary by which the qualified technology fund agrees to provide:

a. to the secretary by August 1 of each year the information required to be included in the secretary's report described in R.S. 51:1927.2, with respect to the operations and investments of the qualified technology fund, to the extent that such information is relevant to the qualified technology fund; and

b. to the commissioner the information required by R.S. 51:1926F, by the dates set forth therein, to the extent that such information is relevant to the qualified technology fund; and

8. such additional information as may be requested by the Secretary with regard to the qualified technology fund or its ownership, management or operations.

B. A qualified technology fund shall be designated by the secretary for purposes of qualifying an investment in the qualified technology fund under R.S. 51:1923(12)(d) if the applicant meets the criteria set forth in each of Paragraphs 1 through 4 of this Subsection B, or if it meets such additional or other criteria determined by the secretary from time to time:

1. the applicant has delivered to the secretary all of the information required by Subsection A of this Section;

2. the information delivered to the secretary pursuant to this Section demonstrates that the qualified technology fund meets the criteria under R.S. 51:1923(16); and

3. the information delivered by the applicant shall demonstrate reasonable prospects for the qualified technology fund to invest the following percentages of each

of the qualified technology fund's investment pools within the following time periods:

a. on or before the second anniversary of the investment date of the investment pool, 50 percent of the investment pool invested in qualified Louisiana-based technology businesses; and

b. on or before the third anniversary of the investment date of the investment pool, 100 percent of the investment pool invested in qualified Louisiana-based technology businesses.

4. The charter and/or management documents with respect to the applicant shall provide that:

a. the non-certified capital company representatives involved with the management of the applicant have the authority to appoint a majority of the members (including the chairman) of each of:

i. the Board of Directors, Board of Managers or other similar governing authority of the applicant and any entity responsible for the direction of the applicant's investment decisions; and

ii. any committee of the Board of Managers, Board of Directors or other similar governing authority of the applicant with the authority to approve investment decisions and any such committee of any entity responsible for the direction of the applicant's investment decisions; provided that the certified Louisiana capital companies investing in the qualified technology fund may retain a right to representation on any such boards or committees and a right to veto, by majority vote of those certified capital companies present and voting at any meeting for such purpose, investment decisions of such boards or committees;

b. the qualified technology fund shall have management representation from at least one of the Louisiana research parks identified in R.S. 51:1923(16)(a) or any other technology park certified by the secretary.

c. each member of any board, committee or other governing authority of the applicant or any entity responsible for applicant's investment decisions shall disclose in writing all conflicts of interest with respect to any prospective investment by the applicant (except for conflicts of interest existing solely because of a prior investment by the qualified technology fund or any investment pool or subsidiary thereof) and no such member may vote on any such matter; provided that, the fact that a business is located at or is being assisted or incubated by a Louisiana research park or other technology park shall not in and of itself constitute a conflict of interest for a representative of the park serving on the Board of Directors or any committee of the qualified technology fund with respect to matters relating to that business; and

d. the applicant may not invest in any qualified Louisiana-based technology business in which a certified Louisiana capital company that is a participant in the qualified technology fund has previously invested except for a follow-on investment by the qualified technology fund to the extent that the certified Louisiana capital company's first investment in the qualified Louisiana-based technology business was closed contemporaneously with or after a previous investment by the qualified technology fund, and further provided that the investment by the qualified technology fund does not serve to directly or indirectly repay

or refund all or a portion of the certified Louisiana capital company's previous investment.

C. Qualified technology funds which are approved by the secretary pursuant to this Section shall be subject to the following additional provisions:

1. The information provided by a qualified technology fund to the office or the department shall be subject to R.S. 51:1926(D) and 51:1934.

2. A qualified technology fund shall not make any investment in any qualified Louisiana-based technology business

a. which is involved in any of the lines of business identified in R.S. 51:1926A(3); or

b. if after making the investment the total investment outstanding in such business and its affiliates would exceed the greater of:

i. twenty-five percent of the total certified capital invested by certified Louisiana capital companies in the qualified technology fund; or

ii. \$500,000.

3. No initial investment by the qualified technology fund in a qualified Louisiana-based technology business, when aggregated with all other investments by the qualified technology fund in such business which are made within the twelve month period following the date of the initial investment, will exceed the greater of

a. fifteen percent of the total certified capital invested by certified Louisiana capital companies in the qualified technology fund; or

b. \$300,000.

4. Before any investment is made by a qualified technology fund, the qualified technology fund shall obtain an affidavit from the qualified Louisiana-based technology business in the form required by R.S. 51:1926G.

5.a. All distributions made by a qualified technology fund to a certified Louisiana capital company which has invested in the qualified technology fund shall constitute certified capital which is subject to the requirements of R.S. 51:1928C.

b. A qualified technology fund shall not make any payment or distribution to any CAPCO or affiliate of a certified Louisiana capital company which has invested in it that is not covered by C(3)(a) of this rule unless approved in advance by the secretary.

6.a. An investment by a certified capital company in a qualified technology fund that is approved by the secretary in accordance with this Section shall be deemed to "further economic development within Louisiana" for purposes of R.S. 51:1923(12); provided that each investment by a qualified technology fund in qualified Louisiana technology-based businesses must:

i. "further economic development within Louisiana" as provided by rule with respect to qualified Louisiana businesses; and

ii. consist of the investment of cash and result in the acquisition of either:

(a). non-callable equity in a qualified Louisiana technology-based business; or

(b). a note issued by a qualified Louisiana technology-based business with a stated final maturity date of not less than three years; provided that the aggregate of all investments by the qualified technology fund in debt

instruments with a stated maturity of less than five years may not exceed 25 percent of the total certified capital invested by certified capital companies in the qualified technology fund."

b. The qualified technology fund need not be a Louisiana business and industrial development corporation to provide financing assistance to qualified Louisiana technology-based businesses.

7. The aggregate management fees charged by a certified Louisiana capital company and a qualified technology fund with respect to funds invested by the certified Louisiana capital company in the qualified technology fund shall not exceed the amount permitted by R.S. 51:1928C(3).

8. The qualified technology fund shall submit to the commissioner, on or before April thirtieth, annual audited financial statements which include the opinion of an independent certified public accountant.

9. The commissioner shall conduct an annual review of the qualified technology fund and its various investment pools similar to the annual review of certified capital companies pursuant to R.S. 51:1927(A).

D. An investment by a certified Louisiana capital company in a qualified technology fund approved by the secretary pursuant to this Section shall constitute an investment and a qualified investment for purposes of R.S. 51:1926A(1) and (2) on the date that the certified Louisiana capital company makes the investment in the qualified technology fund or in an investment pool sponsored and administered by the technology fund if the investment by the certified Louisiana capital company is in cash and is either in the form of equity which is not subject to redemption prior to the third anniversary of the date of investment or debt which has a stated final maturity date of not less than three years from the origination of the debt investment in the qualified technology fund.

E. An investment by a certified Louisiana capital company in a qualified technology fund approved by the secretary pursuant to this Section shall not constitute a qualified investment for purposes of 51:1927.1C(1), (2) and (3) and 51:1928B(3) until the qualified technology fund has invested an amount equal to 100 percent of the investment pool which includes the investment by the certified Louisiana capital company. If as of the third anniversary of the investment date of the investment pool which includes a certified Louisiana capital company's investment in a qualified technology fund the qualified technology fund has failed to invest 100 percent of the investment pool in qualified Louisiana-based technology businesses in accordance with R.S. 51:1923(16) and this Section, the certified Louisiana capital company may demand repayment or redemption of its pro rata share of the uninvested portion and:

1. the invested portion with respect to such certified Louisiana capital company shall be considered to have been invested in qualified investments for purposes of R.S. 51:1927(1), (2) and (3) and R.S. 51:1928B(3); and

2. the uninvested portion returned to the certified Louisiana capital company shall thereafter only be deemed to have been invested in a qualified investment for purposes of R.S. 51:1927.1C(1), (2) and (3) and R.S. 51:1928B(3)

when such funds are invested in qualified investments in qualified Louisiana-based technology businesses; and

3. the repayment or redemption shall not adversely affect the status of such funds as having been invested in a qualified investment for purposes of R.S. 51:1926A(1) and (2).

F. For purposes of this Section, the term *investment pool* means not less than all of the cash invested by certified Louisiana capital companies in a qualified technology fund on the same day.

G. A qualified technology fund may organize separate entities to separate the investments which comprise its different investment pools so long as each such separate entity is organized and managed in a manner materially the same as approved by the secretary pursuant to this Section. Each separate entity shall be subject to regulation as a "qualified technology fund" but need not be separately approved as such by the secretary.

H. The secretary shall respond to an application to become a qualified technology fund within 30 days of receipt of the information required by Subsection A of this Section.

I. To become certified as a "technology park" that is permitted to be involved in the management of a qualified technology fund pursuant to R.S. 51:1923(16)(a) [in addition to the entities specifically enumerated in R.S. 51:1923(16)(a)], an applicant shall submit to the secretary:

1. the charter documents for the applicant;
2. a detailed description of the management and operations of the applicant;
3. a statement showing all owners, operators, managers, beneficiaries or other interest holders of the applicant who benefit financially (directly or indirectly) from the operations of the applicant;
4. a list of qualified Louisiana-based technology businesses that have been assisted by the services provided by the applicant and a list of references from those entities, with contact information;
5. a copy of the applicant's mission statement, goals, purposes or other similar statements;
6. the audited financial statements of the applicant from the prior fiscal year with an opinion of independent certified public accountants;
7. information from which the secretary can determine whether the applicant meets the criteria of a Louisiana research park, as defined in R.S. 51:1923(11); and
8. such additional information as may be requested by the secretary with regard to the applicant.

J. The secretary shall approve an applicant as a "technology park" for purposes of participating in the management of a qualified technology fund if the applicant meets the following criteria or such additional or other criteria determined by the secretary from time to time:

1. the applicant is a Louisiana research park, as defined in R.S. 51:1923(11); and
2. in the secretary's reasonable opinion, the information delivered by the applicant to the secretary demonstrates that the applicant has a history and a mission materially contributing to the economic development of the

State of Louisiana by providing assistance to qualified Louisiana-based technology businesses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1929.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 30:

Don J. Hutchinson,
Secretary

0403#30

DECLARATION OF EMERGENCY
Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division

Expedited Penalty Agreement
(LAC 33:I.801, 803, 805, and 807)(OS054E)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allow the Department of Environmental Quality to use emergency procedures to establish rules, and of R.S. 30:2011 and 2074, which allow the department to establish standards, guidelines, and criteria, to promulgate rules and regulations, and to issue compliance schedules, the secretary of the department hereby declares that an emergency action is necessary in order to implement expedited penalty agreements.

This Emergency Rule will abate the delay in correcting minor and moderate violations of the Environmental Quality Act. Delays in enforcement reduce the effectiveness of the action, utilize unnecessary resources, and slow down the enforcement process. In the past three years alone, the Enforcement Division has received 8,139 referrals and has issued 4,259 actions. Currently strained budget and resource issues pose imminent impairment to addressing minor and moderate violations. This Rule will provide an alternative penalty assessment mechanism that the department may utilize, at its discretion, to expedite penalty agreements in appropriate cases. The report to the Governor by the Advisory Task Force on Funding and Efficiency of the Louisiana Department of Environmental Quality recommended this action as a pilot program. The legislature approved the report and passed Act 1196 in the 2003 Regular Session allowing the department to promulgate rules for the program. This Emergency Rule allows the operation of the pilot program to commence immediately, without the delay and inflexibility of a permanent rule. It will also allow the department to gather information to formulate a long-term rule and to evaluate the environmental and public health benefits and the social and economic costs of such a program in order to justify these requirements for the permanent rule.

This Emergency Rule is effective on March 10, 2004, and shall remain in effect for a maximum of 120 days or until a final rule is promulgated, whichever occurs first. For more information concerning OS054E you may contact the Regulation Development Section at (225) 219-3550.

Title 33
ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 8. Expedited Penalty Agreement

§801. Definitions

Qualifying Permit Parameter? for the purposes of these regulations: total organic carbon (TOC), chemical oxygen demand (COD), dissolved oxygen (DO), 5-day biochemical oxygen demand (BOD₅), 5-day carbonaceous biochemical oxygen demand (CBOD₅), total suspended solids (TSS), fecal coliform, and/or oil and grease.

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

§803. Purpose

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

§805. Applicability

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

B. **Departmental Discretion.** The secretary of the department or his designee, at his sole discretion, may propose an expedited penalty agreement for any violation described in LAC 33:I.807.A and considered in accordance with Subsection E of this Section. The expedited penalty agreement shall specify that the respondent waives any right to an adjudicatory hearing or judicial review regarding violations identified in the signed expedited penalty agreement. The respondent must concur with and sign the expedited penalty agreement in order to be governed by this Chapter and R.S. 30:2025(D).

C. **Notification to the Respondent.** The expedited penalty agreement shall serve as notification to the respondent of the

assessed penalty amount for the violations identified on the specified dates.

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

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

1. **The History of Previous Violations or Repeated Noncompliance.** The violation identified in the expedited penalty agreement is not the same as or similar to a violation identified in any compliance order, penalty assessment, settlement agreement, or expedited penalty agreement issued by the department within the previous two years.

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

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

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

c. The violation is easily identifiable and corrected.

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

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

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

5. **The Monetary Benefits Realized Through Noncompliance.** The respondent's monetary benefit from noncompliance is not considered to be significant with regard to the violation identified. The respondent's monetary benefit from noncompliance for the violation identified shall not exceed the assessed penalty amount for the violation identified. The intent of these regulations is to eliminate economic incentives for noncompliance.

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

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

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

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

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

G Extensions. The department, at its discretion, may grant one 30-day extension in order for the respondent to correct the violation cited in the expedited penalty agreement. In order to receive an extension, the respondent must submit a request, in writing, and satisfactorily demonstrate to the department that compliance with the cited violation is technically infeasible or impracticable within the initial 30-day period for compliance.

H. Additional Rights of the Department

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

2. If the respondent does not agree to and sign the expedited penalty agreement, the department may notify the respondent that a formal civil penalty is under consideration. The department may then pursue formal enforcement action against the respondent in accordance with R.S. 30:2025(C), 2025(E), 2050.2, and 2050.3.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

§807. Types of Violations and Expedited Penalty Amounts

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

Expedited Penalties			
Violation	Citation	Amount	Frequency
ALL MEDIA			
Failure to provide timely notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition	LAC 33:I.3917.A	\$300	per day
Failure to provide timely written notification for the unauthorized discharge of any material that exceeds the reportable quantity but does not cause an emergency condition	LAC 33:I.3925.A	\$300	per day
AIR QUALITY			
40 CFR Part 70 General Permit conditions (Part K, L, M, or R): failure to timely submit any applicable annual, semiannual, or quarterly reports	LAC 33:III.501.C.4	\$500	per occurrence
Failure to submit an Annual Criteria Pollutant Emissions Inventory in a timely and complete manner when applicable	LAC 33:III.919	\$500	per occurrence
Failure to submit an Annual Toxic Emissions Data Inventory in a timely and complete manner when applicable	LAC 33:III.5107	\$500	per occurrence
Stage II Vapor Recovery			
Note: LAC 33:III.2132 is only applicable to subject gasoline dispensing facilities in the parishes of Ascension, East Baton Rouge, West Baton Rouge, Iberville, Livingston, and Pointe Coupee.			
Failure to have at least one person trained as required by the regulations	LAC 33:III.2132.C	\$300	per occurrence
Failure to post operating instructions on each pump	LAC 33:III.2132.E	\$100	per occurrence
Failure to maintain equipment	LAC 33:III.2132.F	\$100	per occurrence
Failure to tag defective equipment "out of order"	LAC 33:III.2132.F.3	\$500	per occurrence
Failure to maintain records on-site	LAC 33:III.2132.G	\$300	per inspection
Failure to use and/or diligently maintain, in proper working order, all air pollution control equipment installed at the site	LAC 33:III.905	\$100	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
SOLID WASTE			
Waste Tires			
Storage of more than 20 whole tires without authorization from the administrative authority	LAC 33:VII.10509.B	\$200	per occurrence
Transporting more than 20 tires without first obtaining a transporter authorization certificate	LAC 33:VII.10509.C	\$200	per occurrence
Storing tires for greater than 365 days	LAC 33:VII.10509.E	\$200	per occurrence
Failure to maintain all required records for three years on-site or at an alternative site approved in writing by the administrative authority	LAC 33:VII.10509.G	\$200	per occurrence
Failure to obtain a waste tire generator identification number within 30 days of commencing business operations	LAC 33:VII.10519.A	\$300	per occurrence
Failure to accept one waste tire for every new tire sold unless the purchaser chooses to keep the waste tire	LAC 33:VII.10519.B	\$100	per occurrence
Failure to remit waste tire fees to the state on a monthly basis as specified	LAC 33:VII.10519.D	\$100	per occurrence
Failure to post required notifications to the public	LAC 33:VII.10519.E	\$100	per occurrence
Failure to list the waste tire fee on a separate line on the invoice so that no tax will be charged on the fee	LAC 33:VII.10519.F	\$100	per occurrence
Failure to keep waste tires or waste tire material covered as specified	LAC 33:VII.10519.H	\$200	per occurrence
Failure to segregate waste tires from new or used tires offered for sale	LAC 33:VII.10519.M	\$200	per occurrence
Failure to provide a manifest for all waste tire shipments containing more than 20 tires	LAC 33:VII.10533.A	\$200	per occurrence
Failure to maintain completed manifests for three years and have them available for inspection	LAC 33:VII.10533.D	\$200	per occurrence
Failure to collect appropriate waste tire fee for each new tire sold	LAC 33:VII.10519.C, 10535.B	\$200	per occurrence
WATER QUALITY			
Failure to properly operate and maintain a facility:			
1. Failing to provide disinfection at any applicable sewage treatment plant	LAC 33:IX.2701.E	\$200	per occurrence
2. Failing to operate/maintain backup or auxiliary systems within a treatment system	LAC 33:IX.2701.E	\$200	per occurrence
3. Failing to implement adequate laboratory controls and quality assurance procedures	LAC 33:IX.2701.E	\$200	per occurrence
4. Allowing excessive solids to accumulate within a treatment system	LAC 33:IX.2701.E	\$200	per occurrence
5. Allowing sample holding times to expire before analyzing any sample and failing to follow approved methods when collecting and analyzing samples	LAC 33:IX.2701.J.4	\$200	per occurrence

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to sample any permit parameter in accordance with an LPDES permit	LAC 33:IX.2701.A	\$100	per permit parameter
Failure to submit Discharge Monitoring Reports (DMRs):			
1. Failing to submit DMRs, for any outfall, required by any LPDES individual permit	LAC 33:IX.2701.L.4.a	\$200	per submittal (per outfall)
2. Failing to submit DMRs, for any outfall, required by any LPDES general permit	LAC 33:IX.2701.L.4.a	\$100	per submittal (per outfall)
Exceedance of LPDES permit effluent limitations:			
1. Exceeding the daily maximum or weekly average concentration permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$150	per permit parameter (per exceedance)
2. Exceeding a monthly average concentration permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$300	per permit parameter (per exceedance)
3. Exceeding a daily maximum or weekly average mass loading permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$200	per permit parameter (per exceedance)
4. Exceeding a monthly average mass loading permit limit for any qualifying permit parameter	LAC 33:IX.2701.A	\$400	per permit parameter (per exceedance)
5. Discharging effluent outside of the permitted range for pH (grab samples only)	LAC 33:IX.2701.A	\$150	per grab sample (per exceedance)
Failure to develop and/or implement a Spill Prevention and Control Plan (SPC):			
1. Failing to develop an SPC plan for any applicable facility	LAC 33:IX.905	\$500	per occurrence
2. Failing to implement any component of an SPC plan	LAC 33:IX.905	\$100	per occurrence
UNDERGROUND STORAGE TANKS			
Failure to register existing or new USTs containing regulated substances	LAC 33:XI.301.A - B	\$300	per occurrence
Failure to certify and provide required information on the department's approved registration form	LAC 33:XI.301.B.1 - 2	\$300	per occurrence
Failure to notify the Office of Environmental Services, Permits Division within 30 days after selling a UST system or acquiring a UST system; failure to keep a current copy of the registration form on-site or at the nearest staffed facility	LAC 33:XI.301.C.1 - 3	\$300	per occurrence
Failure to provide corrosion protection to tanks and/or piping that routinely contain regulated substances using one of the specified methods	LAC 33:XI.303.A.1 - 2	\$300	per occurrence
Failure to provide spill and/or overflow prevention equipment as specified	LAC 33:XI.303.A.3	\$300	per occurrence
Failure to upgrade existing UST systems to new system standards as specified	LAC 33:XI.303.B	\$300	per occurrence

DECLARATION OF EMERGENCY

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

Early Periodic Screening, Diagnosis and Treatment
KidMed Services
(LAC 50:XV.6701)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts LAC 50:XV.6701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides reimbursement for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) KidMed Services under the Medicaid Program. The administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). In compliance with HIPAA requirements, the Bureau promulgated an emergency rule to require Medicaid providers performing EPSDT preventive screening services to submit specific information regarding KidMed services.

This action is being taken to avoid federal sanctions by complying with the mandates of the Health Insurance Portability and Accountability Act. (*Louisiana Register*, Volume 29, Number 12). This Emergency Rule is being promulgated to continue the provisions contained in the December 20, 2003 Rule.

Effective April 19, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following procedures for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) KidMed Services in order to conform to HIPAA requirements.

**Title 50
PUBLIC HEALTH? MEDICAL ASSISTANCE
Part XV. Services for Special Populations
Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment**

**Chapter 67. KidMed
§6701. General Provisions**

A. All providers of Early and Periodic Screening, Diagnosis and Treatment (EPSDT) preventive screening services shall be required to submit information to the Medicaid Program regarding recipient immunizations, referrals and health status.

Expedited Penalties			
Violation	Citation	Amount	Frequency
Failure to pay fees by the required date	LAC 33:XI.307.D	\$200	per occurrence
Failure to report, investigate, and/or clean up any spills and overfills	LAC 33:XI.501.B	\$500	per occurrence
Failure to continuously operate and maintain corrosion protection to the metal components of portions of the tank and piping that routinely contain regulated substances and are in contact with the ground	LAC 33:XI.503.A	\$300	per occurrence
Failure to have UST systems equipped with cathodic protection systems inspected for proper operation as specified	LAC 33:XI.503.B	\$300	per occurrence
Failure to inspect UST systems with impressed current cathodic protection systems every 60 days to ensure that the equipment is running properly	LAC 33:XI.503.C	\$200	per occurrence
Failure to comply with recordkeeping requirements	LAC 33:XI.503.D	\$200	per occurrence
Failure to meet requirements for repairs to UST systems	LAC 33:XI.507	\$300	per occurrence
Failure to follow reporting requirements, maintain required information, and/or keep records at the UST site and make them immediately available or keep them at an alternative site and provide them within 24 hours after a request	LAC 33:XI.509	\$300	per occurrence
Failure to use a method or combination of methods of release detection described in LAC 33:XI.701 for all new or existing tank systems and/or failure to notify the Office of Environmental Compliance when a leak detection method indicates that a release may have occurred	LAC 33:XI.703.A.1 - 2	\$500	per occurrence
Failure to satisfy the additional requirements for petroleum UST systems as specified	LAC 33:XI.703.B	\$200	per occurrence
Failure to maintain release detection records	LAC 33:XI.705	\$100	per occurrence
Failure to report any suspected release to the Office of Environmental Compliance within 24 hours after becoming aware of the occurrence	LAC 33:XI.707	\$500	per occurrence

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 30:

Mike D. McDaniel, Ph.D.
Secretary

0403#075

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:

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 responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#053

DECLARATION OF EMERGENCY

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

Experimental or Investigational
Medical Procedures or Devices

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule on September 20, 1996 governing the coverage of experimental or investigational medical procedures. Coverage was provided only for non-experimental or non-investigational procedures as identified by the American Medical Association, the Federal Drug Administration or recognized experts in the practice of medicine who could lend guidance or judgment regarding the development of new procedures (*Louisiana Register*, Volume 22, Number 9). The bureau has now determined that it is necessary to amend the September 20, 1996 Rule to revise the criteria governing the coverage of experimental or investigational medical procedures and devices. This action is being taken to protect the health and welfare of Medicaid recipients. It is estimated that implementation of this Emergency Rule will be revenue neutral for state fiscal year 2003-2004.

Emergency Rule

Effective for dates of service on or after March 2, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the September 20, 1996 Rule governing the coverage of experimental or investigational medical procedures and devices.

Louisiana Medicaid does not cover any Federal Drug Administration (FDA) designated experimental or investigational medical procedures or devices until those procedures or devices have received final FDA approval or

when a procedure or device is specifically approved for coverage by the Medicaid Director.

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#003

DECLARATION OF EMERGENCY

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

Home and Community Based Services Waivers
New Opportunities Waiver
(LAC 50:XXI.Chapters 137-141)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services amends LAC 50:XXI.Subpart 11 as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 1147 of the 2001 Regular Session of the Louisiana Legislature created the Disability Services and Supports System Planning Group composed of representatives from groups including, but not limited to, individuals with disabilities, developmental disabilities and mental illness. The mission of the planning group is to consider and propose provisions for comprehensive efforts to enhance Louisiana's long term care system which include informed choice and quality supports for individuals of all ages with disabilities. Based on recommendations made by the planning group and a stakeholder task force, the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services promulgated an Emergency Rule to implement a new home and community based services waiver designed to enhance the support services available to individuals with developmental disabilities. This new home and community based services waiver is titled the New Opportunities Waiver (*Louisiana Register*, Volume 29, Number 6). The bureau amended the July 1, 2003 Emergency Rule in order to add discharge criteria and clarify other provisions contained in the Rule (*Louisiana Register*, Volume 29, Number 8). This Emergency Rule is being promulgated to continue the provisions contained in the August 20, 2003 Rule.

This action is being taken to promote the health and welfare of those individuals with developmental disabilities or mental retardation who are in need of such services and are on a request for services registry.

Effective for dates of service on and after April 18, 2004, the Department of Health and Hospitals, Office of the

Secretary, Bureau of Community Supports and Services amends provisions of the July 1, 2003 Emergency Rule governing the establishment of the New Opportunities Waiver in accordance with Section 1915(c) of the Social Security Act and the approved waiver application document and attachments.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services Waivers

Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13701. Introduction

A. The New Opportunities Waiver (NOW), hereafter referred to as NOW, is designed to enhance the long term services and supports available to individuals with developmental disabilities or mental retardation, who would otherwise require an intermediate care facility for the mentally retarded (ICF-MR) level of care. The mission of NOW is to utilize the principle of self determination and supplement the family and/or community supports that are available to maintain the individual in the community. In keeping with the principles of self-determination, NOW includes a self-direction option. This allows for greater flexibility in hiring, training, and general service delivery issues. NOW replaces the current Mentally Retarded/Developmentally Disabled (MR/DD) waiver after recipients of that waiver have been transitioned into NOW.

B. All NOW services are accessed through the case management agency of the recipient's choice. All services must be prior authorized and delivered in accordance with the Bureau of Community Supports and Services (BCSS) approved comprehensive plan of care (CPOC). The CPOC shall be developed using a person-centered process coordinated by the individual's case manager.

C. Providers must maintain adequate documentation to support service delivery and compliance with the approved plan of care and will provide said documentation at the request of BCSS.

D. In order for the NOW provider to bill for services, the individual and the direct service provider, professional or other practitioner rendering service must be present at the time the service is rendered. The service must be documented in service notes describing the service rendered and progress towards the recipient's personal outcomes and CPOC.

E. Only the following NOW services shall be provided for or billed for the same hours on the same day as any other NOW service:

1. substitute family care;
2. residential habilitation; and
3. skilled nursing services;
 - a. skilled nursing services may be provided with:
 - i. substitute family care;
 - ii. residential habilitation;
 - iii. day habilitation;
 - iv. supported employment (all three modules);

and/or

- v. employment related training.

F. The average recipient expenditures for all waiver services shall not exceed the average Medicaid expenditures for ICF-MR services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13703. Recipient Qualifications for NOW Eligibility

A. In order to qualify for NOW, an individual must be three years of age or older, offered a waiver opportunity (slot) and meet all of the following criteria:

1. meet the definitions for mental retardation or developmentally disability as specified in R.S. 28:380;
2. be on the Mentally Retarded/Developmentally Disabled (MR/DD) Request for Services Registry (RFSR);
3. meet the financial eligibility requirements for the Medicaid Program;
4. meet the medical requirements;
5. meet the requirements for an ICF-MR level of care;
6. meet the health and welfare assurance requirements;
7. be a resident of Louisiana; and
8. be a citizen of the United States or a qualified alien.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13705. NOW Discharge Criteria

A. Recipients shall be discharged from the NOW Program if one of the following criteria is met:

1. loss of Medicaid eligibility as determined by the parish Medicaid Office;
2. loss of eligibility for an ICF-MR level of care as determined by the Regional BCSS office;
3. incarceration or placement under the jurisdiction of penal authorities, courts or state juvenile authorities;
4. change of residence to another state with the intent to become a resident of that state;
5. admission to an ICF-MR facility or nursing facility with the intent not to return to waiver services;
6. the health and welfare of the waiver recipient cannot be assured in the community through the provision of reasonable amounts of waiver services as determined by the Regional BCSS Office, i.e., the waiver recipient presents a danger to himself or others;
7. failure to cooperate in either the eligibility determination process, or the initial or annual implementation of the approved Comprehensive Plan of Care (CPOC) or the responsibilities of the NOW recipient; or

8. continuity of services is interrupted as a result of the recipient not receiving NOW services during a period of 30 or more consecutive days. This does not include interruptions in NOW services because of hospitalization, institutionalization (such as ICFs-MR or nursing facilities), or non-routine lapses in services where the family agrees to provide all needed or paid natural supports. This interruption can not exceed 90 days and there is a documented expectation that the individual will return to the NOW services. During this 90-day period, BCSS will not authorize payment for NOW services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

Chapter 139. Covered Services

§13901. Individualized and Family Support Services

A. Individualized and Family Support (IFS) are direct support and assistance services provided in the home or the community that allow the recipient to achieve and/or maintain increased independence, productivity, enhanced family functioning and inclusion in the community or for the relief of the primary caregiver. Transportation is included in the reimbursement for these services. Reimbursement for these services includes the development of a service plan for the provision of these services, based on the BCSS-approved CPOC.

1. IFS-Day (IFS-D) services will be authorized during waking hours for up to 16 hours when natural supports are unavailable in order to provide continuity of services to the recipient. Waking hours are the period of time when the recipient is awake and not limited to traditional daytime hours.

2. IFS-Night (IFS-N) services are direct support and assistance provided to individuals during sleeping hours for a minimum of eight hours. The IFS-N worker must be immediately available in the same residence and able to respond. Night hours is the period of time when the recipient is asleep and there is a reduced frequency and intensity of required assistance and is not limited to traditional nighttime hours. Documentation must support this level of assistance.

B. IFS services may be shared by related waiver recipients who live together or up to three unrelated waiver recipients who live together. Waiver recipients may share IFS services staff when agreed to by the recipients and health and welfare can be assured for each individual. Shared IFS services, hereafter referred to as shared support services, may be either day or night services.

C. IFS (day or night) services include:

1. assisting and prompting with the following activities of daily living (ADL):

- a. personal hygiene;
- b. dressing;
- c. bathing;
- d. grooming;
- e. eating;
- f. toileting;
- g. ambulation or transfers;
- h. other personal care and behavioral support needs;

and

i. any medical task which can be delegated;

2. assisting and/or training in the performance of tasks related to maintaining a safe, healthy and stable home, such as:

- a. housekeeping;
- b. laundry;
- c. cooking;
- d. evacuating the home in emergency situations;
- e. shopping; and
- f. money management;

3. personal support and assistance in participating in community, health, and leisure activities;

4. support and assistance in developing relationships with neighbors and others in the community and in

strengthening existing informal social networks and natural supports;

5. enabling and promoting individualized community supports targeted toward inclusion into meaningful integrated experiences; and

6. providing orientation and information to acute hospital nursing staff concerning the recipient's specific Activities of Daily Living (ADL's), communication, positioning and behavioral needs. All medical decisions will be made by appropriate medical staff.

D. Exclusions. The following exclusions apply to IFS services.

1. Reimbursement shall not be paid for services furnished by a legally responsible relative. A legally responsible relative is defined as the parent of a minor child, foster parent, curator, tutor, legal guardian, or the recipient's spouse.

2. In compliance with licensing regulations, IFS-D and IFS-N services shall not include services provided in the IFS-D or IFS-N worker's residence, regardless of the relationship, unless the worker's residence is a certified foster care home.

E. Staffing Criteria and Limitations

1. IFS-D or IFS-N services may be provided by a member of the recipient's family, provided that the recipient does not live in the family member's residence and the family member is not the legally responsible relative as defined in §13901.D.1.

2. Family members who provide IFS services must meet the same standards as providers or direct care staff who are unrelated to the individual.

3. An IFS-D or N worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency or a time-limited non-routine need that is documented in the BCSS-approved CPOC. An IFS-D or N shared supports worker shall not work more than 16 hours in a 24-hour period unless there is a documented emergency or a time-limited non-routine need that is documented in the BCSS-approved CPOC.

F. Place of Service

1. IFS services shall be provided in the State of Louisiana. Consideration shall be given to requests for the provision of IFS services outside the state on a case-by-case basis for time-limited periods or emergencies. Exceptions to this requirement may be granted for a documented emergency or a time-limited non-routine need documented in the BCSS-approved CPOC.

2. Provision of IFS services shall not be authorized outside of the United States or the Territories of the United States.

G Provider Requirements. Providers must possess a current, valid license as a Personal Care Attendant agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13903. Center-Based Respite Care

A. Center-Based Respite (CBR) Care is temporary, short-term care provided to a recipient with mentally retarded or developmental disabilities who requires support and/or supervision in his/her day-to-day life due to the absence or relief of the primary caregiver. While receiving center-based

respite care, the recipient's routine is maintained in order to attend school, work or other community activities/outings. The respite center is responsible for providing transportation for community outings, as that is included as part of their reimbursement.

B. Exclusions. The cost of room and board is not included in the reimbursement paid to the respite center.

C. Service Limits. CBR services shall not to exceed 720 hours per recipient, per CPOC year.

D. Provider Requirements. The provider shall possess a current, valid license as a Respite Care Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13905. Community Integration Development

A. Community Integration Development (CID) facilitates the development of opportunities to assist recipients who are 18 years and older in becoming involved in their community through the creation of natural supports. The purpose of CID is to encourage and foster the development of meaningful relationships in the community reflecting the recipient's choices and values. Objectives outlined in the Comprehensive Plan of Care will afford opportunities to increase community inclusion, participation in leisure/recreational activities, and encourage participation in volunteer and civic activities. Reimbursement for this service includes the development of a service plan. The recipient must be present in order to receive this service. The recipient may share CID services with one other NOW recipient.

B. Transportation costs are included in the reimbursement for CID services.

C. Service Limitations. Services shall not exceed 60 hours per recipient per CPOC year.

D. Provider Qualifications. The provider must possess a current, valid license as a Supervised Independent Living agency or Personal Care Attendant agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13907. Residential Habilitation-Supported Independent Living

A. Residential Habilitation-Supported Independent Living (SIL) assists the recipient to acquire, improve or maintain those social and adaptive skills necessary to enable an individual to reside in the community and to participate as independently as possible. SIL services include assistance and/or training in the performance of tasks such as personal grooming, housekeeping and money management. Payment for this service includes oversight and administration and the development of service plans for the enhancement of socialization with age-appropriate activities that provide enrichment and may promote wellness. These services also assist the individual in obtaining financial aid, housing, advocacy and self-advocacy training as appropriate, emergency support, trained staff and assisting the recipient in accessing other programs for which he/she qualifies. SIL recipients must be 18 years or older.

B. Place of Service. Services are provided in the recipient's residence and/or in the community. The recipient's residence includes his/her apartment or house, provided that he/she does not live in the residence of any legally responsible relative. An exception will be considered when the recipient lives in the residence of a spouse or disabled parent, or a parent age 70 or older. Family members who are not legally responsible relatives as defined in §13901.D.1, can be SIL workers provided they meet the same qualifications as any other SIL worker.

C. Exclusions

1. Legally responsible relatives may not be SIL providers.

2. SIL shall not include the cost of:

- a. meals or the supplies needed for preparation;
- b. room and board;
- c. home maintenance, or upkeep and improvement;
- d. direct or indirect payment to members of the recipient's legally responsible relative;
- e. routine care and supervision which could be expected to be provided by a family; or
- f. activities or supervision for which a payment is made by a source other than Medicaid e.g., Office for Citizens with Developmental Disabilities (OCDD), etc.

D. Service Limit. SIL services are limited to one service per day, per CPOC year.

E. Provider Qualifications. The provider must possess a current, valid license for the Supervised Independent Living module issued by the Department of Social Services, Bureau of Licensing.

F. Provider Responsibilities

1. Minimum direct services by the SIL agency include three documented contacts per week, by the SIL provider agency, with at least one contact being face-to-face in addition to the approved direct support hours.

2. The provider must furnish back up staff that is available on a 24-hour basis.

3. Residential habilitation services shall be coordinated with any services listed in the BCSS-approved CPOC, and may serve to reinforce skills or lessons taught in school, therapy or other settings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13909. Substitute Family Care

A. Substitute Family Care (SFC) provides for day programming, transportation, independent living training, community integration, homemaker, chore, attendant care and companion services, and medication oversight (to the extent permitted under state law) to recipients residing in a licensed substitute family care home. The service is a stand-alone family living arrangement for individuals age 18 and older. The SFC house parents assume the direct responsibility for the individual's physical, social, and emotional well-being and growth, including family ties. Immediate family members (mother, father, brother and/or sister) cannot be substitute family care parents. Reimbursement for this service includes the development of a service plan based on the approved CPOC.

B. Service Limits. SFC services are limited to one service per day.

C. Provider Qualifications. The provider must possess a current, valid license as a Substitute Family Care agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13911. Day Habilitation

A.1. Day habilitation is assistance with social and adaptive skills necessary to enable the recipient to reside in a community setting and to participate as independently as possible in the community. These services focus on socialization with meaningful age-appropriate activities which provide enrichment and promote wellness, as indicated in the person-centered plan. Day habilitation services must be directed by a service plan and provide assistance and/or training in the performance of tasks related to acquiring, maintaining or improving skills including, but not limited to:

- a. personal grooming;
- b. housekeeping;
- c. laundry;
- d. cooking;
- e. shopping; and
- f. money management.

2. Day Habilitation services shall be coordinated with any therapy, employment-related training, or supported employment models that the recipient may be receiving. The recipient does not receive payment for the activities in which they are engaged. The recipient must be 18 years of age or older in order to receive day habilitation services.

B. Service Limits. Services can be provided one or more hours per day but not to exceed six hours per day or 6,240 1/4 hour units of service per Comprehensive Plan of Care (CPOC) year.

C. Licensing Requirements. The provider must possess a current, valid license as an Adult Day Care Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13913. Supported Employment

A. Supported employment is competitive work in an integrated work setting, or employment in an integrated work setting in which the individuals are working toward competitive work that is consistent with the strengths, resources, priorities, interests, and informed choice of individuals for whom competitive employment has not traditionally occurred. The recipient must be 18 years of age or older in order to receive supported employment services.

B. These are services provided to individuals who are not served by Louisiana Rehabilitation Services, need more intense, long-term follow along and usually cannot be competitively employed because supports cannot be successfully phased out.

C. Supported employment is conducted in a variety of settings, particularly work sites in which persons without disabilities are employed. Supported employment includes activities needed by waiver recipients to sustain paid work, including supervision and training and is based on an

individualized service plan. Supported employment includes assistance and prompting with:

1. personal hygiene;
2. dressing;
3. grooming;
4. eating;
5. toileting;
6. ambulation or transfers;
7. other personal care and behavioral support needs; and
8. any medical task which can be delegated.

D. Supported Employment Models. Reimbursement for supported employment includes an individualized service plan for each model.

1. A one-to-one model of supported employment is a placement strategy in which an employment specialist (job coach) places a person into competitive employment, provides training and support and then gradually reduces time and assistance at the work site. This service is time limited to six to eight weeks in duration.

2. Follow along services are designed for individuals who are in supported employment and have been placed in a work site and only require the oversight of a minimum of two visits per month for follow along at the job site.

3. Mobile Work Crew/Enclave is an employment setting in which a group of eight or fewer workers with disabilities who perform work in a variety of locations under the supervision of a permanent employment specialist (job coach/supervisor). Typically this service is up to six hours per day, five days per week.

E. Service Exclusions

1. Services shall not be used in conjunction or simultaneously with any other waiver service, except substitute family care, residential habilitation supported independent living, and skilled nursing services.

2. When supported employment services are provided at a work site in which persons without disabilities are employees, payment will be made only for the adaptations, supervision and training required by individuals receiving waiver services as a result of their disabilities, and will not include payment for the supervisory activities rendered as a normal part of the business setting.

3. Services are not available to individuals who are eligible to participate in programs funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

F. Service Limits

1. One-to-One intensive services shall not exceed 1,280 1/4 hour units per CPOC year. Services shall be limited to eight hours a day, five days a week, for six to eight weeks.

2. Follow along services shall not exceed 24 days per CPOC year.

3. Mobile Crew/Enclave services shall not exceed 8,320 1/4 hour units of service per CPOC year, without additional documentation. This is eight hours per day, five days per week.

G Licensing Requirements. The provider must possess a current valid license as an Adult Day Care Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13915. Transportation for Day Habilitation and Supported Employment Models

A. Transportation provided between the recipient's residence and the site of the day habilitation or supported employment model, or between the day habilitation and supported employment model site (if the recipient receives services in more than one place) is reimbursable when day habilitation or supported employment model has been provided. Reimbursement will be a daily rate for a round trip fare. A round trip is defined as transportation from the recipient's place of residence and return to the recipient's place of residence. The round trip shall be documented in the provider's transportation log.

B. Licensing Requirements. Transportation providers must possess a current valid license as an Adult Day Care Center. The licensed provider must carry \$1,000,000 liability insurance on the vehicles used in transporting the recipients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13917. Employment-Related Training

A. Employment-related training consists of paid employment for recipients for whom competitive employment at or above the minimum wage is unlikely, and who need intensive ongoing support to perform in a work setting because of their disabilities. Services are aimed at providing recipients with opportunities for employment and related training in work environments one to eight hours a day, one to five days a week at a commensurate wage in accordance with United States Department of Labor regulations and guidelines. The recipient must be 18 years or older in order to receive employment-related training services. Reimbursement for these services includes transportation and requires an individualized service plan.

B. Employment-related training services include, but are not limited to:

1. assistance and prompting in the development of employment related skills. This may include:
 - a. assistance with personal hygiene;
 - b. dressing;
 - c. grooming;
 - d. eating;
 - e. toileting;
 - f. ambulation or transfers;
 - g. behavioral support needs; and
 - h. any medical task which can be delegated;
2. employment at a commensurate wage at a provider facility for a set or variable number of hours;
3. observation of an employee of an area business in order to obtain information to make an informed choice regarding vocational interest;
4. instruction on how to use equipment;
5. instruction on how to observe basic personal safety skills;
6. assistance in planning appropriate meals for lunch while at work;
7. instruction on basic personal finance skills;

8. information and counseling to a recipient and, as appropriate, his/her family on benefits planning and assistance in the process.

C. Exclusions. The following service exclusions apply to employment-related training.

1. Services are not available to recipients who are eligible to participate in programs funded under Section 110 of the Rehabilitation Act of 1973 or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401(16) and (71).

D. Service Limits. Services shall not exceed eight hours a day, five days a week, and cannot exceed 6,240 1/4 hour units of service per CPOC year.

E. Licensing Requirements. The provider must possess a current, valid license as an Adult Day Care Center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13919. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are physical adaptations to the home or a vehicle that are necessary to ensure the health, welfare, and safety of the recipient or that enable him/her to function with greater independence in the home and/or community. Without these services, the recipient would require additional supports or institutionalization.

B. Such adaptations may include:

1. installation of non-portable ramps and grab-bars;
2. widening of doorways;
3. modification of bathroom facilities; or
4. installation of specialized electric and plumbing systems which are necessary to accommodate the medical equipment and supplies for the welfare of the individual.

C. Requirements for Authorization. Items reimbursed through NOW funds shall be supplemental to any adaptations furnished under the Medicaid State Plan.

1. Any service covered under the Medicaid State Plan shall not be authorized by NOW. The environmental accessibility adaptation(s) must be delivered, installed, operational, and reimbursed in the CPOC year in which it was approved. Three written itemized detailed bids, including drawings with the dimensions of the existing and proposed floor plans relating to the modification, must be obtained and submitted for prior authorization. Modifications may be applied to rental or leased property with the written approval of the landlord. Reimbursement shall not be paid until receipt of written documentation that the job has been completed to the satisfaction of the recipient.

2. Three bids may not be required if the environmental accessibility adaptations are available from a single source supplier due to the distance of the recipient's home from other environmental accessibility adaptations providers. The justification and agreement by the service planning/support team for not providing three bids must be included with any request for prior approval.

3. Excluded are those adaptations or improvements to the residence that are of general utility or maintenance and are not of direct medical or remedial benefit to the individual, including, but not limited to:

- a. air conditioning or heating;
- b. flooring;
- c. roofing, installation or repairs;
- d. smoke and carbon monoxide detectors, sprinklers, fire extinguishers, or hose; or
- e. furniture or appliances.

4. Adaptations which add to the total square footage or add to the total living area under the roof of the residence are excluded from this benefit.

5. Home modification is not intended to cover basic construction cost.

6. Excluded are those vehicle adaptations which are of general utility or for maintenance of the vehicle or repairs to adaptations.

D. Service Limits. There is a cap of \$4,000 per recipient for environmental accessibility adaptations. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient may access another \$4,000. Any additional environmental accessibility expenditures during the dormant period reset the three-year time frame.

E. Provider Qualifications. The provider must be an enrolled Medicaid provider and comply with applicable state and local laws governing licensure and/or certification. All persons performing the services (building contractors, plumbers, electricians, engineers, etc.) must meet all state or local requirements for licensure or certification. When state and local building or housing code standards are applicable, modifications to the home shall meet such standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13921. Specialized Medical Equipment and Supplies

A. Specialized Medical Equipment and Supplies (SMES) are devices, controls, or appliances which enable the recipient to:

- 1. increase his/her ability to perform the activities of daily living;
- 2. ensure safety; or
- 3. perceive and control the environment in which he/she lives.

B. The service includes medically necessary durable and nondurable medical equipment not covered under the Medicaid State Plan. NOW will not cover non-medically necessary items. All items shall meet applicable standards of manufacture, design and installation.

C. All alternate funding sources that are available to the recipient shall be pursued before a request for the purchase or lease of specialized equipment and supplies will be considered.

D. Exclusion. Excluded are specialized equipment and supplies that are of general utility or maintenance, but are not of direct medical or remedial benefit to the individual. Refer to the New Opportunities Waiver Provider Manual for a list of examples.

E. Service Limitations. There is a cap of \$4,000 per individual for specialized equipment and supplies. Once a recipient reaches 90 percent or greater of the cap and the account has been dormant for three years, the recipient may

access another \$4,000. Any additional specialized equipment and supplies expenditures during the dormant period reset the three-year time frame.

F. Provider Qualifications. Providers must be enrolled in the Medicaid Program as a durable medical equipment provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13923. Personal Emergency Response Systems

A. Personal Emergency Response Systems (PERS) is a rented electronic device connected to the person's phone and programmed to signal a response center which enables an individual to secure help in an emergency.

B. Recipient Qualifications. Personal emergency response systems (PERS) services are available to those persons who:

- 1. live alone without the benefit of a natural emergency back-up system;
- 2. live alone and would otherwise require extensive IFS services or other NOW services;
- 3. need support due to cognitive limitations until they are educated on the use of PERS;
- 4. have a demonstrated need for quick emergency back-up;
- 5. live with older or disabled care; or
- 6. are unable to use other communications systems as they are not adequate to summon emergency assistance.

C. Coverage of the PERS is limited to the rental of the electronic device. PERS services shall include the cost of maintenance and training the recipient to use the equipment.

D. Provider Qualifications. The provider must be an enrolled Medicaid provider of the Personal Emergency Response System.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13925. Professional Consultation

A. Professional consultation are services designed to evaluate, develop programs, and train natural and formal care givers to implement training or therapy programs, which will increase the individual's independence, participation, and productivity in his/her home, work, and community. These services are not meant to be long-term on-going services. They are normally meant to be short-term or intermittent services to develop critical skills which may be self-managed by the individual or maintained by natural and formal care givers. The recipient must be present in all aspects of the consultation in order for the professional to receive payment for these services. Service intensity, frequency and duration will be determined by individual need. These services may include assessments or periodic reassessments, and may be direct or indirect. Documentation of services provided must be available on-site. The professional consultation services are to be used only when the services are not covered under the Medicaid State Plan. The recipients must be 21 years or older in order to receive professional consultation services.

B. Professional consultation shall include the following services:

1. consultation provided by a licensed registered nurse regarding those medically necessary nursing services ordered by a physician that exceed the service limits for home health services that do not meet the skilled nursing criteria under the Medicaid State Plan. Services must comply with the Louisiana Nurse Practice Act. Consultations may address health care needs related to prevention and primary care activities;

2. evaluation and education performed by a licensed psychologist as specified by state law and licensure. These services are for the treatment of behavioral or mental conditions that address personal outcomes and goals desired by the recipient and his/her team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with mental retardation or developmental disabilities. Consultation provides the recipient, family, care givers, or team with information necessary to plan and implement plans for the recipient;

3. highly specialized consultation services furnished by a licensed clinical social worker and designed to meet the unique counseling needs of individuals with mental retardation and development disabilities. Counseling may address areas such as human sexuality, depression, anxiety disorders, and social skills. Services must only address those personal outcomes and goals listed in the BCSS approved CPOC.

C. Service Limits. Professional consultation services are limited to a \$750 cap per individual per CPOC year for the combined range of professional consultations.

D. Provider Qualifications. The provider of professional consultation services must possess a current valid license as a personal care attendant (PCA), supervised independent living (SIL) or home health (HH) agency. Each professional rendering service must:

1. possess a current valid Louisiana license to practice in his/her field;
2. have at least one year experience in his/her field of expertise, post licensure; and
3. be contracted or employed with an enrolled PCA, SIL or HH agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13927. Professional Services

A. Professional services are services designed to increase the individual's independence, participation and productivity in the home, work, and community. The recipient must be 21 years of age or older in order to receive these services. Professional services are to be used only when the services are not covered under the Medicaid State Plan. Professional services must be delivered with the recipient present and be provided based on the approved CPOC and an individualized service plan. Professional services are limited to the following services.

1. Psychological services are direct services performed by a licensed psychologist, as specified by state law and licensure. These services are for the treatment of a behavioral or mental condition that addresses personal

outcomes and goals desired by the recipient and his or her team. Services must be reasonable and necessary to preserve and improve or maintain adaptive behaviors or decrease maladaptive behaviors of a person with mental retardation or developmental disabilities. Service intensity, frequency, and duration will be determined by individual need.

2. Social work services are highly specialized direct counseling services furnished by a licensed clinical social worker and designed to meet the unique counseling needs of individuals with mental retardation and development disabilities. Counseling may address areas such as human sexuality, depression, anxiety disorders, and social skills. Services must only address those personal outcomes and goals listed in the BCSS approved CPOC.

3. Nursing services are medically necessary direct services provided by a licensed registered nurse or licensed practical nurse. Services must be ordered by a physician and comply with the Louisiana Nurse Practice Act. Direct services may address health care needs related to prevention and primary care activities, treatment and diet. Reimbursement is only available for the direct service performed by a nurse, and not for the supervision of a nurse performing the hands-on direct service.

B. Service Limits. There shall be a \$1,500 cap per recipient per CPOC year for the combined range of professional services.

C. Provider Qualifications. The provider of professional services must possess a current valid license as a personal care attendant, supervised independent living or home health agency. Each professional rendering service must possess a current valid Louisiana license to practice in his/her field and have at least one year of experience post licensure in their area of expertise and be contracted or employed with an enrolled PCA, SIL, or HH agency.

D. Nonreimbursable Activities. The following activities are not reimbursable:

1. friendly visiting, attending meetings;
2. time spent on paperwork or travel;
3. time spent writing reports and progress notes;
4. time spent on staff training;
5. time spent on the billing of services; and
6. other nonMedicaid reimbursable activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13929. Skilled Nursing Services

A. Skilled Nursing services are medically necessary nursing services ordered by a physician and provided to a medically fragile recipient in or outside of his/her home. Skilled nursing services shall be provided by a licensed, enrolled home health agency using licensed nurses. All Medicaid State Plan services must be utilized before accessing this service.

B. Recipient Criteria. The recipient must be 21 years of age or older and have a diagnosis of a chronic disease which requires the vigilance of a licensed nurse to provide evaluation and management of a disease, thereby limiting the need for frequent acute or emergency services. Skilled nursing services require a physician's order documenting medical necessity and individual nursing service plan. These services must be included in the individual's BCSS-approved

CPOC. Skilled nursing services shall be available to individuals who are medically fragile with chronic conditions who meet one of the following criteria:

1. have unstable or uncontrolled diabetes and are insulin dependent;
2. have insufficient respiratory capacity requiring use of oxygen therapy, a ventilator, and/or tracheotomy;
3. require hydration, nutrition, and/or medication via a gastro-tube;
4. have severe musculo-skeletal conditions/non-ambulatory status that requires increased monitoring and/or the treatment of decubitus;
5. have kidney failure requiring dialysis;
6. have cancer requiring radiation/chemotherapy;
7. require end-of-life care not covered by hospice services;
8. require the use of life-sustaining equipment to ensure sufficient body function (a ventilator, a suction machine, pulse oximeters, apnea monitors, or nebulizers); or
9. require the administration of medications which by law must be administered by a licensed nurse via mediports, central lines, or intravenous therapy.

C. When there is more than one recipient in the home receiving skilled nursing services, services may be shared and payment must be coordinated with the service authorization system and each recipient's BCSS approved CPOC.

D. Provider Qualifications. The provider must possess a current valid license as a home health agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13931. One Time Transitional Expenses

A. One time transitional expenses are those allowable expenses incurred by recipients who are being transitioned from an ICF-MR to their own home or apartment in the community of their choice. Own home shall mean the recipient's own place of residence and does not include any family members home or substitute family care homes. The recipient must be 18 years or older in order to receive this service.

B. Allowable transitional expenses include:

1. the purchase of essential furnishings such as:
 - a. bedroom and living room furniture;
 - b. table and chairs;
 - c. window blinds;
 - d. eating utensils; and
 - e. food preparation items;
2. moving expenses required to occupy and use a community domicile;
3. health and safety assurances, such as pest eradication, allergen control, or one-time cleaning prior to occupancy;
4. non-refundable security deposits.

C. Service Limits. Set-up expenses are capped at \$3,000 over a recipient's lifetime.

D. Service Exclusion. Transitional expenses shall not constitute payment for housing, rent, or refundable security deposits.

E. Provider Qualifications. This service shall only be provided by the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities (OCDD) with coordination of appropriate entities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13933. Transitional Professional Support Services

A. Transitional Professional Support Services is a system using specialized staff and resources to intervene and stabilize in a situation caused by any severe behavioral or medical circumstance that could result in loss of a current community-based living arrangement. These services are limited to recipients who have transitioned out of a public developmental center and have reached the cap for professional services and professional consultation for the recipient's CPOC year. The recipient must be present for all services provided.

B. Recipient Criteria

1. These services are available for recipients who meet all of the following criteria:

a. have a developmental disability and one or more concurrent mental health diagnoses of autism or other pervasive developmental disorders;

b. have a history of recurrent challenging behaviors that risks injury to the individual or others, or results in significant property damage; and

c. have a need for professional services and/or professional consultation that exceeds the service limits for these services available under the Medicaid State Plan and NOW, as documented by a statement of necessity from the treating psychiatrist or psychologist; or

2. the recipient has an acute illness or injury which requires the added vigilance of a licensed nurse to provide treatment of disease symptoms that may avert and/or delay the consequence of advanced complications, thereby reducing the likelihood of further deterioration. Supporting documentation from the recipient's physician must be provided to demonstrate need.

C. Exclusion. All Medicaid State Plan services must be utilized before accessing this service.

D. Provider Qualifications. Providers of transitional professional support services must possess a current, valid license as a PCA, SIL, or HH agency. Each professional rendering service must possess a valid Louisiana license to practice in his/her field and one year of experience in their field of expertise post licensure.

E. Provider Responsibility. An agency that fulfills this role must possess specialized staff and resources to intervene in and stabilize a situation caused by any severe behavioral or medical circumstance that could result in loss of a current community-based living arrangement. The provider must develop and maintain a current service plan that details the program goals, plans, and expected outcomes from all individuals providing these services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

§13935. Consumer Directed Service

A. The consumer directed initiative is a payment mechanism and a self-determination option for NOW recipients in the Department of Health and Hospitals Regions 1, 2, and 9. This is a voluntary option where the waiver recipient or his or her authorized representative may choose what services and/or supports best fit their individual needs through the person-centered planning process, and as documented on the BCSS-approved CPOC. The waiver recipient selecting this option will be required to use a contracted fiscal agent to provide designated functions on his/her behalf.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

Chapter 141. Reimbursement

§14101. Reimbursement Methodology

A. Reimbursement for the following services shall be a prospective flat rate for each approved unit of service provided to the recipient. One quarter hour (15 minutes) is the standard unit of service, which covers both service provision and administrative costs.

1. Center-Based Respite
2. Community Integration Development
3. Day Habilitation
4. Employment Related Training
5. Individualized and Family Support-Day and Night
6. Professional Consultation
7. Professional Services
8. Skilled Nursing Services
9. Supported Employment, One-to-One Intensive and Mobile Crew/Enclave
10. Transitional Professional Support Services
11. Shared Supports (IFS-D and -N, Skilled Nursing, CID)

a. Services furnished to two recipients will be reimbursed at 75 percent of the full rate for each recipient; and

b. services furnished to three recipients will be reimbursed at 66 percent of the full rate for each recipient.

B. The following services are to be paid at cost, based on the need of the individual and when the service has been prior authorized and on the CPOC:

1. environmental accessibility adaptations;
2. specialized medical equipment and supplies; and
3. transitional expenses.

C. The following services are paid through a per diem:

1. substitute family care;
2. residential habitation-supported independent living; and
3. supported employment-follow along.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 30:

Implementation of this proposed Rule is subject to approval by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#054

DECLARATION OF EMERGENCY

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

Rehabilitation Services
Reimbursement Fee Increase

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement for rehabilitation services under the Medicaid Program. Rehabilitation services include physical, occupational and speech therapies. Reimbursement is available for these services through outpatient hospital, home health, rehabilitation center and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) health services. The bureau also adopted a Rule establishing the reimbursement methodology for rehabilitation services rendered in rehabilitation centers and outpatient hospital settings in June of 1997 (*Louisiana Register*, Volume 23, Number 6). The bureau adopted a subsequent Rule in May of 2001 to establish the reimbursement methodology for rehabilitation services rendered by home health agencies (*Louisiana Register*, Volume 27, Number 5). Reimbursement for these services is a flat fee established by the bureau minus the amount that any third party coverage would pay.

Act 13 of the 2002 Regular Session of the Louisiana Legislature directed the department to increase the reimbursement for physical therapy, occupational therapy, and speech/language and hearing therapy services provided to children under three years of age. In compliance with the Appropriation Bill and as a result of the allocation of additional funds by the Legislature, the bureau promulgated an Emergency Rule that increased the reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of three, regardless of the type of provider performing the services (*Louisiana Register*, Volume 28, Number 7). The bureau increased the reimbursement for

additional rehabilitation services provided by outpatient hospitals and home health agencies (*Louisiana Register*, Volume 29, Number 4). This Emergency Rule is being promulgated to continue provisions contained in the April 21, 2000 Rule. This action is being taken to protect the health and welfare of Medicaid recipients under the age of three and to ensure access to rehabilitation services by encouraging the participation of rehabilitation providers in the Medicaid Program.

Emergency Rule

Effective for dates of service on or after April 18, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the June 20, 1997 and May 20, 2001 Rules governing the reimbursement methodology for rehabilitation services provided by outpatient hospitals and home health agencies to increase the reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of 3. The new reimbursement rates for rehabilitation services are as follows.

Home Health Agencies and Outpatient Hospitals	
Procedure Name	New Rate
Physical Therapy, one modality	\$37.00
Physical Therapy, 2 or more modalities	\$56.00
P.T. with 1 or more procedures, and/or modalities, 15 minutes	\$18.50
P.T. with procedures, 30 minutes	\$37.00
P.T. with procedures, 75 minutes	\$92.50
Occupational Therapy, 15 minutes	\$15.00
Occupational Therapy, 30 minutes	\$30.00
Speech and Hearing Therapy, 15 minutes	\$14.00
Speech and Hearing Therapy, 30 minutes	\$28.00
Speech and Hearing Therapy, 45 minutes	\$42.00
Speech and Hearing Therapy, 60 minutes	\$56.00

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

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#055

DECLARATION OF EMERGENCY

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Commercial Large Coastal Shark Season Closure

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 Rule LAC 76:VII.357.M.2 which allows the secretary to declare a closed season when he is informed that the commercial large coastal shark seasonal quota for that species group and fishery has been met in the Gulf of Mexico, and that such closure order shall close the season until the date projected for the re-opening of that fishery in the adjacent Federal waters, the Secretary of the Department of Wildlife and Fisheries hereby declares:

Effective 11:30 p.m., February 29, 2004, the commercial fishery for large coastal sharks in Louisiana waters, as described in LAC 76:VII.357.B.2 (great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark, and tiger shark) will close through June 30, 2004. Nothing herein shall preclude the legal harvest of large coastal sharks by legally licensed recreational fishermen during the open season for recreational harvest. Effective with this closure, no person shall commercially harvest, purchase, exchange, barter, trade, sell or attempt to purchase, exchange, barter, trade or sell large coastal sharks or fins thereof within or without Louisiana territorial waters. Also effective with the closure, no person shall possess large coastal sharks in excess of a daily bag limit, which may only be in possession during the open recreational season. Nothing shall prohibit the possession or sale of fish by a commercial dealer if legally taken prior to the closure providing that all commercial dealers possessing large coastal sharks taken legally prior to the closure shall maintain appropriate records in accordance with R.S. 56:306.5 and R.S. 56:306.6.

The secretary has been notified by the National Marine Fisheries Service that the first semi-annual quota for large coastal sharks will be reached on or before February 29, 2004 and that the Federal season closure is necessary to ensure that the semi-annual quota for large coastal sharks for the period January 1 through June 30, 2004 is not exceeded.

Dwight Landreneau
Secretary

0403#001

Rules

RULE

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? American Sign Language I and II as a Foreign Language (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The standard for foreign language has not changed; only the addition of American Sign Language I and II has been added to the list of courses. Students who are deaf and wish to apply for the TOPS scholarship program have to request a waiver for the foreign language requirement. With the approval of ASL I and II as a foreign language, this waiver will not be required. In addition, students who successfully complete these courses would not need a waiver when applying to universities that have foreign language entrance requirements.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:394 (March 2004).

* * *

Foreign Languages

2.105.07. The foreign language course offerings shall be as follows.

Course Title	Unit(s)	Refer to Bulletin
French I, II, III, IV, V	1 each	1876
German I, II, III, IV, V	1 each	1876
Italian I, II, III, IV, V	1 each	1876
Latin I, II, III, IV, V	1 each	1876
Russian I, II, III, IV, V	1 each	1876
Spanish I, II, III, IV, V	1 each	1876
American Sign Language I, II		

* * *

Weegie Peabody
Executive Director

0403#010

RULE

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, Board of Elementary and Secondary Education has amended *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). At the September 2003 meeting of the State Board of Elementary and Secondary Education (SBESE), the board approved revisions to the "Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School System: Participation in LEAP 21." These guidelines are contained in *Bulletin 741? The Louisiana Handbook for School Administrators*. The changes reflect the new achievement levels ("basic/approaching basic") for fourth grade students. This action was required to clarify the transfer policy as it relates to students transferring from nonpublic schools (both in-state and out-of-state and from home schooling programs).

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:483 (November 1975), amended LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:394 (March 2004).

* * *

Guidelines for Nonpublic and Home Schooling Students Transferring to the Public School Systems Participation in the LEAP 21

A student who is transferring from an in-state nonpublic school or a home schooling program or a Louisiana resident* who is transferring from an out-of-state school to enroll in the Louisiana public school system at grades 5 or 9 shall be required to take the 4th- or 8th-grade LEAP 21 English Language Arts and Mathematics tests. Fourth-grade students must score Basic or above on either the LEAP 21 English Language Arts test or the LEAP 21 Mathematics test and Approaching Basic or above on the other one. Eighth-grade students must score Approaching Basic or

above on both the English Language Arts and Mathematics tests. Beginning in spring 2006, the achievement level for 8th grade students will be raised to the Basic/Approaching Basic combination level. The following guidelines shall apply.

1. Students may take LEAP 21 during either a spring or a summer administration prior to enrollment. It is the responsibility of the parent(s) to contact the local school system, or Local Education Agency (LEA), District Test Coordinator to register for the test.

2. The nonpublic school and the parent(s) [or home schooling parent(s)] are responsible for providing to the LEA District Test Coordinator, at least 10 working days prior to the testing date, appropriate documentation required for requested standard testing accommodations.

3. Students with disabilities who have a current 1508 evaluation will participate in LEAP 21 testing. Promotion decisions for these students will adhere to the High Stakes Testing Policy.

4. LEAs may charge a fee for the testing of nonpublic and home schooling students. This fee shall be refunded upon the student's enrollment in that public school system the semester immediately following the testing.

5. Students who participate in a spring administration and fail to score at the required achievement level(s) are eligible to retake the LEAP 21 at the following summer administration.

6. LEAs shall offer LEAP 21 summer remediation to nonpublic/home schooling 4th- and 8th-grade students who fail to score at the required LEAP 21 achievement level(s), as well as to nonpublic/home schooling 4th- and 8th-grade students who did not test in the spring but wish to prepare for the summer administration. LEAs may charge a fee, not to exceed \$100 per student, for such remediation. The summer remediation fee shall be refunded upon the student's enrollment in that public school system the semester immediately following summer remediation.

7. Students who fail to score at the required achievement level(s) are not required to attend the summer remediation offered by the LEA to be eligible to take the summer retest. However, students must attend the LEA - offered summer remediation to be eligible for the appeal process or the policy override.

8. Only students who fail to score at the required achievement level(s) after participation in both the spring and summer administration of LEAP 21 and who attend the summer remediation offered by the LEA are eligible for the appeals process or the policy override, provided all criteria are met (see the High-Stakes Testing Policy).

9. Students who participate only in the spring administration or only in the summer administration and fail to score at the required achievement level(s) are not eligible for the appeals process or the policy override. These students *are* not eligible to take The Iowa Tests for placement purposes.

10. Students transferring into local school systems after the LEAP 21 summer retest but prior to February 15 are

required to take the state-selected form of The Iowa Tests for grade placement if the students have not taken LEAP 21.

11. Students taking The Iowa Tests are not eligible for a retest or for the appeals process. These students may be eligible for the policy override based upon a decision by the School Building Level Committee.

12. The High Stakes Testing Policy and the local Pupil Progression Plan shall govern grade placement of students transferring to the local school systems.

*A Louisiana resident transferring from any out-of-state school is defined as a student who lives in Louisiana but attends school in an adjacent state.

* * *

Weegie Peabody
Executive Director

0403#011

RULE

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? Pre-GED/Skills Option Program (LAC 28:1.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:1.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The revision is technical in nature to bring BESE policy into alignment with current accountability policy.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended LR 28:269-271 (February 2002), LR 28:272-273 (February 2002), LR 28:991-993 (May 2002), LR 28:1187 (June 2002), LR 30:395 (March 2004).

* * *

Pre-GED/Skills Option Program

1.151.05. A school system shall implement the Pre-GED/Skills Option Program and shall obtain approval from the State Department of Education at least 60 days prior to the establishment of the program. (See High Stakes Testing Policy in Bulletin 1566.)

A program application describing the Pre-GED/Skills Option Program shall be submitted and shall address the following program requirements:

1. Students shall be 16 years of age or older and meet one or more of the following criteria:

*Shall have failed LEAP 21 English language arts and/or math 8th grade test for one or two years;

*Shall have failed English language arts, math, science and/or social studies portion of the GEE;

*Shall have participated in alternate assessment;

*Shall have earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, or not more than 15 Carnegie units by age 19;

*Students with Limited English Proficiency shall be considered eligible for the Pre-GED/Skills Option Program.

2. Enrollment is voluntary and requires parent/guardian consent.

3. Counseling is a required component of the program.

4. The program shall have both a Pre-GED/academic component and a skills/job training component. Traditional Carnegie credit course work may be offered but is not required. Districts are encouraged to work with local postsecondary institutions, youth-serving entities, and/or businesses in developing the skills component.

5. BESE will require the Pre-GED/Skills Option Program to be on a separate site. Exceptions will be considered based on space availability, transportation or a unique issue.

6. Students who complete only the skills section will be given a Certificate of skills completion.

7. Students will count in the October 1st MFP count.

8. Students will be included in School Accountability. While enrolled, they shall be required to take the 9th grade Iowa Test or alternate assessment. All programs will be considered Option 1 for alternative education purposes, and the score for every alternative education student at a given alternative school shall be returned to ("sent back") and included in the home-based school's SPS. (See Standard 20.002.00 of Bulletin 741.)

Refer to the Guidelines and Application Packet provided by the Louisiana Department of Education for the requirements to establish a Pre-GED/Skills Option Program.

* * *

Weegie Peabody
Executive Director

0403#012

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for
State Certification of School Personnel?
Alternate Certification Programs
(LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy revises the alternate program descriptions to include content-specific PRAXIS exams as an entry requirement for middle school grades 4-8 candidates. This aligns the alternate program requirements with the No Child Left Behind Act of 2001 specifying that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches. This policy also specifies the grade levels for early childhood, elementary, middle, and secondary certification in Louisiana, as revised to align with the No Child Left Behind Act of 2001.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

* * *

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 30:396 (March 2004).

* * *

Louisiana Alternate Certification Programs

Practitioner Teacher Program? Alternative Path to Certification

State-approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Practitioner Teacher Program. Practitioner Teacher Programs may offer certification in grades 1-5, grades 4-8, or grades 6-12 (regular or special education). The Practitioner Teacher Program is a streamlined certification path that combines intensive coursework and full-time teaching.

1. Admission to the Program. Program providers will work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring. To be admitted, individuals should:

a. possess a baccalaureate degree from a regionally accredited university;

b. have a 2.50 GPA on undergraduate work.

Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider. However, in no case may the GPA be less than 2.20. (Note: State law requires that upon completion of the program, the teacher candidate has a 2.50 GPA for certification.);

c. pass the PRAXIS Pre-Professional Skills Test (e.g., reading, writing, and mathematics). (Individuals who already possess a graduate degree will be exempted from this requirement.);

d. pass the PRAXIS content specific examinations:

(1) candidates for grades 1-5 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;

(2) candidates for grades 4-8 (regular and special education): pass the middle school PRAXIS examination(s) in the content area(s) in which they intend to teach;

(3) candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

(4) candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the content specialty examination. If no

examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area;

e. meet other non-course requirements established by the college or university.

2. Teaching Preparation (Summer)

9 credit hours
(or equivalent 135 contact hours)

All teachers will participate in field-based experiences in school settings while completing the summer courses (or equivalent contact hours).

GRADES 1-5, 4-8, and 6-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships.

MILD/MODERATE SPECIAL EDUCATION 1-12 practitioner teachers will successfully complete courses (or equivalent contact hours) that focus on special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, and vocational and transition services for students with disabilities.

ALL-LEVEL K-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child AND adolescent psychology, the diverse learner, classroom management and organization, assessment; instructional design, and instructional strategies across grade levels K-12 before starting their teaching internships.

3. Teaching Internship and First-Year Support

12 credit hours
(or equivalent 180 contact hours)

Practitioner teachers will assume full-time teaching positions in districts. During the school year, these individuals will participate in two seminars (one seminar during the fall and one seminar during the spring) that address immediate needs of the Practitioner Teacher Program teachers and will receive one-on-one supervision through an internship provided by the program providers. The practitioner teacher will also receive support from school-based mentor teachers provided by the Louisiana Teacher Assistance and Assessment Program (LaTAAP) and principals. NOTE: For all-level areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

4. Teaching Performance Review (End of First Year)

Program providers, principals, mentors, and practitioner teachers will form teams to review first-year teaching performance of practitioner teachers and determine the extent to which the practitioner teachers have demonstrated teaching proficiency. If practitioner teachers demonstrated proficiency, they will enter into the assessment portion of the Louisiana Teacher Assistance and Assessment Program during the next fall. (If a practitioner teacher who passed the assessment portion of the Louisiana Teacher Assistance and Assessment program prior to entering the Practitioner Teacher Program continues to demonstrate the Louisiana

Components of Effective Teaching at the "competent" level, the team may, by unanimous decision, exempt the teacher from completing the assessment part of the Louisiana Teacher Assistance and Assessment Program.)

If weaknesses are cited, teams will identify additional types of instruction needed to address the areas of need. Prescriptive plans that require from one to nine credit hours (or 15 to 135 equivalent contact hours) of instruction will be developed for practitioner teachers. In addition, teams will determine whether practitioner teachers should participate in the new teacher assessment during the fall or whether the practitioner teachers should receive additional mentor support and be assessed after the fall.

5. Prescriptive Plan Implementation (Second Year)

1-9 credit hours
(15 to 135 contact hours)

Practitioner teachers who demonstrate areas of need will complete prescriptive plans.

6. Louisiana Assessment Program (Second Year)

Practitioner teachers will be assessed during the fall or later, depending upon their teaching proficiencies.

7. PRAXIS Review (Second Year)

Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the PRAXIS.

8. Certification Requirements

(Requirements must be met within a three-year time period. A practitioner teacher's license will not be renewed if all course requirements are not met with these three years.)

Private providers and colleges or universities will submit signed statements to the Louisiana Department of Education that indicate that the student completing the Practitioner Teacher Program alternative certification path met the following requirements:

A. passed the PPST components of the PRAXIS (Note: This test was required for admission.);

B. completed the Teaching Preparation and Teaching Internship segments of the program with an overall 2.50 or higher GPA;

C. passed the Louisiana Teacher Assistance and Assessment Program;

D. completed prescriptive plans (if weaknesses were demonstrated);

E. passed the specialty examination (PRAXIS) for the area(s) of certification. (Note: This test was required for admission.);

(1) grades 1-5 (regular and special education): Elementary Education: Content Knowledge Examination #0014;

(2) grades 4-8 (regular and special education): Middle school PRAXIS content specialty examination in each area in which a candidate intends to teach;

(3) grades 6-12 (regular and special education): PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. (Note: This examination was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.);

(4) all-Level K-12 areas (art, dance, foreign language, health and physical education, and music): Content specialty

examination in area(s) in which candidate intends to teach. (Note: This examination was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.) Provider must develop a process to assure that candidates for all-level certification demonstrate necessary performance skills in the area of certification;

- F. passed the pedagogy examination (PRAXIS):
 - a. grades PK-3: Early Childhood Education (#0020);
 - b. grades 1-5: Principles of Learning and Teaching K-6;
 - c. grades 4-8: Principles of Learning and Teaching 5-9;
 - d. grades 6-12, all-level K-12 Certification: Principles of Learning and Teaching 7-12;
 - e. mild/moderate special education 1-12: special education examinations.
- 9. Ongoing Support (Second and Third Year)

Program providers will provide support services to practitioner teachers during their second and third years of teaching. Types of support may include on-line support, Internet resources, special seminars, etc.

- 10. Professional License (Practitioner License to Level 2)

Practitioner teachers will be issued a practitioner license when they enter the program. They will be issued a level 1 professional license once they have successfully completed all requirements of the program; after three years of teaching, they will be eligible for a level 2 license.

UNDERGRADUATE/GRADUATE COURSES AND GRADUATE PROGRAMS

Universities may offer the courses at undergraduate or graduate levels. Efforts should be made to allow students to use graduate hours as electives if the students are pursuing a graduate degree.

Masters Degree Program Alternative Path to Certification

A Louisiana college or university with an approved teacher education program may choose to offer an alternative certification program that leads to a master's degree. The college or university may choose to offer the masters degree program as either a master of education or a master of arts in teaching. Masters Degree Programs may offer certification in grades PK-3, 1-5, 4-8, 6-12, all-level K-12 (art, dance, foreign language, health and physical education, and music), or mild-moderate special education.

ADMISSION TO THE PROGRAM

To be admitted, individuals should:

- 1. possess a baccalaureate degree from a regionally accredited university;
- 2. have a 2.50 GPA, or higher, on undergraduate work;
- 3. pass the Pre-Professional Skills Test (e.g. reading, writing, and mathematics) on the PRAXIS (individuals who already possess a graduate degree will be exempted from this requirement);
- 4. pass the PRAXIS content-specific subject area examination:

- a. candidates for PK-3 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;
- b. candidates for grades 1-5 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;

- c. candidates for grades 4-8 (regular and special education): pass middle school PRAXIS content specialty examination in each area in which a candidate intends to teach;

- d. candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area;

- e. candidates for all-level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area.

5. Meet other non-course requirements established by the college or university.

PROGRAM REQUIREMENTS

- 1. Knowledge of Learner and the Learning Environment

15 credit hours

Grades PK-3, 1-5, 4-8, and 6-12: Child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design and instructional strategies.

Mild/Moderate Special Education 1-12: Special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for mild/moderate exceptional children, vocational and transition services for students with disabilities.

All-Level (grades K-12): Child and adolescent psychology, the diverse learner, classroom management/organization, assessment, instructional design and instructional strategies, across grade levels K-12.

- 2. Methodology and Teaching

12-15 credit hours

Methods courses and field experiences. NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

- 3. Student Teaching or Internship

6-9 credit hours

NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

TOTAL: 33-39 credit hours

CERTIFICATION REQUIREMENTS

Colleges or universities will submit signed statements to the Louisiana Department of Education which indicate that the student completing the Masters Degree Program alternative certification path met the following requirements:

- 1. Passed PPST components of the PRAXIS. (Note: This test was required for admission.)
- 2. Completed coursework (undergraduate and masters program) with an overall 2.50 or higher GPA.
- 3. Passed the specialty examination (PRAXIS) for the area of certification. (Note: This test was required for admission.)

a. Grades PK-3 (regular and special education): Elementary Education: Content Knowledge (#0014) specialty examination.

b. Grades 1-5 (regular and special education): Elementary Education: Content Knowledge (#0014) specialty examination.

c. Grades 4-8 (regular and special education): Middle school PRAXIS content specialty examination in each area in which a candidate intends to teach.

d. Grades 6-12 (regular and special education) and all-level K-12 Certification: Specialty content examination in areas to be certified. (Note: This examination was required for admission.) If no examination was adopted for Louisiana in the certification area, for admission purposes, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area.

4. Passed the pedagogy examination (PRAXIS):

a. grades PK-3: Early Childhood Education (#0020);

b. grades 1-5: Principles of Learning and Teaching K-6;

d. grades 4-8: Principles of Learning and Teaching 5-9;

e. grades 6-12, all-level K-12 Certification: Principles of Learning and Teaching 7-12;

f. mild/moderate special education 1-12: special education examinations.

Non-Masters/Certification-Only Program Alternative Path to Certification

This program is designed to serve those candidates who may not elect participation in or be eligible for certification under either the Practitioner Teacher Alternate Certification Program or the Master's Degree Alternate Certification Program. The program may also be accessible in some areas of the state in which the other alternate certification programs are not available. A college or university may offer this program only in those certification areas in which that institution has a state-approved teacher education program. Non-Master's/Certification-Only Programs may offer certification in PK-3, 1-5, 4-8, and 6-12, all-level K-12 (art, dance, foreign language, health and physical education, and music), or mild-moderate special education.

ADMISSION TO THE PROGRAM

To be admitted, individuals should:

1. possess a baccalaureate degree from a regionally accredited university;

2. have a 2.20 GPA, or higher, on undergraduate coursework. [An overall 2.50 GPA is required for certification; those candidates with a GPA lower than 2.50 may have to take additional courses in the program to achieve a 2.50 GPA];

3. pass the PRAXIS Pre-Professional Skills Test (PPST) (Individuals who already possess a graduate degree will be exempted from this requirement.); and

4. pass the PRAXIS content-specific subject area examination:

a. candidates for PK-3 (regular and special education): pass the elementary education: content knowledge (#0014) specialty examination;

b. candidates for grades 1-5 (regular and special education): pass the elementary education: content knowledge (#0014) specialty examination;

c. candidates for grades 4-8 (regular and special education): pass the middle school PRAXIS content specialty examination in each area in which a candidate intends to teach;

d. candidates for grades 6-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area.

e. candidates for all-level K-12 areas of art, dance; foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area.

PROGRAM REQUIREMENTS

This program will provide the same rigor as other certification routes provided by aligning with such empirically-based standards as National Council for the Accreditation of Teacher Education (NCATE), Interstate New Teacher Assessment and Support Consortium (INTASC), Louisiana Components of Effective Teaching (LCET), and the Louisiana Content Standards. This program will also emphasize collaboration between the university and the school districts in order to share and exchange strategies, techniques, and methodologies; and integrate field-based experiences into the curriculum.

PROGRAM STRUCTURE

1. Knowledge of Learner and the Learning Environment*

12 hours

GRADES PK-3, 1-5, 4-8, and 6-12: Child or adolescent development/psychology, the diverse learner, classroom management/organization/environment, assessment, instructional design, and reading/instructional strategies that are content- and level-appropriate.

MILD/MODERATE SPECIAL EDUCATION 1-12: Special needs of the special education mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods and materials for Special Education Mild/Moderate exceptional children, vocational and transition services for students with disabilities.

ALL-LEVEL K-12 AREAS: Child psychology and adolescent psychology; the diverse learner; classroom management/organization/environment; assessment; instructional design, and reading/instructional strategies across grade levels K-12.

*All courses for regular and special education will integrate effective teaching components, content standards, technology, reading, and portfolio development. Field-based experiences will be embedded in each course.

2. Methodology and Teaching 6 hours

Methods courses to include case studies and field experiences. NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), experiences should be provided across grades K-12.

3. Internship or Student Teaching 6 hours

Will include methodology seminars that are participant-oriented. NOTE: For all-level K-12 areas (art, dance, foreign language, health and physical education, and music), internship or student teaching experiences should be provided across grades K-12.

4. Prescriptive Plan 1-9 hours

The prescriptive plan can be pre-planned courses for individual programs or can be individualized courses for the candidate who demonstrates areas of need, not to exceed 9 semester hours.

TOTAL 24-33 hours

CERTIFICATION REQUIREMENTS

Colleges or universities will submit signed statements to the Louisiana Department of Education that indicate the student completing the Non-Master's/Certification-Only alternative certification path met the following requirements:

1. Passed the PPST components of the PRAXIS. (Note: This test was required for admission.) (Individuals who already possess a graduate degree will be exempted from this requirement).

2. Completed all coursework (including the certification program) with an overall 2.5 or higher GPA.

3. Passed the specialty examination (PRAXIS) for the area(s) of certification. (Note: This test was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.)

a. Grades PK-3: elementary education: content knowledge (#0014) specialty examination.

b. Grades 1-5: elementary education: content knowledge (#0014) specialty examination.

c. Grades 4-8: middle school content specialty examination in each area in which a candidate intends to teach.

d. Grades 6-12 and all-level K-12 certification: specialty content examination in areas to be certified.

4. Passed the pedagogy examination (PRAXIS):
 a. grades PK-3: early childhood education (#0020);
 b. grades 1-5: principles of learning and teaching k-6;
 c. grades 4-8: principles of learning and teaching 5-9;
 d. grades 6-12 and all-level k-12 certification: principles of learning and teaching 7-12;
 e. mild/moderate special education 1-12: special education examinations.

DEADLINE DATES FOR LOUISIANA ALTERNATE PROGRAMS

No students should be accepted into an old post-baccalaureate alternate certification program in the areas of PK-3, 1-5, 4-8, 6-12, and mild/moderate special education after Spring Semester 2003. Candidates in these areas who are already in the old alternative certification programs would be allowed until August 31, 2006, to complete their programs.

No students should be accepted into an old post-baccalaureate alternate certification program in the all-level (K-12) areas of art, dance, foreign language, H&PE, and music after Spring Semester 2004. Candidates in these areas who are already in the old alternative certification programs would be allowed until August 31, 2007, to complete their programs.

Weegie Peabody
 Executive Director

0403#015

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Middle School PRAXIS Exams (LAC 28:1.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:1.903.A. This policy establishes content-specific Praxis exams as the certification requirement for middle school grades 4-8. This aligns the middle school certification testing requirement with the No Child Left Behind Act of 2001, which specifies that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 30:400 (March 2004).

Middle School Certification Testing Policy

For Louisiana middle school certified teachers to have "highly qualified" status, the state's middle school Praxis content exam certification requirements must conform with the No Child Left Behind Act of 2001. The Act specifies that middle school teachers must have passed a content specialty exam for each core academic content area in which the teacher teaches.

The following exams are specified for use by teachers of grades 4-8 in seeking certification in a subject area.

Middle School Subject Area	Exam Number
Mathematics	0069
English/Language Arts	0049
Science	0439
School Social Studies	0089

Weegie Peabody
 Executive Director

0403#013

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? New Certification Structure (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy aligns Bulletin 746 certification policy with the No Child Left Behind Act of 2001 by specifying grade levels for early childhood (PK-3), elementary (1-5), middle school (4-8), and secondary (6-12) certification in Louisiana. Additionally, it revises the middle school structure to delete the generic certification option and to require middle school certification in each of the core academic subject areas in which the individual will teach. This action aligns the certification structure with the definition of middle school grades under the No Child Left Behind Act of 2001.

**Title 28
EDUCATION**

**Part I Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 28:2505 (December 2002), LR 29:117 (February 2003), LR 29:119 (February 2003), LR 29:121 (February 2003), LR 30:401 (March 2004).

* * *

New Certification Structure

A. Recommended Changes

1. Have the universities recommend that teachers be issued Level 1 Teaching Certificates when they have met state certification requirements and hold the universities accountable for the success of the teachers that they recommend for certification. This would eliminate the need for the Louisiana Department of Education to count hours on transcripts and allow the department to become more involved in providing support to universities to improve the quality of teacher preparation programs. (Note: The Louisiana Department of Education would still continue to review transcripts and issue certificates to out-of-state teachers.)

2. Change the certification structure to allow teachers to develop more content knowledge in the grade levels in which they are expected to teach and provide them with more flexible hours to add special education and other grade levels to their certification areas. This would allow new teachers to be certified in one or two areas when completing a 124 credit hour undergraduate degree program.

See B "New Certification Areas and Courses" for the areas of certification that are more content specific.

See C "Additional Certifications" for requirements to add additional areas of certification.

3. Require all new teachers to receive mentoring during their first year of the Louisiana Teacher Assistance and Assessment Program and have them undergo the assessment during the second year.

4. Require all teachers to pass the teacher assessment and teach for a total of three years before being issued a Level 2 teaching certificate.

5. Require all new teachers to undergo a predetermined amount of professional development during a five year time period in order to have their teaching certificates renewed for 5 years. Have the Blue Ribbon Commission on Teacher Quality develop the details for the professional development system during 2000-2001.

B. New Certification Areas and Courses	
1. Common Elements of Basic Certification for All Grade Levels:	
a. General Education Coursework	Same general coursework areas and hours (e.g., 54 hours) for Grades 1-5 and 4-8.
b. Knowledge of the Learner and The Learning Environment	Same general coursework areas and hours (e.g., 15 hours) for all PK-12 teachers.
c. Teaching Methodology	Varying requirements based upon focus areas.
d. Student Teaching	Same requirements and hours (e.g., 9 hours) for all PK-12 teachers.
2. Differing Elements of Basic Certification:	
a. Focus Areas	Four new focus areas:
	(1) Preschool to Grade 3 (Focus: Greater Depth in Early Childhood, Reading/Language Arts, and Mathematics)
	(2) Grades 1-5 (Focus: Greater Depth in Reading/Language Arts and Mathematics)
	(3) Grades 4-8 (Focus: Greater Depth in Content—Two In-depth Teaching Areas)
	(4) Grades 6-12 (Focus: Greater Depth in Content—Primary Teaching Area and Secondary Teaching Area)
	<i>Primary Teaching Area:</i> Pre-service teachers must complete at least 31 credit hours in a specific content area (e.g., English, Mathematics, etc.).
	AND
	<i>Secondary Teaching Area:</i> Pre-service teachers must complete at least 19 credit hours in a second content area (e.g., Science, Social Studies, etc.).
b. Flexible University Hours	Flexible hours that may be used by the universities to create quality teacher preparation programs.
3. Additional Certifications:	Additional grade level certifications within the undergraduate teacher education program that would require approximately 12-15 credit hours. Universities could create programs that would allow teachers to obtain more than one type of certification within the 124 total hours by using the "flexible hours" to add additional grade level or special education certifications.

B. New Certification Areas And Courses (Cont'd)									
Areas		Grades Pk-3 Basic Certification (Focus: Greater Depth in Early Childhood, Reading/Language Arts, and Mathematics)		Grades 1-5 Basic Certification (Focus: Greater Depth in Reading/Language Arts and Mathematics)		Grades 4-8 Basic Certification (Focus: Greater Depth in Content-Two In-Depth Teaching Areas)		Grades 6-12 Basic Certification (Focus: Greater Depth in Content-Primary Teaching Area and Secondary Teaching Area)	
General Education Course Work	English	12 Hours		12 hours		12 hours		6 hours	
	Mathematics	9 Hours		12 hours		12 hours		6 hours	
	Sciences	9 Hours		15 hours		15 hours		9 hours	
	Social Studies	6 Hours		12 hours		12 hours		6 hours	
	Arts	3 Hours		3 hours		3 hours		3 hours	
Focus Areas		Young Child		Reading/Language Arts and Mathematics		Two In-depth Teaching Areas		Primary Teaching Area and Secondary Teaching Area	
		Nursery School and Kindergarten	12 hours	Reading/ Language Arts (Additional Content and Teaching Methodology)	12 hours	In-depth Teaching Area #1 English/ Social Studies/ Mathematics OR Science <i>General Education and Focus Area hours should equal 19 total hours.</i>	7 or more hours OR 4 or more hours	Primary Teaching Area	22 or more hours if in Science OR 25 or more hours if in English, Social Studies, or Math. OR 31 or more hours if in other areas
		Reading/Language Arts (Additional Content and Teaching Methodology)	12 hours						
		Mathematics (Additional Content and Teaching Methodology)	9 hours						
				Mathematics (Additional Content and Teaching Methodology)	9 hours	In-depth Teaching Area #2: English/ Social Studies/ Mathematics OR Science General Education and Focus Area hours should equal 19 total hours.	7 or more hours 4 or more hours	Secondary Teaching Area	13 or more hours if in English, Social Studies, or Math OR 10 or more hours if in Science OR 19 or more hours if in other areas
Knowledge of Learner and the Learning Environment (These hours may be integrated into other areas when developing new courses.)	Child/Adolescent Development/ Psychology, Educational Psychology, The Learner with Special Needs, Classroom Organization and Management, Multicultural Education (Note: All of these areas should address the needs of the regular and exceptional child.)	15 hours Emphasis Upon Early Childhood		15 hours Emphasis Upon Elementary School Student		15 hours Emphasis Upon Middle School Student		15 hours Emphasis Upon Middle and High School Student	

Methodology and Teaching	Reading			6 hours	3 hours
	Teaching Methodology	6 hours	6 hours	9 hours	6 hours
	Student Teaching**	9 hours	9 hours	9 hours	9 hours
Flexible Hours for the University's Use		22 hours***	19 hours	17-23 hours	17-26 hours
Total Hours****		124 hours	124 hours	124 hours	124 hours

* If students do not possess basic technology skills, they should be provided coursework or opportunities to develop those skills early in their program.

** Students must spend a minimum of 270 clock hours in student teaching with at least 180 of such hours spent in actual teaching. A substantial portion of the 180 hours of actual student teaching shall be on an all-day basis.

*** Three of the flexible hours must be in the humanities. This must occur to meet General Education Requirements for the Board of Regents.

*** In addition to the student teaching experience, students should be provided actual teaching experience (in addition to observations) in classroom settings during their sophomore, junior, and senior years within schools with varied socioeconomic and cultural characteristics. It is recommended that pre-service teachers be provided a minimum of 180 hours of direct teaching experience in field-based settings prior to student teaching.

Notes: Minimum credit hours have been listed. Programs may use the flexible hours to add more content hours to the various elements of the program.

The Board of Regents defines a "major" as being 25% of the total number of hours in a degree program; thus, 25% of 124 credit hours is 31 credit hours.

The Board of Regents defines a "minor" as being 15% of the total number of hours in a degree program; thus 15% of 124 credit hours is 19 credit hours.

No final grade below a "C" will be accepted by the State Department of Education in any coursework within the undergraduate program, with the exception of the general education requirements.

C. Additional Certifications Within the Undergraduate Preparation Program

It is recommended that universities consider using their flexible hours to provide pre-service teachers opportunities to select additional areas to add to their certification—either

special education or extended grade level certifications—when they obtain the baccalaureate degree. The additional hours would provide pre-service teachers with the necessary core knowledge to teach the additional content necessary for the new certification areas.

Basic Certifications	Add-On Certifications		Total Hours
	New Certifications	Additional Courses And Hours	
Grades PK - 3	Grades 1-5	Content Emphasis: Sciences 6 Hours Social Studies 6 Hours Mathematics 3 Hours	15 Hours
Grades 1-5	Grades PK - 3	Content Emphasis: Nursery School and Kindergarten 12 Hours	12 Hours
Grades 4-8	Grades 1-5	Reading and Math Emphasis (Additional Content and Teaching Methodology): Accumulate a total of Reading 12 Hours Mathematics 21 Hours	Up to 15 Hours
GRADES 1-5, GRADES 4-8, OR GRADES 6-12	Mild/Moderate Special Education	Special Education Emphasis*: Methods and Materials for Mild/Moderate Exceptional Children, Assessment and Evaluation of Exceptional Learners, Behavioral Management of Mild/Moderate Exceptional Children, and Vocational and Transition Services for Students with Disabilities 12 Hours Practicum in Assessment and Evaluation of Mild/Moderate Exceptional Children (Note: This should not be required if students participate in student teaching that combines regular and special education teaching experiences.) 3 Hours * General knowledge of exceptional students and classroom organization should be addressed in the curriculum for all teachers under "Knowledge of Learner and the Learning Environment."	12 Hours (Additional 3 Hour Practicum if not Integrated Into Other Field-Based Experiences and Student Teaching)

Weegie Peabody
Executive Director

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Temporary Employment Permit Policy (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy aligns Bulletin 746 certification policy for Temporary Employment Permits with R.S. 17:7(6)(c-ii)(d-e) in limiting the maximum number of times the certificate may be issued to three years. It also aligns policy with other Louisiana temporary licensure categories as to number of years (3) a teacher can remain employed on a temporary basis.

Title 28

EDUCATION

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), Amended LR 28:2505-2508 (December 2002), LR 29:117-119 (February 2003), LR 29:119-121 (February 2003), LR 29:121-123 (February 2003), LR 30:404 (March 2004).

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Types of Teaching Authorizations and Certifications

Non-Standard Temporary Authorizations to Teach			
		Conditions	Requirements to Renew Temporary Authorization to Teach and/or Move to Another Certification Level
Temporary Authority to Teach (A teacher may hold a one-year Temporary Authorization to Teach for a maximum of three years while pursuing a specific certification area. He/she may not be issued another Temporary Certification at the end of the three years for the same certification unless the Louisiana Department of Education designates the certification area as one that requires extensive hours for completion.)	Districts may recommend that teachers be given one-year temporary authorizations to teach according to the stipulated conditions. Districts must provide a signed affidavit by the local superintendent that "there is no regularly certified, competent, and suitable person available for that position" and that the applicant is the best qualified person for the position.	a. Individual who graduates from teacher preparation program but does not pass PRAXIS	Teacher must prepare for the PRAXIS and take the necessary examinations at least twice a year.
		b. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who applies for admission to a Practitioner Teacher Program or other alternate program but does not pass the PPST or the content specialty examination of the PRAXIS required for admission to the program.	Teacher must successfully complete a minimum of six credit hours per year in the subject area(s) that they are attempting to pass on the PRAXIS; candidate must reapply for admission to a Practitioner Teacher Program or other alternate program.
		c. Individual who holds a minimum of a baccalaureate degree from a regionally-accredited institution and who is hired after the start of the Practitioner Teacher Program	Teacher must apply for admission to a Practitioner Teacher Program or other alternate program and pass the appropriate PRAXIS examinations required for admission to the program.
Practitioner Teacher License One-year license that can be held a maximum of three years, renewable annually.	The District and the alternate certification program provider must identify the individual as a practitioner teacher (PL1), a non-master's alternate certification program teacher (PL2), or a master's alternate certification program teacher (PL3).	Teacher must be admitted to and enrolled in a State-approved Practitioner Teacher Program (PL1), Non-Master's Alternate Certification Program (PL2), or Master's Degree Alternate Certification Program (PL3), which necessitates meeting all program requirements including baccalaureate degree, stipulated GPA, and passing scores on the Praxis PPST and content area exams.	The alternate certification teacher (PL1, PL2, and PL3) must remain enrolled in the respective program and fulfill all coursework, teaching assignments, and prescribed activities as identified by the program provider. Program requirements must be completed within the three-year maximum that the license can be held. PL2 and PL3 teachers must demonstrate progress toward program requirements by successfully completing at least 9 semester hours each year to remain on the PL license.

<p>Out-of-Field Authorization to Teach</p> <p>(A teacher may hold a one-year Out-of-Field Authorization to Teach, renewable annually, for a maximum of three years.</p> <p>If the teacher is actively pursuing certification in the field and LDE designates the certification area as one requiring extensive hours for completion, two additional years of annual renewability may be granted.)</p>	<p>District submits application to LDE; renewable annually for maximum of three years.</p> <p>Superintendent of employing district must provide a signed statement that certifies that "there is no regularly certified, competent and suitable person available for the position" and that the applicant is the best - qualified person available for the position.</p>	<p>a. Individual holds a Louisiana teaching certificate, but is teaching outside of the certified area.</p>	<p>Teacher must obtain a prescription/outline of course work required for add-on certification in the area of the teaching assignment.</p> <p>Teacher must successfully complete a minimum of six credit hours per year of courses that lead toward certification in the area in which he/she is teaching; or the secondary-certified teacher who is teaching out-of-field may opt to take and pass the required PRAXIS content specialty examination for the specific 7-12 academic certification area, if the area has been declared as a primary or secondary teaching focus area. The district must support a teacher's efforts in this area.</p>
<p>Temporary Employment Permit</p>	<p>Under condition (a) the district submits application to LDE; renewable annually for a period not to exceed three total years.</p> <p>Under condition (b) the Individual submits application to LDE; renewable annually for a period not to exceed three total years.</p>	<p>a. Individual meets all certification requirements, with the exception of passing all portions of the NTE examination, but scores within 10 percent of the composite score required for passage of all exams. (Formerly classified as EP)</p> <p>b. Individual meets all certification requirements, with the exception of passing one of the components of the PRAXIS, but has an aggregate score equal to or above the total required on all tests. (Formerly classified as TEP)</p>	<p>Superintendent and President of the school board to which the individual has applied for employment must submit a signed affidavit to the LDE stipulating that there is no other applicant who has met all of the certification requirements available for employment for a specific teaching position. Such permit shall be in effect for not more than one year, but may be renewed annually, twice. One can remain on this temporary certificate for a period not to exceed three years. Such renewal of the permit shall be accomplished in the same manner as the granting of the original permit. The granting of such emergency teaching permit shall not waive the requirement that the person successfully complete the exam. While employed on an emergency teaching permit, employment period does not count toward tenure.</p> <p>Temporary Employment Permits are issued at the request of individuals. All application materials required for issuance of a regular certificate must be submitted to LDE with the application for a TEP. An individual can be re-issued a permit two times only if evidence is presented that the required test has been retaken within one year from the date the permit was last issued. One can remain on this temporary certificate for a period not to exceed three years.</p>

Standard Teaching Certifications

Out of State Certificate	Individual submits application to LDE; valid for three years, non-renewable.	a. A teacher certified in another state who meets all requirements for a Louisiana certificate, except for the PRAXIS examinations.	Teacher must take and pass the appropriate PRAXIS examinations -OR- Teacher provides evidence of at least four years of successful teaching experience in another state, completes one year of employment as a teacher in Louisiana public school systems, and secures recommendation of the local superintendent of the employing school system for continued employment.
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**Professional Level Certificates
(effective for all new certificates issued after July 1, 2002)**

Level 1 Professional Certificate (Three-year term)	Teachers must graduate from a State-approved teacher preparation program (traditional or alternative path), pass PRAXIS, and be recommended by a university to receive a Level 1 Professional Certificate. -OR- Teacher must complete a State-approved Practitioner Teacher Program, pass PRAXIS, and be recommended by the Practitioner Teacher Program provider to receive a Level 1 Professional Certificate. -OR- Teacher must meet the requirements of an out-of-state certified teacher.	A lapsed Level 1 certificate may be extended once for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of resident, extension, or correspondence credit directly related to the area of certification. However, if the holder of the Level 1 certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of 150 hours of professional development.
Level 2 Professional Certificate	Teachers with a Level 1 Professional Certificate must pass the Louisiana Assistance and Assessment Program and teach for three years to receive a Level 2 Professional Certificate.	Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 2 Professional License renewed.
Level 3 Professional Certificate	Teachers with a Level 1 or Level 2 Certificate are eligible for a Level 3 Certificate if they complete a Masters Degree, teach for five years, and pass the Louisiana Assistance and Assessment Program.	Teachers must complete 150 clock hours of professional development over a five-year time period in order to have a Level 3 Professional License renewed.

**Standard Teaching Certificates
(issued prior to July 1, 2002)**

Type C Certificate	Type C certificates will not be issued after July 1, 2002.
Type B Certificate Type A Certificate	Candidates currently holding Type A or Type B certificates will continue to hold these certificates, which are valid for life, provided the holder does not allow any period of five or more consecutive years of disuse to accrue and/or the certificate is not revoked by the State Board of Elementary and Secondary Education, acting in accordance with law.

Process for Renewing Lapsed Professional Certificates

Type C, B, and A Certificates
Type B and Type A certificates will lapse for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester (90 consecutive days). Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.

A lapsed Type C certificate may be renewed for an additional three years, subject to the approval of the Division of Teacher Standards, Assessment, and Certification or upon the presentation of six semester hours of credit directly related to the area(s) of certification. Such credit hours shall be resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. However, if the holder of a Type C certificate has not been employed regularly as a teacher for at least one semester during a period of five years, his certificate can be reinstated for three years only upon the presentation of the six semester hours of credit as described previously in the paragraph.

Level 2 and 3 Certificates
Level 2 and Level 3 professional certificates will lapse (a) for disuse if the holder thereof allows a period of five consecutive calendar years to pass in which he is not a regularly employed teacher for at least one semester [90 consecutive days], or (b) if the holder fails to complete the required number of professional development hours during his employ. Reinstatement of a lapsed certificate shall be made only on evidence that the holder has earned six semester hours of resident, extension, or correspondence credit in courses approved by the Division of Teacher Standards, Assessment, and Certification or a dean of a Louisiana college of education. The six semester credit hours of extension must be earned during the five-year period immediately preceding reinstatement.

Weegie Peabody
Executive Director

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RULE

Board of Elementary and Secondary Education

Bulletin 1566? Guidelines for Pupil Progression
High Stakes Testing Policy
(LAC 28:XXXIX.503, 505, 905, 911, 1301, and 1501)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the State Board of Elementary and Secondary Education has amended *Bulletin 1566? Guidelines for Pupil Progression*. The State Board of Elementary and Secondary Education at its June, August, and September 2003 meetings made revisions to the High Stakes Testing Policy, which is an addendum to *Bulletin 1566? Guidelines for Pupil Progression*, and to Bulletin 1566 itself. The Rule changes include:

1. A revision in the student retention policy as contained in the High Stakes Testing Policy. As a result of the policy change, a student who has been retained in the fourth grade may only be promoted to the fifth grade. A district may apply for a waiver from this part of the policy if their specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education. However, students who have been retained in the fourth grade who are 12 years old on or before September 30th may be promoted according to the local Pupil Progression Plan.

2. The adoption of the transitional program (4.5) waiver policy and criteria for a school system desiring to request a waiver of the above policy and offer a program in which certain students may be promoted from the transitional program to the sixth grade the following year.

3. The elimination of the LAA-B testing program (formally out-of-level testing) for students with disabilities.

4. A revision of the High Stakes Testing Policy as it relates to the passing standards for fourth grade students. Beginning in the spring of 2004, fourth graders will have to score "basic" on either the English language arts or mathematics component of LEAP 21 and "approaching basic" on the other to move to the fifth grade. The achievement levels for eighth graders will remain the same until 2006, when they too will have to achieve a score of "basic" on either mathematics or English language arts and "approaching basic" on the other.

5. The appeals process as contained in the High Stakes Testing Policy was revised. At the fourth and eighth grade levels, school systems were mandated to review student eligibility and consider granting appeals. Prior to this revision, systems had the option of not considering an appeal on behalf of students who met certain criteria. The level at which a fourth grade student must score before an appeal can be considered was raised from 20 scaled score points from "approaching basic" to 20 scaled score points from "basic."

Title 28 EDUCATION

Part XXXIX. Bulletin 1566? Guidelines for Pupil Progression

Chapter 1. Purpose

§503. Regular Placement¹

A. - A.1.b.

ii.(a). No fourth grade student shall be promoted until he or she has scored at or above the "basic" achievement level on the English language arts or mathematics components of the LEAP for the 21st century (LEAP 21) and at the "approaching basic" achievement level on the other (hereafter referred to as the "basic/approaching basic" combination).

(b). No eighth grade student shall be promoted until he or she has scored at or above the "approaching basic" achievement level on the English language arts and mathematics component of the LEAP for the 21st century (LEAP 21). Exceptions to this policy include the following.

(i). Policy Override. A given student scores at the "unsatisfactory" level in English language arts or mathematics and scores at the "mastery" or "advanced" level in the other; and participates in the summer school and retest offered by the LEA. The decision to override is made in accordance with the local Pupil Progression Plan, which may include referral to the School Building Level Committee (SBLC).

(ii). Retention Limit (Fourth Grade). The decision to retain a student in the fourth grade more than once as a result of failure to score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 shall be made by the LEA in accordance with the local Pupil Progression Plan.

[a]. A student who has repeated the fourth grade and who is 12 years old on or before September 30th may be promoted according to the local pupil progression plan.

[b]. Any other student who has repeated the fourth grade may be promoted to only the fifth grade. A district may apply for a waiver from this part of the policy if their specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education. (See Appendix)

[c]. Students retained in the fourth grade shall retake all four components of the LEAP 21.

[d]. For promotional purposes, a student must score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of the LEAP 21 only one time.

(iii). Retention Limit (Eighth Grade). The decision to retain an eighth grade student more than once as a result of his/her failure to score at or above the "approaching basic" achievement level in English language arts and/or mathematics on LEAP 21 shall be made by the LEA in accordance with the local Pupil Progression Plan which shall include the following: An eighth grade student who has repeated the entire grade (Option 1) may be either retained again in the eighth grade; promoted to the ninth grade provided that the student has passed either the English language arts or mathematics component of LEAP 21, has attended at least one LEAP 21 summer remediation program and taken the summer retest, and will enroll in a remedial high school course (English or mathematics) in which an "unsatisfactory" achievement level was attained; or placed in a Pre-GED/Skills Program (Option 3). An eighth grade student attending class on a high school campus and earning some carnegie credit(s) (Option 2) may be either promoted

or retained in accordance with the local pupil progression plan, or placed in a Pre-GED/Skills Program (Option 3).

[a]. If promoted without passing the failed component (English language arts or mathematics) on LEAP 21, the student must pass a high school remedial course in English language arts or mathematics before enrolling in or earning carnegie credit for English or mathematics.

[b]. (Pre-GED/Skills Program (Option 3) shall be available to students who meet criteria as outlined in Bulletin 741? Louisiana Handbook for School Administrators, standard 1.151.05.

(iv). Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP 21 Alternate Assessment (LAA). Students with disabilities who participate in the LEAP 21 Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

(v). Waiver for Limited English Proficient (LEP) Student. LEP Students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

(vi). Appeals Process. A school system, through its superintendent, must review student eligibility and consider granting an appeal on behalf of individual fourth and eighth grade students who have not scored at or above the required achievement levels on the English language arts and/or mathematics components of LEAP 21 after retesting provided that certain criteria are met. (Refer to Appendix B.)

(vii). - (viii). ...

iii. School systems shall design and implement additional instructional program options for these fourth and eighth grade students being retained

(a). The purpose of the additional instructional options is to move the students to grade level proficiency by providing focused instruction in the area(s) on which they failed to achieve the required level and by providing ongoing instruction using locally developed curricula based on state level content standards.

(b). Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes or other instructional options appropriate to the student's needs.

(c). LEAs are encouraged to design and implement additional options for students in grades 3, 4, 7 and 8 determined to be at risk of failing to achieve the required level on LEAP 21.

iv. Summer remediation programs and end-of-summer retests must be offered by school systems at no cost to students who did not take the Spring LEAP 21 tests or who failed to achieve the required level on LEAP 21.

(a). All students with disabilities who participate in LEAP 21 testing should receive services along with regular education students in summer programs, with special supports provided as needed.

(b). Students with disabilities who participate in LEAP 21 Alternate Assessment (LAA) are not eligible to attend LEAP 21 summer remediation programs.

v. School Systems must develop and implement non-discriminatory criteria to determine placement of eighth grade students who have not scored "approaching basic" or above on the LEAP 21 into Options 1 or 2.

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

(b). Option 2 Students. Students in Option 2 will participate in a transitional program on the high school campus. Students in Option 2 will retake the eighth grade components of the LEAP 21 previously failed (English and/or mathematics) and all parts of the Iowa Tests at the ninth grade level. For promotional purposes, a student must score at or above the "approaching basic" achievement level on the English language arts and mathematics components of LEAP 21 only one time. In order to be considered for placement into Option 2, a student must:

(i). pass at the "approaching basic" or above achievement level either the English language arts or mathematics component of LEAP 21; and

(ii). participate in both the summer remediation program offered by the LEA and the summer testing.

(c). All Option 2 Students who scored at the "unsatisfactory" achievement level on English language arts or mathematics component of the Grade 8 LEAP 21:

(i). shall take a remediation course in the component (English language arts and/or mathematics) of the Grade 8 LEAP 21 in which an "unsatisfactory" achievement level was attained;

(ii). may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the student passes a specially designed remediation elective and scores at or above the "basic" achievement level on the component of the eighth grade LEAP 21 that is retaken. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (p/f) on the students transcript;

(iii). may earn carnegie credit in other content areas;

vi. Exceptional students participating in LEAP 21 must be provided with significant accommodations as noted in the students IEP.

vii. The aforementioned policies will be in effect from spring 2004 through spring 2005. Beginning in spring 2006, the achievement level for eighth grade students will be raised to the "basic/approaching basic" combination level. The promotion policy will be reviewed in 2008.

viii. Other Requirements

(a). Each plan shall include the function of the school building level committee/student assistance team as it relates to student promotion. Refer to Appendix B for complete text of the High Stakes Testing Policy.

c. Other Requirements

i. Each plan shall include the function of the school building level committee/student assistance team as it relates to student promotion.

B. - D.1.a. ...

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

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

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

2000), amended LR 26:1433 (July 2000), LR 26:1576 (August 2000), LR 27:188 (February 2001), LR 27:1006 (July 2001), LR 27:1682 (October 2001), LR 29:123 (February 2003), LR 30:407 (March 2004).

§505. Progression? Students Participating in LEAP 21 Alternate Assessment (LAA)

A. Students with disabilities who participate in the LEAP 21 alternate assessment (LAA) shall have promotion decisions determined by the School Building Level Committee.

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

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

§905. Definition and Purpose

A. - B.2. ...

3. Beginning in the summer of 2004, remediation in the form of summer school shall be provided to fourth grade students who score at the "approaching basic" or "unsatisfactory" level on LEAP 21st for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

4. Remediation in the form of summer school shall be provided to eighth grade students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer remediation shall consist of a minimum of 50 hours of instruction per subject.

5. Remediation shall be provided to students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) science or social studies tests.

6. Remediation is recommended for students who score at the "approaching basic" level on LEAP for the 21st Century (LEAP 21) English language arts, mathematics, science, or social studies tests.

7. Beyond the goal of student achievement in grade appropriate skills, additional goals are to give students a sense of success, to prevent alienation from school, and to prevent their early departure from school (R.S. 17:395 B).

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

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

§911. Criteria for State Approval

A. - C.3.a. ...

b. Beginning in the Summer of 2004, remediation in the form of summer school shall be provided to fourth grade students who score at the "approaching basic" or "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instructions per subject.

c. Remediation in the form of summer school shall be provided to eighth grade students who score at the "unsatisfactory" level on LEAP for the 21st Century (LEAP 21) English language arts or mathematics tests. Summer Remediation shall consist of a minimum of 50 hours of instructions per subject.

d. Remediation shall be provided to students who score at the "unsatisfactory" level on IEAP for the 21st Century (LEAP 21) Science and Social Studies tests.

e. Remediation is recommended for eighth grade students who score at the "approaching basic" level on LEAP for the 21st Century (LEAP 21) English language arts, mathematics, science, or social studies tests.

C.3.f. - D.4. ...

§1301. LEAP for the 21st Century, High Stakes Testing Policy

A. Grade 4

1. A student may not be promoted to the fifth grade until he or she has scored at or above the "basic" achievement level on either the English language arts or mathematics component on the fourth grade Leap for the 21st Century (LEAP 21) and at the "approaching basic" achievement level on other (hereafter referred to as the "basic/approaching basic" combination). For promotional purposes, however, a student shall score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 only one time

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grade 3 and grade 4 who have been determined to be at risk of failing to achieve the "basic/approaching basic" combination on the English language arts and mathematics components of the fourth grade LEAP 21, as well as for students who were retained in grade 4.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who failed to achieve the "basic/approaching basic" combination on the spring tests.

a. A student who failed to achieve the "basic/approaching basic" combination is not required to attend the LEA-offered LEAP 21 summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP 21 should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

c. Students with disabilities who participate in LEAP Alternate Assessment (LAA) are not eligible to attend the LEAP 21 summer remediation programs.

d. LEAs shall offer remediation services to students who score at the "approaching basic" or "unsatisfactory" level on either the English language arts or mathematics components of the fourth grade LEAP 21.

4. In order to move students toward grade level performance, LEAs shall design and implement additional instructional program options for those fourth grade students being retained. The purpose of the additional instructional options is to move the students to grade level proficiency by providing focused instruction in the subject area(s) on which they failed to achieve the "basic/approaching basic" combination on LEAP 21, and ongoing instruction using locally-developed curricula based on state-level content standards for the core subject areas. Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes, or other

instructional options appropriate to the students' needs. LEAs are also encouraged to design and implement additional instructional options for students in grades 3 and 4 who have been determined to be at risk of failing to achieve the "basic/approaching basic" combination on LEAP 21.

5. Retention Limit

a. The decision to retain a student in the fourth grade more than once as a result of his/her failure to achieve the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 shall be made by the LEA in accordance with the local pupil progression plan.

i. A student who has repeated the fourth grade and who is 12 years old on or before September 30th may be promoted according to the local pupil progression plan.

ii. Any other student who has repeated the fourth grade may be promoted to only the fifth grade. A district may apply for a waiver from this part of the policy if its specific plan is presented to the Department of Education and it is approved by the State Superintendent of Education.

iii. Students retained in the fourth grade shall retake all four components of LEAP 21.

6. For promotional purposes, however, a student shall score at or above the "basic/approaching basic" combination on the English language arts and mathematics components of LEAP 21 only one time.

6. Exceptions to the High Stakes Testing policy may include the following.

a. Policy Override

i. The local school system (LEA) may override the State policy for students scoring at the "unsatisfactory" level in English language arts or mathematics if the student scores at the mastery or "advanced" level in the other provided that:

(a). the decision is made in accordance with the local pupil progression plan, which may include a referral to the School Building Level Committee (SBLC);

(b). the student has participated in both the spring and summer administrations of LEAP 21 and has attended the summer remediation program offered by the LEA (The student shall participate in the summer retest only on the subject area(s) that he/she scored at the "unsatisfactory" achievement level during the spring test administration); and

(c). parental consent is granted.

b. Students with Disabilities Eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessments (LAA)

i. Students with disabilities who participate in the LEAP Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

(a). A student with a disability must participate in both the summer remediation program offered by the LEA and the summer retesting to be considered for a waiver.

c. Waiver for Limited English Proficient (LEP) Students

i. LEP students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for a LEP student. A LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

d. Appeals Process

i. A school system, through its superintendent must review student eligibility and consider granting an appeal on behalf of individual students provided that all of the following criteria have been met.

(a). The student's highest score in English language arts and/or mathematics on either the spring or summer LEAP 21 must fall within 20 scaled score points of the cutoff score for "basic."

(b). The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) on which he/she scored "approaching basic" on LEAP 21.

(c). The student must have attended the LEAP 21 summer remediation program.

(d). The student must have taken the LEAP 21 retest given after the LEAP 21 summer remediation program has been concluded.

(e). The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program.

(f). The principal and the School Building Level Committee (SBLC) must review student work samples and attest that the student exhibits the ability of performing at or above the "basic" achievement level in the subject for which the appeal is being considered.

e. Waiver for Extenuating Circumstances

i. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP 21 testing or unable to attend LEAP 21 summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

(a). a physical illness or injury that is acute or catastrophic in nature;

(b). a chronic physical condition that is in an acute phase; or

(c). court ordered custody issues.

(i). Documentation

[a]. Physical Illness. Appropriate documentation must include verification that the student is under the medical care of a licensed physician for illness, injury, or a chronic physical condition that is acute or catastrophic in nature. Documentation must include a statement verifying that the illness, injury, or chronic physical condition exists to the extent that the student is unable to participate in testing and/or remediation.

[b]. Custody Issues. Certified copies of the court ordered custody agreements must be submitted to the LEA at least 10 school days prior to summer remediation or retesting.

ii. Student Eligibility/Retest Requirements

(a). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(i). who are unable to participate in both the spring and the summer administration of LEAP 21, or who failed to achieve the "basic/approaching basic" combination on the spring administration of LEAP 21 mathematics and English language arts tests and are unable to participate in LEAP 21 summer retest, shall take the Iowa Tests for grade placement within 10 school days of returning

to school, which may include hospital/homebound instruction, in order to ensure the appropriate level of instruction; must score at or above the cutoff score on the selected form of The Iowa Tests for grade placement to be promoted to the fifth grade; and are not eligible for a retest. These students may be eligible for the policy override or appeals process in accordance with the local pupil progression plan.

iii. Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(a). who are unable to participate in the spring testing and/or summer remediation including the provision of remediation through hospital/homebound instruction;

(b). are required to take the LEAP 21 summer retest. These students may be eligible for the policy override, or appeals process in accordance with the local pupil progression plan.

f. State-Granted Exceptions

i. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the State Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances.

(a). The Department of Education will provide a report to the State Board of Elementary and Secondary Education detailing state-granted waivers.

(i). Documentation

[a]. LEA Error. The LEA superintendent or parent must provide the State Superintendent of Education with school and student level documentation detailing the error, how the error occurred, and how the error will be corrected so that it will not occur again in the future.

[b]. Other Unique Situations. Documentation must be provided to the State Superintendent of Education detailing the unique situation and justifying why a waiver should be granted.

ii. Testing/Promotion Decisions

(a). The Department of Education will communicate to the LEAs the means for establishing promotional decisions for those students who have received a state-granted waiver.

7. The promotion policies outlined above will be reviewed in 2008.

B. Grade Eight

1. A student may not be promoted to the ninth grade until he or she has scored at or above the "approaching basic" level on the English language arts and mathematics components of the eighth grade LEAP for the 21st Century (LEAP 21). For promotional purposes, however, a student shall score at or above the "approaching basic" level on the English language arts and mathematics components of LEAP 21 only one time.

2. A parent/student/school compact that outlines the responsibilities of each party will be required for students in grade 7 and grade 8 who have been determined to be at risk of scoring at the "unsatisfactory" level in English language

arts and/or mathematics on the eighth grade LEAP 21, as well as for students who were retained in grade 8.

3. LEAs shall offer a minimum of 50 hours per subject of summer remediation and retest opportunities in English language arts and mathematics at no cost to students who did not take the spring LEAP 21 tests or who score at the "unsatisfactory" level on the spring tests.

a. A student who scores at the "unsatisfactory" achievement level is not required to attend the LEA -offered LEAP 21 summer remediation program in order to be eligible for the summer retest.

b. All students with disabilities who participate in LEAP 21 testing should receive services along with regular education students in summer remediation programs, with special supports provided as needed.

c. Students with disabilities who participate in LEAP Alternate Assessment (LAA) are not eligible to attend the LEAP 21 summer remediation programs.

d. LEAs are encouraged to offer remediation services to students who score at the "approaching basic" level.

4. In order to move students toward grade level performance, LEAs shall design and implement additional instructional program options for those eighth grade students being retained. The purpose of the additional instructional options is to move the students to grade level proficiency by providing the following: focused instruction in the subject area(s) on which they scored at the "unsatisfactory" level on LEAP 21, and ongoing instruction using locally-developed curricula based on state-level content standards for the core subject areas. Examples of instructional options may include alternative learning settings, individual tutoring, transitional classes, or other instructional options appropriate to the students' needs. LEAs are also encouraged to design and implement additional instructional options for students in grades 7 and 8 who have been determined to be at risk of scoring at the "unsatisfactory" level on the LEAP 21.

a. School systems shall develop non-discriminatory criteria for the placement of those eighth grade students who score at the "unsatisfactory" achievement level on the English language arts and/or the mathematics component(s) of the LEAP 21 in either Option 1 or Option 2.

i. Students in Option 1 will repeat grade 8. Students in Option I will retake all four components of LEAP 21.

ii. Students in Option 2 will participate in a transitional program on the high school campus. Students in Option 2 will retake the eighth grade components of LEAP 21 previously failed (English or mathematics) and all parts of the Iowa Tests at the ninth grade level.

iii. For promotional purposes, a student must score at or above the "approaching basic" achievement level on the English language arts and mathematics components of the LEAP 21 only one time.

b. In order to be considered for placement into Option 2, a student must:

i. pass at the "approaching basic" or above achievement level either the English language arts or mathematics component of LEAP 21; and

ii. participate in both the summer remediation program offered by the LEA and the summer testing.

5. In accordance with the local Pupil Progression Plan, Option 1 students who scored at the "unsatisfactory" achievement level on English language arts and/or mathematics component(s) of the Grade 8 LEAP 21:

a. may earn carnegie units in accordance with the policy regarding high school credit for elementary students as found in *Bulletin 741? Louisiana Handbook for School Administration*;

b. may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the students pass a specially designed remediation elective and score at or above the "basic" achievement level on the components of the eighth grade LEAP 21 that is retaken. The LEAP 21 shall be in lieu of a required credit examination. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (P/F) on the student's transcript;

6. All Option 2 students who scored at the "unsatisfactory" achievement level on English language arts or mathematics component of the Grade 8 LEAP 21:

a. shall take a remediation course in the component (English language arts or mathematics) of the Grade 8 LEAP 21 in which an "unsatisfactory" achievement level was attained;

b. may earn a maximum of one carnegie unit of remedial elective credit toward graduation provided the students pass a specially designed remediation elective and score at or above the "basic" achievement level on the component of the eighth grade LEAP 21 that is retaken. For these specially designed remediation courses, the LEA shall record a grade of fail or fail (p/f) on the student's transcript;

c. may earn carnegie credit in other content areas.

7. Retention Limit

a. The decision to retain an eighth grade student more than once as a result of his/her failure to score at or above the "approaching basic" achievement level in English language arts and/or mathematics on LEAP 21 shall be made by the LEA in accordance with the local pupil progression plan which shall include the following:

i. An eighth grade student who has repeated the entire grade (Option 1) may be either retained again in the eighth grade; promoted to the ninth grade provided that the student has passed either the English language arts or mathematics component of LEAP 21, has attended at least one LEAP 21 summer remediation program and taken the summer retest, and will enroll in a remedial high school course (English or mathematics) in which an "unsatisfactory" achievement level was attained; or placed in a Pre-GED/Skills Program (Option 3).

ii. An eighth grade student attending class on a high school campus and earning some carnegie credit(s) (Option 2) may be either promoted or retained in accordance with the local pupil progression plan, or placed in a Pre-GED/Skills Program (Option 3).

(a). If promoted without passing the failed component (English language arts or mathematics) on LEAP 21, the student must pass a high school remedial course in English language arts or mathematics before enrolling in or earning carnegie credit for English or mathematics.

b. Pre-GED/Skills Program (Option 3) shall be available to students who meet criteria as outlined in *Bulletin*

741? Louisiana Handbook for School Administrators, standard 1.151.05.

8. Exceptions to the high stakes testing policy may include:

a. Policy Override

i. The local school system (LEA) may override the state policy for students scoring at the "unsatisfactory" level in English language arts or mathematics if the student scores at the "mastery" or "advanced" level in the other provided that

ii. the decision is made in accordance with the local pupil progression plan, which may include a referral to the School Building Level Committee (SBLC);

iii. the student has participated in both the spring and summer administrations of the LEAP 21 and has attended the summer remediation program offered by the LEA (The student shall participate in the summer retest only on the subject that he/she scored at the "unsatisfactory" achievement level during the spring test administration); and

iv. parental consent is granted.

b. Students with disabilities eligible under the Individuals with Disabilities Education Act (IDEA) participating in LEAP Alternate Assessments (LAA)

i. Students with disabilities who participate in the LEAP Alternate Assessment (LAA) shall have promotion decisions determined by the SBLC.

c. Waiver for Limited English Proficient (LEP) Students

i. LEP students shall participate in statewide assessment. The SBLC shall be granted the authority to waive the state's grade promotion policy for an LEP student. An LEP student who was granted a waiver at the fourth grade level is ineligible for a waiver at the eighth grade level.

d. Appeals Process

i. A school system, through its superintendent, must review student eligibility and consider granting an appeal on behalf of individual students provided that all of the following criteria have been met.

(a). The student's highest score in English language arts and/or mathematics on either the spring or summer LEAP 21 must fall within 20 scaled score points of the cutoff score for "approaching basic."

(b). The student shall have a 3.0 grade point average on a 4.0 scale in the subject(s) on which he/she scored "unsatisfactory" on LEAP 21.

(c) The student must have attended the LEAP 21 summer remediation program.

(d). The student must have taken the LEAP 21 retest given after the LEAP 21 summer remediation program has been concluded.

(e). The student must have met state-mandated attendance regulations during the regular school year and any locally mandated regulations during the summer remediation program.

(f). The principal and the School Building Level Committee (SBLC) must review student work samples and attest that the student exhibits the ability of performing at or above the "approaching basic" achievement level in English language arts and/or mathematics.

e. Waiver for Extenuating Circumstances

i. A school system through its superintendent may grant a waiver on behalf of individual students who are unable to participate in LEAP 21 testing or unable to attend LEAP 21 summer remediation because of one or more of the following extenuating circumstances as verified through appropriate documentation:

(a). a physical illness or injury that is acute or catastrophic in nature;

(b). a chronic physical condition that is in an acute phase; or

(c). court ordered custody issues.

(i). Documentation

[a]. Physical Illness. Appropriate documentation must include verification that the student is under the medical care of a licensed physician for illness, injury, or a chronic physical condition that is acute or catastrophic in nature. Documentation must include a statement verifying that the illness, injury, or chronic physical condition exists to the extent that the student is unable to participate in testing and/or remediation.

[b]. Custody Issues. Certified copies of the court ordered custody agreements must be submitted to the LEA at least 10 school days prior to summer remediation or retesting.

ii. Student Eligibility/Retest Requirements

(a). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(i). who are unable to participate in both the spring and the summer administration of LEAP 21; or

(ii). who score at the "unsatisfactory" achievement level on the spring administration of LEAP 21 mathematics and/or English language arts tests and are unable to participate in LEAP 21 summer retest shall take the Iowa Tests for grade placement within 10 school days of returning to school, which may include hospital/homebound instruction, in order to ensure the appropriate level of instruction; must score at or above the cutoff score on the selected form of the Iowa Tests for grade placement to be promoted to the ninth grade; and are not eligible for a retest. These students may be eligible for the policy override or appeals in accordance with the local pupil progression plan;

(iii). Students who meet the criteria for extenuating circumstances under the physical illness, chronic physical condition, or court ordered custody category related to LEAP 21; and

(iv). who are unable to participate in the spring testing and/or summer remediation including the provision of remediation through hospital/homebound instruction are required to take the LEAP 21 summer retest. These students may be eligible for the policy override or appeals process in accordance with the local pupil progression plan.

f. State-Granted Exceptions

i. A local school superintendent, a parent or guardian, or the State Department of Education may initiate a request for a state-granted waiver from the state Superintendent of Education on behalf of individual students who are not eligible for promotion because of LEA error or other unique situations not covered under extenuating circumstances.

(a). The Department of Education will provide a report to the State Board of Elementary and Secondary Education detailing state-granted waivers.

(i). Documentation

[a]. LEA Error. The LEA superintendent or parent must provide the State Superintendent of Education with school and student level documentation detailing the error, how the error occurred, and how the error will be corrected so that it will not occur again in the future.

[b]. Other Unique Situations. Documentation must be provided to the State Superintendent of Education detailing the unique situation and justifying why a waiver should be granted;

(ii). Testing/Promotion Decisions. The Department of Education will communicate to the LEAs the means for establishing promotional decisions for those students who have received a state-granted waiver.

9. The promotion policies outlined above are in effect from Spring 2004 through Spring 2005; beginning in spring 2006 at the achievement level will be raised to the "basic/approaching basic" combination level. The promotion policies outlined above will be reviewed in 2008.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 27:1008 (July 2001), amended LR 28:1189 (June 2002), LR 29:123 (February 2003), LR 30:409 (March 2004).

Chapter 15. Appendix C

§1501. Waiver Request

A. Implementation of a Fourth Grade Transitional Program with a Sixth Grade Promotion Option Pupil Progression Plan Amendment

1. Section I

a. Purpose of a Transitional Program:

i. The State Board of Elementary and Secondary Education (SBESE) requires that school systems develop and implement additional instructional options for those students repeating the fourth grade. A transitional program is one such option. The purpose of a fourth grade transitional program is to provide a class setting to students who have demonstrated the ability to benefit from a combination of intensive fourth grade remedial work and fifth grade regular coursework. Students in the transitional program may be able to progress to the sixth grade the following year.

2. Section II

a. Minimum criteria for placement into a fourth grade transitional program:

i. the student must score at the "approaching basic" or above achievement on level either the English language arts or mathematics component of LEAP 21;

ii. the student must have met all requirements for promotion from the fourth grade as outlined in the local pupil progression plan; and

iii. the student must participate in both the summer remediation program offered by the LEA and the summer retest.

3. Section III

a. Minimum criteria for promotion to the sixth grade from a fourth grade transitional program:

i. the student must meet the required combination achievement level ("basic/approaching basic") on the English language arts and mathematics components of LEAP 21;

ii. the student must have met all requirements for promotion from the fifth grade as outlined in the local Pupil Progression Plan;

iii. the student must obtain a composite score of 1200 on all four components of the fourth grade LEAP 21;

iv. in order to move students toward the required combination achievement level ("basic/approaching basic") on the English language arts and mathematics components of LEAP 21, the student must be provided remediation in the subject area(s) on which the student scored below "basic" on LEAP 21; and

v. in order for students to attain the required composite score (1200) on LEAP 21, focused instruction should be provided in the subject area(s) (Science and/or Social Studies) on which the student scored "unsatisfactory."

4. Section IV

a. Required Documentation

i. A school system requesting a waiver must submit data to the State Superintendent of Education that supports the effectiveness of their previously operated fourth grade transitional program. This data must include an analysis of sixth grade IOWA Tests scores that compare fourth grade students who repeated the entire grade, fourth grade students who repeated the grade in a transitional program (4.5 program), and fourth grade students who did not repeat any grades.

5. Section V

a. Assurances:

i. I assure that the fourth grade transitional program described in the amended 2003-2004 Pupil Progression Plan meets all of the requirements as outlined in Section III of this document.

ii. Based upon this submitted assurance, the _____ School System is requesting a waiver of the High Stakes Testing Policy to allow for the implementation of a fourth grade transitional program which meets the purpose as described in Section I with the option of promoting students to the sixth grade.

iii. Beginning with the 2004-2005 school year, school systems applying for this waiver must submit all required documentation as listed in Section IV and receive approval from the State Superintendent of Education prior to the implementation of a transitional (4.5) program that provides the option of promotion to the sixth grade. If approved, Sections I, II, and III must be included in the 2004-2005 Pupil Progression Plan.

iv. Signature of School System Superintendent: _____

v. Date: _____

6. Section VI

a. Approved/Denied: (circle one)

Cecil J. Picard
State Superintendent of Education

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:413 (March 2004).

Weegie Peabody
Executive Director

0403#017

RULE

Board of Elementary and Secondary Education

Bulletin 1922? Compliance Monitoring Procedures (LAC 28:XCI.Chapters 1-5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted *Bulletin 1922? Compliance Monitoring Procedures*. Bulletin 1922 will be printed in codified format as LAC 28:XCI of the Louisiana Administrative Code. The Rule provides the procedures for monitoring all public and participating private schools and other educational agencies for compliance with *Bulletin 1706? The Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A? Regulations for Students with Disabilities and Subpart B? Regulations for Gifted/Talented Students, and other applicable federal regulations, state statutes, and standards.

R.S. 17:1944(2) requires the Division of Special Populations to provide general supervision and monitoring and *Bulletin 1706? The Regulations for Implementation of the Children with Exceptionalities Act*, R.S. 17:1941 et seq., Subpart A? Regulations for Students with Disabilities and Subpart B? Regulations for Gifted/Talented Students require that procedures for monitoring be established at Subsections 302 and 372.

Title 28

EDUCATION

Part XCI. Bulletin 1922? Compliance Monitoring Procedures

Chapter 1. Overview

§101. Monitoring

A. Monitoring is a process to ensure a free, appropriate, public education for all children with exceptionalities and to assess and ensure program effectiveness for all children with exceptionalities in public schools. Students with disabilities, ages 3-21, as well as students identified as gifted and talented are included in this process.

B. The monitoring system for Louisiana, through the analysis of various quantitative and qualitative data, will focus State resources on improving educational program outcomes for students with exceptionalities through a comprehensive, data-based process. Annually, the State Department of Education (SDE) will select a list of specific variables and performance indicators for comparative purposes for all local educational agencies providing services to children with exceptionalities.

C. The quantitative data will be used to determine specific performance profiles for school systems using data relative to a set of variables. Performance profiles will be issued annually. The quantitative data will be collected in relation to a set of variables selected by a statewide group of stakeholders from various agencies and entities. This group

will meet annually with the Division of Special Populations (DSP) to select only specific variables or "focus indicators" from all of the variables. The variables selected as "focus indicators" will be used to determine a system's performance status.

D. School systems will be placed in one of three performance categories within one of four population groups based on the total population of students attending public schools. Upon validation of quantitative data, school systems will be notified of their performance status. The performance categories are focus, exemplary, and continuous improvement.

1. School systems designated as *Focus* will receive an on-site compliance monitoring visit in order to review qualitative data specific to selected qualitative indicators that focus on the system's lowest performing indicator areas.

2. Systems designated as exemplary will receive recognition, and those systems which are exemplary on a statewide basis will also receive an on-site visit. The findings revealed in on-site visits that could be identified as best program practices will be available to other school systems.

3. The systems designated as continuous improvement will not be targeted to receive an on-site compliance visit. Through the LEA application process and self-review summaries, systems will, for that year, document and track improvement strategies. This documentation will include, not only the allocation of monies in the LEA grant application to target corrective action specific to noncompliance issues revealed in the system's self-review summaries, but also written documentation and tracking of other means of corrective action the school system has taken.

E. Annually, there will also be selected at random a group of systems which the DSP will visit for an on-site compliance review. The on-site review for the systems designated as random will include a review of a sampling of the qualitative indicators for all special education compliance areas. Eight will be chosen from the continuous improvement category.

F. Embodied in this process are proactive measures of self-evaluation, support, and technical assistance to ensure compliance with all regulatory requirements at the federal and state levels. Findings from data analysis, as well as findings from the on-site compliance visit, will be used to determine and allocate various resources for technical assistance and support to the school system by the SDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:414 (March 2004).

§103. Authority

A. The authority for monitoring is found in the following regulatory documents.

B. Individuals with Disabilities Education Act (IDEA), 20 USC, Chapter 33.

C. Federal Regulations for the Implementation of IDEA, 34 CFR Part 300, 301, and 303.

D. U.S. Education Department General Administrative Regulations (EDGAR).

E. Education of Children With Exceptionalities Act, R.S. 17:1941 et seq.

F. Regulations for Implementation of the Children with Exceptionalities Act, R.S.17:1941, et. seq., Bulletin 1706: Part A, Regulations for Students with Disabilities and Part B, Regulations for Gifted and Talented Students.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004).

§105. Local Educational Agencies (LEAs)

A. Local Educational Agencies (LEAs) to be monitored are:

1. city or parish school systems;
2. special school district;
3. state board of elementary and secondary special schools;
4. type 2 charter schools with special education programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004).

§107. Corrective Action and Sanctions

A. The Division of Special Populations has the responsibility to monitor all public educational agencies with programs for exceptional children within the state for compliance with applicable state and federal laws, regulations, and standards.

B. The Division of Special Populations is authorized to take actions necessary to ensure compliance. Failure on the part of a participating agency to comply may result in the SDE recommending to its governing authority a withholding of funds for the said agency. The affected agency shall be granted an opportunity for a hearing before final actions are taken.

C. Each system monitored and found to have non-compliant findings will be required to develop a corrective action improvement plan in collaboration with the Division of Special Populations. The meeting will be arranged within 30 days of receipt of the report. Based on a one-year timeframe, the plan will address the activities the system will implement to correct the areas of non-compliance identified in the on-site visit. If the corrective action activities extend beyond a one-year timeframe for completion, a plan may be submitted with extended timelines. This plan must still contain annual activities and growth targets which will be submitted on an annual basis to the DSP.

D. The progress toward completing the activities in the plan will be tracked by the DSP to determine if the timelines are being met. Systems will submit evidence and data as requested by the DSP to show completion of activities and evidence of change in the system as a result of the corrective action improvement plan. The DSP will conduct a follow-up, on-site visit to determine if the system has made systemic changes to correct non-compliant issues addressed in the corrective action improvement plan.

E. A written report of the findings from the follow-up visit will be issued to the system by the DSP with 30 days after the on-site visit. When the corrective action follow-up report for a system indicates that the system has remaining non-compliant findings, and there is not sufficient documented evidence provided within the mandated timeframe, the system will receive a letter directing the

system to submit additional information within thirty business days to prove the deficiencies have been corrected and to inform the system of the possibility of sanctions if the issues are not corrected.

F. At the end of the 30 days in Subsection E above, if the system has not produced sufficient data to indicate that compliance has been met, the DSP shall initiate and implement a process which imposes further corrective action and sanctions on the system. The DSP will meet with the system to discuss the sanctions that will be issued.

G. Sanctions are implemented on a continuum. A larger number would reflect a more serious consequence.

1. The evidence submitted to and reviewed by the DSP to document that the non-compliant findings were:

a. addressed and corrected, with documentation to show evidence of change; or

b. addressed in a plan, which provides evidence for implementing effective corrective action, the system should submit evidence of change by a specified date.

2. The system shall contact the DSP to arrange for a meeting to redesign the Corrective Action Plan (CAP) to more effectively address the non-compliant findings from the previous school year's on-site visit. All CAPs must be written in a collaborative effort between the DSP and the school system. The system should identify and appoint a team to develop the corrective action improvement plan. It may be necessary to include general educators in the improvement planning process. The DSP staff responsible for compliance monitoring will determine from the findings, the additional DSP staff members that need to be in attendance. An approved CAP must include the signatures of the state and local superintendents.

3. The DSP will require that an intensive improvement plan for technical assistance be developed by the system to address non-compliant findings. The plan must be submitted to and approved by the local school board. The plan will be published in order to provide the public with information relative to the non-compliant finding, and the plan the system will use to correct the non-compliant findings. (Local newspapers and websites are methods that may be used for publishing the information.) Local funds will be used to implement the improvement plan.

4. The system will target IDEA Part B flow-through funds to address the identified non-compliant findings. The use of these Part B funds will be tracked by the system to show evidence to the DSP of the specific funds targeted for areas of non-compliance. The system will be required to provide clear and concise evidence of the use of the specific funds to target the deficiencies identified in the improvement plan. The DSP will monitor the expenditure of such funds on a consistent basis.

5. The DSP will require the appointment of a special master, monitor, or management team to oversee the corrective action improvement plan. The appointment is to be made by the state agency and funded at the local level.

6. IDEA Part B flow-through funds will be released on a conditional basis. The conditions will be written into the correction improvement plan with input by the DSP. The conditions will be implemented with the signature of the state superintendent and approval of the State Board of Elementary and Secondary Education (SBESE).

7. IDEA Part B flow-through monies, which could include the partial release of funds, will be withheld with the approval of the SBESE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:415 (March 2004).

§109. Components of the Continuous Improvement Monitoring Process

A. The monitoring system will be implemented as a process that includes various components. This process will be comprehensive and continuous to include the use of various data sources. The monitoring system will be an ongoing process through the use of different components, rather than a cyclical process occurring on a scheduled basis.

B. The monitoring system will incorporate and utilize strategies and components as listed below:

1. analyze self-review summaries at the local level which are integrated to review the appraisal process as it relates to the development and implementation of programming, as well as review programming issues;

2. analyze data elements and databases that are current and captured by the DSP, which are directly related to student outcome;

3. analyze the LEA grant application to track and monitor the allocation and use of Part B funds to address priorities revealed through previous data sources in the monitoring process, as well as policy and procedural assurances;

4. review complaint management logs regarding specific complaints in individual systems;

5. analyze Extended School Year Program data;

6. analyze Annual School Report data;

7. analyze district and school accountability profiles;

8. analyze Louisiana's Automated System of Special Education Records (LANSER);

9. analyze FAPE tables and other mandated Federal data reporting (i.e., personnel tables, child count data);

10. review ongoing fiscal monitoring of the use of Part B funds through on-site visits and project completion reports;

11. review preschool on-site visits and data collection analysis and reporting;

12. analyze pupil progression assurances/reviews;

13. review the comprehensive system of personnel development/staff development plan, trainings conducted, and evaluations;

14. track corrective action on noncompliant issues and validate previous corrective action reviews, documentation, and on-site reviews;

15. analyze the provision of technical assistance to facilitate corrective action and to support the continuation of best program practices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:416 (March 2004).

§111. Purpose

A. The SDE has the responsibility to ensure that each participating agency in the state is in compliance with all applicable federal and state laws, regulations and standards required for the provision of a free and appropriate public

education for all exceptional children for whom each is legally responsible. To fulfill this responsibility, the SDE has established a purpose for conducting monitoring, as well as procedures and strategies that provide ongoing monitoring activities. The procedures provide continuous and comprehensive monitoring of all aspects of special education including the following:

1. child identification;
2. demographic and disproportionality issues;
3. screening, intervention, referral, and evaluation process;
4. program, services, and placement implementation for students with disabilities three through twenty-one years of age;
5. program, services, and placement implementation for gifted/talented students;
7. professional development; and
8. fiscal requirements relative to programmatic issues of local educational agencies.

B. In Louisiana, the purpose of compliance monitoring is threefold:

1. to ensure program effectiveness;
2. to enforce legal requirements and measure results of corrective action; and
3. to identify, promote, and support best program practices.

C. The information obtained as a result of the monitoring process will be utilized in the following ways:

1. to improve outcomes for all children with exceptionalities;
2. to direct initiatives statewide; and
3. to direct statewide personnel development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:416 (March 2004).

Chapter 3. Operational Procedures for Compliance Monitoring

§301. Focus Monitoring

A. All systems are placed in performance profile categories on an annual basis. The performance profile is based upon an analysis of quantitative data collected by the SDE.

B. Monitoring will focus on the variables selected annually as focus indicators. Systems will be profiled on the focus indicators in defined population groups. On-site visits will be determined based on performance profiles rather than on cyclical scheduled on-site visits. Systems designated as focus and statewide exemplary will be subject to on-site compliance visits.

C. A group of school systems will be selected at *Random* for on-site compliance visits. A sampling of the qualitative indicators from each area will be reviewed in these systems.

D. Systems not noted as focus, exemplary, or random will be classified as continuous improvement. These will not be subject to on-site visits. The identification of non-compliant issues and corrective action necessary to remedy these issues will be tracked by the DSP through the validation of the self-review process in these systems.

E. If critical issues of noncompliance are identified by means other than the performance profiles, an on-site compliance visit may be required by the SDE.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004).

§303. Timelines

A. Before the start of each monitoring cycle, each system will be issued a performance profile and a designation into which category the system fell. Within two weeks after the designations are made, a schedule of on-site visits will be issued to systems designated as focus, exemplary, and random.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004).

§305. On-Site Visits

A. On-site visits will be conducted by teams of qualified individuals with training and experience in the program areas that they will be monitoring.

B. Individuals selected to serve as team members will be initially required to receive a minimum of sixteen hours of professional development specific to conducting on-site monitoring, conducted by the DSP, with follow-up training on an annual basis. In addition, team leaders will be initially be required to receive 32 of professional development specific to leadership, investigative techniques for specific regulatory areas, and assimilating data for report writing conducted by the DSP, with follow-up training annually and throughout the year as determined by the state monitoring coordinator. Participants will receive a certificate that indicates their completion of the required annual professional development activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004).

§307. Regulatory Issues Reviewed On-Site

A. For Focus category systems, the regulatory issues and qualitative indicators reviewed will be specific to the variables targeted in the system's performance profile. These visits will focus on selected issues.

B. For random category systems, the on-site team will review a sampling of qualitative indicators from each of the variables on the performance profile.

C. For exemplary category systems, the on-site visit will be conducted for three purposes:

1. to validate the quantitative data using qualitative indicators specific to the regulatory issues for which the system has been found to be exemplary;
2. to issue commendations to the system; and
3. to collect data to be used in statewide dissemination efforts regarding effective program practices.

D. All qualitative indicators used in the on-site reviews will be appropriately addressed during the visits with personnel in the service setting, administrators, and parents.

E. The DSP will reserve the right to direct the team leader to review any and all regulatory issues that indicate non-compliance status in a school system.

F. Data for the following major regulatory issues will be analyzed, reviewed, and utilized in the self-review and on-site monitoring process:

1. child identification;
2. individual evaluation;

3. IEP development;
4. provision of a free, appropriate, public education;
5. participation in statewide assessment;
6. transition at different programming levels;
7. placement in the least restrictive environment;
8. professional development and personnel standards;
9. program comparability (ASR);
10. facility accessibility and comparability;
11. procedural safeguards;
12. extended school year programming;
13. discipline procedures; and
14. gifted and talented services and programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:417 (March 2004).

§309. Activities Conducted Prior to the On-Site Visit

A. The on-site team leader must review and analyze the quantitative data collected by the DSP specific to the school system prior to the on-site visit and will include the following:

1. self-review data submitted by the school system;
2. performance profiles;
3. LEA Application for IDEA Part B funds;
4. complaint logs and due process hearings relative to the system;
5. files/logs indicative of technical assistance provided to the system by the DSP;
6. annual school report data;
7. information relative to the state's accountability system which is school-site specific;
8. school improvement plans;
9. data relative to statewide assessment for participation and performance;
10. data derived from the District Composite Reports;
11. information relative to certifications and professional development activities provided to personnel and parents; and
12. any other data the team leader determines is necessary to review as part of a comprehensive data review of the school system.

B. The team leader will contact the LEA supervisor/director of special education and any member of the DSP or SDE staff for clarification of any concerns regarding the data. Upon completion of the data analysis, the team leader will select the sites to be visited, the number and types of records to be reviewed, and the methods that will be used for validation of qualitative issues during on-site visits.

C. The team leader will provide the DSP with the names of the sites, the number of records to be reviewed, the methods that will be used for validation, and the number and types of team members needed for conducting the on-site visits. The DSP will select team members based on the needs expressed by the team leader. The LEA Supervisor/Director of Special Education will be notified not less than two days prior to the on-site visit on this information.

D. The team leader will meet with the selected team members to:

1. summarize, analyze, and review the school system's data;

2. review the specific qualitative indicators relative to the focus indicators that will be targeted in the on-site monitoring visit;

3. discuss any unique circumstances or issues regarding the on-site visit to the system;

4. answer any questions or concerns of the team members;

5. discuss, review, and instruct the team on the various methods to be used in validating the qualitative data during the on-site visits; and

6. make team member assignments for specific site visits and record reviews.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004).

§311. Activities Conducted During the On-Site Visit

A. The team leader and team members will meet briefly with the representatives of the LEA to discuss how the visit will be conducted and to discuss any logistical or travel issues of concern.

B. The parent team member will conduct a parent focus meeting and interview parents to collect data/information on their satisfaction of the services provided to their children and their involvement in their children's program.

C. Team members will visit sites, make observations, review records, and interview personnel. Student input will be collected through a student focus group or interviews. The team leader will be available to team members throughout the visit to provide additional information, if required, as well as to assist the team members with their tasks.

D. The team leader will meet with the director to review administrative issues. Additional data/information may be requested if further analysis is required for determining compliance status for specific regulatory issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004).

§313. Activities/Procedures at the Completion of the On-Site Visit

A. The team leader will meet with the team members to discuss, review, and analyze the team findings and to summarize their findings on DSP issued forms. The team leader will meet with representatives of the school system providing services for an exit interview.

B. The team leader will compile and mail a copy of a preliminary draft of a Summary of Findings to the DSP no later than 10 business days after the completion of the on-site visit. The team leader may request a meeting to discuss the findings with the DSP.

C. The DSP will review the draft, issue final approval of the report, and mail the Summary of Findings to the school system no later than 60 business days after the completion of the on-site monitoring visit.

D. Upon receipt of the report, the school system or agency will have 30 business days from the date of receipt of the report to review, accept, or reject the findings, and to arrange for a meeting with the DSP to develop a plan of corrective action to address deficiencies determined in the Summary.

E. If the school system does not accept the findings, there will be a period of 30 business days allowed for negotiations of the findings and the corrective action. Extensions for negotiations may be granted by the DSP, upon written request.

F. If negotiations fail and an agreement is not reached within the established timelines, the state director of special education shall, within five business days, notify the state superintendent of education.

G. The State Superintendent shall notify the State Board of Elementary and Secondary Education (SBESE) at its next meeting of a system's noncompliant status. All procedures and sanctions regarding non-compliance shall be followed according to federal and state regulations.

H. The school system in collaboration with the DSP, will be required to design corrective action which defines specific supports and resources that the system must have in order to implement the corrective action plan.

I. Timelines must be developed that are specific to the corrective action required and to the issue found to be in non-compliant status. The system must provide appropriate signatures required in the report and return the report to the DSP.

J. The DSP will allocate resources from the State level, both human and monetary, when determined necessary by the DSP and the system in question, on an annual basis to address the issues specific to implementing the corrective action required in school systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:418 (March 2004).

§315. Validation of Corrective Action

A. Upon receipt of the approved compliance document, the school system must begin to address the corrective action plan agreed upon by the school system and the DSP.

B. Corrective action timelines established in the report will be tracked to determine corrective action has been taken and to verify compliance by the DSP.

C. All corrective action must be completed in accordance with the timelines that relate to each specific non-compliant issue. Documentation must be submitted to the DSP within the required timelines.

D. The DSP will conduct an on-site visit in the year following the initial on-site visit, or sooner if deemed necessary by the DSP, to validate the documentation of the implementation of the corrective action.

E. The DSP will notify the school system or agency in writing when all corrective action has been accepted as completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004).

§317. Self-Review Conducted at the Local Level

A. A locally conducted self-review will be an integral component of the entire monitoring process. The data collected in the self-review will be analyzed to help the LEA and the DSP identify areas of non-compliance, as well as levels of support and technical assistance needed at the local level. Corrective action timelines established in the report will be reviewed in order to determine the system's effort and commitment to making valid systematic findings and

developing corrective action that will result in the required evidence of change.

B. Local school systems will use set procedures for conducting self-reviews of compliance standards.

1. Systems will identify the sites to be included in the self-review. Systems should use the procedures identified in their LEA application to identify the number of sites.

2. The identified sites must provide a cross section of all exceptionalities served, as well as a sample of each service delivery model used in the system.

3. A minimum of five percent of the records of children with exceptionalities must be reviewed, along with the use of other methods and strategies for determining compliance status.

4. The local monitoring team and team leader will be designated at the local level.

5. The team must include personnel from the service setting such as general educators, parents, and administrators.

6. The team will be trained at the local level on procedures and strategies for conducting a self-review relative to special education regulatory compliance standards.

7. All self-review activities will be coordinated by the local school system or agency.

8. The school system or agency will be required to monitor the same regulatory issues for State and Federal regulations as monitored by the DSP.

9. As part of the self-review, the team will gather information from families of students receiving special education services regarding their satisfaction with their children's program and services, and their involvement in their children's program. This information may be gathered through focus meetings, interviews, or surveys.

10. The school system providing services will summarize the findings and compile a report to include:

a. summary of non-compliant issues;

b. a corrective action plan for correcting deficiencies and a timeline for completing a corrective action; and

c. identified best practices.

11. The report of findings will be submitted as part of the annual LEA Application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004).

Chapter 5. Fiscal Monitoring

§501. Introduction

A. There are three distinct types of fiscal monitoring performed by the State Department of Education, Division of Education Finance, pertaining to Special Education Programs:

1. on-site fiscal reviews of sub recipients;

2. verification of compliance applicable laws and regulations for non-supplanting, maintenance of effort, excess cost and other financial information during the award period; and

3. verification of the accuracy of the child count.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:419 (March 2004).

§503. On-Site Fiscal Reviews of Subrecipients

A. There are two main purposes that on-site fiscal reviews accomplish. The first purpose is to verify the completeness, accuracy, and validity of reimbursements of program funds received by sub-recipients (local educational agencies, state agencies, or universities.) The other purpose is to ensure that these reimbursements of program funds were made in accordance with applicable federal and state laws, regulations and guidelines.

B. Subrecipients are selected for on-site fiscal reviews on a cyclical basis. There are also requests by Division of Special Populations program staff to perform on-site reviews of sub-recipients. Subrecipients that terminate participation in Special Education programs, also have on-site reviews performed

C. Subrecipients will be contacted and the on-site reviews will be scheduled. A letter from the Audit Supervisor of the Federal Audit Section will confirm this contact. This letter will include the starting date and location of the fieldwork, the number of auditors that will perform the fieldwork, the scope of the review (fiscal years and projects to be reviewed), and the records that will be required for the fieldwork.

D. Fieldwork may last for varying lengths of time. The length of time the fieldwork could take will be determined by several factors. These factors include, but are not limited to, the number of fiscal years to be reviewed, the number of projects to be reviewed, the records available for review, the accounting system of the subrecipient, the auditor's access to these records, previous review findings and their resolution, and any current findings that are discovered.

E. The fieldwork will include, but not limited to, the examination and review of the grant award, including the budget and all expenditure categories on the reimbursement claims for which sub recipients received reimbursement. These categories are as follows:

1. salaries;
2. employee benefits;
3. purchased professional and technical services;
4. other purchased services;
5. supplies;
6. property;
7. other objects; and
8. other uses of funds.

F. At the end of the fieldwork, the auditors will meet with the subrecipient in an exit conference to discuss the review results including any findings.

G. A preliminary report will be prepared and sent to the subrecipient. The Federal Audit Section Audit Supervisor signs this preliminary report, which is then mailed to the subrecipient. The subrecipient has fifteen business days from the date of the preliminary report to respond to any findings. Subrecipient responses are examined to determine whether the findings should be adjusted and/or eliminated from the preliminary report. If no response is received, then the report is considered accepted by the subrecipient. After either of these two instances has occurred, a final report will be sent to the State Superintendent of Education for signature. Once signed, it will be returned to the Federal Audit Section and mailed to the subrecipient with a copy forwarded to the Division of Special Populations. The letter will instruct the

subrecipient to contact the Division of Special Populations for audit resolution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004).

§505. Verification of Compliance Applicable Laws and Regulations for Non-Supplanting, Maintenance of Effort, Excess Cost and Other Financial Information During the Award Period.

A. Local education agencies (LEA) must annually prepare and submit Non-Supplanting, Maintenance of Effort and Excess Cost Verification forms to the Division of Education Finance by April 15 of each year. Approval of the LEA application and budget for Special Education program funds is contingent on the receipt and verification of the items and amounts reported on these forms. Verification of compliance by LEAs with Non-Supplanting, Maintenance of Effort and Excess Cost laws and regulations is performed. The amounts reported on these forms are also verified. This verification process uses the prior year Annual Financial Report (AFR) and current year budget along with the Excess Cost and Non-Supplanting forms submitted by the LEAs. Once compliance with applicable Non-Supplanting, Maintenance of Effort and Excess Cost laws and regulations has been determined, the forms are forwarded to the Division of Education Finance, Federal Budget Section.

B. Other special education program financial information is also verified as to accuracy and correctness by Division of Education Finance Federal Audit Section staff. These verifications may be conducted at the request of Division of Special Populations staff, sub recipients, and other governmental agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004).

§507. Verification of the Accuracy of the Child Count

A. SBESE establishes the policy to seek to recover any funds made available under IDEA -Part B for services to any child who is determined to be classified erroneously as eligible to be counted.

B. Determination of eligible children shall be accomplished through the verification procedures of the SDE regarding the accuracy of the child count. In order to verify the accuracy of each count submitted, the SDE will conduct the following activities:

1. The current child count from each school system shall be compared with the previous count. In addition, the current child count incidence figures from each school system shall be compared with incidence figures from the previous state child count.

2. An on-site monitoring visit to verify the accuracy of the child count will be conducted in selected LEAs each year. If necessary, each system can be monitored for the previous years to verify the accuracy of the child count. During the monitoring of each LEA, the monitors will select at least ten names from the child count report. The LEA must provide the student's name, date of birth, evaluation report, IEP, class rosters, and any other information that may be necessary to verify the accuracy of the count.

3. Administrative on-site reviews are conducted in selected LEAs each year. Any multi-disciplinary evaluation reviewed and found not to be in compliance with State guidelines, to the extent that it cannot be determined that the student is a student with a disability, will result in the exclusion of that child from the child count.

4. If a child's IEP is monitored during the on-site review process and it is determined that the child is not receiving all the special education and related services specified on the IEP, the child will be excluded from the child count.

5. The LEA will be afforded an opportunity to present supportive or explanatory documentation to refute the DSP findings. If the evidence cannot justify the count, the count will be disallowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:420 (March 2004).

§509. Recovery of Funds for a Misclassified Child

A. If the LEA has received funds based on an erroneous count and the DSP has documented the extent of the error, the SDE will either reduce the grant award if the error occurred in the current budget and all of the funds have not been expended or request that the LEA return such funds. In the event the LEA refuses to comply, within ten business days these procedures will be followed.

1. The DSP will submit written documentation of the error in the count to the State Superintendent of Education.

2. Within 10 business days of this submission, the State Superintendent will request that the SBESE require the LEA to repay the funds.

3. The SBESE has the responsibility to offer an opportunity for a hearing to an LEA prior to a determination to withhold funds. (Refer to Section 955 of the Louisiana Administration Procedures Act.)

4. Funds recovered by the SDE and the SBESE will be handled within the guidelines set forth by OSEP, U.S. Department of Education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1944.

HISTORICAL NOTE: Promulgated by the State Board of Elementary and Secondary Education, LR 30:421 (March 2004).

Weegie Peabody
Executive Director

0403#018

RULE

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Penalty Determination Methodology (LAC 33:I.705)(OS051)

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 Office of the Secretary regulations, LAC 33:I.705 (Log #OS051).

The Rule clarifies the portion of the regulations on penalty calculations that requires the department to take into account

any monetary benefits the violator may have realized through noncompliance. The Rule change was suggested by EPA as a result of a Water Program audit. The basis and rationale for this Rule are to incorporate the language suggested by EPA to clarify the regulations.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 7. Penalties

§705. Penalty Determination Methodology

A. - F. ...

G. The department shall consider the monetary benefits realized through noncompliance. Any monetary benefits calculated may be added to the penalty subtotal. However, the amount calculated may not cause the penalty subtotal to exceed the maximum penalty amount allowed by law. A cash penalty should be collected unless it has been demonstrated and documented that the violator cannot pay the cash penalty.

H. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2050.3.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 25:658 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:2400 (December 1999), LR 30:421 (March 2004).

James H. Brent, Ph.D.
Assistant Secretary

0403#078

RULE

Department of Health and Hospitals Board of Medical Examiners

Occupational Therapists and Occupational Therapy
Assistants? Licensure, Certification and Practice
(LAC 46:XLV.1903, 1907, 1917-1927, 1931,
1933, 1947-1951, 1955, 1975, 4903 and 4923)

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:3001-3014, R.S. 37:1270, R.S. 37:1281, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended its Rules governing licensure, certification and practice of occupational therapists and occupational therapy assistants to reflect a change in the testing and certification entity for occupational therapists and occupational therapy assistants from the American Occupational Therapy Association (AOTA) to the National Board for Certification in Occupational Therapy, Inc. (NBCOT), and by limiting the use of NBCOT's certification marks "occupational therapist registered," "OTR," "certified occupational therapy assistant," and "COTA," to those authorized to use such designations by current NBCOT

certification and/or registration, LAC 46:XLV, Subpart 2, Chapter 19, Subchapters A, B, D, F and H (§§1903, 1907, 1917-1933, 1947-1951, 1955 and 1975), respectively, and Subpart 3, Chapter 49, Subchapters A (§4903) and B (§4923). The Rule amendments are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 19. Occupational Therapists and

Occupational Therapy Assistants

Subchapter A. General Provisions

§1903. Definitions

A. As used in this Chapter the following terms shall have the meanings specified.

Department? the Louisiana Department of Health and Hospitals.

NBCOT? National Board for Certification in Occupational Therapy, Inc.

Occupational Therapist? a person who is licensed to practice occupational therapy, as defined in this Chapter, and whose license is in good standing.

Occupational Therapy Assistant? a person who is licensed to assist in the practice of occupational therapy under the supervision of, and in activity programs with the consultation of, an occupational therapist licensed under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

Subchapter B. Qualifications for License

§1907. Qualifications for License

A. - A.2. ...

3. have successfully completed the academic and supervised field work experience requirements to sit for the "Certification Examination for Occupational Therapist, Registered" or the "Certification Examination for Occupational Therapy Assistant" as administered for or by the NBCOT or such other certifying entity as may be approved by the board;

4. make written application to the board for review of proof of his current certification by the NBCOT on a form and in such a manner as prescribed by the board;

A.5. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

Subchapter D. Examination

§1917. Designation of Examination

A. For purposes of licensure, the board shall use the examination administered by or on behalf of the NBCOT or such other certifying entity as the board may subsequently approve.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

§1919. Eligibility for Examination

A. To be eligible for examination an applicant for licensure must make application to the NBCOT or its designated contract testing agency in accordance with procedures and requirements of NBCOT. Information on the examination process, including fee schedules and application deadlines, must be obtained by each applicant from the NBCOT. Application for licensure under §1913 does not constitute application for examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

§1921. Dates, Places of Examination

A. The dates on which and places where the NBCOT certification examination for occupational therapists and occupational therapy assistants are given are scheduled by the NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

§1923. Observance of Examination

A. The NBCOT examination may be observed by a representative appointed by the board. The representative is authorized and directed by the board to obtain positive photographic identification from all applicants for licensure appearing and properly registered for the examination and to observe that all applicants for licensure abide by the rules of conduct established by the NBCOT.

B. An applicant for licensure who appears for examination shall:

1. ...

2. fully and promptly comply with any and all rules, procedures, instructions, directions, or requests made or prescribed by the NBCOT or its contract testing agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:422 (March 2004).

§1925. Subversion of Examination Process

A. ...

B. Conduct which subverts or undermines the integrity of the examination process shall be deemed to include:

1. refusing or failing to fully and promptly comply with any rules, procedures, instructions, directions, or requests made or prescribed by the NBCOT or its contract testing agency, or the board's representative;

2. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

§1927. Finding of Subversion

A. When, during the administration of examination the board's representative, has reasonable cause to believe that an applicant-examinee is engaging or attempting to engage, or has engaged or attempted to engage, in conduct which subverts or undermines the integrity of the examination process, the board's representative shall take such action as he deems necessary or appropriate to terminate such conduct and shall report such conduct in writing to the board and the NBCOT.

B. When the board, upon information provided by the board's representative, the NBCOT or its contract testing agency, an applicant-examinee or any other person, has probable cause to believe that an applicant has engaged or attempted to engage in conduct which subverts or undermines the integrity of the examination process, the board shall so advise the applicant in writing, setting forth the grounds for its finding of probable cause, specifying the sanctions which are mandated or permitted for such conduct by §1929 of this Subchapter and provide the applicant with an opportunity for hearing pursuant to the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

§1931. Passing Score

A. The board shall use the criteria for satisfactory performance on the exam adopted by the NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

§1933. Reporting of Examination Score

A. Applicants for licensure shall request the NBCOT to notify the board of successful completion of the examination according to procedures for such notification established by NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health

and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

Subchapter F. License Issuance, Termination, Renewal and Reinstatement

§1947. Renewal of License

A. Every license issued by the board under this Subchapter shall be renewed annually on or before its date of expiration by submitting to the board an application for renewal upon forms supplied by the board, together with the renewal fee prescribed in Chapter 1 of these rules and documentation of satisfaction of the continuing professional education requirements prescribed by Subchapter H of these rules.

B. - D. ...

E. Current registration or certification is not a prerequisite to renewal of a license to practice as an occupational therapist or occupational therapy assistant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1003 (September 1994), LR 24:1499 (August 1998), LR 30:423 (March 2004).

§1949. Reinstatement of License

A. ...

B. An application for reinstatement shall be made upon forms supplied by the board and accompanied by two letters of character recommendation, one from a reputable physician and one from a reputable occupational therapist of the former licensee's last professional location, together with the applicable late renewal and reinstatement fees prescribed in Chapter 1 of these rules.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1003 (September 1994), LR 30:423 (March 2004).

§1951. Titles of Licensees

A. Any person who is issued a license as an occupational therapist under the terms of this Chapter may use the words "occupational therapist," "licensed occupational therapist," or he may use the letters "OT" or "LOT," in connection with his name or place of business to denote his licensure. In addition, any person currently certified or registered by and in good standing with the NBCOT, may use the words "licensed occupational therapist registered" or "occupational therapist registered" or "LOTR" or "OTR."

B. Any person who is issued a license as an occupational therapy assistant under the terms of this Chapter may use the words "occupational therapy assistant," "licensed occupational therapy assistant," or he may use the letters "OTA" or "LOTA" in connection with his name or place of business to denote his licensure. In addition, any person currently certified as an assistant by and in good standing with the NBCOT, may use the designation "licensed certified occupational therapy assistant" or "LCOTA" or "certified occupational therapy assistant" or "COTA."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:423 (March 2004).

§1955. False Representation of Licensure Prohibited

A. No person who is not licensed under this Chapter as an occupational therapist or an occupational therapy assistant, or whose license has been suspended or revoked, shall use, in connection with his name or place of business, the words "occupational therapist," "licensed occupational therapist," "occupational therapy assistant," "licensed occupational therapy assistant," or the letters, "OT," "LOT," "OTA," "LOTA," or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist or an occupational therapy assistant, or in any way, orally, in writing, in print, or by sign, directly or by implication, represent himself as an occupational therapist or an occupational therapy assistant.

B. No person who is not licensed under this Chapter as an occupational therapist or an occupational therapy assistant, or whose license has been suspended or revoked, who is not currently certified or registered by and in good standing with the NBCOT shall use, in connection with his name or place of business, the words "occupational therapist registered," "licensed occupational therapist registered," "certified occupational therapy assistant," or "licensed certified occupational therapy assistant" or the letters, "OTR," "LOTR," or "COTA," or "LCOTA" or any other words, letters, abbreviations, or insignia indicating or implying that he is an occupational therapist registered or a certified occupational therapy assistant, or in any way, orally, in writing, in print, or by sign, directly or by implication, represent himself as such.

C. Whoever violates the provisions of this section shall be fined not more than \$500 or be imprisoned for not more than six months, or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

Subchapter H. Continuing Professional Education

§1975. Failure to Satisfy Continuing Professional Education Requirements

A. - B.1.c. ...

2. the applicant has, within one year prior to making application for reinstatement, taken and successfully passed the recertification examination of the NBCOT.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3012(B) and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1005 (September 1994), amended LR 24:1499 (August 1998), LR 30:424 (March 2004).

Subpart 3. Practice

Chapter 49. Occupational Therapists and Occupational Therapy Assistants

Subchapter A. General Provisions

§4903. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified.

* * *

Occupational Therapist? a person who is licensed to practice occupational therapy, as defined in this Chapter, and whose license is in good standing.

Occupational Therapy Assistant? a person who is licensed to assist in the practice of occupational therapy under the supervision of, and in activity programs with the consultation of, an occupational therapist licensed under this Chapter.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

Subchapter B. Standards of Practice

§4923. False Representation of Licensure Prohibited

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repealed by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

John B. Bobear, M.D.
Executive Director

0403#069

RULE

Department of Health and Hospitals Board of Medical Examiners

Office-Based Surgery (LAC 46:XLV.Chapter 73)

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by the Louisiana Medical Practice Act, R.S. 37:1261-1292, and the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., has adopted Rules governing office-based surgery by physicians, LAC 46:XLV, Subpart 3, Chapter 73, §§7301-7315. The Rules are set forth below.

Title 46

PROFESSIONAL AND OCCUPATION STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 73. Office-Based Surgery

Subchapter A. General Provisions

§7301. Scope of Chapter

A. The rules of this Chapter govern the performance of office-based surgery by physicians in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

§7303. Definitions

A. As used in this Chapter, unless the content clearly states otherwise, the following terms and phrases shall have the meanings specified.

Anesthesia Provider—an *anesthesiologist* or *certified registered nurse anesthetist* who possesses current certification or other evidence of completion of training in advanced cardiac life support training or pediatric advanced life support for pediatric patients.

Anesthesiologist—a *physician* licensed by the *board* to practice medicine in this state who has completed post-graduate residency training in anesthesiology and is engaged in the practice of such specialty.

Board? the Louisiana State Board of Medical Examiners.

Certified Registered Nurse Anesthetist ("CRNA")—an advanced practice registered nurse certified according to the requirements of a nationally recognized certifying body approved by the Louisiana State Board of Nursing ("Board of Nursing") who possesses a current license or permit duly authorized by the Board of Nursing to select and administer anesthetics or provide ancillary services to patients pursuant to R.S. 37:911 et seq., and who, pursuant to R.S. 37:911 et seq., administers anesthetics and ancillary services under the direction and supervision of a *physician* who is licensed to practice under the laws of the state of Louisiana.

Conscious Sedation—a drug-induced depression of consciousness during which patients retain the ability to independently maintain an airway, ventilatory and cardiovascular functions and respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation.

Deep Sedation, Monitored Sedation, General Anesthesia (referred to in this Chapter as "*anesthesia*" unless the context states otherwise)—a drug-induced loss of consciousness that results in the partial or complete loss of ability to independently maintain an airway, ventilatory, neuromuscular or cardiovascular function and during which patients are not arousable, even by painful stimulation.

Medical Practice Act or the Act? R.S. 37:1261-92 as may be amended from time to time.

Office-Based Surgery? any *surgery* or *surgical procedure* not exempted by these rules that is performed in an *office-based surgery setting* or *facility*.

Office-Based Surgery Setting or Facility? any clinical setting not exempted by these rules where surgery is performed.

Physician—a person lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or permit duly issued by the *board*.

Reasonable Proximity—a distance of not more than 30 miles or one which may be reached within 30 minutes for patients 13 years of age and older and a distance of not more than 15 miles or one which can be reached within 15 minutes for patients 12 years of age and under.

Regional Anesthesia/Blocks (referred to in this Chapter as ("*regional anesthesia*")—the administration of anesthetic agents that interrupt nerve impulses without loss of consciousness or ability to independently maintain an airway, ventilatory or cardiovascular function that includes but is not limited to the upper or lower extremities. For purposes of this Chapter regional anesthesia of or near the central nervous system by means of epidural or spinal shall be considered *general anesthesia*.

Surgery or Surgical Procedure? the excision or resection, partial or complete destruction, incision or other

structural alteration of human tissue by any means, including but not limited to lasers, pulsed light, radio frequency, or medical microwave devices, that is not exempted by these rules upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering or any elective procedure for aesthetic, reconstructive or cosmetic purposes. Surgery shall have the same meaning as "*operate*."

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:424 (March 2004).

§7305. Exemptions

A. This Chapter shall not apply to the following surgical procedures or clinical settings:

1. exempt surgical procedures include those:

a. requiring no anesthesia, using only local, oral, topical or intra-muscular anesthesia, those using regional anesthesia as defined by this Chapter or those using conscious sedation either individually or in combination; and/or

b. performed by a physician oral and maxillofacial surgeon under the authority and within the scope of a license to practice dentistry issued by the Louisiana State Board of Dentistry;

2. excepted clinical settings include:

a. a hospital, including an outpatient facility of the hospital that is separated physically from the hospital, an ambulatory surgical center, abortion clinic or other medical facility that is licensed and regulated by the Louisiana Department of Health and Hospitals;

b. a facility maintained or operated by the state of Louisiana or a governmental entity of this state;

c. a clinic maintained or operated by the United States or by any of its departments, offices or agencies; and

d. an outpatient setting currently accredited by one of the following associations or its successor association:

i. the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;

ii. the American Association for the Accreditation of Ambulatory Surgery Facilities; or

iii. the Accreditation Association for Ambulatory Health Care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004).

§7307. Prohibitions

A. On and after January 1, 2005, no physician shall perform office-based surgery except in compliance with the rules of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004).

§7309. Prerequisite Conditions

A. A physician who performs office-based surgery shall adhere to and comply with the following rules.

1. Facility and Safety

a. The facility shall comply with all applicable federal, state and local laws, codes and regulations pertaining to fire prevention, building construction and occupancy, accommodations for the disabled, occupational safety and health, medical waste and hazardous waste, infection control and storage and administration of controlled substances.

b. All premises shall be kept neat and clean. Operating areas shall be sanitized and materials, instruments, accessories and equipment shall be sterilized.

c. Supplies of appropriate sterile linens, gloves and dressings shall be maintained in sufficient quantities for routine and emergency use. All surgical personnel shall wear suitable operative attire.

d. Supplies of appropriate drugs, medications and fluids shall be maintained in sufficient quantities for routine and emergency use.

2. Quality of Care

a. A physician performing office-based surgery shall:

i. possess current staff privileges to perform the same procedure at a hospital located within a reasonable proximity; or

ii.(a). have achieved board certification from a board recognized by the American Board of Medical Specialties in a specialty that encompasses the procedure performed in an office-based surgery setting; and

(b). possess current admitting privileges at a hospital located within a reasonable proximity;

b. a physician performing office-based surgery shall possess current certification or other evidence of completion of training in advanced cardiac life support training or pediatric advanced life support for pediatric patients;

c. a physician performing office-based surgery shall ensure that all individuals who provide patient care in the office-based surgery setting are duly qualified, trained and possess a current valid license or certificate to perform their assigned duties. An unlicensed individual otherwise properly trained in the performance of a given procedure or duty shall participate in a patient's care only under the on-site direction and supervision of a physician who retains responsibility to the patient for the individual's performance.

3. Patient and Procedure Selection

a. Any office-based surgical procedure shall be within the training and experience of the operating physician, the health care practitioners providing clinical care assistance and the capabilities of the facility.

b. The surgical procedure shall be of a duration and degree of complexity that shall permit the patient to recover and be discharged from the facility on the same day. Under no circumstances shall a patient be permitted to remain in an office-based surgery setting overnight.

4. Informed Consent

a. Informed consent for surgery and the planned anesthetic intervention shall be obtained from the patient or legal guardian in accordance with the requirements of law.

5. Patient Care

a. The anesthesia provider shall be physically present throughout the surgery.

b. The anesthesia provider or an individual possessing current certification or other evidence of completion of training in advanced cardiac life support

training or pediatric advanced life support for pediatric patients shall remain in the facility until all patients have been released from anesthesia care by a CRNA or a physician.

c. Discharge of a patient shall be properly documented in the medical record.

6. Monitoring and Equipment

a. There shall be sufficient space to accommodate all necessary equipment and personnel and to allow for expeditious access to the patient and all monitoring equipment.

b. All equipment shall be in proper working condition; monitoring equipment shall be available, maintained, tested and inspected according to the manufacturer's specifications.

c. A secondary power source appropriate for equipment in use in the event of a power failure shall be available. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, heart rate and breath sounds shall be monitored using a precordial stethoscope or similar device and blood pressure measurements shall be re-established using a non-electrical blood pressure measuring device until power is restored.

d. In an office where anesthesia services are to be provided to infants and children the required equipment, medication, including drug dosage calculations, and resuscitative capabilities shall be appropriately sized for a pediatric population.

e. All facilities shall have an auxiliary source of oxygen, suction, resuscitation equipment and medication for emergency use. A cardiopulmonary resuscitative cart shall be available and shall include, but not be limited to, an Ambu Bag, laryngoscope, emergency intubation equipment, airway management equipment, a defibrillator with pediatric paddles if pediatric patients are treated and a medication kit which shall include appropriate non-expired medication for the treatment of anaphylaxis, cardiac arrhythmia, cardiac arrest and malignant hyperthermia when triggering agents are used or if the patient is at risk for malignant hyperthermia. Resources for determining appropriate drug doses shall be readily available.

7. Emergencies and Transfers

a. Emergency instructions along with the names and telephone numbers to be called in the event of an emergency (i.e., emergency medical services ("EMS"), ambulance, hospital, 911, etc.) shall be posted at each telephone in the facility.

b. Agreements with local EMS or ambulance services shall be in place for the purpose of transferring a patient to a hospital in the event of an emergency.

c. Pre-existing arrangements shall be established for definitive care of patients at a hospital located within a reasonable proximity when extended or emergency services are needed to protect the health or well being of the patient.

8. Medical Records

a. A complete medical record shall be documented and maintained of the patient history, physical and other examinations and diagnostic evaluations, consultations, laboratory and diagnostic reports, informed consents, preoperative, inter-operative and postoperative anesthesia assessments, the course of anesthesia, including monitoring

modalities and drug administration, discharge and any follow-up care.

9. Policies and Procedures

a. Written policies and procedures for the orderly conduct of the facility shall be prepared for the following areas:

i. management of anesthesia including:

(a). patient selection criteria;

(b). drug overdose, cardiovascular and respiratory arrest, and other risks and complications from anesthesia;

(c). the procedures to be followed while a patient is recovering from anesthesia in the office; and

(d). release from anesthesia care and discharge criteria;

ii. infection control (surveillance, sanitation and asepsis, handling and disposal of waste and contaminants, sterilization, disinfection, laundry, etc.); and

iii. management of emergencies, including:

(a). the procedures to be followed in the event that a patient experiences a complication;

(b). the procedures to be followed if the patient requires transportation for emergency services including the identity and telephone numbers of the EMS or ambulance service if one is to be utilized, the hospital to which the patient is to be transported and the functions to be undertaken by health care personnel until a transfer of the patient is completed;

(c). fire and bomb threats.

b. All facility personnel providing patient care shall be familiar with, appropriately trained in and annually review the facility's written policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:425 (March 2004).

§7311. Administration of Anesthesia

A. Evaluation of the Patient. An anesthesia provider shall perform a pre-anesthesia evaluation, counsel the patient and prepare the patient for anesthesia.

B. Diagnostic Testing, Consultations. Appropriate pre-anesthesia diagnostic testing and consults shall be obtained as indicated by the pre-anesthesia evaluation.

C. Anesthesia Plan of Care. A patient-specific plan for anesthesia care shall be formulated based on the assessment of the patient, the surgery to be performed and the capacities of the facility.

D. Administration of Anesthesia. Anesthesia shall be administered by an anesthesia provider who shall not participate in the surgery.

E. Monitoring. Monitoring of the patient shall include continuous monitoring of ventilation, oxygenation and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry, electrocardiogram continuously, non-invasive blood pressure measured at appropriate intervals, an oxygen analyzer and an end-tidal carbon dioxide analyzer. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure. Post-

operatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable. Monitoring and observations shall be documented in the patient's medical record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:427 (March 2004).

§7313. Reports to the Board

A. A physician performing office-based surgery shall notify the board in writing within 15 days of the occurrence or receipt of information that an office-based surgery resulted in:

1. an unanticipated and unplanned transport of the patient from the facility to a hospital emergency department;

2. an unplanned readmission to the office-based surgery setting within seventy-two hours of discharge from the facility;

3. an unscheduled hospital admission of the patient within 72 hours of discharge from the facility; or

4. the death of the patient within 30 days of surgery in an office-based facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), 1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:427 (March 2004).

§7315. Effect of Violation

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), providing cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician culpable of such violation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(A)(1), R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:427 (March 2004).

John B. Bobear, M.D.
Executive Director

0403#070

RULE

**Department of Health and Hospitals
Licensed Professional Vocational Rehabilitation
Counselors Board of Examiners**

Licensing and Advisory Opinions
(LAC 46:LXXXVI.703, 1800, and 1801)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., that the Louisiana Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, pursuant to the authority vested in it by R.S. 37:3445, has amended the Professional and Occupational Standards pertaining to Vocational Rehabilitation Counselors in order to provide for the

requirements for licensing, and to add Chapter 18 to provide for advisory ethics opinions.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXXVI. Vocational Rehabilitation Counselors

Chapter 7. Requirements for Licensure and Renewal of License

§703. Requirements

A. - A.4. ...

5. has received a master's degree in vocational rehabilitation counseling or related field and two years of experience under the direct supervision of a licensed vocational rehabilitation counselor. An applicant may subtract one year of the required professional experience for successfully completing Ph.D. requirements in a rehabilitation counseling program acceptable to the board. In order to meet the requirements of licensure, one must have a degree in vocational rehabilitation counseling or an approved related degree as listed in Section A below:

Section A
Clinical or Counseling Psychology
Professional Guidance and Counseling
Rehabilitation Studies (O.T. and P.T. excluded)
Special Education (as determined by the board)

a. The board will consider as a feasible alternative to a vocational rehabilitation degree, a related degree as listed in Section A which includes 42 hours of qualifying courses from an accredited college or university which meet the academic and training content established by the board and listed in Section B below. Both Section A and Section B are at the discretion of the board.

Section B	Hours
Orientation of Vocational Rehabilitation	3
Statistics	3
Medical and/or Psycho-Social Terminology of Disabilities Relative to Vocational Performance	3
Psychological and Social Effects of Disabilities	3
Tests and Measurements	3
Occupational Information and/or Job Placement and Job Development	3
Analysis of the Individual	3
Theories of Personality	3
Theories and Techniques of Counseling	6
Demonstrations and Practice of Counseling	3
Field Work or Practicums	9-12
Psychiatric Disorders and/or Substance Abuse	3
Vocational Analysis or Assessment of Persons with Disabilities	3
Introduction to Psychology	3
Abnormal Psychology	3
Introduction to Sociology	3
Developmental Psychology (Adult or Adolescent)	3
Ethics of Counseling	3
	66

b. A candidate for licensure must have 42 of the 66 hours enumerated, completing each course with a "C" or better. Any substitutions of similar course work will be limited and at the discretion of the board. As of July 20, 1996, anyone possessing an unrelated degree, not specific in the above text, will not be accepted even if they pursue

additional course work. Should they obtain an additional degree in the related areas as specified in Section A above, this will be considered.

6. The board shall issue a license to each applicant who files an application upon a form designated by the board and in such a manner as the board prescribes, accompanied by such fee required by R.S. 37:3447 and who furnishes satisfactory evidence to the board that he has met the requirements of Paragraphs A.1-4 and has a bachelor's degree in vocational rehabilitation counseling or related field as defined in Paragraph 703.A.5 and five years of work experience working under the direct supervision of a licensed vocational rehabilitation counselor which period of supervision began prior to September 1, 2004. Except as provided in this Paragraph 703.A.6, after September 1, 2009 no license shall be issued to any applicant not meeting the requirements of Paragraphs 703.A.1-5.

B. - B.15.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3447.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 15:277 (April 1989), amended by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 19:1570 (December 1993), LR 22:582 (July 1996), LR 30:428 (March 2004).

Chapter 18. Guidelines for Requesting Advisory Opinions From LLPVRC's Ethics Committee

§1800. General

A. Consistent with the intent of the Louisiana Licensed Professional Vocational Rehabilitation Counselors (LLPVRC) Code of Professional Ethics for Licensed Rehabilitation Counselors, the LLPVRC Ethics Committee recommends that licensed rehabilitation counselors who are considering seeking advisory opinions first consult with other rehabilitation counselors and colleagues who are knowledgeable about ethics in order to attempt to resolve questions that may easily be addressed by other knowledgeable parties. If these attempts do not result in resolution of the matter, individuals may request advisory opinions from the LLPVRC Ethics Committee.

B. The committee provides advisory opinions on selected situations having ethical implications. These advisory opinions are provided as a general educational service and are rendered in response to limited and unverified information provided to the committee. Therefore, it should not be construed as direct advice regarding the unique or specific ethical or legal action recommendations that should be followed regarding the issues raised. The considerations described by the committee's advisory opinion should be regarded only as general educational assistance and not as specific direction in any particular instance.

C. Requests should not be filed if there is reason to believe that a violation of the code has occurred. Those attempting to determine if alleged behavior violates the code may receive a response to a request for an advisory opinion that may later appear to contradict a ruling made if a complaint is actually filed. This possible incongruity might be due to the fact that advisory opinions do not allow for full disclosure of all available information in the matter.

D. Information presented in a request for an advisory opinion and the committee's response to that ruling may be presented for educational purposes to other parties in a sanitized format.

E. LLPVRC's Ethics Committee meets four times per year. Requests received will be scheduled for review at the next scheduled meeting of the committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3445.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:428 (March 2004).

§1801. Requesting an Advisory Opinion

A. Requests should be clear and concise and should include both the scenario and the requestor's opinion as to the Standard(s) in the LLPVRC Code of Professional Ethics for Licensed Rehabilitation Counselors that relate to the matter as well as the requestor's interpretation of how to apply the Standard(s) to the scenario. Further, if the requestor is a LRC, the request should advise as to the results of consultation with other rehabilitation counselors and colleagues.

B. Requests should be sent in writing to:

Louisiana Licensed Professional Vocational
Rehabilitation Counselors Board of Examiners
P.O. Box 41594
Baton Rouge, LA 70835-1594
Attn: Ethics Committee

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3445.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Vocational Rehabilitation Counselors Board of Examiners, LR 30:429 (March 2004).

Carla Seyler
Chairperson

0403#020

RULE

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

Adult Denture Program
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has promulgated the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing increases the following reimbursement fees for certain designated procedures in the Adult Denture Program.

Procedure Code	Description	Fee
D0150	Comprehensive Oral Exam – Adult	\$20
D5110	Complete Denture, Maxillary	\$495
D5120	Complete Denture, Mandibular	\$495
D5130	Immediate Complete Denture, Maxillary	\$495
D5140	Immediate Complete Denture, Mandibular	\$495
D5211	Partial Denture, Resin Base, Maxillary	\$470
D5212	Partial Denture, Resin Base, Mandibular	\$470
D5510	Repair Complete Broken Denture Base	\$100
D5520	Repair Missing or Broken Teeth - Complete Denture, Per Tooth	\$52/\$26*
D5610	Repair Resin Denture Base, Partial Denture	\$100
D5630	Repair or Replace Broken Clasp, Partial Denture	\$95
D5640	Replace Broken Teeth, Partial Denture, Per Tooth	\$52/\$26*
D5650	Add Tooth to Existing Partial Denture	\$52/\$26*
D5660	Add Clasp to Existing Partial Denture	\$95
D5750	Reline Complete Maxillary Denture (Lab)	\$238
D5751	Reline Complete Mandibular Denture (Lab)	\$238
D5760	Reline Maxillary Partial Denture (Lab)	\$208
D5761	Reline Mandibular Partial Denture (Lab)	\$208

*The rate for each subsequent tooth in the same arc.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#061

RULE

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

Early and Periodic Screening, Diagnosis and Treatment Program? Personal Care and Extended and/or Multiple Daily Skilled Nursing Services
(LAC 50:XV.7501)

Editor's Note: LAC 50:XV.7501 was promulgated in the February 20, 2004 issue of the *Louisiana Register* on page 253 and is being repromulgated to correct typographical errors.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.Chapter 75 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 75. Extended and/or Multiple Daily Skilled Nursing

§7501. Medically Fragile

A. A medically fragile individual is one who has a medically complex condition characterized by multiple, significant medical problems that require extended care. Medically fragile individuals require most or all of the following services/aids:

1. use of home monitoring equipment;
2. IV therapy;

3. ventilator or tracheotomy care;
4. feeding tube and nutritional support;
5. frequent respiratory care;
6. medication administration;
7. catheter care;
8. frequent positioning needs;
9. special accommodations such as specially equipped vehicles or medical devices in order to attend school.

B. Under the EPSDT Program, continuous nursing care by a registered nurse (RN) or a licensed practical nurse (LPN) may be provided to children up to age 21 who are considered "medically fragile." Children who meet the continuous care criteria, which must be prior authorized, may leave the home and have the nurse provide services in any setting other than a school or institutions such as a hospital, skilled nursing facility or intermediate care facility for the mentally retarded.

C. Medically fragile recipients meet the medical necessity criteria for extended and/or multiple daily skilled nursing services if the individual has received prior authorization for services in accordance with the certifying physician's orders that document and meet the following criteria:

1. the medical condition of the recipient meets the medical necessity requirement for skilled nursing services and the provision of these services in the home is the most appropriate level of medical care; and
2. failure to receive skilled nursing services in the home would place the recipient at risk of developing additional medical problems or could cause further debilitation; and
3. the recipient requires skilled nursing services on a regular basis and that these services cannot be obtained in an outpatient setting before or after normal school hours. Therefore, extended and/or multiple daily skilled nursing services may be provided to the recipient/student in the home before or after normal school hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:253 (February 2004), repromulgated LR 30:429 (March 2004).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#060

RULE

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

Home Health Services? Medical Necessity Criteria (LAC 50:XIX.Chapters 1-5)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XIX, Chapters 1-5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50 PUBLIC HEALTH? MEDICAL ASSISTANCE Part XIX. Other Services Subpart 1. Home Health

Chapter 1. General Provisions

§101. Definitions

A. The following words and terms, when used in this Subpart 1, shall have the following meanings, unless the context clearly indicates otherwise:

Home Health Aide Services? direct care services to assist in the treatment of the patient's illness or injury provided under the supervision of a registered nurse and in compliance with the standards of nursing practice governing delegation, including assistance with the activities of daily living such as mobility, transferring, walking, grooming, bathing, dressing or undressing, eating, or toileting.

Home Health Services? patient care services provided in the patient's home under the order of a physician that are necessary for the diagnosis and treatment of the patient's illness or injury, including one or more of the following services:

- a. skilled nursing;
- b. physical therapy;
- c. speech-language therapy;
- d. occupational therapy;
- e. home health aide services; or
- f. medical supplies, equipment and appliances

suitable for use in the home.

Note: Medical supplies, equipment and appliances for home health are reimbursed through the Durable Medical Equipment Program and must be prior authorized.

Occupational Therapy Services? medically prescribed treatment to improve or restore a function which has been impaired by illness or injury or, when the function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning.

Physical Therapy Services? rehabilitative services necessary for the treatment of the patient's illness or injury or, restoration and maintenance of function affected by the patient's illness or injury. These services are provided with the expectation, based on the physician's assessment of the patient's rehabilitative potential, that:

- a. the patient's condition will improve materially within a reasonable and generally predictable period of time; or
- b. the services are necessary for the establishment of a safe and effective maintenance program.

Skilled Nursing Services? nursing services provided on a part-time or intermittent basis by a registered nurse or licensed practical nurse that are necessary for the diagnosis and treatment of a patient's illness or injury. These services shall be consistent with:

- a. established Medicaid policy;
- b. the nature and severity of the recipient's illness or injury;
- c. the particular medical needs of the patient; and
- d. the accepted standards of medical and nursing practice.

Speech-Language Therapy Services? those services necessary for the diagnosis and treatment of speech and language disorders that result in communication disabilities,

and for the diagnosis and treatment of swallowing disorders (dysphagia), regardless of a communication disability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:430 (March 2004).

§103. Requirements for Home Health Services

A. Home health services shall be based on an expectation that the care and services are medically reasonable and appropriate for the treatment of an illness or injury, and that the services can be performed adequately by the agency in the recipient's place of residence. A written plan of care for services shall be evaluated and signed by the physician every 60 days. This plan of care shall be maintained in the recipient's medical records by the home health agency.

B. Medicaid recipients who are linked to a CommunityCare primary care physician (PCP) must have a referral from the PCP for home health services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004).

§105. Provider Responsibilities

A. Home health agencies must comply with the following requirements as condition for participation in the Medicaid Program.

1. The home health agency must provide to the bureau, upon request, the supporting documentation verifying that the recipient meets the medical necessity criteria for services.

2. Home health services shall be terminated when the goals outlined in the plan of care have been achieved, regardless of the number of days or visits that have been approved.

3. The home health agency must ensure that the family is instructed on a home maintenance exercise program which has been established by the treating physical therapist.

4. The home health agency shall discharge a patient once it has been determined that the patient or his/her legally responsible caregiver is noncompliant with the treatment regimen, keeping medical appointments and/or assisting with medication compliance and med-pack setups.

5. The home health agency must report complaints and suspected cases of abuse or neglect of a home health recipient to the appropriate authorities if the agency has knowledge that a minor child, a non-consenting adult or a mentally incompetent adult has been abused or is not receiving proper medical care due to neglect or lack of cooperation on the part of the legal guardians or caretakers. This includes knowledge that a recipient is routinely taken out of the home by a legal guardian or caretaker against medical advice or when it is obviously medically contraindicated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004).

Chapter 3. Medical Necessity

§301. General Provisions

A. Medical necessity for home health services is determined by the recipient's illness and/or injury and functional limitations. All home health services shall be medically reasonable and appropriate. To be considered medically reasonable and appropriate, the care must be necessary to prevent further deterioration of a recipient's condition regardless of whether the illness or injury is acute, chronic or terminal. The services must be reasonably determined to:

1. diagnose, cure, correct or ameliorate defects, physical and mental illnesses, and diagnosed conditions of the effects of such conditions; or

2. prevent the worsening of conditions, or the effects of conditions, that:

a. endanger life or cause pain;

b. result in illness or infirmity; or

c. have caused, or threatened to cause, a physical or mental dysfunction, impairment, disability, or developmental delay; or

3. effectively reduce the level of direct medical supervision required or reduce the level of medical care or services received in an inpatient or residential care setting; or

4. restore or improve physical or mental functionality, including developmental functioning, lost or delayed as the result of an illness, injury, or other diagnosed condition or the effects of the illness, injury or condition; or

5. provide assistance in gaining access to needed medical, social, educational and other services required to diagnose, treat, or support a diagnosed condition or the effects of the condition, in order that the recipient might attain or retain:

a. independence;

b. self-care;

c. dignity;

d. self-determination;

e. personal safety; and

f. integration into all natural family, community, and facility environments and activities.

B. Home health skilled nursing and aide services are considered medically reasonable and appropriate when the recipient's medical condition and medical records accurately justify the medical necessity for services to be provided in the recipient's home rather than in a physician's office, clinic, or other outpatient setting according to guidelines as stated in this Subpart.

C. Home health services are appropriate when a recipient's illness, injury, or disability causes significant medical hardship and would interfere with the effectiveness of the treatment if he/she had to go to a physician's office, clinic, or other outpatient setting for the needed service. Any statement on the plan of care regarding this medical hardship must be supported by the totality of the recipient's medical records.

D. The following circumstances are not considerations when determining medical necessity for home health services:

- a. inconvenience to the recipient or the recipient's family;
- b. lack of personal transportation; or
- c. failure or lack of cooperation by a recipient or a recipient's legal guardians or caretakers to obtain the required medical services in an outpatient setting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004).

§303. Provisions for Infants and Toddlers

A. For the purpose of this Subpart 1, *Infants or Toddlers* are defined as young children, up to age 3, who have not learned to ambulate without assistance.

B. Home health services are considered to be medically necessary for an infant or toddler when the primary care physician has advised against removing the infant or toddler from the home because it would:

- 1. place the infant or toddler at serious risk of infection;
- 2. greatly delay or hamper the recovery process;
- 3. cause significant further debilitation of an existing medical condition or physical infirmity;
- 4. seriously threaten to cause or aggravate a handicap or a physical deformity or malfunction;
- 5. cause great suffering or pain;
- 6. seriously endanger the well being of the infant or toddler; or
- 7. otherwise be considered medically contraindicated.

C. The following circumstances are not considered when determining the medical necessity of home health services for infants and toddlers:

- 1. the provision of services in the home is solely a matter of convenience;
- 2. a lack of personal transportation; or
- 3. failure or lack of cooperation by the child's legal guardian(s) to obtain the required medical services in an outpatient setting.

NOTE: The fact that an infant or toddler cannot ambulate or travel without assistance from another is not a factor in determining medical necessity for services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:432 (March 2004).

Chapter 5. Service Limitations

§501. Home Health Visits

A. Home health services are limited to 50 skilled nursing and/or aide visits per year, one service per day for recipients who are 21 years of age and older.

B. The service limitation of 50 skilled nursing and/or aide visits per year, one service per day is not applicable for recipients who are from birth up to the age of 21. However, home health services provided to recipients up to the age of 21 are subject to post-payment review in order to determine if the recipient's condition warrants high utilization.

C. The service limitation of 50 home health visits per year is not applicable for rehabilitation services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:432 (March 2004).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#063

RULE

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

Minimum Licensing Standards
End Stage Renal Disease Treatment Facilities? Licensing
(LAC 48:I.Chapter 84)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 48:I.Chapter 84 under the Medical Assistance Program as authorized by R.S. 36:254 and 40:2117.4. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the Rule governing the licensing of end stage renal disease treatment facilities/programs.

Title 48

PUBLIC HEALTH? GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 84. End Stage Renal Disease Treatment Facilities

Subchapter A. General Provisions

§8407. Survey

A. All surveys, except the initial licensing survey, shall be unannounced. This survey may be conducted with other agency personnel and/or personnel from other local, state or federal agencies. A survey of all aspects of the facility's operation is required prior to issuing a license.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2193 (October 2002), amended LR 30:432 (March 2004).

§8409. Adverse Actions

A. DHH reserves the right to suspend, deny (initial or renewal), or revoke any license at the discretion of the secretary or his/her designee.

B. - D.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2194 (October 2002), amended LR 30:432 (March 2004).

Subchapter B. Facility Operations

§8429. Physical Plant Requirements

A. - F.4. ...

5. In facilities initially licensed after March 20, 2004, at least one window shall be provided in every treatment area.

F.6. - J.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2196 (October 2002), amended LR 30:432 (March 2004).

Subchapter C. Personnel

§8439. General Provisions

A. - B.2. ...

3. The facility must have formal written agreements with outside professionals or other entities retained to provide contract services. Written agreements shall express the responsibilities between the two parties, be signed by both parties and shall either be time-limited or remain in effect until either party terminates the agreement in writing.

C. - C.5.d.xiv. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2197 (October 2002), amended LR 30:433 (March 2004).

§8443. Personnel Qualifications and Responsibilities

A. - C.1.c. ...

d. Repealed.

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

F. Social Worker

1. Qualifications. Currently licensed by the Louisiana State Board of Social Work Examiners as a Licensed Clinical Social Worker or certified by the board as either a graduate social worker (GSW) or provisional graduate social worker (provisional GSW).

F.2. - H.1. ...

2. At a minimum, each patient receiving dialysis in the facility shall be seen by a physician, physician's assistant, or advanced practice nurse at least once every 30 days; home patients shall be seen at least every three months. There shall be evidence of monthly assessment for new and recurrent problems and review of dialysis adequacy.

H.3. - H.4.c. ...

I. Patient Care Technician (PCT) or Dialysis Technician

1. Qualifications include basic general education (high school or equivalent) and dialysis training as specified in §8441.C.

2. Responsibilities include:

a. performing patient care duties only under the direct and on-site supervision of qualified registered nurses;

b. performing only those patient care duties that are approved by facility management and included in the policy and procedure manual; and

c. performing only those patient care duties for which they have been trained and are documented as competent to perform.

J. Reuse Technician

1. Qualifications. Basic general education (high school or equivalent), facility orientation program, and completion of education and training to include the following:

a. health and safety training, including universal precautions;

b. principles of reprocessing, including dangers to the patient;

c. procedures of reprocessing, including pre-cleaning, processing, storage, transporting, and delivery;

d. maintenance and safe use of equipment, supplies, and machines;

e. general principles of hemodialysis and in-depth information on dialyzer processing; and

f. competency certification on a biannual basis by a designated facility employee.

2. Responsibilities. The reuse technician is responsible for the transport, cleaning, processing, and storage of dialyzers to limit the possibility of cross contamination, and to avoid improper care of multiple use dialyzers.

3. Any technician or professional staff who performs reprocessing shall have documented training in the procedure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2198 (October 2002), amended LR 30:433 (March 2004).

Subchapter D. Patient Care

§8457. Treatment Services

A. - A.2. ...

B. In addition, the following services may be provided by a facility:

1. home training? home visits, teaching, and professional guidance to teach patients to provide self-dialysis;

2. home support? provision of professional support to assist the patient who is performing self-dialysis.

C. Dialyzer Reprocessing. Reuse shall meet the requirements of 42 CFR. §405.2150. Additionally, the facility shall:

1. develop, implement, and enforce procedures that eliminate or reduce the risk of patient care errors including, but not limited to, a patient receiving another patient's dialyzer, or a dialyzer that has failed performance checks;

2. develop procedures to communicate with staff and to respond immediately to market warnings, alerts, and recalls;

3. develop and utilize education programs that meet the needs of the patient and/or family members to make informed reuse decisions; and

4. be responsible for all facets of reprocessing, even if the facility participates in a centralized reprocessing program.

D. Water treatment shall be in accordance with the *American National Standard, Hemodialysis Systems* published by the Association for the Advancement of Medical Instrumentation (AAMI Standards) and adopted by reference 42 CFR. §405.2140.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002), amended LR 30:433 (March 2004).

§8459. Treatment Requirements

A. - A.2.b. ...

c. written contracts with those patients who have a history of problems at other facilities, such as disruptive, threatening and abusive behavior to staff or other patients; and

A.2.d. - C.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2117.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2201 (October 2002), amended LR 30:434 (March 2004).

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#062

RULE

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

Pregnant Women Extended Services? Dental Services
(LAC 50:XV.16101-16107)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.16101-16107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing the coverage of the dental services for pregnant women.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 13. Pregnant Women Extended Services

Chapter 161. Dental Services

§16101. Recipient Qualifications

A. In order to qualify for the dental services indicated below, a Medicaid eligible pregnant woman must be 21 years of age or older and certified for Medicaid as categorically eligible.

B. Pregnant women who are certified for Medicaid as Qualified Medicare Beneficiaries do not qualify for coverage of dental services unless these services are covered by Medicare.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004).

§16103. Provider Responsibilities

A. The medical professional providing pregnancy care must complete the Referral for Pregnancy-Related Dental Services Form (BHSF Form 9M), including the expected date of delivery. The dental provider must obtain an original completed and signed BHSF 9M prior to the delivery of dental services. This form shall be kept on file at the treating dentist's office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004).

§16105. Covered Services

A. The following dental services are covered for Medicaid eligible pregnant women 21 years of age or older.

Description
Comprehensive Periodontal Evaluation – New or Established Patient
Intraoral - Periapical First Film
Intraoral - Periapical Each Additional Film
*Intraoral - Occlusal Film
Bitewings, Two Films
*Panoramic Film
Prophylaxis – Adult
* Amalgam, One Surface, Primary or Permanent
*Amalgam, Two Surfaces, Primary or Permanent
*Amalgam, Three Surfaces, Primary or Permanent
*Amalgam, Four or More Surfaces, Permanent
*Resin-based Composite, One Surface, Anterior
*Resin-based Composite, Two Surfaces, Anterior
*Resin-based Composite, Three Surfaces, Anterior
*Resin-based Composite, Four or More Surfaces or Involving Incisal Angle, Anterior
*Resin-based Composite Crown, Anterior
*Prefabricated Stainless Steel Crown, Permanent Tooth
*Prefabricated Resin Crown
*Pin Retention, Per Tooth, In Addition to Restoration
*Periodontal Scaling and Root Planing - Four or More Contiguous Teeth or Bounded Teeth Spaces Per Quadrant
*Full Mouth Debridement to Enable Comprehensive Evaluation and Diagnosis
Extraction, Erupted Tooth or Exposed Root (Elevation and/or Forceps Removal)
*Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Removal of Bone and/or Section of Tooth
*Removal of Impacted Tooth, Soft Tissue
*Removal of Impacted Tooth, Partially Bony

* Prior Authorization Required

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004).

§16107. Reimbursement

A. Reimbursement for these services is a flat fee based on the fee schedule established by the bureau for the Early and Periodic Screening, Diagnosis and Treatment Program minus the amount which any third party coverage would pay.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:434 (March 2004).

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

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#064

RULE

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

POST Approved Shotgun Course (LAC 22:III.4725)

In accordance with the provision of R.S. 40:2401 et seq., the Peace Officer Standards and Training Act, and R.S. 49:950 et seq., the Administrative Procedure Act, the Commission on Law Enforcement and Administration of Criminal Justice has amended rules and regulations relative to the training of peace officers. The Peace Officers Standards and Training Council approved the Shotgun Course at its meeting on September 9, 2003.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4725. POST Approved Shotgun Course

A. Slug Phase. If rifled slugs are issued, the firearms instructor shall include the slug phase in the Basic Shotgun Course. Option one will always be used where a 50-yard shooting position is available.

1. Option One (50 yards)

a. The officer, using the assembly load method, will load two rifled slugs and take aim.

b. On command, the officer will fire one round from the shoulder in the standing position and one round in the kneeling position, from cover, with or without support. Time Limit: 15 seconds.

2. Option Two (25 yards)

a. The officer, using the assembly load method, will load two rifled slugs and take aim.

b. On command, the officer will fire one round from the shoulder in the standing position and one round from the kneeling position, from cover, with or without support. Time limit: 7 seconds.

3. Target: B-27 or P.O.S.T. qualification (P-1)

4. Scored: B-27: Hit inside eight ring scores five points; hit inside seven ring scores four points, hit inside black scores three points.

5. Scored: P.O.S.T. (P-1): Hit inside scoring ring scores five points, hit in the green scores four points.

B. Buckshot Phase. Recommend use of 9pellet "OO." Buckshot (may also be fired with any buckshot).

1. 25 Yards (five rounds buckshot)

a. On command, using the assembly load method, the officer will load two rounds of buckshot and come to "Ready Gun Position." Officer will have three additional rounds of buckshot on his/her person.

b. On command, officer will fire two rounds from the shoulder (standing), then using the combat load method, load and fire three rounds from the shoulder (kneeling). Total time: 35 seconds.

2. 15 Yards (five rounds buckshot)

a. Officer will start with five rounds of buckshot on their person and empty shotgun.

b. On command, the officer, using the combat load method, load five rounds of buckshot and fire two rounds from the shoulder (standing). Total time: 25 seconds.

c. Officer will then cover target.

d. On command, fire one round from the shoulder (standing). Total time: 2 seconds.

e. On command, fire one round from the shoulder (standing). Total time: 2 seconds.

f. On command, fire one round from the shoulder (standing). Total time: 2 seconds.

3. Target: B-27 or P.O.S.T. qualification (P-1).

4. Scoring: One point for hit on black of B-27 target or one point for hit on green of P-1 target.

5. Total score should equal 75 percent with or without the Slug Phase.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 30:435 (March 2004).

Michael A. Ranatza
Executive Director

0403#049

RULE

Office of the Governor Division of Administration Office of Group Benefits

MCO Plan of Benefits? Lifetime Maximum Benefits (LAC 32:IX.701)

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. 42:801(C) and 802(B)(2) vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate Rules with respect thereto, OGB finds that it is necessary to revise and amend provisions of the MCO plan document relative to lifetime maximum benefits to implement a one million dollar per person lifetime maximum for all benefits except pharmacy benefits. This action is necessary in order to maintain the financial integrity of the plan for the plan year beginning July 1, 2004, and in subsequent years.

Accordingly, OGB has adopted the following Rule to become effective July 1, 2004.

Title 32

EMPLOYEE BENEFITS

Part IX. Managed Care Option (MCO) Plan of Benefits Chapter 7. Schedule of Benefits MCO

§701. Comprehensive Medical Benefits

A. ...

1. Lifetime Maximum Benefits

a. Lifetime maximum for all benefits except pharmacy benefits (outpatient prescription drug benefits) per person	\$ 1,000,000
b. Lifetime maximum for all pharmacy benefits (outpatient prescription drug benefits) per person	\$ 250,000

A.2. - D.3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 29:901 (June 2003), amended LR 30:435 (March 20004).

A. Kip Wall
Chief Executive Officer

0403#019

RULE

**Office of the Governor
Used Motor Vehicle and Parts Commission**

Licensing Used Motor Vehicle Dealers
(LAC 46:V.2901, 2905, 4401 and 4403)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapters 4A and 4B, the Office of the Governor, Used Motor Vehicle and Parts Commission, has amended rules and regulations governing dealers to be licensed in accordance with R.S. 32:773, garage liability insurance policy in accordance with R.S. 32:774:I(1) and educational seminars in accordance with R.S. 32:774(B)(3)(b)(i)(ii)(iii)(iv).

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part V. Automotive Industry

Subpart 2. Used Motor Vehicle and Parts Commission

Chapter 29. Used Motor Vehicle Dealer

§2901. Dealers to be Licensed

A. ...

B. Dealers in new and used motor homes, new and used semi-trailers, new and used motorcycles, new and used all-terrain vehicles, new and used recreational trailers, new and used boat trailers, and new and used travel trailers, new and used boats, new and used boat motors, daily rentals not of current year or immediate prior year models that have been titled previously to an alternate purchaser, manufacturers and distributors and other types subject to certificate of title law and Title 32 and/or Vehicle Registration Tax Number under Title 47. All new and unused vehicle dealers and other dealers licensed by the Louisiana Used Motor Vehicle and Parts Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:773(B).

HISTORICAL NOTE: Promulgated by Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1062 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 24:1682 (September 1998), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission LR 30:436 (March 2004).

§2905. Qualifications and Eligibility for Licensure

A. The commission, in determining, the qualifications and eligibility of an applicant for a dealer's license, will base its determinations upon the following factors.

1 ...

2. All dealers are required to keep in force a garage liability insurance policy on all vehicles offered for sale or used in any other capacity in demonstrating or utilizing the streets and roadways in accordance with the financial responsibility laws of the state. For those dealers who, in addition to selling vehicles, conduct the business of daily vehicle rentals, a separate renter's policy must be in effect.

A.3. - D. ...

E. Dealers in new and used motor homes, new and used boats, new and used boat motors, new and used motorcycles, new and used all-terrain vehicles, new and used semi-trailers, new and used recreational trailers, new and used boat trailers, and new and used travel trailers, likewise must meet the above qualifications to be eligible and all these types license numbers will be prefixed by NM, followed by a four digit number then current year of license (NM-0000-98). Semi-trailers are described in the title law as every single vehicle without motive of power designed for carrying property and passengers and so designed in conjunction and used with a motor vehicle that some part of its own weight and that its own load rests or is carried by another vehicle and having one or more load carrying axles. This includes, of course, recreational trailers, boat trailers and travel trailers, but excludes mobile homes. One license shall be due for new and used operators at the same location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772(F)(2).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR11:1062 (November 1985), amended by Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:258 (April 1989), LR 15:375 (May 1989), LR 24:1682 (September 1998), LR 25:245 (February 1999), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:436 (March 2004).

Chapter 44. Educational Seminar

§4401. Required Attendance

A. On or after January 1, 2005, every applicant for a used motor vehicle dealer's license must attend a four-hour educational seminar approved and conducted by the Used Motor Vehicle and Parts Commission.

1. - 3. ...

4. Any dealers who are found guilty of violations of commission laws and/or rules and regulations will be required to attend.

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774B.(3)(b)(i)-(iv).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 23:2351 (November 2002), amended LR 30:436 (March 2004).

§4403. Certification

A. Upon applying for a 2005 used motor vehicle dealer's license, the applicant must attach a copy of the certificate of completion which documents that the dealership's general manager, office manager, title clerk, or other responsible representative of the dealership has attended the four-hour educational seminar. If the applicant has not completed the

educational seminar, he must provide evidence that he has registered to attend such seminar within 60 days after issuance of the license.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:774.B (3)(b)(i).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 23:2351 (November 2002), amended LR 30:436 (March 2004).

John M. Torrance
Executive Director

0403#036

RULE

Department of Natural Resources Office of Conservation

Statewide Order No. 29-L-3? Termination of Units (LAC 43:XIX.3101, 3103, and 3105)

Editor's Note: LAC 43:XIX.3101, 3103, and 3105 were promulgated in the February 20, 2003 issue of the *Louisiana Register* on pages 255-257 and are being repromulgated to correct typographical errors.

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, R.S. 4.C, the Louisiana Office of Conservation has amended an existing Rule, Statewide Order No. 29-L-2 (LAC 43:XIX.3101, 3103, and 3105). The Rule concerns the terminations of oil and gas unit(s) for a pool established by the commissioner of conservation. The amended Rule will allow the termination of any unit or units for a pool provided each of the items listed below apply as of the date the application is filed with the commissioner.

1. A period of five years has elapsed without any production from the unit or units.
2. There is no well located on the unit which is capable of producing from the pool for which the unit or units is established.
3. A period of a year and 90 days has elapsed without any drilling, reworking, recompletion, plugging back, or deepening operations having been conducted on a well located on the unit in an attempt to obtain or restore production from the pool for which the unit or units were established.
4. There is no unexpired drilling permit for the drilling of a new well on the unit to a depth which would penetrate the pool for which the unit or units were established.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation? General Operations

Subpart 13. Statewide Order No. 29-L-3

Chapter 31. Termination of Units

§3101. Scope

A. This order establishes rules and regulations for termination of any unit established by the commissioner of conservation pursuant to the authority of Title 30 of the Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with RS. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 15:741 (September 1989), repromulgated LR 19:776 (June 1993), amended LR 21:1083 (October 1995), LR 30:255 (February 2004), repromulgated LR 30:437 (March 2004).

§3103. Definitions

A. Unless the context otherwise requires, the words defined in this Section shall have the following meaning when found in this order.

District Manager? the manager of any one of the districts of the state of Louisiana under the Office of Conservation, and refers specifically to the manager within whose district the *pool* for which any *unit(s)* are sought to be terminated are located.

Interested Party? any person, as person is defined in Title 30 of the Revised Statutes of 1950, who owns an interest in any *unit(s)* sought to be terminated.

Pool? an underground reservoir containing a common accumulation of crude petroleum or natural gas or both. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term *pool*.

Unit? any *unit(s)*, whether one or more, established for a particular *pool*, by order of the commissioner of conservation pursuant to authority of Subsection B of Section 9 or Subsection B or C of Section 5 of Title 30 of the Revised Statutes of 1950.

Well? all *wells* drilled within the confines of any *unit(s)* sought to be terminated.

AUTHORITY NOTE: Promulgated in accordance with RS.30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 15:741 (September 1989), repromulgated LR 19:776 (June 1993), amended LR 21:1083 (October 1995), LR 30:255 (February 2004), repromulgated LR 30:437 (March 2004).

§3105. Order

A. Termination of All Existing Units for a Pool

1. On and after the effective date hereof, a supplemental order terminating all existing units established by the commissioner for a pool may be issued after written application and upon proper showing in the manner provided herein, and in the absence of protest without the necessity of a public hearing, when with respect to the pool for which the unit was established, a period of one year and 90 days has elapsed without:

- a. production from the pool; and
- b. the existence of a well proven capable of producing from the pool; and
- c. drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well to secure or restore production from the pool.

2. Each application for unit termination shall be filed with the commissioner with a copy to the district manager and each interested party. Interested parties need not be furnished information described in §3105.A.2.b, d and e. The application shall include the following:

- a. a plat showing all existing units established for the pool, with each well located thereon, together with order number(s) and effective date of the order(s) of the commissioner establishing said units. Each well shall be

identified on such plat by operator of record, serial number and well name and number or by reference to an appropriate attachment;

b. a signed statement indicating the status of each well. Should there exist a well which has not been plugged and abandoned in accordance with LAC 43:XIX.137, sufficient geological, engineering, or other data with detailed explanation thereof to clearly demonstrate that said well is not capable of producing from the pool;

c. a signed statement indicating that with respect to the pool for which the unit was established, to the best of applicant's knowledge, a period of one year and 90 days has elapsed without:

i. production from the pool; and
ii. the existence of a well proven capable of producing from the pool; and

iii. drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well to secure or restore production from the pool;

d. a list of all interested parties identified by the applicant after reasonable search to whom a copy of the application has been sent;

e. an application fee as established by LAC 43:XIX.201 et seq.

3. Notice of the filing of the application of unit termination shall be published in the official journal of the state of Louisiana giving notice that unless a written protest is filed with the commissioner within the 30-day period from the date of publication of notice, the commissioner may issue a supplemental order for such unit termination. In the event written objection is filed within said 30-day period, the applicant may apply for a public hearing for consideration of the application.

4. In the event that production from the pool is subsequently reestablished from an existing well which was deemed not capable of producing from the pool as of the effective date of unit termination, the operator of record of such well shall immediately apply to the commissioner for a public hearing, after 30-day legal notice, to consider evidence concerning whether the previously existing unit on which the well is located should be reestablished for such well.

B. Termination of Any Existing Unit for a Pool

1. On and after the effective date hereof, a supplemental order terminating any existing unit(s) established by the commissioner for a pool may be issued after written application and upon proper showing in the manner provided herein, and in the absence of protest without the necessity of a public hearing, when with respect to the unit(s) to be terminated, each of the following apply as of the date the application for unit termination is filed with the commissioner:

a. a period of five years has elapsed without any production from the unit(s); and

b. there is no well located on the unit(s) which is capable of producing from the pool for which the unit(s) was established; and

c. a period of one year and 90 days has elapsed without any drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well located on the unit(s) to be terminated in an attempt to

secure or restore production from the pool for which the unit(s) was established.

2. Each application for unit termination shall be filed with the commissioner with a copy to the district manager and each interested party. Interested parties need not be furnished information described in §3105.B.2.b, d and e. The application shall include the following:

a. a plat showing the existing unit(s) to be terminated, with each well located thereon, together with order number and effective date of the order of the commissioner establishing said unit(s). Each well shall be identified on such plat by operator of record, serial number and well name and number or by reference to an appropriate attachment;

b. a signed statement indicating the status of each well. Should there exist a well which has not been plugged and abandoned in accordance with LAC 43:XIX.137, sufficient geological, engineering, or other data with detailed explanation thereof to clearly demonstrate that said well located on the unit(s) is not capable of producing from the pool for which the unit(s) was created;

c. a signed statement indicating that with respect to the unit(s) to be terminated, to the best of applicant's knowledge, each of the following apply as of the date the application for unit termination is filed with the commissioner:

i. a period of five years has elapsed without any production from the unit(s); and

ii. there is no well located on the unit(s) to be terminated which is capable of producing from the pool for which the unit(s) was established; and

iii. a period of one year and 90 days has elapsed without any drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well located on the unit(s) in an attempt to secure or restore production from the pool for which the unit(s) was established; and

iv. there is no unexpired drilling permit for the drilling of a new well on the unit(s) to be terminated to a depth which would penetrate the pool for which the unit(s) was established;

d. a list of all interested parties identified by the applicant after reasonable search to whom a copy of the application has been sent;

e. an application fee as established by LAC 43:XIX.201 et seq.

3. Notice of the filing of the application of unit termination shall be published in the official journal of the state of Louisiana giving notice that unless a written protest is filed with the commissioner within the 30-day period from the date of publication of notice, the commissioner may issue a supplemental order for such unit termination. In the event written objection is filed within said 30-day period, the applicant may apply for a public hearing for consideration of the application.

C. The effective date of any supplemental order issued hereunder can not be prior to the expiration of the legal advertisement period, reference §3105.A.3 and §3105.B.3 hereof. Consequently, any activity described in §3105.A.1 and §3105.B.1 hereof, occurring between the date of the signed statement, reference §3105.A.2.c and §3105.B.2.c

hereof and the expiration of the legal advertisement period, shall result in application denial.

D. Any supplemental order issued hereunder approving the application terminating any unit(s) created for the pool shall be filed for record as provided in Section 11.1 of Title 30 of the Revised Statutes of 1950.

E. This order supersedes Statewide Order Number 29-L-2 and shall be effective on and after February 20, 2004.

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 15:741 (September 1989), amended LR 19:776 (June 1993), repromulgated LR 19:1030 (August 1993), amended LR 21:1083 (October 1995), LR 30:255 (February 2004), repromulgated LR 30:437 (March 2004).

James H. Welsh
Commissioner

0403#071

RULE

Department of Public Safety and Corrections Gaming Control Board

Video Draw Poker (LAC 42:XI.Chapter 24)

Editor's Note: This Rule is being repromulgated for renumbering. The original Rule may be viewed in the February 20, 2004 edition of the *Louisiana Register* on pages 266-270.

The Louisiana Gaming Control Board has amended LAC 42:XI.2403, 2405, 2407, 2409, 2411, 2413, 2417, 2419, and 2421 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42 LOUISIANA GAMING Part XI. Video Poker

Chapter 24. Video Draw Poker

§2403. Definitions

A. The provisions of the Louisiana Video Draw Poker Devices Control Law relating to the definitions of words, terms, and phrases are hereby incorporated by reference and made a part hereof, and shall apply and govern the interpretation of these regulations, except as otherwise specifically declared or as is clearly apparent from the context of the regulations herein. The following words, terms, and phrases shall have the ascribed meaning indicated below.

* * *

Applicant? the person who has completed an application to the division for a license or permit to participate in the video gaming industry in Louisiana.

Application? the process by which a person requests a license or permit, or the renewal of a license or permit, for participation in the video gaming industry in Louisiana.

* * *

Permittee? for purposes of these Rules, shall have the same meaning as *video draw poker employee* as provided in R.S. 27:301.

* * *

Warehouse? a secure and limited access structure or room, approved by the division, utilized for the storage of video gaming devices and/or their components.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:266 (February 2004), repromulgated LR 30:439 (March 2004).

§2405. Application and License

A. Initial and Renewal Applications

1. All applications for a license shall be submitted on forms provided by the division and mailed to an address provided by the division.

2. An application is not complete nor is it considered filed with the division unless it is submitted with the appropriate fee, is signed by the applicant, and contains all information required by the division.

3. All new applications or renewals shall be submitted to the division via delivery by the United States Postal Service certified or registered mail, return receipt requested or a private or commercial interstate carrier.

4. All applicants for a license shall comply with the disclosure provisions of R.S. 27:306.B. In addition, all applicants shall be required to disclose any violation of an administrative regulation from any jurisdiction.

5. All licensed establishment applications submitted to the division shall be for an existing and operating business.

6. All applications, except for a manufacturer's application, shall include an accurate sketch of the interior of the facility, and the proposed location of all video gaming devices to be located therein. In addition, the sketch shall include all grounds and parking areas.

7. All applications shall include the name of the owner(s) of the premises on which the establishment is located.

8. All renewal applications, shall be submitted in completed form, including a Louisiana State Tax Clearance Certificate. Out-of-state manufacturers shall not be required to submit a Louisiana State Tax Clearance Certificate.

9. All applicants shall provide all additional information requested by the division. If applicants fail to provide all additional information requested by the division, the application shall be considered incomplete.

10. All applications are to contain a properly notarized oath wherein the applicant states that:

a. the information contained therein is true and correct;

b. the applicant has read the act and these rules, and any other informational materials supplied by the division that pertain to video gaming; and

c. the applicant agrees to comply with these rules and the act.

11. All applications shall contain a telephone number and permanent mailing address for receipt of correspondence and service of documents by the division.

12. Incomplete applications, including failure to pay fees may result in a delay or denial of a license.

13. The applicant shall notify the division in writing of all changes of address, phone numbers, personnel, and other required information in the application within 10 business days of the effective date of the change.

14. An application shall be denied if an applicant has been convicted in any jurisdiction for any of the following offenses within the 10 years prior to the date of the application, and at least 10 years has not elapsed between the date of application and the successful completion of any service of a sentence, deferred adjudication, or period of probation or parole for any of the following:

- a. any offense punishable by imprisonment for more than one year;
- b. theft or any crime involving false statements or declaration; or
- c. gambling as defined by the laws or ordinances of any municipality, parish (county), or state, the United States, or any similar offense in any other jurisdiction.

15. Any false statement, including improperly notarized documents, contained in any report, disclosure, application, permit form, or any other document required by this Section shall be a violation of these rules and the act.

B. Requirements for Licensing

1.a. No person shall be granted a license, and no license shall be renewed unless the applicant demonstrates to the division that he is suitable for licensing, and thereafter continues to maintain suitability, as provided in the act.

b. All applicants for a license and licensees shall be current in filing all applicable tax returns and in the payment of all taxes, interest and penalties owed to all appropriate local taxing authorities, the state of Louisiana and the Internal Revenue Service, excluding contested amounts pursuant to applicable statutes, and excluding items for which the Department of Revenue and Taxation and the Internal Revenue Service have accepted a payment schedule of back taxes.

2. Once a gaming license has been issued by the division, the license shall be conspicuously displayed by the licensee in his place of business so that it can be easily seen and read by the public.

3.a. Beginning with licenses renewed or issued after August 15, 1999, licenses to operate video draw poker devices shall expire as follows.

- i. Licenses with a last digit of 1 or 2 in the license number shall expire on June 30, 2005.
- ii. Licenses with a last digit of 3 or 4 in the license number shall expire on June 30, 2001.
- iii. Licenses with a last digit of 5 or 6 in the license number shall expire on June 30, 2002.
- iv. Licenses with a last digit of 7 or 8 in the license number shall expire on June 30, 2003.
- v. Licenses with a last digit of 9 or 0 in the license number shall expire on June 30, 2004.

b. Beginning on July 1, 2004, all licenses shall have a term of five years from the date of issuance.

c. If a licensee fails to file a complete renewal application on or before forty five days prior to the license expiration date, the division may assess a civil penalty of \$250 for the first violation, \$500 for the second violation and \$1000 for the third violation.

4.a. The appropriate annual fee shall be paid by all licensees regardless of the expiration date of the license on or before July 1 of each year.

b. Proof of current tax filings and payments, including tax clearance certificates from the state and all appropriate local taxing authorities shall be submitted to the

division along with the annual fee as provided in Subparagraph B.4.a. no later than July 1 of each year.

5. All nonrefundable fees required for application/renewal and any administrative fines or penalties shall be made payable to the Department of Public Safety and Corrections and remitted to an address provided by the division.

6. Upon discovery, hidden ownership, whether by counter letter or other device or agreement, whether oral or written, shall constitute grounds for immediate suspension, revocation or denial of a license or application. Therefore, if there is more than one owner, applicants and licensees shall disclose full ownership of a company so that the aggregate of percentages of individual ownership total 100 percent, regardless of the percentage of individual ownership.

7. All licensees shall attend all hearings, meetings, seminars and training sessions required by the division. The division shall not be responsible for any costs incurred by the licensees.

8. All licensees shall maintain compliance with all applicable federal gambling law requirements, including any registration required by the provisions of Chapter 24 of Title 15 of the United States Code (§1171 et seq.), which govern the transportation of gambling devices.

9.a. All licensees shall continue to operate the business described in the application during the term of the license. In the event either the business or the video draw poker devices at the location are not in operation for a period of 30 consecutive calendar days during which the business would normally operate, the licensee and device owner shall immediately notify the division of such fact and the licensee shall immediately surrender its license to the board or division.

b. If surrendered in accordance with §2405.B.9.a, no gaming activities may be conducted at the premises unless and until the license is returned to the licensee.

c. The license may be returned to the licensee when business operations are resumed for the unexpired term of the license provided that the license has not been revoked and is not under suspension and further provided that no more than 180 days has elapsed from the date the license was surrendered.

d. Licenses surrendered in accordance with §2405.B.9.a shall not be subject to renewal unless the license has been returned to the licensee.

e. Failure to surrender the license as provided in §2405.B.9.a shall constitute grounds for revocation or suspension of the license.

C. Parish or Municipal Licenses

1. Prior to obtaining a video gaming license, all applicable parish and/or municipal occupational and alcohol beverage control licenses required for a facility to operate within said parish or municipality shall be current and valid.

2. All fees required to secure the aforementioned licenses shall be paid prior to the division issuing a license for video gaming.

D. Change of Ownership of Licensed Establishment

1. If a change in ownership of a licensed establishment occurs, the division shall be notified, in writing within five days, of the act of sale or transfer.

2. When a licensed establishment which requires an alcoholic beverage license as a condition of the receipt of a

video gaming license is sold or transferred, the devices shall be allowed to continue to operate under the old license if:

a. the new owner applies for a state Class "A" general retail or restaurant alcohol permit within 15 days of the act of sale or transfer; and

b. upon issuance of a state Class "A" general retail or restaurant alcohol permit, the new owner applies for a video gaming license within 15 days of said issuance.

3. The devices shall only be allowed to continue in operation under the old license until:

a. the issuance of a video draw poker license in the name of the new owner;

b. a determination by the division that the new applicant is unsuitable;

c. denial of the new license application; or

d. the passage of 180 days from submission of the application to the division.

4. The new owner shall provide, at the time of application to the division, a certified copy of the act of sale or transfer, a copy of all appropriate documentation which indicates the date the licensed establishment began the Alcohol and Tobacco Control Commission application process, and a copy of the permit issued by the Alcohol and Tobacco Control Commission.

5. If any of the documents required by this Section are not submitted with the new owner's application, the division may immediately disable the devices.

6. If the 180-day period has elapsed prior to the issuance of a new video gaming license, the devices shall be disabled and the device owner shall immediately make arrangements to remove and transfer the devices from the formerly licensed establishment.

7. Upon the issuance of a license to a new owner or the passage of 180 days, whichever occurs first, the license issued to the prior owner shall expire and be surrendered to the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:439 (March 2004).

§2407. Operation of Video Draw Poker Devices

A. Responsibilities of Licensees

1. The licensee or a designated representative of the licensed establishment shall be required to be physically present and available within the licensed establishment at all times during all hours of operation; shall ensure that the devices are not tampered with, abused, or altered in any way; and shall prevent the play of video draw poker devices by persons under the age of 21 and prevent access to the gaming area by persons under the age of 18. The penalty for violation of this subsection shall be \$250 for the first offense, \$500 for the second offense, and \$1,000 for the third offense. The penalty for fourth and subsequent offenses shall be administrative action, including, but not limited to, suspension or revocation.

2. Licensees and employees of a licensee shall not loan money, extend credit, or provide any financial assistance to patrons for use in video gaming activities.

3. Licensees and employees of a licensee shall not permit any person who appears to be intoxicated to participate in the play of the video devices.

4. All licensees shall supervise all employees to ensure compliance with the laws and regulations relating to the operation of video gaming devices.

5. All licensees or an employee of a licensee shall, upon demand of the player, pay all monies owed as shown on a valid ticket voucher.

6. All licensees shall be responsible for the proper placement and installment of devices within a licensed establishment as prescribed by these rules.

7. Licensees shall advise the division of any device malfunction that has not been rectified by the device owner, within 24 hours after the device owner or service entity has been notified, or before the end of the next business day.

8. Licensees shall not advertise or participate in any promotion or scheme which is contingent upon the play of a video gaming device and which results in an enhanced payoff other than that set by the internal mechanism of the video gaming device as established by the act.

9. All keys to all devices shall be secured and available upon request by the division.

10. All licensees shall provide a separate voice grade telephone line which shall provide exclusive, continuous capabilities, for the division, to access licensed devices. Any device that loses telephone line service for any reason within the control of the licensee, shall constitute a violation of these rules. Such violations shall include, but not be limited to:

a. the loss of service due to delinquent or nonpayment of telephone service;

b. the internal disruption of service resulting from tampering with the communications link;

c. the internal disruption of service generated by a request to the phone company to disconnect service; or

d. any other method of interference with normal telephone service.

11. Licensees shall not allow a device to be played unless connected to the required telephone line service and the division's central computer system.

12. All licensees shall post signs on the premises of a licensed establishment which admits mixed patronage that restricts the play of video draw poker devices by persons under the age of 21 and restricts the access to areas where gaming is conducted by persons under the age of 18.

a. The signs shall be placed at the entrances to device areas with lettering at least 3 inches in height stating that there are gaming devices inside, no one under 18 allowed in gaming area, and no one under the age of 21 allowed to play gaming devices.

13. All licensees shall maintain a readily accessible and current copy of the rules and regulations contained in this Chapter at their licensed establishments.

14. All licensees shall post one or more signs at points of entry to the gaming area to inform customers of the toll-free telephone number available to provide information and referral services regarding compulsive or problem gambling. The toll-free numbers shall be provided by the division. The penalty for violation of this subsection shall be \$250 per day for the first offense, \$500 per day for the second offense and \$1000 per day for the third offense. The penalty for fourth

and subsequent offenses shall be \$1000 per day or administrative action including but not limited to suspension or revocation.

B. Video Draw Poker Employees and Permits

1. The division shall issue a video draw poker employee permit to persons determined to be suitable pursuant to the provisions of the Act and Rules adopted by the Louisiana Gaming Control Board pursuant to the Administrative Procedure Act.

2. All video draw poker employees shall possess a valid video draw poker employee permit in addition to a valid state issued driver's license, identification card or United States military identification card. The penalty for violation of this subsection shall be \$25 for the first offense, \$50 for the second offense, and \$75 for the third offense. The penalty for fourth and subsequent offenses shall be administrative action, including, but not limited to, suspension or revocation of the permit.

3. All video draw poker employee applications must be submitted on forms prescribed by the Louisiana Gaming Control Board.

a. All applications shall be submitted to the division via delivery by the United States Postal Service certified or registered mail, return receipt requested, or a commercial interstate carrier.

b. All applications shall contain a telephone number and permanent address for receipt of correspondence and service of documents by the division.

c. All video draw poker employees shall submit a renewal application to the division at least sixty days prior to expiration of their permit to avoid a lapse in their ability to work as video draw poker employees.

4. All applicants shall provide all additional information requested by the division. If applicants fail to provide all additional information requested by the division, the application shall be denied.

5. All video draw poker employees or applicants shall notify the division in writing of all changes of address, phone numbers, and other required information in the application within 10 calendar days of the effective date of the change.

6. No person shall be granted a permit and no permit will be renewed unless the applicant demonstrates to the division that he is suitable for permitting and thereafter continues to maintain suitability, as provided in the Act.

7. All applicants and video draw poker employees shall attend all hearings, meetings, seminars, and training sessions required by the division. The division shall not be responsible for any cost incurred by the applicants and/or video draw poker employees.

8. Permittees employed as a designated representative shall have the ability to locate all records and documents of the licensed establishment and possess the knowledge of all day to day operations of the licensed establishment.

9. All video draw poker employees shall have knowledge of these Rules and the provisions of the act.

C. Payment of Prizes

1. An employee shall be available during all hours of operation to redeem valid ticket vouchers. All valid ticket vouchers shall be paid when presented. In addition:

a. ticket vouchers shall be redeemed for cash only;

b. ticket vouchers shall be redeemed only at licensed establishments where the ticket voucher was printed;

c. ticket vouchers shall be redeemed during the normal operating hours of the licensed establishment unless otherwise authorized by the division;

d. neither the division nor the state of Louisiana is responsible for any device malfunction that causes prizes to be wrongfully awarded or denied to any player;

e. the phrase "ANY MALFUNCTION VOIDS ALL PLAYS AND PAYS" shall be conspicuously displayed on the face of all licensed devices; and

f. failure to make timely payments as required shall be grounds for the suspension or revocation of the license, or assessment of a civil penalty.

2. The payment for prizes awarded by a video gaming device may be withheld if the ticket voucher printed by that device is:

a. mutilated, altered, unreadable, or tampered with in any manner;

b. falsified or counterfeited in any way;

c. created by a device malfunction;

d. not fully legible; or

e. presented for payment at the licensed establishment by a person not authorized to operate the devices.

D. Advertising

1. Except for a uniform logo which has been adopted by the division, no other advertising of video gaming activities shall be displayed anywhere on the exterior of any licensed establishment. In addition:

a. duplication of the uniform logo shall be identical to the design and colors of the approved uniform logo;

b. the size of the uniform logo shall not exceed 6 feet in height and 6 feet in width; and

c. the uniform logo may be displayed alone or in conjunction with advertisement by the licensed establishment of other activities that do not pertain to video gaming.

2. For purposes of advertising prohibitions, a licensed establishment which is a qualified truck stop facility shall include the entire area which comprises the qualified truck stop facility.

3. The logo format may be obtained for duplication by all licensed establishments from their respective device owners.

4. The division shall enforce the prohibition of all other video gaming advertising on a licensed premises that is not permitted by these rules or the act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004), repromulgated LR 30:441 (March 2004).

§2409. Revenues

A. License Fees

1. Upon application, a nonrefundable annual fee as listed below shall be paid by each applicant:

- a. manufacturer, as provided in R.S. 27:311.A(1)
 - b. distributor, as provided in R.S. 27:311.A(2)
 - c. service entity, as provided in R.S. 27:311.A(3);
 - d. device owner, as provided in R.S. 27:311.A(4);
- and
- e. licensed establishment, as provided in R.S. 27:311.A(6).

2. All appropriate license fees shall accompany the initial/renewal application.

3. All licensees shall pay their license fee(s) for the year in a single payment.

4. All license fees shall be paid by personal, company, certified, or cashier's check, money order, or electronic funds transfer. If a personal or company check is returned, the applicant's license shall not be issued.

B. Device Operation Fees

1. A nonrefundable annual device operation fee shall be paid by the device owner for each video gaming device placed at a licensed establishment.

2. The division shall prorate the device operation fee that is required for each enabled video gaming device on a quarterly basis in accordance with the following schedule of dates of enrollment. For devices enrolled:

- a. July 1 through September 30, the whole operation fee is due;
- b. October 1 through December 31, three quarters of the operation fee is due;
- c. January 1 through March 31, one half of the operation fee is due;
- d. April 1 through June 30, one quarter of the operation fee is due.

3. The annual device operation fee may be paid in quarterly installments as prescribed by the Act.

4. If the device operation fee is to be paid in quarterly installments, after payment of the initial enrollment fee, subsequent payments are to be made by electronic funds transfer and are due on the first sweep of each quarter.

5. Any payments received after the tenth day of the beginning of each quarter shall constitute a violation of this Section and be subject to an interest penalty of 0.000575 per day (21 percent per annum).

6. The annual device operation fees are as follows:

- a. a restaurant, bar, tavern, cocktail lounge, club, motel, or hotel, as provided in R.S. 27:311.A(5)(a);
- b. a Louisiana State Racing Commission licensed pari-mutuel wagering facility, as provided in R.S. 27:311.A(5)(b)(i);
- c. a Louisiana State Racing Commission licensed offtrack wagering facility, as provided in R.S. 27:311.A(5)(b)(ii);
- d. a qualified truck stop facility, as provided in R.S. 27:311.A(5)(c).

C. Franchise Payments

1. All device owners shall remit to the division a franchise payment as provided for by the act. Franchise payments shall be calculated based upon the net device revenue, as verified by the electronic (soft) meters of the device. Revenues received from franchise payments shall be electronically transferred to the designated bank of the state treasurer.

2. All device owners shall establish and maintain a single bank account exclusively for the electronic funds

transfer (sweep) of franchise payments to the designated bank of the state treasurer.

a. The payments shall be transferred electronically into the designated bank of the state treasurer semi-monthly or as otherwise prescribed by the division. Licensees shall authorize the division to initiate these transfers.

b. The funds shall be electronically transferred (swept) no later than the tenth day after the fifteenth and last day of every month. Any account found with insufficient funds shall constitute a violation of this Section.

c. Electronic funds transfers shall be calculated based upon device polling from the first through the fifteenth, and the sixteenth through the last day of every month.

d. Any delinquent monies not forwarded to the bank designated by the state treasurer by electronic funds transfers at the time of the transfer shall be subject to an interest penalty of 0.000575 per day (21 percent per annum). The interest penalty shall be in addition to any other penalties imposed by the division.

3. A device owner who has a nonsufficient fund return within the past three years shall be required to maintain a minimum balance at all times in the video gaming sweep account, or the account shall at all times be secured by a line of credit or bond issued by a bank or security company acceptable to the state treasurer. For purposes of this rule the term "bond" shall include cash, cash equivalent instruments or such other instruments as the division determines provide immediate liquidity.

a. The minimum balance and the security shall be equivalent to at least 15 percent of the previous month's net device revenues of all video gaming devices of the device owner.

b. No withdrawals at any time from the device owner's video gaming account, including electronic funds transfers, shall cause the account balance to be less than the minimum balance requirement prescribed above.

4. All licensed device owners shall be liable for that portion of net device revenues from such times as the funds are received into the device until said funds are deposited into the designated bank of the state treasurer.

D. Supplemental Purses for Horsemen

1. Forms provided by the division shall be used to record amounts earned for purse supplements and shall be filed with the division, the Horsemen's Benevolent and Protective Association, and the Louisiana State Racing Commission by the twentieth day of every month.

2. The division may at all times oversee any and all operations pertaining to video gaming and may review and/or audit any account or fund used for receipt and/or disbursement of any of the aforementioned income.

E. Authority to Audit Records

1. If there is a discrepancy between the electronic (soft) and mechanical (hard) meter accounting devices, an audit may be performed.

2. In the event of an audit, all records requested by the division shall be made readily available. These records shall include, but not be limited to:

- a. audit tapes;
- b. collection reports;
- c. bank statements;
- d. canceled checks;

- e. deposit slips;
- f. lease agreements;
- g. access log books; and
- h. any other records of gaming activity that are necessary for the completion of the audit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:268 (February 2004), repromulgated LR 30:442 (March 2004).

§2411. Regulatory, Communication, and Reporting Responsibilities

A. General Provisions

1. For purposes of this Section quarters of the year are defined as follows:

- a. first quarter shall be July 1-September 30;
- b. second quarter shall be October 1-December 31;
- c. third quarter shall be January 1-March 31; and
- d. fourth quarter shall be April 1-June 30.

2. For purposes of this Section, business days are defined as Monday through Friday, not including state or federal holidays.

3. Semi-annual reports, if required, shall be postmarked no later than the last business day of July for the reporting period of January through June and no later than the last business day of January for the reporting period of July through December.

4. Quarterly reports, if required, shall be postmarked no later than the fifteenth day of the first month following the end of the quarter for which they are required.

5. Monthly reports, if required, shall be postmarked no later than the tenth day of the first month following the end of the month for which they are required.

6. Any semi-annual, quarterly, or monthly report that is requested by the division which is either postmarked later than the date required by these regulations, or inaccurate or incomplete shall constitute a violation of these rules.

7. All licensees shall retain all records for a period of three years, except that licensed manufacturers shall maintain all records for a period of five years.

8. Any licensee who seeks to surrender his license and cease participation in video gaming shall surrender his license to the division, and if requested, shall also provide copies to the division of all of the licensee's records pertaining to video gaming activities.

9. All licensees shall maintain all required records, submit all required reports, and keep the division currently informed, in writing, of any changes which could affect the status of any records, reports, or gaming devices.

10. All licensees shall keep and maintain the following records:

- a. all video gaming bank account documents and other related financial documents; and
- b. all business documents of the licensee including, but not limited to records of:
 - i. employee salary payments and hours worked;
 - ii. all federal, state, and local taxes paid;
 - iii. all contracts and/or subcontracts that exist with the licensed business; and

iv. if applicable, certified technician training records of employees.

11. Except as otherwise provided in these regulations and the act, all licensees, upon divesting or selling a licensed entity, shall surrender their video gaming license to the division within 10 business days of the effective date of the change of ownership.

12. All licensed manufacturers and distributors shall maintain a current record of devices received, devices sold, and devices in inventory, and if requested, must provide this information to the division.

13. All licensed manufacturers and distributors shall develop and provide to all licensed device owners and licensed service entities, a division approved program to train and certify technicians. In addition, all licensed manufacturers and distributors shall award certification to authorized service personnel, and maintain all training records and certificate awards, which shall be provided to the division upon request.

14. All licensed manufacturers and distributors shall provide the division with a current list of authorized service entities and other personnel that they have certified. The list, which shall be updated and provided quarterly in a format specified by the division, shall include, but not be limited to, the following information:

- a. name and address of service entity and all of its certified technicians;
- b. Social Security Number and date of birth of all technicians;
- c. date of certification of all technicians; and
- d. level(s) of certification of all technicians.

B. Licensed Manufacturers

1. If requested by the division, all licensed manufacturers shall provide a semi-annual report, signed by the licensee or an authorized representative of the licensee, on authorized forms provided by the division.

2. The semi-annual report shall include, but not be limited to the following information:

- a. gross machine sales for that period;
- b. specific delivery location of all devices and identity of person(s) purchasing and receiving devices;
- c. names and addresses of carriers used in transporting devices;
- d. names and addresses of licensees to whom the devices were sold;
- e. number of devices sold to each licensee;
- f. make, model, and serial number of all devices; and
- g. the sale price of each device.

3. All licensed manufacturers shall request authorization for any device modifications and updates from the division. Any device operating in, or shipped to or within, Louisiana that is modified without prior written approval from the division, shall be considered an illegal gambling device as provided in the act.

4. All licensed manufacturers shall sell or lease video gaming devices only to licensed video gaming distributors.

C. Licensed Distributors

1. If requested by the division, all licensed distributors shall provide a quarterly report, signed by the licensee or an authorized representative of the licensee, on authorized forms provided by the division.

2. The quarterly report shall include, but not be limited to, the following information:

- a. gross device sales for the quarter;
- b. make, model, and serial number of all devices sold or leased;
- c. name and address of all licensees that the devices were sold or leased to;
- d. number of devices sold or leased to each licensee;
- e. delivery address of each device sold or leased; and
- f. if requested, copies of invoices, credit memos, and/or documents substantiating any transactions and/or sales.

3. In addition, if requested by the division, all licensed distributors shall provide a quarterly inventory report, signed by the licensee or an authorized representative of the licensee, on authorized forms provided by the division.

4. The inventory report shall include, but not be limited to, the following information:

- a. total number of devices in inventory; and
- b. make, model, and serial number of all devices in inventory.

5. A licensed distributor shall only purchase or lease video gaming devices from, or sell or lease video gaming devices to, a licensed manufacturer, licensed device owner, or another licensed distributor.

D. Licensed Device Owners

1. If requested by the division, a licensed device owner shall provide a monthly report, signed by the licensee or an authorized representative of the licensee, on authorized forms provided by the division.

2. The monthly report shall include, but not be limited to, the following information:

- a. gross and net device revenue;
- b. make, model and serial number of all devices;
- c. physical location of each device;
- d. number of devices at each licensed establishment;
- e. mechanical (hard) and electronic (soft) meter readings for each device on the last day of the month of the reporting period; and
- f. actual cash collected from each device.

3. All licensed device owners shall maintain all audit tapes for a period of three years.

4. Except as otherwise provided in this Section, all licensed device owners shall only purchase or lease video gaming devices from, or sell or lease video gaming devices to, licensed distributors, or other licensed device owners.

5. All licensed device owners are prohibited from possessing RAM clear chips.

6. If a device is to be removed for service and/or repair for a period of less than 72 hours, the device owner shall notify the division technical staff prior to such removal for the service and/or repair.

7. Any time a device located in a licensed establishment is disabled from the central computer for a period in excess of 72 hours, the device owner shall transfer the device to its warehouse or to a licensed service entity, and notify the division using the appropriate transfer report form within five business days.

E. Licensed Establishments

1. If requested by the division, licensed establishments shall file a quarterly report, signed by the licensee or an authorized representative, on authorized forms provided by the division.

2. The quarterly report shall include, but not be limited to, the following information:

- a. device owners who have devices on licensed premises;
- b. number of devices each device owner has on the premises; and
- c. make, model, and serial number of all devices on the premises.

3. All licensed establishments that are qualified truck stop facilities shall provide to the division all necessary diesel and gasoline fuel sales data consisting of beginning and ending pump meter readings and summaries of all diesel and gasoline fuel sales, in gallons. Such information shall be given to the division on a monthly basis, on a form supplied by the division.

4. All licensed establishments that are qualified truck stop facilities shall maintain records that would enable the division to verify daily fuel sales on a pump-by-pump basis. Failure to maintain such records shall be considered grounds for suspension or revocation of the licensed establishment's video gaming license.

5. The division shall evaluate each monthly report to establish the average monthly fuel sales for the quarter in question. This shall determine the number of electronic video draw poker devices that can be legally operated at the truck stop facility during the next quarterly period. The division shall disable or enable devices in accordance with the Act.

6. For purposes of this Section, only nonbulk transfers of fuel to over-the-road motor vehicles, sold at prices not less than the delivered fuel cost, shall be used to compute average monthly fuel sale totals. Sales to marine vessels shall not be used to compute these fuel totals.

F. Licensed Service Entities

1. All licensed service entities shall be required to maintain the following records:

- a. invoices, of all services and/or repairs to devices, which shall contain, but not be limited to:
 - i. date device was received;
 - ii. date device was serviced;
 - iii. date device was returned;
 - iv. service entity name and license number;
 - v. device owner name and license number;
 - vi. manufacturer, make, and model number of the device;
 - vii. device serial number;
 - viii. description of service and/or repair performed on the device;
 - ix. name of certified technician performing service and/or repair on the device; and
 - x. electronic (soft) and mechanical (hard) meter readings before and after service and/or repair of the device;
- b. a list of all certified technicians, including a list of the types of devices that each is certified to service and/or repair, and who certified the technician.

2. All licensed service entities shall have a certified technician or technicians who are employed by the licensed service entity, adequate facilities approved by the division to

repair, service, and maintain video gaming devices, and the ability to make service calls at licensed establishments.

3. A service entity may contract with a device owner to maintain, repair, and service video gaming devices.

4. All licensed service entities are prohibited from possessing RAM clear chips.

G Required Forms

1. The division shall have the authority to require, design, prescribe, and amend all forms.

2. The division shall have the authority to require submission of any additional forms, reports, or records that it deems necessary.

3. If applicable, all licensees shall provide the division with all required device-related reports, to include, but not be limited to, the following:

a. APPLICATION FOR VIDEO POKER DEVICE PERMIT, which shall be submitted for any enrollment, device renewal, device transfer, decal replacement, or withdrawal within five business days of any enrollment, device renewal, device transfer, decal replacement, or withdrawal;

b. GAMING DEVICE OWNERSHIP TRANSFER NOTIFICATION, which shall be submitted for any change of ownership of any device within five business days of the change of ownership;

c. VIDEO GAMING DEVICE SHIPMENT NOTIFICATION, which shall be submitted for any shipment of any device at least three business days prior to the date of shipment of any device; and

d. VIDEO GAMING DEVICE SERVICE/REPAIR FORM, which shall be submitted when any service or repair is done to a device that may alter any meter reading of the device within five business days of the service or repair.

H. Contracts

1. Misrepresentation of contracts concerning activities regulated by the act is prohibited and shall be grounds for denial, suspension, or revocation of a license, as well as possible criminal charges as provided in the act.

2. All applicants and licensees shall submit copies of all written contracts pertaining to the operation of video gaming devices and summaries of all oral contracts pertaining to the operation of video gaming devices to which they are party or intend to become party within 10 business days of signing or making such contracts.

3. If requested, every person who is party to any video gaming contract with an applicant for a video gaming license, or a licensee of the division, shall provide the division with any and all information requested by the division that is necessary for a determination of suitability.

4. No licensee shall enter into or continue any contract with any person, natural or juridical, whom the division determines to be unsuitable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), LR 30:444 (March 2004).

§2413. Devices

A. Device Specifications

1. All devices shall include all of the specifications and features as provided in R.S. 27:302. In addition, all

devices shall include the following specifications and features:

a. - c. ...

d. accept only United States coins and/or currency.

e. - h. ...

i. permanent serial numbers not to exceed nine alpha and/or numeric characters. The serial number plate shall be located in the upper (front) right side panel of the device, unless otherwise approved by the division, and shall contain the following information:

1.i.i. - 4. ...

5. Devices shipped to and transported through Louisiana shall at all times remain in the demonstration mode. In addition, no device operating in demonstration mode shall accept coin or currency.

A.6. - C.2. ...

D. Enrollment Procedures

1. - 2. ...

3. Validation decals shall be issued by the division for devices and shall be promptly affixed by a division representative to an enrolled device. The validation decal shall be affixed to the upper (front) right side of the device, or as otherwise approved by the division.

E. - G.3. ...

H. Devices Permanently Removed from Service

1. - 3. ...

4. For purposes of this Section, devices permanently removed from service shall mean devices:

a. that are sold back or otherwise returned, and shipped to the distributor or manufacturer;

b. that are damaged beyond repair due to theft, vandalism, or natural disasters; or

c. that are completely dismantled for parts or destroyed and properly discarded as waste.

H.5. - J.2. ...

K. Warehouses

1. Devices stored in a warehouse shall be stored in a manner which easily displays the device serial number plate and/or the state issued permit sticker.

2. Device owners who wish to share warehouse space must execute a written lease agreement outlining the conditions and method of the space sharing. A copy of the lease agreement, along with a diagram indicating the method of device separation, must be sent to the division within five calendar days from the date of execution.

a. The shared warehouse must be partitioned in such a manner as to visually distinguish each device owner's video gaming devices.

b. Device owners shall not commingle their video gaming devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), amended by the Department of Public Safety, Gaming Control Board, LR 25:85 (January 1999), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:271 (February 2004), repromulgated LR 30:269 (February 2004), repromulgated LR 30:446 (March 2004).

§2417. Code of Conduct of Licensees and Permittees

A. - A.3. ...

B. Unsuitable Conduct

1. - 3. ...

4. Any person required to be found suitable or approved in connection with the granting of any license or permit shall have a continuing duty to notify the division of his/her/its arrest, summons, citation or charge for any criminal offense or violation including D.W.I.; however, minor traffic violations need not be included. All licenses and permittees shall have a continuing duty to notify the division of any fact, event, occurrence, matter or action that may affect the conduct of gaming or the business and financial arrangements incidental thereto or the ability to conduct the activities for which the licensee or permittee is licensed or permitted. Such notification shall be made within ten calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action.

5. ...

C. Additional Causes for Disciplinary Action

1. Further instances of conduct by a licensee or permittee where the division or board may sanction a licensee or permittee shall include but not be limited to when:

a. - i. ...

j. unavailability of the licensees or permittees, their designated representatives, or any agents of the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq., R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 27:59 (January 2001), LR 30:270 (February 2004), repromulgated LR 30:447 (March 2004).

§2419. Investigations

A. - A.4. ...

B. Inspections

1. - 1.d. ...

2. Inspection of Records

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

b. The division may require a licensee to submit any and all video gaming records or documents that are necessary for the facilitation and/or completion of an investigation pertaining to a violation of these Rules or the act.

3. - 3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:270 (February 2004), repromulgated LR 30:447 (March 2004).

§2421. Miscellaneous

A. Required Meetings

1. The division may summon a licensee or permittee to appear for a consultation, explanation, discussion, clarification, training session, or other meeting considered by the division to be of potential benefit, or otherwise aid in the effective regulation of the video gaming industry.

A.2. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:270 (February 2004), repromulgated LR 30:447 (March 2004).

Hillary J. Crain
Chairman

0403#088

RULE

**Department of Public Safety and Corrections
Office of State Police**

Federal? Motor Carrier Safety and Hazardous Materials
(LAC 33:V.10303)

The Department of Public Safety and Corrections, Office of State Police, Transportation and Environmental Safety Section, hereby amends LAC 33:V.10303 pertaining to Motor Carrier Safety and Hazardous Material requirements to restate the revision date of the previously adopted parts of 49 CFR as authorized by R.S. 32:1501 et seq.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Wastes and Hazardous Materials

**Subpart 2. Department of Public Safety and
Corrections? Hazardous Materials**

**Chapter 103. Motor Carrier Safety and Hazardous
Materials**

**§10303. Federal? Motor Carrier Safety and Hazardous
Materials**

A. The following federal motor carrier safety regulations and hazardous materials regulations promulgated by the United States Department of Transportation, revised as of October 1, 2003 and contained in the following parts of 49 CFR as now in effect or as hereafter amended, are made a part of this Chapter.

Hazardous Material Regulations	
Part 171	General Information, Regulations, and Definitions
Part 172	Hazardous Materials Table, Special Provisions, and Hazardous Materials Communications, Emergency Response Information, and Training Requirements
Part 173	Shippers? General Requirements for Shipments and Packagings
Part 177	Carriage by Public Highways
Part 178	Specifications for Packagings
Part 180	Continuing Qualification and Maintenance of Packagings
Motor Carrier Safety Regulations	
Part 382	Controlled Substances and Alcohol Use and Testing
Part 383	Commercial Driver's License Standards; Requirements and Penalties
Part 385	Safety Fitness Procedures
Part 390	Federal Motor Carrier Safety Regulations; General
Part 391	Qualifications of Drivers
Part 392	Driving of Commercial Motor Vehicles
Part 393	Parts and Accessories Necessary for Safe Operation
Part 395	Hours of Service of Drivers
Part 396	Inspection, Repair, and Maintenance
Part 397	Transportation of Hazardous Materials; Driving and Parking Rules

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:1501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:31 (January 1988), amended LR 17:1115 (November 1991), LR 19:351 (March 1993), LR 10:58 (January 1994), LR 24:956 (May 1998), LR 24:2321 (December 1998), LR 30:447 (March 2004).

Chris A. Keaton
Undersecretary

0403#022

RULE

Department of Revenue Policy Services Division

Corporation Franchise Tax (LAC 61:I.301-313 and 317)

Under the authority of R.S. 47:601-617 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, repromulgates LAC 61:I.301-313 and repeals LAC 61:I.317.

Louisiana Administrative Code 61:I.301-313 has been repromulgated to reaffirm the Secretary of Revenue's rulemaking authority with respect to the Louisiana Corporation Franchise Tax. In *Collector of Revenue v. Mossler Acceptance Co.*, 139 So. 2d 263 (La. App. 1st Cir. 1962), the First Circuit held that regulations defining the terms used in the corporation franchise tax statutes went beyond the secretary's authority in R.S. 47:1511 to promulgate rules regarding "the proper administration and enforcement" of the tax statutes. Since the Mossler decision, R.S. 47:1511 was amended removing the language that the First Circuit determined was a limitation on the secretary's rulemaking authority. Although no taxpayer has relied on Mossler to refute the secretary's rulemaking authority, repromulgation of Sections 301-313 reaffirms the secretary's authority.

Louisiana Administrative Code 61:I.317, which pertains to corporation franchise tax refunds and credits, has been repealed because it is obsolete and in conflict with R.S. 47:617, which was amended to provide that interest on overpayments will be paid at the rate established pursuant to Civil Code Article 2924(B)(3).

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 3. Corporation Franchise Tax

§301. Imposition of Tax

A. Except as specifically exempted by R.S. 47:608, R.S. 47:601 imposes a corporation franchise tax, in addition to all other taxes levied by any other statute, on all corporations, joint stock companies or associations, or other business organizations organized under the laws of the state of Louisiana which have privileges, powers, rights, or immunities not possessed by individuals or partnerships, all of which are hereinafter designated as domestic corporations, for the right granted by the laws of this state to exist as such an organization and on both domestic and

foreign corporations for the enjoyment under the protection of the laws of this state of the powers, rights, privileges, and immunities derived by reason of the corporate form of existence and operation. Liability for the tax is created whenever any such organization qualifies to do business in this state, exercises its charter or continues its charter within this state, owns or uses any part of its capital, plant, or any other property in this state, through the buying, selling, or procuring of services in this state, or actually does business in this state through exercising or enjoying each and every act, power, right, privilege, or immunity as an incident to or by virtue of the powers and privileges acquired by the nature of such organizations.

B. With respect to foreign corporations, R.S. 12:306 generally grants such organizations authority to transact business in this state subject to and limited by any restrictions recited in the certificate of authorization, and in addition thereto provides that they shall enjoy the same, but no greater, rights and privileges as a business or nonprofit corporation organized under the laws of the state of Louisiana to transact the business which such corporation is authorized to contract, and are subject to the same duties, restrictions, penalties, and liabilities (including the payment of taxes) as are imposed on a business or nonprofit corporation organized under the laws of this state. In view of the grant of such rights, privileges, immunities, and the imposition of the same duties, restrictions, penalties, and liabilities on foreign corporations as are imposed on domestic corporations, the exercise of any right, privilege, or the enjoyment of any immunity within this state by a foreign corporation which might be exercised or enjoyed by a domestic business or nonprofit corporation organized under the laws of this state renders the foreign corporation liable for the same taxes, penalties, and interest, where applicable, which would be imposed on a domestic corporation.

C. Thus, both domestic and foreign corporations which enjoy or exercise within this state any of the powers, privileges, or immunities granted to business corporations organized under the provisions of R.S. 12:41 are subject to and liable for the payment of the franchise tax imposed by this Section. R.S. 12:41 recites those privileges to be as follows:

1. the power to perform any acts which are necessary or proper to accomplish its purposes as expressed or implied in the articles of incorporation, or which may be incidental thereto and which are not repugnant to law;

2. without limiting the grant of power contained in §301.C.1, every corporation shall have the authority to:

a. have a corporate seal which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced; but failure to affix a seal shall not affect the validity of any instrument;

b. have perpetual existence, unless a limited period of duration is stated in its articles of incorporation;

c. sue and be sued in its corporate name;

d. in any legal manner to acquire, hold, use, and alienate or encumber property of any kind, including its own shares, subject to special provisions and limitations prescribed by law or the articles;

e. in any legal manner to acquire, hold, vote, and use, alienate and encumber, and to deal in and with, shares,

memberships, or other interests in, or obligations of, other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities;

f. make contracts and guarantees, including guarantees of the obligations of other businesses, nonprofit or foreign corporations, associations, partnerships, joint ventures, individuals, or governmental entities, incur liabilities, borrow money, issue notes, bonds, and other obligations, and secure any of its obligations by hypothecation of any kind of property;

g. lend money for its corporate purposes and invest and reinvest its funds, and take and hold property or rights of any kind as security for loans or investments;

h. conduct business and exercise its powers in this state and elsewhere as may be permitted by law;

i. elect or appoint officers and agents, define their duties, and fix their compensation; pay pensions and establish pension plans, pension trusts, profit-sharing plans, and other incentive and benefit plans for any or all of its directors, officers, and employees; and establish stock bonus plans, stock option plans, and plans for the offer and sale of any or all of its unissued shares, or of shares purchased or to be purchased, to the employees of the corporation, or to employees of subsidiary corporations, or to trustees on their behalf; such plans:

i. may include the establishment of a special fund or funds for the purchase of such shares, in which such employees, during the period of their employment, or any other period of time, may be privileged to share on such terms as are imposed with respect thereto; and

ii. may provide for the payment of the price of such shares in installments;

j. make and alter bylaws, not inconsistent with the laws of this state or with the articles, for the administration and regulation of the affairs of the corporation;

k. provide indemnity and insurance pursuant to R.S. 12:83;

l. make donations for the public welfare, or for charitable, scientific, educational, or civic purposes; and

m. in time of war or other national emergency, do any lawful business in aid thereof, at the request or direction of any apparently authorized governmental authority.

D. Thus, the mere ownership of property within this state, or an interest in property within this state, including but not limited to mineral interests and oil payments dependent upon production within Louisiana, whether owned directly or by or through a partnership or joint venture or otherwise, renders the corporation subject to franchise tax in Louisiana since a portion of its capital is employed in this state.

E. The tax imposed by this Section shall be at the rate prescribed in R.S. 47:601 for each \$1,000, or a major fraction thereof, on the amount of its capital stock, determined as provided in R.S. 47:604, its surplus and undivided profits, determined as provided in R.S. 47:605, and its borrowed capital, determined as provided in R.S. 47:603 on the amount of such capital stock, surplus, and undivided profits, and borrowed capital as is employed in the exercise of its rights, powers, and immunities within this

state determined in compliance with the provisions of R.S. 47:606 and R.S. 47:607.

F. The accrual, payment, and reporting of franchise taxes imposed by this Section are set forth in R.S. 47:609.

G. In the case of any domestic or foreign corporation subject to the tax herein imposed, the tax shall not be less than the minimum tax provided in R.S. 47:601.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:601.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:448 (March 2004).

§302. Determination of Taxable Capital

A. Taxable Capital. Every corporation subject to the tax imposed by R.S. 47:601 must determine the total of its capital stock, as defined in R.S. 47:604, its surplus and undivided profits, as defined in R.S. 47:605, and its borrowed capital, as defined in R.S. 47:603, which total amount shall be used as the basis for determining the extent to which its franchise and the rights, powers, and immunities granted by Louisiana are exercised within this state. Determination of the taxable amount thereof shall be made in accordance with the provisions of R.S. 47:606 and R.S. 47:607, and the rules and regulations issued thereunder by the Secretary of Revenue and Taxation.

B. Holding Corporation Deduction. Any corporation which owns at least 80 percent of the capital stock of a banking corporation organized under the laws of the United States or of the state of Louisiana may deduct from its total taxable base, determined as provided in §302.A and before the allocation of taxable base to Louisiana as provided in R.S. 47:606 and R.S. 47:607, the amount by which its investment in and advances to such banking corporation exceeds the excess of total assets of the holding corporation over total taxable capital of the holding corporation, determined as provided in §302.A.

C. Public Utility Holding Corporation Deductions. Any corporation registered under the Public Utility Holding Company Act of 1935 that owns at least 80 percent of the voting power of all classes of the stock in another corporation (not including nonvoting stock which is limited and preferred as to dividends) may, after having determined its Louisiana taxable capital as provided in R.S. 47:602(A), R.S. 47:606, and R.S. 47:607, deduct therefrom the amount of investment in and advances to such corporation which was allocated to Louisiana under the provisions of R.S. 47:606(B). The only reduction for investment in and advances to subsidiaries allowed by this Subsection is with respect to those subsidiaries in which the registered public utility holding company owns at least 80 percent of all classes of stock described herein; the reduction is not allowable with respect to other subsidiaries in which the holding company owns less than 80 percent of the stock of the subsidiary, notwithstanding the fact that such investments in and advances to the subsidiary may have been attributed to Louisiana under the provisions of R.S. 47:606(B). In no case shall a reduction be allowed with respect to revenues from the subsidiary. Any repeal of the Public Utility Holding Company Act of 1935 shall not affect

the entitlement to deductions under this Subsection of corporations registered under the provisions of the Public Utility Holding Company Act of 1935 prior to its repeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:602.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:08 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:449 (March 2004).

§303. Borrowed Capital

A. General

1. As used in this Chapter, borrowed capital means all indebtedness of a corporation, subject to the provisions of this Chapter, maturing more than one year from the date incurred, or which is not paid within one year from the date incurred regardless of maturity date.

2. All indebtedness of a corporation is construed to be capital employed by the corporation in the conduct of its business or pursuit of the purpose for which it was organized, and in the absence of a specific exclusion, qualification, or limitation contained in the statute, must be included in the total taxable base. No amount of indebtedness of a corporation may be excluded from borrowed capital except in those cases in which the corporation can demonstrate conclusively that a specific statutory provision permits exclusion of the indebtedness from borrowed capital.

3. In the case of amounts owed by a corporation to a creditor who does not meet the definition of an *affiliated corporation* contained in R.S. 47:603, all indebtedness of a corporation which has a maturity date of more than one year from the date on which the debt was incurred and all indebtedness which has not been paid within one year from the date the indebtedness was incurred, regardless of the maturity or due date of the indebtedness, shall be included in borrowed capital. Determination of the one-year controlling factor is with respect to the original date that the indebtedness was incurred and is not to be determined by any date the debt is renewed or refinanced. The entire amount of long-term debt not having a maturity date of less than one year, which was not paid within the one-year period, constitutes borrowed capital, even though it may constitute the current liability for payment on the long-term debt.

4. The fact that indebtedness which had a maturity date of more than one year from the date it was incurred, was actually liquidated within one year does not remove the indebtedness from the definition of borrowed capital.

5. For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, the following shall apply: With respect to any indebtedness which was extended, renewed, or refinanced, the date the indebtedness was originally incurred shall be the date the extended, renewed, or refinanced indebtedness was incurred. All debt extended, renewed, or refinanced shall be included in borrowed capital if the extended maturity date is more than one year from, or if the debt has not been paid within one year from, that date. In instances of debts which are extended, renewed, or refinanced by initiating indebtedness with a creditor different from the original creditor, the indebtedness shall be

construed to be new indebtedness and the one-year controlling factor will be measured from the date that the new debt is incurred.

6. For purposes of determining whether indebtedness has a maturity date in excess of one year from the date incurred or whether the indebtedness was paid within one year from the date incurred, with respect to the amount due on a mortgage on real estate purchased subject to the mortgage, the date the indebtedness was originally incurred shall be the date the property subject to the mortgage was acquired by the corporation.

7. In the case of amounts owed by a corporation to a creditor who meets the definition of an *affiliated corporation* contained in R.S. 47:603, the age or maturity date of the indebtedness is immaterial. An affiliated corporation is defined to be any corporation which through (a) stock ownership, (b) directorate control, or (c) any other means, substantially influences policy of some other corporation or is influenced through the same channels by some other corporation. It is not necessary that control exist between the corporations but only that policy be influenced substantially. Any indebtedness between such corporations constitutes borrowed capital to the extent it represents capital substantially used to finance or carry on the business of the debtor corporation, regardless of the age of the indebtedness. For this purpose, all funds, materials, products, or services furnished to a corporation for which indebtedness is incurred, except as provided in this Section with respect to normal trading accounts and offsetting indebtedness, are construed to be used by the corporation to finance or carry on the business of the corporation; in the absence of a conclusive showing by the taxpayer to the contrary, all such indebtedness shall be included in borrowed capital.

a. To illustrate this principle, assume:

- i. Corporation A? Parent of B, C, D, and E;
- ii. Corporation B? Nonoperating, funds flow conduit, owning no stock in C, D, or E;
- iii. Corporation C? Other Corporation;
- iv. Corporation D? Other Corporation;
- v. Corporation E? Other Corporation;
- vi. any funds furnished by the parent A to either B, C, D, or E constitute either a contribution to capital or an advance which must be included in the taxable base of the receiving corporation;
- vii. any funds supplied by D or E to C, whether or not channeled through A or B, would constitute borrowed capital to C, and the indebtedness must be included in the taxable base. In the absence of a formal declaration of a dividend from D or E to A, the funds constitute an advance to A by D or E and borrowed capital to A. In all such financing arrangements, the multiple transfers of funds are held to constitute capital substantially used to carry on each taxpayer's business.

8. The amount that normal trading-account indebtedness bears to capitalization of a debtor determines to what extent said indebtedness constitutes borrowed capital substantially used to finance or carry on the business of the debtor. Due consideration should also be given to the debtor's ability to have incurred a similar amount of

indebtedness, equally payable as to terms and periods of time.

9. In the case of equally demandable and payable indebtedness of the same type between two corporations, wherein each is indebted to the other, only the excess of the amount due by any such corporation over the amount of its receivable from the other corporation shall be deemed to be borrowed capital.

10. With respect to any amount due from which debt discount was paid upon inception of the debt, that portion of the unamortized debt discount applicable to the indebtedness which would otherwise constitute borrowed capital shall be eliminated in calculating the amount of the indebtedness to be included in taxable base.

B. Exclusions from Borrowed Capital

1. Federal, State and Local Taxes. R.S. 47:603 provides that an amount equivalent to certain indebtedness shall not be included in borrowed capital. With respect to accruals of federal, state, and local taxes, the only amounts which may be excluded are the tax accruals determined to be due to the taxing authority or taxes due and not delinquent for more than 30 days. In the case of reserves for taxes, only so much of the reserve as represents the additional liability due at the taxpayer's year-end for taxes incurred during the accrual period may be excluded. Any amount of the reserve balance in excess of the amount additionally due for the accrual period shall be included in the taxable base, since the excess does not constitute a reserve for a definitely fixed liability. This additional amount due is determined by subtracting the taxpayer's tax deposits during the year from the total liability for the period. All reserves for anticipated future liabilities due to accounting and tax timing differences shall be included in the taxable base. Any taxes which are due and are delinquent more than 30 days must be included in borrowed capital. For purposes of determining whether taxes are delinquent, extensions of time granted by the taxing authority for the filing of the tax return or for payment of the tax shall be considered as establishing the date from which delinquency is measured.

2. Voluntary Deposits

a. The liability of a taxpayer to a depositor created as the result of advances, credits, or sums of money having been voluntarily left on deposit shall not constitute borrowed capital if:

i. said moneys have been voluntarily left on deposit to facilitate the transaction of business between the parties; and

ii. said moneys have been segregated by the taxpayer and are not otherwise used in the conduct of its business.

b. Neither the relationship of the depositor to the taxpayer nor the length of time the deposits remain for the intended purpose has an effect on the amount of such liability which shall be excluded from borrowed capital.

3. Deposits with Trustees

a. The principal amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account may be excluded from the indebtedness which would otherwise constitute borrowed

capital if such segregation is fixed by a prior written commitment or court order for the payment of principal or interest on funded indebtedness or other fixed obligations. In the absence of a prior written commitment or court order fixing segregation of the funds or securities, no reduction of borrowed capital shall be made with respect to such deposits or segregated amounts.

b. Whenever a liability for the payment of dividends theretofore lawfully and formally authorized would constitute borrowed capital as defined in this Section, an amount equivalent to the amount of cash or securities deposited with a trustee or other custodian or segregated into a separate or special account for payment of the dividend liability may be excluded from borrowed capital.

4. Receiverships, Bankruptcies and Reorganizations. In the case of a corporation having indebtedness which could have been paid from cash and temporary investments on hand which were not currently needed for working capital and in which case the corporation has secured approval or allowance by the court of the petition for receivership, bankruptcy, or reorganization under the bankruptcy law, after such allowance or approval by the court of the taxpayer's petition, the taxpayer may then reduce the amount which would otherwise constitute borrowed capital by the amount of cash or temporary investment which it could have paid on the indebtedness prior to such approval, to the extent that they are permitted to make such payments under the terms of the receivership, bankruptcy, or reorganization proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:603.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:450 (March 2004).

§304. Capital Stock

A. For the purpose of determining the amount of capital stock upon which the tax imposed by R.S. 47:601 is based, such stock shall in every instance have such value as is reflected on the books of the corporation, subject to whatever increases to the recorded book values may be found necessary by the Secretary of Revenue and Taxation to reflect the true value of the stock. In no case shall the value upon which the tax is based be less than is shown on the books of the corporation.

B. In any case in which capital stock of a corporation has been issued in exchange for assets, the capital stock shall have a value equal to the fair market value of the assets received in exchange for the stock, plus any intangibles received in the exchange, except as provided in the following Subsection.

C. In any such case in which capital stock of a corporation is transferred to one or more persons in exchange for assets, and the only consideration for the exchange was stock or securities of the corporation, and immediately after the exchange such person or persons owned at least 80 percent of the total voting power of all voting stock and at least 80 percent of the total number of shares of all of the stock of the corporation, the value of the stock exchanged for the assets so acquired shall be the same as the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received in the

exchange. The only other exception to the rule that capital stock exchanged for assets shall have such value as equals the fair market value of the assets received and any intangibles received is in the case of stock issued in exchange for assets in a reorganization, which transaction was fully exempt from the tax imposed by the Louisiana income tax law, in which case the value of the stock shall have a value equal to the basis of the assets received in the hands of the transferor of the assets, plus any intangibles received.

D. In any case in which an exchange of stock of a corporation for assets resulted in a transaction taxable in part or in full under the Louisiana income tax law, the value of the stock so exchanged shall be equal to the fair market value of all of the assets received in the exchange, including the value of any intangibles received.

E. Capital stock, valued as set forth heretofore, shall include all issued and outstanding stock, including treasury stock, fractional shares, full shares, and any certificates or options convertible into shares.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:604.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:451 (March 2004).

§305. Surplus and Undivided Profits

A. Determination of Value? Assets

1. For the purpose of determining the tax imposed by R.S. 47:601, there are statutory limitations on both the maximum and minimum amounts which shall be included in the taxable base with respect to surplus and undivided profits. The minimum amount which shall be included in the taxable base shall be no less than the amount reflected on the books of the taxpayer. Irrespective of the reason for any book entry which increases the franchise tax base, such as, but not limited to, entries to record asset appreciation, entries to reflect equity accounting for investments in affiliates or subsidiaries, and amounts credited to surplus to record accrual of anticipated future tax refunds created by accounting timing differences, the amount reflected on the books must be included in the tax base.

2. Entries to the books of any corporation to record the decrease in value of any investment through the use of equity accounting will be allowed as a reduction in taxable surplus and its related asset account for property factor purposes. This is only in those cases in which all investments are recorded under the principles of equity accounting, and such reductions in the value of any particular investment below cost thereof to the taxpayer will not be allowed. The exception is in those instances in which the taxpayer can show that such reduction is in the nature of a bona fide valuation adjustment based on the fair value of the investment. In no case will a reduction below zero value be recognized. Corresponding adjustments shall in all instances be made to the value of assets for property factor purposes.

3. In any instance in which an asset is required to be included in the property factor under the provisions of R. S. 47:606 and the regulations issued thereunder, the acquisition of which resulted in the establishment of a contra account, such as, but not limited to, an account to record unrealized

gain from an installment sale, all such contra accounts shall be included in the taxable base, except to the extent such contra accounts constitute a reserve permitted to be excluded under the provisions of R.S. 47:605(A) and the regulations issued under §305.A. See §306.A for required adjustments to assets with respect to any contra account or reserve which is not included in the taxable base.

4. The minimum value under the statute is subject to examination and revision by the Secretary of Revenue and Taxation. The recorded book value of surplus and undivided profits may be increased, but not in excess of cost, as the result of such examination to the extent found necessary by the secretary to reflect the true value of surplus and undivided profits. The secretary is prohibited from making revisions which would reflect any value below the amount reflected on the books of the taxpayer. A taxpayer may, in his own discretion, reflect values in excess of cost; that option is not extended to the secretary in any examination of recorded cost.

5. In determining cost to which the revisions limitation applies, the fair market value of any asset received in an exchange of properties shall be deemed to constitute the cost of the asset to the taxpayer under the generally recognized concept that no prudent person will exchange an article of value for one of lesser value. In application of that concept, the Secretary of Revenue and Taxation shall, except as provided in the following Paragraphs, construe cost of any asset to be fair market value of the asset received in exchange therefor.

6. Exception to the rules stated above will be made only in those instances in which the exchange resulted in a fully tax-free exchange under provisions of the Louisiana income tax law, in which case cost shall be construed to be the income tax basis of the properties received for purposes of calculating depreciation and the determination of gain or loss on any subsequent disposition of the assets. Limitation of the valuation of the cost of any asset to the income tax basis will be considered only in the case of fully tax-free exchanges and will not be considered if the transaction was taxable to any extent under the provisions of the Louisiana income tax law contained in R.S. 47:131, 132, 133, 134, 135, 136, and 138.

B. Determination of Value? Reserves

1. There must be included in the franchise taxable base determined in the manner heretofore described, all reserves other than those for:

- a. definitely fixed liabilities;
- b. reasonable depreciation (or amortization), but only to the extent recorded on the books of the taxpayer, except as noted in the following Paragraphs with respect to taxpayers subject to regulations of governmental agencies controlling the books of such taxpayers;
- c. bad debts; and
- d. other established valuation reserves.

2. No deduction from surplus and undivided profits shall be made with respect to any reserve for contingencies of any nature, without regard to whether the reserve is partially or fully funded. Reserves for future liability for income taxes shall not be excluded from the tax base. Deferred federal income tax accounts may be netted in

determining the amount of reserve to be included in the taxable base. Reserves for fixed liabilities shall be included in the taxable base to the extent that they constitute borrowed capital under the provisions of R.S. 47:603 and the regulations issued thereunder.

3. In addition to the four classifications of reserves which may be excluded from the taxable base, any amount of surplus which has been set aside and segregated pursuant to a court order so as not to be available for distribution to stockholders or for investment in properties which would produce income which would be distributable to stockholders may also be excluded from the taxable base.

C. Adjustment by regulated companies for depreciation sustained but not recorded. When, because of regulations of a governmental agency controlling the books of a taxpayer, the taxpayer is unable to record on its books the full amount of depreciation sustained, the taxpayer may apply to the collector of revenue for permission to add to its reserve for depreciation and deduct from its surplus the amount of depreciation sustained but not recorded, and if the collector finds that the amount proposed to be so added represents a reasonable allowance for actual depreciation, he shall grant such permission.

1. Permission to add to depreciation reserves and reduce surplus must be requested in advance and shall be granted only in those instances in which a governmental agency requires that the books of the corporation reflect a depreciation method under which the total accumulated depreciation reflected on the books is less than would be reflected if the straight-line method of depreciation had been applied from the date of acquisition of the asset. The period over which depreciation shall be computed shall be the expected useful life of the asset.

2. The amount of adjustment shall be the amount of accumulated depreciation which would be reflected on the books if the straight-line method had been applied from the date of acquisition of the asset, less the amount of accumulated depreciation actually reflected on the books.

3. Permission granted by the secretary shall be automatically revoked upon a material change in the facts and circumstances presented by the taxpayer.

4. Permission granted by the secretary shall be for a period of six years, at which time the taxpayer must reapply for permission to continue making the adjustment.

D. For purposes of this Chapter, reserves include all accounts appearing on the books of a corporation that represent amounts payable or potentially payable to others. However, the term reserves shall not include accounts included in capital stock as used in R.S. 47:604 and shall not include accounts that represent indebtedness, regardless of maturity date, as indebtedness is used in R.S. 47:603.

E. For purposes of this Chapter, the term assets shall mean all of a corporation's property and rights of every kind. The definition of the term assets for corporation franchise tax purposes may differ from the definition of assets for general accounting purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:605.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), LR 28:1995 (September 2002), LR

29:1520 (August 2003), repromulgated by the Department of Revenue, Policy Services Division, LR 30:452 (March 2004).

§306. Allocation of Taxable Capital

A. General Allocation Formula. Every corporation subject to the tax imposed by this Chapter must determine the extent to which its entire franchise taxable base is employed in the exercise of its franchise within this state. The extent of such use of total taxable base in the state is determined by multiplying the total of all issued and outstanding capital stock, surplus and undivided profits, and borrowed capital by the ratio obtained through the arithmetical average of the ratio of net sales made to customers in the regular course of business and other revenues attributable to Louisiana to total net sales made to customers in the regular course of business and total other revenues, and the ratio that the value of all of the taxpayer's property and assets situated or used by the taxpayer in Louisiana bears to all of the taxpayer's property and assets wherever situated or used.

1. Net Sales and Other Revenue. Net sales to be combined with other revenue in determining both the numerator and denominator of the revenue factor for purposes of calculating the portion of the taxpayer's total capital stock, surplus and undivided profits, and borrowed capital to be allocated to Louisiana are only those sales made to customers in the regular course of the taxpayer's business. In transactions in which raw materials, products, or merchandise are transferred to another party at one location in exchange for raw materials, products, or merchandise at another location in agreements requiring the subsequent replacement with similar property on a routine, continuing, or repeated basis, all such transactions shall be carefully analyzed in order to determine whether they constitute sales made to customers which should be included in the sales factor or whether they constitute exchanges which are not sales and should be excluded from the sales factor. Sales of scrap materials and by-products are construed to meet the requirements for inclusion in the sales factor. Sales made other than to customers, such as, but not limited to, sales of stocks, bonds, and other evidence of investment on the open market, regardless of the frequency or volume of those sales, shall not be included in the revenue factor. Similarly, revenues and/or gains on the sale of property other than stock in trade shall not be included in the revenue factor since they generally do not meet the specific requirements that only sales made to customers in the regular course of business of the taxpayer should be included. Whenever a transaction is determined to be a sale which is not to be included as a sale to customers in the regular course of business, the amount does not constitute other revenue so as to qualify for inclusion in either the numerator or the denominator of the allocation ratio.

a. Sales made to customers in the regular course of business attributable to Louisiana are those sales where the goods, merchandise, or property are received in Louisiana by the purchaser. Where goods are delivered into Louisiana by public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in

question is the initial transportation relating to the sale by the taxpayer.

i. Transportation by Taxpayer or by Public Carrier. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point and whether the carrier be a pipeline, trucking line, railroad, airline, or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation incident to the sale has ended is deemed to be the place where the goods are received by the purchaser. The attribution of sales to each state is based upon actual delivery rather than technical or constructive delivery.

ii. Transportation by Purchaser

(a). Where the transportation involved is transportation by the purchaser, it is recognized that it is more difficult to determine whether or not the transportation is related to the sale by the taxpayer. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent economic and natural circumstances occurring at the time.

(b). The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

(c). In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by a carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B. Houston to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

iii. Sales to a Pipeline Company. The sale of natural resources to a pipeline company is attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

iv. Transportation of Natural Resources by a Public Carrier Pipeline

(a). Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier, that is, actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and the customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a

purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In all cases possible, attribution will be made in accordance with the rules applicable to all public carrier transportation, that is, where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality, but not any specific oil.

(b). In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied. To illustrate, consider the incident where three different taxpayers, A, B, and C, all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B. Texas by public carrier pipeline.

(i). If X Refinery receives all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana.

(ii). If X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all of his sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each taxpayer's sale was received in Louisiana, and must be attributed to Louisiana accordingly.

(iii). To further illustrate, consider the incident of the three different taxpayers, A, B, and C, in Texas, selling to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in Alabama. The same rules governing the problems set forth above are applicable.

(iv). If A sells to X Refinery, in Louisiana, and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery.

(v). If A sells to X, B to Y, and C to Z, with X, Y, and Z receiving a portion of their purchases in Louisiana, in Mississippi, and in Alabama, that portion received by X, Y, and Z in Louisiana must be attributed to Louisiana by A, B, and C.

v. Storage of Property after Purchase

(a). In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase and at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage is of a temporary nature.

(b). In cases where the storage is permanent or semipermanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage. However, where the storage is of a temporary nature, such as that necessitated by lack of transportation or by change from one means of

transportation to another, or by natural conditions, the place of such storage is of no significance.

b. Revenue from Air Transportation. All revenues derived from the transportation of cargo or passengers by air shall be attributed within and without this state based on the point at which the cargo shipment or passenger journey originates. Other revenues received by a corporation engaged primarily in the business of transportation of passengers and cargo shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this Section for the particular type of revenue received.

c. Revenue from Transportation for Others through Pipelines

i. Revenues derived from the transportation of crude petroleum, natural gas, petroleum products, or other commodities for others through pipelines shall be attributed to this state on the basis of the ratio of the number of units of transportation performed in Louisiana to the total of such units of transportation. In the case of transportation performed entirely within this state, total revenues from the transportation shall be attributed to Louisiana.

ii. In the case of transportation performed partly within and partly without Louisiana, revenue from such transportation shall be attributed to this state in the following manner.

(a). Crude Petroleum and Liquid Petroleum Products. Revenues from the transportation of crude petroleum and liquid petroleum products shall be attributed to this state upon the ratio which the number of barrels of such liquid transported times the number of miles transported within Louisiana bears to the total number of such barrels transported times the total number of miles transported both within and without Louisiana.

(b). Natural Gas. Revenues from the transportation of natural gas shall be attributed to this state upon the ratio which the number of thousand cubic feet of natural gas transported within this state times the number of miles transported within Louisiana bears to the total number of thousand cubic feet of such gas transported times the total number of miles such gas transported both within and without Louisiana.

(c). Other Commodities

(i). Revenues from the transportation of other commodities shall be attributed to this state upon the ratio which the number of tons of such commodities transported within Louisiana times the number of miles transported within Louisiana bears to the total number of tons of such commodities transported times the total number of miles transported both within and without Louisiana.

(ii). In any case in which the prescribed ratio for the particular commodity does not represent the basis upon which the transportation charges are calculated, the ratio used as the basis for attributing revenues to this state shall be the unit of measurement upon which the charges are based times the number of miles which the commodity is transported within this state to the total of such units times the total number of miles the commodity is transported both within and without Louisiana. Whenever the information is not readily available with which to calculate the required units of transportation, the Secretary

of Revenue and Taxation may require the use of any method deemed reasonable.

(iii). Other revenues received by a corporation engaged primarily in the business of transporting commodities for others through pipelines shall be attributed within and without this state in accordance with the processes and formulas provided elsewhere in the regulations issued under this Section for the particular kind or type of revenue received.

d. Revenue Derived from Transportation Other Than by Aircraft or Pipeline. Revenue attributable to Louisiana from transportation other than by aircraft or pipeline shall include all such revenues derived from such transportation entirely within Louisiana and shall also include a pro rata portion of revenue from transportation performed partly within and partly without Louisiana, such pro rata portion to be based on the number of units of transportation service performed in Louisiana to the total of such units. The revenue to be attributed will be calculated separately for each of the various types of transportation service. A unit of transportation service for each of the various types shall consist of the following:

i. in the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

ii. in the case of transportation of liquid commodities, the transportation of one barrel of the commodity a distance of one mile;

iii. in the case of transportation of property other than liquids, the transportation of one ton of property a distance of one mile;

iv. in the case of the transportation of a liquid commodity or other property when barrels or tons are not the common basis for the transportation charges, the quantity used as the basis for calculating total transportation charges for a distance of one mile shall be used. In the determination of miles within Louisiana, one-half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

v. In the case where another method would more accurately reflect revenue from transportation attributable to the service performed in Louisiana, or when the information is not readily available with which to calculate the required units of transportation, the Secretary of Revenue and Taxation may require the use of any alternate method deemed reasonable.

vi. Other revenues received by a corporation engaged primarily in the business of transportation other than by aircraft or pipeline shall be attributed to Louisiana in accordance with the processes and formulas provided elsewhere in the regulations issued under this Section for the particular type of revenue received.

e. Revenue from Services Other Than from Transportation

i. Revenue derived from services other than from transportation shall be attributed to the state in which the services are rendered. In the case of services in which property is not a material revenue-producing factor, the services shall be presumed to have been performed in the state in which the personnel engaged in rendering the services are located. In the case of services in which

personnel and property are material revenue-producing factors, such revenue shall be attributed within and without this state on the basis of the arithmetical average of the following two ratios:

(a). the ratio that salaries and wages paid to personnel performing such services within Louisiana bear to total salaries and wages for personnel performing such services both within and without Louisiana; and

(b). the ratio that the value of property used in Louisiana in performing the services (whether owned by the taxpayer or not) bears to the total value of all property used in performing the services both within and without Louisiana.

ii. In any case in which it can be shown that charges for services constitute a pure recovery of the cost of performing the services and do not include a reasonable rate of profit, amounts received in reimbursement of such costs shall not be construed to be revenues received and shall be omitted from both the numerator and denominator of the attribution ratio.

f. Rents and Royalties from Immovable or Corporeal Movable Property

i. Rents and royalties from immovable or corporeal movable property shall be attributed to the state where the property is located at the time the revenue is derived, which is construed to be the place at which the property is used resulting in the rental payment. Rents, royalties, and other income from mineral leases, royalty interests, oil payments, and other mineral interests shall be allocated to the state in which the property subject to such interest is located.

ii. In the case of movable property which is used in more than one state or when the lessor has no knowledge of where the property is located at all times, application of the general rule for attributing the revenue from rental of the property may be sufficiently difficult so as to require use of a formula or formulas to determine the place of use for which the rents were paid. The specific formula to be used must be determined by reference to the basis on which rents are charged, the basis of which is usually set forth in the rental agreement. In those cases in which time of possession in the hands of the lessee is the only consideration in calculating rental charges, time used by the lessee in each state will be used as the basis for attributing the revenue to each state. Where miles traveled is the basis for the rental charge, revenue shall be attributed on that basis; where ton miles or traffic density in combination with miles traveled is the basis for the rental charges, revenue will be attributed to each state on that basis. In the case of drilling equipment where rentals are based on the number of feet drilled, income will be attributed to each state based on the ratio of the number of feet drilled within that state to the total number of feet drilled in all states by the rented equipment during the taxable period covered by the rental agreement.

g. Interest on Customers' Notes and Accounts

i. Interest on customers' notes and accounts can generally be associated directly with the specific credit instrument or account upon which the interest is paid and shall be attributed to the state at which the goods were

received by the purchaser or services rendered. For purposes of this Section, interest is construed to include all charges made for the extension of credit, such as finance charges and carrying charges.

ii. When the records of the taxpayer are not sufficiently detailed so as to enable direct attribution of the revenue, interest, as defined herein, shall be attributed to each state on the basis of a formula or formulas which give due consideration to credit sales in the various states, outstanding customer accounts and notes receivable, and variances in the rates of interest charged or permitted to be charged in each of the states where the taxpayer makes credit sales.

h. Other Interest and Dividends

i. Interest, other than on customers' notes and accounts, and dividends shall be attributed to the state in which the securities producing such revenue have their situs, which shall be at the business situs of such securities if they have been so used in connection with the taxpayer's business as to acquire a business situs, or, in the absence of such a business situs, shall be at the commercial domicile of the taxpayer.

ii. Used in connection with the taxpayer's business is construed to mean use of a continuing nature in the regular course of business and does not include the mere holding of the instrument at a location or the use of the property as security for credit. Business situs must be established on the basis of facts, indicating precisely the use to which the securities have been put and the manner in which the taxpayer conducts its business.

iii. Commercial Domicile is in that state where management decisions are implemented which is presumed to be the state where the taxpayer conducts its principal business and thereby benefits from public facilities and protection provided by that state. Commercial domicile cannot be assigned to a state where the taxpayer has no substantial operation or facility, other than the location of one or more management level employees. The location of board of directors' meetings is not presumed to create commercial domicile at the location.

iv. Interest and dividends from a parent or subsidiary corporation shall be attributed as provided in R.S. 47:606(B) and the regulations issued thereunder.

i. Royalties or Similar Revenue from the Use of Patents, Trademarks, Secret Processes, and Other Similar Intangible Rights

i. Royalties or similar revenue received for the use of patents, trademarks, secret processes, and other similar intangible rights shall be attributed to the state or states in which such rights are used by the licensee from whom the income is received.

ii. In those cases where the rights are used by the licensee in more than one state, royalties and similar revenue will be attributed to the states on the basis of a ratio which gives due consideration to the proportion of use of the right by the licensee within each of the states. When the royalty is based on a measurable unit of production, sales, or other measurable unit, the attribution ratio shall be based on such units within each state to the total of such units for which the

royalties were received. When the royalty or similar revenue is not based on measurable units, the attribution ratio will be based on the relative amounts of income produced by the licensee in each state or on such other ratio as will clearly reflect the proportion of use of the rights by the licensee in each state.

j. Revenue from a Parent or Subsidiary Corporation. Revenue from a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

k. All Other Revenues

i. All revenues which are not specifically described in §306.A.1.a-j shall be attributed within and without Louisiana on the basis of such ratio or ratios as may be reasonably applicable to the type of revenue and business involved.

ii. In the case of revenue from construction, repairs, and similar services, generally, all of the work will be performed at a specific geographical location and the total revenue, including all billings by the taxpayer without regard to the method of reporting gain for purpose of the income tax statutes, shall be attributed to the place where the work is performed. In the case of contracts wherein a material part or parts of the work may have been performed in another state, such as the design, engineering, manufacture, fabrication, or preassembly of component parts, total revenue from the specific elements will be attributed to the place at which that segment of the work was performed on the basis of segregated charges contained in the performance contract. In the absence of segregated charges in the contract, revenues shall be allocated on the basis of a formula or formulas which give due consideration to such factors as direct cost, time devoted to the separate elements, and relative profitability of the specific function. Such ratios may be based on estimates of costs compiled during calculation of bid amounts for purposes of securing the contract in the absence of sufficient contract segregation of the charges between functions or sufficient records necessary to determine direct cost.

iii. For purposes of this Chapter, revenues from partnerships shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

(a). The ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R.S. 47:606(A)(1) and subparts thereunder; and

(b). The ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606(A)(2) and subparts thereunder.

iv. For the purposes of this Chapter, the term partnership includes a syndicate, group, pool, joint venture, or other unincorporated organizations through or by means of which any business, financial operation, or venture is carried on.

2. Property and Assets. For the purpose of calculating the ratio of the value of property situated or used by a corporation in Louisiana to the value of all property

wherever situated, both tangible and intangible property must be considered. The minimum value to be included in both the numerator and denominator is the value recorded on the books of the taxpayer. Both the cost recorded on the books of the corporation and the reserves applicable thereto are subject to examination and revision by the Secretary of Revenue and Taxation when such revision is found to be necessary in order to reflect properly the extent to which capital of the corporation is employed in the exercise of its charter; in no event, however, shall the revision by the secretary to any asset value or applicable reserve result in a net valuation which exceeds actual cost of the asset to the taxpayer. Specific rules as contained in the governing statute prescribe the state to which any asset will be allocated. Those rules are as follows:

a. Cash on Hand. Cash on hand shall be allocated to the state in which the cash is physically located.

b. Cash in Banks and Temporary Investments. Cash in banks and temporary cash investments shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, cash in banks and temporary cash investments shall be allocated to the state in which the commercial domicile of the taxpayer is located.

c. Trade Accounts and Trade Notes Receivable. Trade accounts and trade notes receivable are construed to mean only those accounts and notes receivable resulting from the sale of merchandise or the performance of services for customers in the regular course of business of the taxpayer. Such accounts and notes shall be allocated to the location at which the merchandise was delivered or at which the services were performed resulting in the receivable. In the absence of sufficient recorded detail upon which to base the allocation of specific accounts and notes receivable to the various states, such accounts and notes may, by agreement between the Secretary of Revenue and Taxation and the corporation, be allocated to the separate states based upon the ratio of credit sales within any particular state to the total of all credit sales.

d. Investments In and Advances To a Parent or Subsidiary. Investments in and advances to a parent or subsidiary corporation shall be allocated as provided in R.S. 47:606(B) and the regulations issued thereunder.

e. Notes and Accounts Other Than Temporary Cash Investments, Trade Notes and Accounts, and Advances To a Parent or Subsidiary. Notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary, shall be allocated to the state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, notes and accounts receivable other than temporary cash investments, trade notes and accounts, and advances to a parent or subsidiary shall be allocated to the state in which the commercial domicile of the taxpayer is located. See §306.A.1.h relative to business situs and commercial domicile.

f. Stocks and Bonds Other Than Temporary Cash Investments and Investments In or Advances to a Parent or Subsidiary Corporation. Stocks and bonds other than temporary cash investments and investments in or advances to a parent of subsidiary corporation shall be allocated to the

state in which they have their business situs if they have been so used as to have acquired a business situs. In the absence of a business situs for such assets, stocks and bonds other than temporary cash investments and advances to a parent or subsidiary corporation shall be allocated to the state in which the commercial domicile of the corporation is located. See §306.A.1.h relative to business situs and commercial domicile.

g. **Immovable and Corporeal Movable Property.** Immovable property and corporeal movable property which is used entirely within a particular state shall be allocated to the state in which the property is located. Movable property which is not limited in use to any particular state shall be allocated among the states in which used on the basis of a ratio which gives due consideration to the extent of use in each of the states. For the purpose of determining the amount to be included in the numerator of the property ratio with respect to corporeal movable property used both within and without Louisiana, the following rules shall apply:

i. the value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles traveled in Louisiana to total diesel locomotive miles;

ii. the value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles traveled in Louisiana to total other locomotive miles;

iii. the value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles traveled in Louisiana to total freight car miles;

iv. the value of railroad passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles traveled in Louisiana to total passenger car miles;

v. the value of passenger buses shall be allocated to Louisiana on the basis of the ratio of passenger bus miles traveled in Louisiana to total passenger bus miles;

vi. the value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles traveled in Louisiana to total diesel truck miles;

vii. the value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles traveled in Louisiana to total other truck miles;

viii. the value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles traveled in Louisiana to total trailer miles;

ix. the value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles traveled in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

x. the value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles traveled in Louisiana to total tug miles. In the determination of Louisiana tug miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xi. the value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles traveled in Louisiana to total barge miles. In the determination of Louisiana barge miles, one-half of the mileage of navigable

streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xii. the value of work and miscellaneous equipment shall be allocated to Louisiana in the following manner:

(a). in the case of a railroad, on the basis of the ratio of track miles in Louisiana to total track miles;

(b). in the case of truck and bus transportation, on the basis of the ratio of route miles operated in Louisiana to total route miles; and

(c). in the case of inland waterway transportation, on the basis of the ratio of bank miles in Louisiana to total bank miles. In the determination of bank mileage of navigable streams bordering on both Louisiana and another state, one-half of such mileage shall be considered Louisiana miles.

xiii. the value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to total operating equipment miles for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one-half of the mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles;

xiv. the value of flight equipment shall be allocated to Louisiana on the basis of the ratio of ton miles flown within Louisiana to total ton miles. For the purpose of determining Louisiana ton miles, a passenger and his luggage shall be assigned a weight factor of two hundred pounds;

xv. the value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary;

xvi. all other corporeal movable property shall be allocated to Louisiana on the basis of such ratio or ratios as will reasonably reflect the extent of their use within this state. In any case where the information necessary to determine the prescribed ratio is not readily available from the taxpayer's records, the Secretary of Revenue and Taxation may require the allocation of the value of the property on the basis of any method deemed reasonable.

h. **All Other Assets.** All other assets shall be allocated within or without Louisiana on such basis as may be reasonably applicable to the particular asset and the type of business involved. Investments in or advances to a partnership shall be attributed within and without Louisiana based on the percentage of the partnership's capital employed in Louisiana, determined by the arithmetical average of the following two ratios:

i. the ratio that the partnership's net sales and other revenue in Louisiana bear to the partnership's total net sales and other revenue everywhere as described in R.S. 47:606(A)(1) and subparts thereunder; and

ii. the ratio that the partnership's Louisiana property bears to the partnership's total property everywhere as described in R.S. 47:606(A)(2) and subparts thereunder. See §306.A.1.k.iv for the definition of a partnership.

B. **Allocation of Intercompany Items**

1. Without regard to the legal or commercial domicile of a corporation subject to the tax imposed by this Chapter, and without regard to the business situs of investments in or advances to a subsidiary or parent corporation by a corporation subject to the tax imposed by this Chapter, all such investments in, advances to, and revenue from such parent or subsidiary shall be allocated to Louisiana on the basis of the percentage of capital employed in Louisiana by the parent or subsidiary corporation for franchise tax purposes. The corporation franchise tax ratio of the parent or subsidiary shall be the measure of the extent to which the investment in, advances to, and revenues from the parent or subsidiary are attributable to Louisiana for purposes of determining the revenue and property ratios to be used in allocating the total taxable base of any corporation subject to the tax imposed by this Chapter to Louisiana.

2. A subsidiary corporation is any corporation the majority of the capital stock of which is actually, wholly, or substantially owned by another corporation and whose management, business policies, and operations are, howsoever, actually, wholly, or substantially controlled by another corporation. Such latter corporation shall be termed the parent corporation.

3. In general, the ownership, either directly or indirectly, of more than 50 percent of the voting stock of any corporation constitutes control of that corporation's management, business policies, and operations for purposes of application of this Subsection, whether such control is documented by formal directives from the owner of such stock or not.

4. Other criteria which will be construed to constitute control of the management, business policies, and operations of a corporation are:

a. the filing of a consolidated income tax return in which operations of the corporation are included with operations of the corporation owning more than 50 percent of its stock for purposes of determining its federal income tax liability, foreign tax credits, investment credits, other credits against its tax, and the minimum tax on preferential items of income; or

b. the requirement or policy that the purchase of a majority of the merchandise, equipment, supplies, or services required for operations be made from the corporation owning more than 50 percent of its stock, its designee, or from another corporation in which the owning corporation owns more than 50 percent of the stock; or

c. the requirement or policy that a majority of sales of merchandise, products, or service be made to the corporation owning more than 50 percent of its stock, its designee, or to another corporation in which the owning corporation owns more than 50 percent of the stock; or

d. the participation in a retirement, profit-sharing, or stock option plan administered by or participating in the profits or purchase of stock of the corporation owning more than 50 percent of its stock; or

e. the filing of reports with the Securities and Exchange Commission or other regulatory bodies in which its operations, assets, liabilities, and other financial information are reflected as a part of similar information of the corporation owning more than 50 percent of its stock; or

f. the presence on its Board of Directors of a majority of members who are directors, officers, or

employees of the corporation owning more than 50 percent of its stock.

5. In the case of a corporation which owns more than 50 percent of a corporation, the burden of proving that control of the management, business policies, and operations of the latter does not exist shall rest with the taxpayer.

6. For purposes of this Subsection, accounts receivable which may be considered to be advances resulting from normal trading between the companies in the regular course of business and the sales of merchandise, products, or services in such transactions shall not be included in advances to or revenue from a parent or subsidiary under this provision, but shall be allocated and attributed as provided in R.S. 47:606(A) and the regulations issued thereunder.

C. Minimum Allocation; Assessed Value of Real and Personal Property. The minimum amount of issued and outstanding capital stock, surplus and undivided profits, and borrowed capital upon which the tax imposed by this Chapter is calculated shall be the total assessed value of all real and personal property of a corporation in this state. Total assessed value is construed to be the value, after any and all exemptions, upon which the ad valorem tax is based. The assessed value to be used as the basis for the minimum tax calculation is the value upon which the ad valorem tax was calculated for the calendar year preceding the year in which the corporation franchise tax is due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:606.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:453 (March 2004).

§308. Exemptions

A. General

1. Corporations organized for the purposes described in §308.B.1-15 of this Section are fully exempt from the payment of Louisiana Corporation Franchise Tax. Only those corporations which meet the prescribed standards of organization, ownership, control, sources of income, and disposition of funds are exempt from the tax, whether or not they may enjoy exemption from any other tax, federal, state, or local, or whether or not they may be specifically exempted from all taxes under the laws of the state in which they were organized, chartered, or domiciled.

2. A corporation is not exempt from the corporation franchise tax merely because it is a nonprofit organization. In each case, an organization other than those described in §308.B.1.a.ii and iii as limited by §308.B.1.c.i and ii, must file a verified application for exemption with the Secretary of Revenue and Taxation which shall include an affidavit showing, in addition to such other information as the secretary may deem necessary from any particular applicant, the following:

- a. character of the organization;
- b. purpose for which organized;
- c. its actual activities;
- d. ownership of stock in the corporation;
- e. the source of its income;
- f. the disposition of its income;

g. whether or not any of its income is credited to surplus, and if so, the intended future use of the retained amounts;

h. whether any of its income may inure to the benefit of any shareholder or individual;

i. a copy of the charter or articles of incorporation;

j. bylaws of the organization;

k. the latest statement of the assets, liabilities, receipts, and disbursements;

l. any other facts relating to its operations which affect its right to exemption from the tax; and

m. a copy of the ruling or determination letter issued by the federal Internal Revenue Service.

3. The required application for exemption may be filed by an organization before it has started operations or at any time it can describe its operations in sufficient detail to permit a conclusion that it will be clearly exempt under the particular requirements of the Section for which the exemption is sought.

4. Once the secretary has issued a ruling or determination letter that an organization, except those described in §308.B.1.a.ii and iii, as limited by §308.B.1.c.i and ii, meets the exemption requirements, there is no mandatory provision that it make a return or any further showing that it meets the specified requirements unless it changes the character of its organization or operations. The secretary reserves the right to review any exemption granted, and may require the filing of whatever information deemed necessary to permit proper evaluation of the exempt status.

5. No exemption will be granted to a corporation, other than those described in §308.B.1.a.ii and iii, as limited by §308.B.1.c.i and ii, organized and operated for the purpose of carrying on a trade or business for profit, even though its entire income may be contributed or distributed to another organization or organizations which are themselves exempt from the tax.

6. An application for exemption filed by a corporation under either the Louisiana income tax law or the Louisiana corporation franchise tax law may be accepted by the secretary as fulfilling the application requirements under both laws. Taxpayers are cautioned, however, that approval of exemption under either law does not grant exemption under the other law in the absence of a statement contained in the ruling to that effect.

7. A corporation is either entirely exempt from the corporation franchise tax law or it is wholly taxable. There is no statutory provision under which partial exemption may be granted.

B. Exempt Corporations

1. Labor, Agricultural or Horticultural Organizations

a. Labor, agricultural, or horticultural organizations which are exempt under this provision are those corporations which have:

i. no net income inuring to the benefit of any stockholder or member and are educational or instructive in character, and have as their objects the betterment of conditions of those engaged in such pursuits, or improvements of the grade of their respective occupations; or

ii. at least 75 percent of the beneficial ownership held by or for the benefit of members, or the spouses of members of a family, and at least 80 percent of total gross

income is from the production, harvesting, and preparation for market of products produced by the corporation; or

iii. at least 80 percent of total gross income of the corporation derived from the production, harvesting, and preparation for market of products produced by the corporation, but only if total gross income of such corporation did not exceed \$500,000 for the previous year.

b. For purposes of this Subsection, agricultural includes the art or science of cultivating land, harvesting crops or aquatic resources, excluding minerals, or raising livestock, poultry, fish, and crawfish. Thus, the following types of organizations (but not limited thereto) which meet the requirements of §308.B.1.a.i, will be deemed to be exempt from the tax:

i. an organization engaged in the promotion of artificial insemination of livestock;

ii. a nonprofit organization of growers and producers formed principally to negotiate with processors for the price to be paid to members for their produce;

iii. a nonprofit organization of persons engaged in raising fish (or crawfish) as a cash crop on farms that were formed to encourage better and more economical methods of fish farming and to promote the interest of its members; or

iv. parish fairs and like organizations formed to encourage the development of better agricultural and horticultural products through a system of awards, and whose income is used exclusively to meet the necessary expenses of upkeep and operations.

c. corporations engaged in growing agricultural or horticultural products for profit are not exempt from the tax, except as provided in §308.B.1.a.ii and iii, subject to the following limitations:

i. any corporation engaged in the production, harvesting, and preparation for market of raw agricultural products or horticultural products produced by it and that has at least 80 percent of its gross income from such pursuits is exempt from corporation franchise tax, but only if 75 percent or more of the beneficial ownership in such corporation is held by or for the benefit of a single family. For purposes of this Paragraph, a single family shall consist of brothers, sisters, spouses, ancestors, and lineal descendants, including those legally adopted;

ii. any corporation engaged in the production, harvesting, and preparation for market of raw agricultural or horticultural products produced by such corporation is exempt from corporation franchise tax, but only if:

(a). at least 80 percent of its income is from such activity; and

(b). total gross income of the corporation for the previous year did not exceed \$500,000.

2. Mutual Savings Banks, National Banking Corporations and Banking Corporations Organized under the Laws of Louisiana, and Building and Loan Associations

a. Mutual savings banks, national banking corporations, and building and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

b. Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose

shareholders are required to pay a tax on their shares of stock, are exempt.

c. Banking corporations, other than those described in §308.B.2.a and b above, organized under the laws of a state other than the state of Louisiana are not exempt from the tax.

3. Fraternal Beneficiary Societies, Orders or Associations Operating Under the Lodge System. Fraternal beneficiary societies, orders, or associations are exempt from tax only if operated under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system. Operating under the lodge system means carrying on its activities under a form of organization that comprises local branches, chartered by a parent organization, and largely self-governing, called lodges, chapters, or the like. In order to be exempt, it is necessary that the organization have an established system for the payment of life, sick, accident, or other benefits to its members or their dependents.

4. Cemetery Companies

a. Cemetery companies are exempt from the corporation franchise tax if:

i. they are owned and operated exclusively for the benefit of their lot owners who hold such lots for bona fide burial purposes and not for the purpose of resale, or they are not operated for profit;

ii. they are not permitted by their charter to engage in any business not necessarily incident to burial purposes; and

iii. no part of their net earnings inures to the benefit of any private shareholder or individual.

b. For purposes of this Paragraph, a nonprofit corporation engaged in the operation of a crematory, which otherwise meets the exemption qualifications set forth herein, will be deemed to be an exempt cemetery company.

c. Such companies may issue preferred stock entitling the holders to dividends at a fixed rate not exceeding 8 percent per annum on the value of the consideration for which the stock was issued, but only if the articles of incorporation require that the preferred stock shall be retired at par as soon as sufficient funds available therefor are realized from sales, and that all funds not required for the payment of dividends or for retirement of the preferred stock shall be used for the care and improvement of the cemetery property.

5. Community Chests, Funds or Foundations

a. Organizational and Operational Tests

i. In order to be exempt as an organization described in R.S. 47:608(5), an organization must be both organized and operated exclusively for one or more of the purposes specified in such Section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

ii. The term *exempt purpose or purposes* as used in this Section means any purpose or purposes specified in R.S. 47:608(5), as defined and elaborated in Subparagraph d of this Section (see §308.B.5.d).

b. Organizational Test

i. In General

(a). An organization is organized exclusively for one or more exempt purposes only if its articles of

organization (referred to in this Section as *its articles*) as defined in §308.B.5.b.ii:

(i). limit the purposes of such organization to one or more exempt purposes; and

(ii). do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(b). In meeting the organizational test, the organization's purposes, as stated in its articles, may be as broad as, or more specific than, the purposes stated in R.S. 47:608(5). Therefore, an organization which, by the terms of its articles, is formed for literary and scientific purposes, within the meaning of R.S. 47:608(5) shall, if it otherwise meets the requirements in this Paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely to receive contributions and pay them over to organizations which are described in R.S. 47:608(5) and exempt from taxation under R.S. 47:608(5) are sufficient for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for charitable purposes, such articles ordinarily shall be sufficient for purposes of the organizational test (see §308.B.5.b.v) for rules relating to construction of terms.

(c). An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in R.S. 47:608(5). Thus, an organization that is empowered by its articles to engage in a manufacturing business, or to engage in the operation of a social club does not meet the organizational test regardless of the fact that its articles may state that such organization is created for charitable purposes within the meaning of R.S. 47:608(5).

(d). In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in R.S. 47:608(5). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(e). An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption.

ii. Articles of Organization. For purposes of this Section, the term *articles of organization* or *articles* includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

iii. Authorization of Legislative or Political Activities

(a). An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

(i). to devote more than an insubstantial part of its activities attempting to influence legislation by propaganda;

(ii). to directly or indirectly participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

(iii). to have objectives and to engage in activities which characterize it as an action organization as defined in §308.B.5.c.iii;

(b). The terms used in §308.B.5.b.iii.(a).(i)-(iii) shall have the meanings provided in §308.B.5.c.

iv. Distribution of Assets on Dissolution. An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as the court decides will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles of incorporation or the law of the state in which it was created provided that its assets would, upon dissolution, be distributed to its members or shareholders.

v. Construction of Terms. The law of the state in which an organization is created shall be controlling in interpreting the terms of its articles. However, any organization which contends that such terms have, under state law, a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the state attorney general, or other evidence of applicable state law.

vi. Applicability of the Organization Test. A determination by the secretary that an organization as described in R.S. 47:608(5) and exempt under R.S. 47:608(5) will not be granted the exemption unless such organization meets the organizational test prescribed by this Subparagraph. If an organization has been determined by the secretary to be exempt as an organization described in R.S. 47:608(5) and such determination has not been revoked, the fact that such organization does not meet the organizational test prescribed by this Subparagraph shall not be basis for revoking such determination. Accordingly, an organization which has been determined to be exempt, and which does not seek a new determination of exemption, is not required to amend its articles of organization to conform to the rules of this Subparagraph.

c. Operational Test

i. Primary Activities. An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages primarily in activities which

accomplish one or more of such exempt purposes specified in R.S. 47:608(5). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

ii. Distribution of Earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals.

iii. Action Organizations

(a). An organization is not operated exclusively for one or more exempt purposes if it is an *action* organization as defined in §308.B.5.c.iii.(b), (c), or (d).

(b). An organization is an action organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization:

(i). contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(ii). advocates the adoption or rejection of legislation. The term *legislation*, as used in this Clause, includes action by the Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(c). An organization is an action organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term *candidate for public office* means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, state, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(d). An organization is an action organization if it has the following two characteristics:

(i). its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and

(ii). it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(e). An action organization, described in §308.B.5.c.iii.(b) or (d), though it cannot qualify under R.S. 47:608(5), may nevertheless qualify as a social welfare organization under R.S. 47:608(7) if it meets the requirements set out in R.S. 47:608(7).

d. Exempt Purposes

i. In General

(a). An organization may be exempt as an organization described in R.S. 47:608(5) if it is organized and operated exclusively for one or more of the following purposes:

- (i). religious;
- (ii). charitable;
- (iii). scientific;
- (iv). literary;
- (v). educational; or
- (vi). prevention of cruelty to children or animals.

(b). An organization is not organized or operated exclusively for one or more of the purposes specified in §308.B.5.d.i.(a) unless it serves a public rather than a private interest. Thus, to meet the requirement of this Subclause, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interest such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

(c). Since each of the purposes specified in §308.B.5.d.i.(a) is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes.

(d). If, in fact, an organization is organized and operated exclusively for an exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is educational, an exemption will not be denied if, in fact, it is charitable.

ii. Charitable Defined

(a). The term *charitable* as used in R.S. 47:608(5) in its generally accepted legal sense is not to be construed as limited by the separate enumeration in R.S. 47:608(5) of other tax-exempt purposes which may fall within the broad outlines of charity as developed by judicial decisions. Such term includes: relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or work; lessening of the burdens of government; and promotion of social welfare by organizations designed to accomplish any of the above purposes; or

- (i). to lessen neighborhood tension;
- (ii). to eliminate prejudice and discrimination;
- (iii). to defend human and civil rights secured by law; or
- (iv). to combat community deterioration and juvenile delinquency.

(b). The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes.

(c). The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinions on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization

from qualifying under R.S. 47:608(5) so long as it is not an action organization of any one of the types described in §308.B.5.c.iii.

iii. Educational Defined

(a). In General. The term *educational*, as used in R.S. 47:608(5), relates to:

(i). the instruction or training of the individual for the purpose of improving or developing his capabilities; or

(ii). the instruction of the public on subjects useful to the individual and beneficial to the community.

(b). An organization may be educational even though it advocates a particular position or viewpoint, so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(c). Examples of Educational Organizations. The following are examples of organizations which, if they otherwise meet the requirements of this Subsection, are educational.

(i). Example. An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

(ii). Example. An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

(iii). Example. An organization which presents a course of instruction by means of correspondence or through the use of television or radio.

(iv). Example. Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

iv. Scientific Defined

(a). Since an organization may meet the requirements of R.S. 47:608(5) only if it serves a public rather than a private interest, a scientific organization must be organized and operated in the public interest (§308.B.5.d.i.[b]). Therefore, the term *scientific*, as used in R.S. 47:608(5) includes the carrying on of scientific research in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with scientific, and the nature of particular research depends upon the purpose which it serves. For research to be scientific within the meaning of R.S. 47:608(5), it must be carried on in furtherance of a scientific purpose. The determination as to whether research is scientific does not depend on such research being classified as fundamental or basic, as contrasted with applied or practical.

(b). Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products, or the designing or construction of equipment, buildings, etc.

(c). Scientific research will be regarded as carried on in the public interest:

(i). if the results of such research (including any patents, copyrights, processes, or formulas resulting from such research) are made available to the public on a nondiscriminatory basis;

(ii). if such research is performed for the United States, or any of its agencies or instrumentalities, or for a state or political Subdivision thereof; or

(iii). if such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

[a]. scientific research carried on for the purpose of aiding in the scientific education of college or university students;

[b]. scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication, or in any other form that is available to the interested public;

[c]. scientific research carried on for the purpose of discovering a cure for a disease; or

[d]. scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in §308.B.5.d.iv.(c) will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formulas resulting from such research.

(d). An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under R.S. 47:608(5) as a scientific organization, if:

(i). such organization will perform research only for persons who are (directly or indirectly) its creators and who are not described in R.S. 47:608(5); or

(ii). such organization retains (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formulas resulting from its research and does not make such patents, copyrights, processes, or formulas available to the public. For purposes of this Subclause, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copyright, process, or formula, it shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be used to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of §308.B.5.d.iv.c.iii) if it is carried on for a person described in §308.B.5.d.iv.c.ii or if it is scientific research described in §308.B.5.d.iv.c.iii.

(e). The fact that any organization (including a college, university, or hospital) carries on research which is

not in furtherance of an exempt purpose described in R.S. 47:608(5) will not preclude such organization from meeting the requirements of R.S. 47:608(5) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research (see §308.B.5.e relating to organizations carrying on a trade or business).

e. Organizations Carrying on Trade or Business. In general, an organization may meet the requirements of R.S. 47:608(5) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under R.S. 47:608(5), even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization.

6. Business Leagues, Chambers of Commerce, Real Estate Boards, and Boards of Trade. A business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self sustaining, is not a business league. An association engaged in furnishing information to prospective investors to enable them to make sound investments is not a business league since its activities do not further any common business interest, even though all of its income is devoted to the purpose stated. A stock or commodity exchange is not a business league, a chamber of commerce, or a board of trade within the meaning of R.S. 47:608(6) and is not exempt from the tax.

7. Civic Leagues and Local Associations of Employees

a. Civic leagues or organizations may be exempt, provided they are not organized or operated for profit, and are operated exclusively for the promotion of social welfare. An organization is operated exclusively for social welfare only if it is primarily engaged in promoting in some manner the common good and general welfare of people in the community. An organization embraced within this provision is one which is operated primarily for the purpose of bringing about civic betterment and social improvements. A social welfare organization will qualify for exemption as a charitable organization if it falls within the definition of

charitable set forth in §308.B.5.d.ii and is not an action organization as set forth in §308.B.5.c.iii.

b. The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office, nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit. See R.S. 47:608(6) and the regulations issued thereunder, relating to business leagues and similar organizations. A social welfare organization may qualify under this Section even though it is an action organization described in §308.B if it otherwise qualifies under this Section.

c. Local associations of employees described in R.S. 47:608(7) are expressly entitled to exemption. As conditions to exemption, it is required that:

i. membership of such an association be limited to the employees of a designated person or persons in a particular municipality;

ii. the net earnings of the association be devoted exclusively to charitable, educational, or recreational purposes;

iii. its activities are confined to a particular community, place, or district. If the activities are limited only by the borders of a state, it cannot be considered to be local in character; and

iv. no substantial part of the activities of the association is carrying on propaganda or otherwise attempting to influence legislation.

8. Social Clubs

a. The exemption provided by R.S. 47:608(8) applies only to clubs which are organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, but does not apply to any club if any part of its net earnings inures to the benefit of any private shareholder. In general, the exemption extends to social and recreational clubs which are supported solely by membership fees, dues, and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenue from members through the use of club facilities or in connection with club activities.

b. A club which engages in business, such as making its social and recreational facilities available to the general public or by selling real estate or other products, is not organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, and is not exempt. Solicitation by advertisement or otherwise for public patronage to its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes. However, an incidental sale of property will not deprive a club of its exemption.

9. Local Benevolent Life Insurance Associations, Mutual Ditch or Irrigation Companies, Mutual Cooperative or Telephone Companies, and Like Organizations

a. In order to be exempt under the provision of R.S. 47:608(9), an organization of the type specified must receive at least 85 percent of its income from amounts collected from members for the sole purpose of meeting losses and

expenses. If an organization issues policies for stipulated cash premiums, or if it requires advance deposits to cover the cost of insurance and maintains investments from which more than 15 percent of its income is derived, it is not entitled to an exemption. Although it may make advance assessments for the sole purpose of meeting future losses and expenses, an organization may be entitled to the exemption provided that the balance of such assessments remaining on hand at the end of the year is retained to meet losses and expenses or is returned to members.

b. The phrase *of a purely local character* applies only to benevolent life insurance associations and organizations exempt on the ground that they are organizations similar to a benevolent life insurance association, and not to the other organizations specified in R.S. 47:608(9). An organization of a purely local character is one whose business activities are confined to a particular community, place, or district, irrespective of political subdivisions. If the activities of an organization are limited only by the borders of a state, it cannot be considered to be purely local in character.

10. Insurance Corporations. Insurance companies which pay or which are required to pay a premium tax under the provisions of Title 22 of the Louisiana Revised Statutes of 1950 are exempt from the corporation franchise tax.

11. Farmers' and Fruit Growers' Cooperatives

a. Farmers' cooperative marketing associations engaged in the marketing of farm products for farmers, fruit growers, livestock growers, dairymen, etc. and turning back to the producers the proceeds of the sales of their products, less the necessary operating expenses, on the basis of either the quantity or the value of the products furnished by them, are exempt from the corporation franchise tax. Nonmember patrons must be treated the same as members insofar as the distribution of patronage dividends is concerned. Thus, if products are marketed for nonmember producers, the proceeds of the sales, less necessary operating expenses, must be returned to the patron from the sale of whose goods such proceeds result, whether or not such patrons are members of the association. In order to establish compliance with the statutory requirement that the proceeds of sales, less necessary operating expenses, be turned back to all producers on the basis of either the quantity or the value of the products furnished by them, it is necessary for such an association to keep permanent records of the business done with both members and nonmembers. While patronage dividends must be paid to all producers on the same basis, the requirement is complied with if an association, instead of paying patronage dividends to nonmembers in cash, keeps permanent records from which the proportionate share of the patronage dividends due to nonmember producers can be determined, and such shares are made applicable toward the purchase price of a share of stock or of a membership in the association.

b. An association which has capital stock will not for such reason be denied exemption:

i. if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation on the value of the consideration for which the stock was issued; and

ii. if substantially all of such stock (with the exception noted below) is owned by producers who market

their products or purchase their supplies and equipment through the association. Any ownership of stock by others than such actual producers must be satisfactorily explained in the association's application for exemption. The association will be required to show that the ownership of its capital stock has been restricted as far as possible to such actual producers. If by statutory requirement all officers of an association must be shareholders, the ownership of a share of stock by a nonproducer to qualify him as an officer will not destroy the association's exemption. Likewise, if a shareholder for any reason ceases to be a producer and the association, because of a constitutional restriction or prohibition or other reason beyond the control of the association, is unable to purchase or retire the stock of such nonproducer, the fact that under such circumstances a small amount of the outstanding capital stock is owned by shareholders who are no longer producers will not destroy the exemption. The restriction placed on the ownership of capital stock of an exempt cooperative association shall not apply to nonvoting preferred stock, provided the owners of such stock are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends.

c. The accumulation and maintenance of a reserve required by state statute, or the accumulation and maintenance of a reasonable reserve or surplus for any necessary purpose, such as to provide for the erection of buildings and facilities required in business or for the purchase and installation of machinery and equipment or to retire indebtedness incurred for such purposes, will not destroy the exemption. An association will not be denied exemption because it markets the products of nonmembers, provided the value of the products marketed for nonmembers does not exceed the value of the products marketed for members. Anyone who shares in the profits of a farmers' cooperative marketing association and is entitled to participate in the management of the association must be regarded as a member of such association.

d. Cooperative associations engaged in the purchasing of supplies and equipment for farmers, fruit growers, livestock growers, dairymen, etc., and turning over such supplies and equipment to them at actual cost, plus the necessary operating expenses, are exempt. The term *supplies and equipment* includes groceries and all other goods and merchandise used by farmers in the operation and maintenance of a farm or farmer's household. The provisions relating to a reserve or surplus and to capital stock shall apply to associations coming under this Paragraph. An association which purchases supplies and equipment for nonmembers will not for such reason be denied exemption, provided the value of the purchases for nonmembers does not exceed the value of the purchases made for members, and provided the value of the purchases made for nonmembers who are not producers does not exceed 15 percent of the value of all its purchases.

e. In order to be exempt under R.S. 47:608(11), an association must establish that it has no income for its own account other than that reflected in a reserve or surplus authorized therein. An association engaged both in marketing farm products and in purchasing supplies and equipment is exempt only if it meets the prescribed requirements for each of its functions.

f. To be exempt, an association must not only be organized but actually operated in the manner of and for the purposes specified in R.S. 47:608(11).

g. Cooperative organizations engaged in activities dissimilar from those of farmers, fruitgrowers, and the like, are not exempt.

12. Corporations Organized to Finance Crop Operations. A corporation organized by a farmers' cooperative marketing or purchasing association, or the members thereof, for the purpose of financing the ordinary crop operations of such members or other producers is exempt, provided the marketing or purchasing association is exempt under the provisions of R. S. 47:608(11) and the financing corporation is operated in conjunction with the marketing or purchasing association. The provisions of R.S. 47:608(11) relating to a reserve or surplus and to capital stock also apply to corporations coming under this Paragraph.

13. Corporations Organized for the Exclusive Purpose of Holding Title to Property

a. Corporations organized for the exclusive purpose of holding title to property are exempt from the corporation franchise tax, but only if:

i. the entire amount of income from the property, less expenses, is turned over to organizations which are organized and operated exclusively for:

- (a). religious purposes;
- (b). charitable purposes;
- (c). scientific purposes;
- (d). literary purposes; or
- (e). educational purposes; and

ii. no part of the net earnings inures to the benefit of any private shareholder or any organization organized and operated for a purpose other than those enumerated under §308.B.13.a.i.(a), whether or not the benefiting organization is exempt under other provisions of R.S. 47:608.

b. Corporations whose articles of incorporation or by-laws permit activities other than the holding of title to property, collecting the income therefrom, paying the necessary expenses of operating the property, and turning over the entire amount of its income, after expenses, to the specified types of organizations are not exempt.

14. Voluntary Employees' Beneficiary Associations

a. In general, the exemption provided by R.S. 47:608(14) applies if all of the following requirements are met:

i. the organization is an association of employees;

ii. membership of the employees in the association is voluntary;

iii. the organization is operated only for the purpose of providing for the payment of life, sick, accident, or other benefits to its members or their dependents;

iv. no part of the net earnings of the organization inures, other than by payment of the benefits described in §308.B.14.a.iii, to the benefit of any private shareholder or individual; and

v. at least 85 percent of the income of the organization consists of amounts collected from members for the sole purpose of such payments of benefits and meeting expenses.

b. Explanation of requirements necessary to constitute an organization described in R.S. 47:608(14) [LAC 61.I.308.B.14.b.ii]. For purposes of §308.B.14.b:

i. Association of Employees

(a). In general, an organization described in R.S. 47:608(14) must be composed of individuals who are entitled to participate in the association by reason of their status as employees who are members of a common working unit. The members of a common working unit include, for example, the employees of a single employer, one industry, or the members of one labor union. Although membership in such an association need not be offered to all the employees of a common working unit, membership must be offered to all of the employees of one or more classes of the common working unit and such class or classes must be selected on the basis of criteria which do not limit membership to shareholders, highly compensated employees, or other like individuals. The criteria for defining a class may be restricted by conditions reasonably related to employment, such as a limitation based on a reasonable minimum period of service, a limitation based on a maximum compensation, or a requirement that a member be employed on a full-time basis. The criteria for defining a class may also be restricted by conditions relating to the type and amount of benefits offered, such as a requirement that members need a reasonable minimum health standard in order to be eligible for life, sick, or accident benefits, or a requirement which excludes, or has the effect of excluding, employees who are members of another organization offering similar benefits to the extent such employees are eligible for such benefits. Whether a group of employees constitutes an acceptable class is a question to be determined with regard to all the facts and circumstances, taking into account the guidelines set forth in this Clause. Furthermore, exemption will not be barred merely because the membership of the association includes some individuals who are not employees (within the meaning of §308.B.14.b.i.b) or who are not members of the common working unit, provided that these individuals constitute no more than 10 percent of the total membership of the association.

(b). Meaning of *Employee*

(i). The term *employee* has reference to the legal and bona fide relationship of employer and employee.

(ii). The term *employee* also includes:

[a]. an individual who would otherwise qualify for membership under §308.B.14.b.i.(b)(i), but for the fact that he is retired or on leave of absence;

[b]. an individual who would otherwise qualify under §308.B.14.b.i.(b)(i), but subsequent to the time he qualifies for membership he becomes temporarily unemployed. The term *temporary unemployment* means involuntary or seasonal unemployment, which can reasonably be expected to be of limited duration. An individual will still qualify as an employee under §308.B.14.b.i.(b)(i), during a period of temporary unemployment, he performs services as an independent contractor or for another employer; or

[c]. an individual who qualifies as an employee under the state or federal unemployment compensation law covering his employment, whether or not such an individual could qualify as an employee under the

usual common law rules applicable in determining the employer-employee relationship.

ii. Explanation of Voluntary Association. An association is not a voluntary association if the employer unilaterally imposes membership in the association on the employee as a condition of his employment and the employee incurs a detriment (for example, in the form of deductions from his pay) because of his membership in the association. An employer will not be deemed to have unilaterally imposed membership on the employee if such employer requires membership as the result of a collective bargaining agreement which validly requires membership in the association.

iii. Life, Sick, Accident, or Other Benefits

(a). In general, a voluntary employee's beneficiary association must provide solely (and not merely primarily) for the payment of life, sick, accident, or other benefits to its members or their dependents. Such benefits may take the form of cash or non-cash benefits.

(i). Life Benefits. The term *life benefits* includes life insurance benefits, or similar benefits payable on the death of the member, made available to members for current protection only. Thus, term life insurance is an acceptable benefit. However, life insurance protection made available under an endowment insurance plan or a plan providing cash surrender values to the member is not included. Life benefits may be payable to any designated beneficiary of a member.

(ii). Sick and Accident Benefits. A sick and accident benefit is, in general, an amount furnished in the event of illness or personal injury to or on behalf of members or their dependents. For example, a sick and accident benefit includes an amount provided under a plan to reimburse a member for amounts he expends because of illness or injury, or for premiums which he pays to a medical benefit program such as Medicare. Sick and accident benefits may also be furnished in noncash form, such as benefits in the nature of clinical care, services by visiting nurses, and transportation furnished for medical care.

(iii). Other Benefits. The term *other benefits* includes only benefits furnished to members or their dependents which are similar to life, sick and accident benefits. A benefit is similar to a life, sick or accident benefit if it is intended to safeguard or improve the health of the employee or to protect against a contingency which interrupts earning power. Thus, paying vacation benefits, subsidizing recreational activities such as athletic leagues, and providing vacation facilities are considered other benefits since such benefits protect against physical or mental fatigue and accidents or illness which may result therefrom. Severance payments or supplemental unemployment compensation benefits paid because of a reduction in force or temporary layoff are other benefits since they protect the employee in the event of interruption of earning power. However, severance payments at a time of mandatory or voluntary retirement and benefits of the type provided by pension, annuity, profit-sharing, or stock bonus plans are not other benefits since their purpose is not to protect in the event of an interruption of earning power. Furthermore, the term *other benefits* does not include the furnishing of automobile or fire insurance or the furnishing of scholarships to the members' dependents.

iv. Inurement to the Benefit of Any Private Shareholder or Individual. No part of the net earnings of the organization may inure to the benefit of any private shareholder or individual other than through the payment of benefits described in §308.B.14.b.iii. The disposition of property to, or the performance of services for, any person for less than its cost (including the indirect costs) to the association, other than for the purpose of providing such a benefit, will constitute inurement. Further, the payment to any member of disproportionate benefits will not be considered a benefit within the meaning of §308.B.14.b.iii even though the benefit is of the type described in §308.B.14.b.iii. For example, the payment to highly compensated personnel of benefits which are disproportionate in relation to benefits received by other members of the association will constitute inurement. However, the payment to similarly situated employees of benefits which differ in kind or amount will not constitute inurement if such benefits are paid pursuant to objective and reasonable standards. For example, two employees who are similarly situated while employed receive unemployment benefits which differ in kind and amount. These unemployment benefits will not constitute inurement if the reason for the larger payment to the one employee is to provide training for that employee to qualify for reemployment and the other employee has already received such training. Furthermore, the rebate of excess insurance premiums based on experience to the payor of the premium, or a distribution to member-employees upon the dissolution of the association, will not constitute inurement. However, the return of contributions to an employer upon the dissolution of the association will constitute inurement.

v. Meaning of the term *income*. The requirement of R.S. 47:608(14) that 85 percent of the income of a voluntary employees' beneficiary association consist of amounts collected from members and amounts contributed by the employer for the sole purpose of making payment of the benefits described in §308.B.14.b.iii (including meeting the expenses of the association) assures that not more than a limited amount (15 percent) of an association's income is from sources such as investments, selling goods, and performing services, which are foreign to what must be the principal source of the association's income, i.e., the employees. Therefore, the term *income* as used in R.S. 47:608(14) means the gross receipts of the organization for the taxable year, including income from tax-exempt investments (but exclusive of gifts and donations) and computed without regard to losses and expenses paid or incurred for the taxable year. The term *income* does not include the return to the association of an amount previously expended. Thus, for example, rebates of insurance premiums paid in excess of actual insurance costs do not constitute income for this purpose. In order to be an amount collected from a member, it must be collected as a payment, such as dues, qualifying the member to receive an allowable benefit, or as a payment for an allowable benefit actually received. For example, if the association furnishes medical care in a hospital operated by it for its members, an amount received from the member as payment of a portion of the hospital costs is an amount collected from such a member. However, an amount paid by an employee as interest on a loan made by the association is not an amount collected from a member

since the interest is not an amount collected as payment for an allowable benefit received. For the same reason, gross receipts collected by the association as a result of employee purchases of work clothing from an association-owned store, or employee purchases of food from an association-owned vending machine, are not amounts collected from members. Amounts collected from members or amounts contributed to the association by the employer of the members are not considered gifts or donations.

vi. Record-Keeping Requirements

(a). In addition to such other records which may be required, every organization described in R.S. 47:608(14) must maintain records indicating the amount of benefits paid by such organization to each member. If the organization is financed, in whole or in part, by amounts collected from members, the organization must maintain records indicating the amount of each member's contribution.

(b). A supplemental unemployment compensation benefit plan may also qualify for exemption under the provisions of R.S. 47:608(14).

15. Teachers' Retirement Fund Associations. Teachers' retirement fund associations are exempt from the corporation franchise tax only if:

a. they are of a purely local character whose activities are confined to a particular community, place, or district, irrespective of political subdivisions, but if the activities are limited only by the borders of a state, it cannot be considered to be purely local in character;

b. its income consists solely of amounts received from public taxation, assessments upon the teaching salaries of members, and income from investments; and

c. no part of its net earnings inures (other than through the payment of retirement benefits) to the benefit of any private shareholder or individual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:608.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February, 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:459 (March 2004).

§309. Due Date, Payment, and Reporting of Tax

A. The corporation franchise tax becomes due on the first day of each calendar or fiscal year in which a corporation is subject to the tax, and is based on its entire issued and outstanding capital stock, surplus, and undivided profits, and borrowed capital determined as of the close of the previous calendar or fiscal year. There is no proration of the tax for a portion of the year in the case of dissolution of a domestic corporation, withdrawal from the state by a foreign corporation, or where a corporation otherwise ceases to be subject to the tax. The tax is payable to the secretary of Revenue on or before the fifteenth day of the third month following the month in which the tax becomes due; in the case of a calendar year taxpayer, the tax becomes due on January 1 and is payable to the secretary on or before April 15. If the day on which the tax is payable falls on a Saturday, Sunday, or legal holiday the tax is payable on the next business day. For purposes of this Section, fiscal or calendar year shall be determined by reference to the annual accounting period regularly used by the corporation in keeping its books.

B. Payment of the tax shall be accompanied by a full, accurate, and complete report prepared on forms furnished by the secretary of Revenue, which shall be signed by a duly authorized official of the corporation.

C. Whenever the secretary has granted permission to a corporation to change its accounting period under the provisions of R.S. 47:613, the tax to be paid for the period from the end of the last period for which the tax had already become due until the end of the new accounting period shall be determined by multiplying the ratio that the number of such months bears to 12, times the tax computed for an annual period based on the previous period's closing. All subsequent returns shall be prepared on the basis of the new accounting period.

D. In the case of a mere change in the name or change in the state of incorporation, the tax shall be determined and paid as if the change had not occurred.

E. For provisions relating to newly taxable corporations, see R.S. 47:611.

F. For provisions relating to requests for extensions of time within which to file the report required by this Chapter, see R.S. 47:612.

G. In the case of mergers which have an effective time and date of 12 midnight of the last day of the merged corporation's accounting period which coincides with the last day of the surviving corporation's accounting period, the surviving corporation shall include the assets of the merged corporation with its assets in computing the ratios of property and assets for the purpose of determining the amount of tax due for the year following the date of the merger.

H. If the surviving corporation was not previously subject to the tax, it shall pay the minimum tax for the accounting period within which such merger date occurs as required of newly taxable corporations under the provisions of R.S. 47:611.

AUTHORITY NOTE: Promulgated in accordance with 47:609 and R.S.47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), amended by the Department of Revenue, Policy Services Division, LR 28:97 (January 2002), LR 30:468 (March 2004).

§311. Newly Taxable Corporations

A. Every corporation shall pay only the minimum tax in the first accounting period or fraction thereof in which it becomes subject to the tax. It is immaterial whether the corporation became liable for the tax on the first day or the last day of the accounting period regularly used by the taxpayer in keeping its books; the minimum tax is due for that accounting period. The tax accrues immediately upon the corporation's becoming subject thereto.

B. The tax for all accounting periods subsequent to the period in which the corporation became subject to the tax accrues on the first day of the period and is based on the previous period's closing.

C. In all instances, the tax is payable on or before the fifteenth day of the fourth month following the month in which the tax accrues.

AUTHORITY NOTE: Promulgated in accordance with 47:611.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes

Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:469 (March 2004).

§312. Extension of Time for Filing Return and Paying the Tax

A. When such application for an extension of time within which to file the report required by this Chapter has been filed, the Secretary of Revenue and Taxation may grant such extension for a period not to exceed six months from the due date of the report prescribed by R.S. 47:609 and R.S. 47:611. In any case in which the taxpayer has filed a request for an automatic extension of time within which to file its federal income tax return with the U.S. Internal Revenue Service, a copy of the automatic extension request attached to the report required by this Chapter will be accepted by the secretary as an application filed under this Section, and an extension equal to that granted by the federal government will be granted by Louisiana.

B. The granting of an extension of time within which to file the report required by this Chapter does not automatically grant an extension of time within which the tax shall be paid, and the secretary may require payment of the estimated amount of tax due as a condition to granting the report filing extension.

C. Whenever an extension has been granted with respect to payment of the tax, interest accrues thereon for the period from the payment date prescribed by R.S. 47:609 to the date on which the tax is paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:612.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:469 (March 2004).

§313. Fiscal Year; Accounting Period

A. *Fiscal year* means an accounting period of 12 months ending on the last day of any month other than December. In the case of a taxpayer that, in keeping its books, regularly uses a 52- to 53-week period permitted under R.S. 47:91(F), the Secretary of Revenue and Taxation may permit the use of such accounting period for purposes of this Chapter, provided that in any case in which the effective date or the applicability of any provisions of this Chapter is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, such 52- or 53-week accounting period shall be treated:

1. as beginning with the first day of the calendar month beginning nearest to the first day of such taxable period; or

2. as ending with the last day of the calendar month ending nearest to the last day of such taxable period, as the case may be.

B. However, no fiscal year will be recognized unless, before its close, it was definitely established as an accounting period and the books of the taxpayer were kept accordingly.

C. Once an accounting period has been established, no change from that period shall be made without the approval of the Secretary of Revenue and Taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:613.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes

Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repromulgated by the Department of Revenue, Policy Services Division, LR 30:469 (March 2004).

§317. Refunds and Credits

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:601-617 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income and Corporation Franchise Taxes Section, Office of Group III, LR 6:25 (January 1980), amended LR 11:108 (February 1985), repealed by the Department of Revenue, Policy Services Division, LR 30:470 (March 2004).

Cynthia Bridges
Secretary

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RULE

**Department of Revenue
Policy Services Division**

Corporation Income Tax (LAC 61:I.1115-1189)

Under the authority of R.S. 47:287.2-287.785 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, repromulgates LAC 61:I.1115-1189.

Louisiana Administrative Code 61:I.1115-1189 are repromulgated to reaffirm the Secretary of Revenue's rulemaking authority. In *Collector of Revenue v. Mossler Acceptance Co.*, 139 So.2d 263 (La. App. 1st Cir. 1962), the First Circuit held that regulations defining the terms used in the tax statutes went beyond the secretary's authority in R.S. 47:1511 to promulgate rules regarding "the proper administration and enforcement" of the tax statutes. Since the Mossler decision, R.S. 47:1511 was amended removing the language that the First Circuit determined was a limitation on the secretary's rulemaking authority. Although no taxpayer has relied on Mossler to refute the secretary's rulemaking authority, repromulgation of Sections 1115-1189 reaffirms the secretary's authority.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 11. Income: Corporation Income Tax

§1115. Modifications to Deductions from Gross Income Allowed by Federal Law

A. Dividends Received by a Corporation. R.S. 47:287.73(C)(1) allows a deduction for dividends received by one corporation from another to the extent that the income from which the dividends are paid has been earned from Louisiana sources and has borne Louisiana income tax. The amount of the income from which the dividends are paid that has borne Louisiana income tax shall be determined by relating the Louisiana net taxable income to the total book net income of the declaring corporation, less adjustments.

B. Example. During the calendar year 1986, ABC Inc., a Louisiana corporation, derived a total Louisiana net taxable income of \$10,000 and \$10,000 of net income from Texas. The depreciation expense deducted on the tax return exceeds depreciation expense deducted on the books by \$10,000. The depletion expense deducted on the tax return exceeds depletion expense deducted on the books by \$10,000 which is a noncompensating difference. The total net income determined from the books of the corporation is \$60,000. The book income includes \$20,000 of interest on U.S. obligations that is not included in taxable income. On January 7, 1987, the corporation paid a dividend of \$30,000. The allowable deduction to recipient corporations is computed as follows.

Items	Per Books	Per Louisiana Income Tax Return
Net Income	\$60,000	\$10,000
Less: Excess of tax depreciation over book depreciation	\$10,000	
Adjusted Net Income	\$50,000	\$10,000
Ratio		20%
Dividend Paid		\$30,000
Allowable Deduction		\$6,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.73.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:95 (February 1988), repromulgated by the Policy Services Division, LR 30:470 (March 2004).

§1122. Taxes Not Deductible

A. General. R.S. 47:287.83 provides that federal income tax levied on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid, is not deductible.

B. Federal Alternative Minimum Tax

1. Federal alternative minimum tax attributable to tax preferred items such as, but not limited to, accelerated depreciation, depletion, and intangible drilling and development cost, is not deductible. The nondeductible portion of federal alternative minimum tax after credits is the excess of the total federal alternative minimum tax after credits over the deductible portion of federal alternative minimum tax attributed to Louisiana net income.

2. Federal alternative minimum tax on federal alternative minimum taxable net income from sources other than tax preferred items is deductible to the extent the alternative minimum taxable net income is taxed by Louisiana. The deductible portion of federal alternative minimum tax attributable to Louisiana apportionable and allocable net income, which is taxed at alternative minimum taxable income rates, is the result obtained by multiplying the federal alternative minimum tax after credits by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative minimum taxable net income rates and the denominator of which is the excess of federal alternative minimum taxable income over regular federal taxable income. The determination of the amount of deductible and nondeductible

federal alternative minimum tax is illustrated by the following example.

C. Example. The ABC Corporation earns 100 percent of its net income in Louisiana. The ABC Corporation is on a fiscal year beginning July 1, 1987 and ending June 30, 1988. ABC's regular federal taxable income for fiscal year ending June 30, 1988, was \$200,000 and regular federal income tax was \$56,250. Book net income before federal income tax was \$450,000. Of the total difference between book and tax net income, \$150,000 was due to the tax preferenced item, excess tax depreciation expense over book depreciation expense, and \$100,000 was due to interest income earned on municipal bonds exempt from regular federal income tax, but not from Louisiana income tax. Louisiana apportionable and allocable net income before the federal income tax deduction is \$300,000.

Computation of Alternative Minimum Taxable Income

1. Regular federal taxable income	200,000
2. Income from tax preferenced items (excess tax depreciation over book depreciation expense)	150,000
3. Book income adjustment (interest on municipal bonds issued by a state or its political subdivisions other than Louisiana: 100,000 multiplied by 50%)	
4. Alternative minimum taxable income (AMTI, the sum of lines 1, 2 and 3)	400,000

Computation of Alternative Minimum Tax

5. Alternative minimum taxable income (ATMI from line 4)	\$ 400,000
6. Less exemption	\$ -0-
7. AMTI after exemption	\$ 400,000
8. Federal alternative minimum tax rate	\$ 20%
9. Tentative alternative minimum tax rate (line 7 multiplied by line 8)	\$ 80,000
10. Less credits	\$ -0-
11. Less regular federal income tax (after credits)	\$ 56,250
12. Alternative minimum tax (AMT line 9 minus line 11)	\$ 23,750

Computation of Alternative Minimum Tax Attributable to Louisiana Net Income Which is Taxed at AMTI Rates

13. Louisiana allocable and apportionable net income	\$ 300,000
14. Less:	
a. Louisiana net income which is taxed at federal ordinary and alternative capital gain tax rates	\$200,000
b. Louisiana net income which is not taxed by federal (interest on municipal bonds \$100,000 multiplied by 50%)	\$ 50,000
15. Louisiana net income which is taxed at AMTI rates (line 13 minus line 14)	\$ 50,000
16. Excess of AMTI over regular federal taxable income (\$400,000 minus \$200,000)	\$ 200,000
17. Ratio (Louisiana net income which is taxed at AMTI rates over the excess of AMTI over regular federal taxable income, line 15 divided by line 16)	\$ 25%
18. AMT (from line 12)	\$ 23,750
19. AMT deductible (the amount attributable to Louisiana net income which is taxed at AMTI rates, line 18 multiplied by line 17)	\$ 5,938
20. AMT not deductible (line 18 minus line 19)	\$ 17,812

D. Net Operating Loss Carryback. Federal income tax deducted from Louisiana net income in taxable periods to which a net operating loss is carried back shall be computed to determine the amount of federal income tax attributable to net income which is taxed by the federal but which is not taxed by Louisiana as a result of a net operating loss carryback. Federal income tax attributable to net income which is not taxed by Louisiana as a result of a net operating loss carryback is the excess of allowable federal income tax deducted from Louisiana net income before the net operating loss carryback over the allowable deduction after the net operating loss carryback. The federal income tax attributable to net income which is not taxed by Louisiana shall be treated as a reduction to the net operating loss deduction. If the amount of the federal income tax attributable to the net income which is not taxed by Louisiana exceeds the Louisiana net operating loss deduction, such excess shall be treated as income in the year of the transaction that gave rise to the excess. These principles are illustrated in the following examples.

E. Examples

Example 1

The ABC Corporation does not include its net income in a consolidated federal income return as provided by Section 1501 of the *Internal Revenue Code*. ABC files state and federal income tax returns on a calendar year basis. ABC Corporation's net income and other financial information used to file state and federal income tax returns for the four-year period ending December 31, 1987, include the following.

Taxable Periods	1984	1985	1986	1987
Federal net income or (loss)	\$ 2,000,000	\$ 4,000,000	\$ 5,000,000	\$ 600,000
Louisiana net income or (loss)	1,200,000	1,800,000	3,000,000	(1,000,000)
Federal income tax	800,000	1,600,000	2,000,000	240,000
Federal income tax deducted from Louisiana net income	467,280	706,240	1,171,200	-0-
State income tax deducted from federal net income but not Louisiana net income	57,500	86,000	144,000	-0-
Income tax apportionment ratio	55%	40%	50%	50%
Louisiana taxable income	732,720	1,093,760	1,828,800	-0-

ABC Corporation elects to carry their 1987 Louisiana net operating loss back to 1984 pursuant to R.S. 47:287.86. Federal income tax attributable to net income which is not taxed by Louisiana as a result of the net operating loss carryback is computed as follows.

1. Louisiana net income, 1984		\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$1,000,000	
Adjustment		\$ 1,031,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$ 168,375
4. Federal net income, 1984		\$ 2,000,000
5. Ratio (line 3 divided by line 4)		8.4188%
6. Federal income tax, 1984		\$ 800,000
7. Allowable federal income tax deduction after the Louisiana net operating loss carryback (line 6 multiplied by line 5)		\$ 67,350
8. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$ 467,280
9. Federal income tax attributable to net income which is not taxed by Louisiana (line 8 minus line 7)		\$ 399,930
10. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$ 1,000,000
11. Federal income tax attributable to net income which is not taxed by Louisiana (from line 9)		\$ 399,930
12. Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 11)		\$ 600,070

Example 2

Assume the same facts in Example 1 except that the ABC Corporation sustained a \$2,000,000 federal net operating loss in 1987 and elects to carry the federal loss back to 1984. Federal income tax after the net operating loss carryback is zero.

1. Louisiana net income, 1984		\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$1,000,000	
Adjustment		\$ 1,031,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$ 168,375
4. Federal net income, 1984		\$ 2,000,000
5. Federal net operating loss carryback from 1987		\$ (2,000,000)
6. Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)		-0-
7. Ratio (line 3 divided by line 6)		-0-
8. Federal income tax after the federal net operating loss carryback		-0-
9. Allowable federal income tax deduction after the netoperating loss carryback (line 8 multiplied by line 7)		-0-
10. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$ 467,280
11. Federal income tax attributable to net income which is not taxed by Louisiana (line 10 minus line 9)		\$ 467,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$ 1,000,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)		\$ 467,280
14. Louisiana net operating loss after deduction for federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)		\$ 532,720

Example 3

Assume the same facts in Examples 1 and 2 except that the Louisiana and federal net operating losses in 1987 are \$350,000 and \$1,800,000 respectively. Federal income tax after the net operating loss carryback is \$80,000.

1. Louisiana net income, 1984		\$ 1,200,000
2. Less: State income tax deduction allowed by the federal but not Louisiana	\$57,500	
Multiplied by the income tax apportionment ratio	55%	
Balance	\$31,625	
Louisiana net operating loss, 1987	\$350,000	
Adjustment		\$ 381,625
3. Louisiana net income after deducting the net operating loss carryback (line 1 minus line 2)		\$ 818,375
4. Federal net income, 1984		\$ 2,000,000
5. Federal net operating loss carryback from 1987		\$ (1,800,000)
6. Federal net income after federal net operating loss carryback from 1987 (line 4 minus line 5)		\$ 200,000
7. Ratio (line 3 divided by line 6)		100%
8. Federal income tax after the federal net operating loss carryback		\$ 80,000
9. Allowable federal income tax deduction after the netoperating loss carryback (line 8 times line 7)		\$ 80,000

10. Federal income tax deducted from Louisiana net income before the net operating loss carryback		\$ 467,280
11. Federal income tax attributable to net income which is not taxed by Louisiana, 1984 (line 10 minus line 9)		\$ 387,280
12. Louisiana net operating loss before deduction for federal income tax attributable to net income which is not taxed by Louisiana		\$ 350,000
13. Federal income tax attributable to net income which is not taxed by Louisiana (from line 11)		\$ 387,280
14. Louisiana net operating loss after deduction for the amount of federal income tax attributable to net income which is not taxed by Louisiana (line 12 minus line 13)		-0-
15. Additional Louisiana taxable income for 1987 due to excess of federal income tax attributable to net income which is not taxed by Louisiana over the Louisiana net operating loss (line 13 minus line 12)		\$ 37,280

F. Definitions. For the purposes of this Section, alternative minimum tax, regular federal income tax, alternative tax on capital gains, and regular tax on ordinary net income are defined as provided in §1123.F.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.83.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:96 (February 1988), repromulgated by the Policy Services Division, LR 30:470 (March 2004).

§1123. Federal Income Tax Deduction

A. General. R.S. 47:287.85(C) permits corporations to claim as a deduction in computing net income that portion of the federal income tax levied with respect to the Louisiana net income, which is applicable to the year for which the Louisiana return is filed, regardless of the method of accounting utilized (cash, accrual, etc.). For determination of the deductible amount of federal alternative minimum tax attributable to Louisiana net income, refer to §1122. When a corporation includes its net income in a consolidated federal income tax return, total federal income tax for the purpose of this Section shall be the amount determined pursuant to §1123.E.

B. Computations. The deductible portion of the federal income tax, the tax attributable to Louisiana income, is the sum of the amounts determined in §1123.B.1 and 2.

1. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates is the result obtained by multiplying the federal income tax which is calculated at alternative capital gain rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income which is taxed at alternative capital gain rates and the denominator of which is federal net income which is taxed at alternative capital gain rates.

2. The deductible portion of federal income tax attributable to Louisiana apportionable and allocable net income, less adjustment for the net operating loss deduction if applicable, which is taxed at ordinary rates, is the result obtained by multiplying the federal income tax which is calculated at ordinary rates by a fraction, the numerator of which is Louisiana apportionable and allocable net income, less adjustment for the net operating loss deduction if applicable, which is taxed at ordinary rates and the denominator of which is federal net income which is taxed at ordinary rates.

C. Numerator. The numerator to be used in §1123.B shall be determined as set forth in §1123.C.1 and 2.

1. The numerator in the case of Louisiana net income which is taxed by federal at alternative capital gain rates is the sum of:

a. the amount of net apportionable and net allocable income, subject to tax at alternative capital gain rates for

federal income tax purposes, apportioned and allocated to Louisiana;

b. any compensating item of income attributable to Louisiana and which is taxed by federal at alternative capital gain rates but which is not taxed by Louisiana; and

c. any compensating loss item of income, of a character which would be allowable by federal in arriving at income which is taxed at alternative capital gain rates, attributed to and allowed by Louisiana but not allowed by federal, reduced by the sum of:

d. any compensating item of income, of a character which would be subject to tax by federal at alternative capital gain rates, attributed to and taxed by Louisiana but which is not taxed by federal;

e. any compensating loss item of income attributable to Louisiana and allowed by federal in arriving at income which is taxed at alternative capital gain rates but not allowed by Louisiana; and

f. any excess of the sum of:

i. any noncompensating loss item of income attributable to Louisiana and allowed by federal in arriving at income which is taxed at alternative capital gain rates, but not allowed by Louisiana; and

ii. any noncompensating item of income, of a character which would be subject to tax by federal at alternative capital gain rates, attributed to and taxed by Louisiana but which is not taxed by federal; over

iii. any noncompensating loss item of income, of a character which would be allowable in arriving at income which is taxed at alternative capital gain rates by federal, attributed to and allowed by Louisiana but not allowed by federal.

2. The numerator in the case of Louisiana net income which is taxed by federal at ordinary rates is the sum of:

a. the amount of net apportionable and net allocable income, less adjustment for the net operating loss deduction if applicable, subject to tax at ordinary rates for federal income tax purposes, apportioned and allocated to Louisiana;

b. any compensating item of gross income attributable to Louisiana and taxed by federal at ordinary rates but which is not taxed by Louisiana; and

c. any compensating item of deduction, of a character which would be allowable by federal in arriving at income which is taxed at ordinary rates, attributed to and allowed by Louisiana but not allowed by federal, and not attributable to any item of gross income taxable by Louisiana but not by federal; reduced by the sum of:

d. any compensating item of gross income, which would be subject to tax by federal at ordinary rates, attributed to and taxed by Louisiana but which is not taxed by federal;

e. any compensating item of deduction attributable to Louisiana and allowed by federal in arriving at income which is taxed at ordinary rates but not allowed by Louisiana;

f. any excess of the sum of:

i. any noncompensating item of deduction attributable to Louisiana and allowed by federal in arriving at income which is taxed at ordinary rates, but not allowed by Louisiana, and not attributable to any item of gross income taxable by federal but not by Louisiana; and

ii. any noncompensating item of gross income, of a character which would be subject to tax at ordinary rates, attributed to and taxed by Louisiana but which is not taxed by federal; over

iii. any noncompensating item of deduction, which would be allowable by federal in arriving at income which is taxed at ordinary rates, attributed to and allowed by Louisiana but not allowed by federal, and not attributable to

any item of gross income taxable by Louisiana but which is not by federal.

D. Example. The following example illustrates these principles. Facts: The income reported and deductions claimed by ABC, Inc., a Delaware corporation having its commercial domicile in Louisiana and having several places of business outside this state, are reflected below. The difference between the federal depreciation deduction and the depreciation deducted in arriving at total net income is a compensating item. One-half of the total royalty income, depletion, and other expenses related thereto are attributable to a Louisiana oil property. There are \$15,000 in expenses attributable to the royalty income in addition to the depletion deduction. The portion of net income from royalties allocable to Louisiana is \$25,000. Of the total profit from the sale of capital assets, \$25,000 is allocable to Louisiana.

Items	----- RETURNS -----	
	Federal	Louisiana
Income		
Gross profit from sales	\$ 1,400,000	\$ 1,400,000
Royalties	100,000	100,000
Interest—Bond, State of Mississippi	-0-	5,000
Interest—Bond, U.S. Government	5,000	-0-
Long-term gain from sale of capital assets	100,000	100,000
Total Income	\$ <u>1,605,000</u>	\$ <u>1,605,000</u>
Deductions		
Louisiana income tax	10,000	-0-
Officers' compensation	50,000	50,000
Repairs	10,000	10,000
Interest	15,000	15,000
Bad debts	5,000	5,000
Depletion	27,500	35,000
Depreciation	25,000	35,000
Contributions	5,000	5,000
Other deductions	350,000	350,000
Total deductions	\$ <u>497,500</u>	\$ <u>505,000</u>
Net Income	\$ <u>1,107,500</u>	\$ <u>1,100,000</u>
Federal income tax—		
Ordinary income	\$518,400	
Capital gains	25,000	
Total	<u>\$543,400</u>	

1. The taxpayer files on the apportionment basis and the following computation discloses the net allocable and net apportionable income derived from Louisiana sources.

Total net income		\$ 1,100,000
Deduct allocable income		
Profit from sale of capital assets	\$ 100,000	
Interest—Bonds, State of Mississippi	5,000	
Net royalty income	<u>50,000</u>	\$ <u>155,000</u>
Net income for apportionment		\$ <u>945,000</u>
Net income apportioned to Louisiana (20% of \$945,000)		\$ <u>189,000</u>
Add Louisiana allocable income		
Interest	\$ 5,000	
Profit from sale of capital assets	25,000	
Royalty income	<u>25,000</u>	<u>55,000</u>
Total Louisiana apportionable and allocable income		\$ <u>244,000</u>

2. Computations

	Ordinary Rates	Alternative Capital Gains Rates
Net income apportioned and allocated to Louisiana	\$ 219,000	\$ 25,000
Add: Compensating items of income attributable to Louisiana and taxed by federal but which is not taxed by Louisiana	-0-	-0-
Compensating items of deduction attributed to Louisiana and allowed by Louisiana but not allowed by federal depreciation (20% of \$10,000)	2,000	-0-
Total:	\$ <u>221,000</u>	\$ <u>25,000</u>
Deduct: Compensating items of income attributed to and taxed by Louisiana but not taxed by federal	-0-	
Compensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana	-0-	-0-
TOTAL:	\$ <u>221,000</u>	\$ <u>25,000</u>
Excess of the sum of noncompensating items of deduction attributable to Louisiana and allowed by federal but not allowed by Louisiana		
Louisiana income tax (20% of \$10,000)*	\$ 2,000	
Noncompensating items of gross income attributed to and taxed by Louisiana but which is not taxed by federal		
Bond interest—State of Mississippi	<u>5,000</u>	
Total	\$ <u>7,000</u>	
Over		
Noncompensating items of deduction attributed to and allowed by Louisiana but not allowed by federal depletion on oil royalties	\$ <u>3,750</u>	
Excess	\$ <u>3,250</u>	-0-
Louisiana net income which is taxed by federal	\$ 217,750	\$ 25,000
Federal net income	\$ 1,007,500	\$ 100,000
	0	
Ratio	21.61%	25.00%
Federal income tax liability	\$ 518,400	\$ 25,000
Deductible federal income tax		
21.61% of \$518,400	\$ <u>112,026</u>	
25% of \$25,000		\$ 6,250
		<u>112,026</u>
Grand Total		\$ <u><u>118,276</u></u>

* Where the separate method of reporting is used, the entire amount of Louisiana income tax deducted in the federal return is attributed to Louisiana under this item.

E. Consolidated Returns. When a corporation includes its net income in a consolidated federal income tax return, the portion of the consolidated federal income tax after credits attributable to such corporation shall consist of the sum of the amounts determined in §1123.E.1, 2, and 3:

1. the consolidated regular tax on ordinary net income multiplied by the percentage determined by a fraction, the numerator of which is regular tax on ordinary net income of each member of the consolidated group computed on a separate return basis and the denominator of which is regular tax of all members of the group so computed; plus

2. the consolidated alternative tax on net capital gains multiplied by the percentage determined by a fraction, the numerator of which is alternative tax on net capital gains of each member of the consolidated group computed on a separate return basis and the denominator of which is alternative tax on net capital gains of all members of the group so computed; plus

3. the consolidated alternative minimum tax multiplied by the percentage determined by a fraction, the numerator of which is alternative minimum tax of each member of the consolidated group computed on a separate return basis and the denominator of which is alternative minimum tax of all members of the group so computed.

F. Definitions

Alternative Minimum Tax? the excess of the federal tentative minimum tax after credits for the tax year, over the federal regular tax after credits for the taxable year.

Alternative Tax on Capital Gains? the net tax liability imposed by Section 1201(a)(2) of the *Internal Revenue Code* on net capital gains, less credits.

Compensating Item? any difference in any deduction or item of income for a particular year arising solely by reason of the fact that the item is accounted for in different periods for federal and Louisiana income tax purposes. However, if a larger federal income tax deduction would be allowable were an item treated as a *compensating item* than would be allowable were the item treated as a *noncompensating item*, the item is a *compensating item* only to the extent that it is equal to the result obtained by multiplying the difference in the item by a fraction determined as follows:

a. in the case of a deduction:

i. the numerator shall be the excess, if any, of the amount of the item allowed by federal over the amount allowed by Louisiana in each prior year in which the federal allowance exceeded the Louisiana allowance and which has been taken into consideration fully in determining the allowable federal income tax deduction for Louisiana income tax purposes for such prior years, plus the excess, if any, of the amount of the item to be allowed by federal over the amount to be allowed by Louisiana in each future year in which the federal allowance will exceed the Louisiana allowance and which reasonably can be expected to be taken into consideration in determining the allowable federal income tax deduction for Louisiana income tax purposes in such future years;

ii. the denominator shall be the total of all excesses of the amount of the item allowed by federal over the amount of the item allowed by Louisiana in each prior year and of all excesses of the amount of the item to be allowed by federal over the amount to be allowed by Louisiana in each future year;

b. in the case of an item of income:

i. the numerator shall be the excess, if any, of the amount of the item taxed by Louisiana over the amount taxed by federal in each prior year in which the amount taxed by Louisiana exceeded the amount taxed by federal and which has been fully taken into consideration in determining the allowable federal income tax deduction for Louisiana income tax purposes for such prior years, plus the excess, if any, of the amount of the item to be taxed by Louisiana over the amount to be taxed by federal in each future year in which the amount to be taxed by Louisiana will exceed the amount to be taxed by federal and which can reasonably be expected to be fully taken into consideration in determining the allowable federal income tax deduction in such future years for Louisiana income tax purposes;

ii. the denominator shall be the total of all excesses of the amount of the item taxed by Louisiana over the amount taxed by federal in each prior year and of all excesses of the amount of the item to be taxable by Louisiana over the amount to be taxable by federal in each future year.

Income Taxed? income included in taxable income, regardless of whether tax has been paid thereon.

Item of Deduction? each individual deduction rather than each category of deduction, and includes loss items of gross income. For example, the amount of depreciation on a particular property, as distinguished from the amount of depreciation on all properties of the taxpayer, would be an *item of deduction*. Similarly, the term *item of income* means each amount of income rather than each category of income. The amount of a Louisiana item of income or deduction is the amount apportioned or allocated to Louisiana. Thus, where a taxpayer has a 10 percent apportionment ratio and has an *item of deduction* of \$10,000 allowed by Louisiana in arriving at apportionable net income but not allowed by federal, the amount of the Louisiana item is 10 percent of \$10,000 or \$1,000.

Noncompensating Item? any item of difference between federal and Louisiana income or deductions for a particular year other than a *compensating item*.

Regular Federal Income Tax? the sum of the tax defined in *regular tax on ordinary net income* and *alternative tax on capital gains*.

Regular Tax on Ordinary Net Income? the federal net tax liability imposed on net income after net income is reduced by the amount of net capital gain subject to alternative tax rates, less credits.

Taken into Consideration Fully in Determining the Allowable Federal Income Tax Deduction for Louisiana Income Tax Purposes for Prior Years? as used in this Section means fully used in reducing the amount of the federal income tax deduction for such prior years. The purpose of this provision is to allow an adjustment for an item which will increase the federal income tax deduction only to the extent that adjustments applicable to the item in prior years were used to decrease the federal income tax deduction.

Similarly, the term *to be fully taken into consideration in determining the allowable federal income tax deduction in ... future years for Louisiana income tax purposes* means to be used fully in reducing the amount of the federal income tax deduction for such future years.

G Special Rules

1. The computations prescribed in §1123.B are subject to the rules provided in R.S. 47:287.442. That is, the computations cannot have the effect of attributing refunds of federal income tax which arose on account of conditions or transactions occurring after the close of the taxable year, to any year other than that in which arose the transactions or conditions giving rise to the refund. Accordingly, appropriate changes shall be made when necessary to attribute the refund to the proper year.

2. Notwithstanding the definition provided in §1123.F *Noncompensating Item* and *Compensating Item*, deductions which are declared as allowable in the computation of Louisiana net income pursuant to R.S. 47:287.73(C)4 shall be treated as a compensating item of deduction for the purpose of computing the amount of federal income tax deduction under §1123.C.

3. The federal income tax deduction determined under §1123 must take into account R.S. 47:287.83 which provides in part that no federal income tax deduction shall be allowed on net income upon which no Louisiana income tax has been incurred, or upon which, for any reason whatsoever, no Louisiana income tax will be paid.

4. If the tax of any member computed on a separate return basis under §1123.E.1, 2, and 3 is less than zero, then for the purposes of §1123.E, such member's separate return tax shall be zero.

5. The secretary may adjust the consolidated federal income tax allocation formula prescribed in §1123.E when in his opinion such action is necessary to obtain a reasonable allocation and to clearly reflect Louisiana taxable income.

6. The sum of the net consolidated federal income tax attributed to all members of the consolidated group for the taxable period cannot exceed the amount of consolidated federal income tax paid to the U.S. government for the taxable period.

7. When the alternative tax rate on net capital gains is the same as the regular tax rate on ordinary net income reduced by net capital gains, consolidated regular tax on ordinary net income and alternative tax on capital gains, after credits, may be combined and then attributed to each member of the consolidated group.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.85.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:98 (February 1988), repromulgated by the Policy Services Division, LR 30:473 (March 2004).

§1128. Segregation of Items of Gross Income

A. For the purpose of applying rules for determining the amount of income earned within or derived from sources in Louisiana, all items of gross income must be divided into two general classes-allocable income and apportionable income. The various types of income constituting allocable income are set forth in R.S. 47:287.92(B), and the specific basis for allocating each of these types of income is prescribed in R.S. 47:287.93. Any income which does not

fall within any of the types of allocable income as listed in the statute must be treated as apportionable income. When Louisiana net apportionable income is derived primarily from the business of making loans, refer to R.S. 47:287.95(E) and §1134.E for the determination of the Louisiana apportionment percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.92.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988), repromulgated by the Policy Services Division, LR 30:476 (March 2004).

§1130. Computation of Net Allocable Income from Louisiana Sources

A. R.S. 47:287.93 provides that items of gross allocable income or loss shall be allocated directly to the states within which such items of income are earned or derived.

1. Reserved.

2. Reserved.

3. Profits from sales or exchanges of property not made in the regular course of business requires that both profits and losses from such transactions be included in income allocated directly to the state in which the property had its situs at the time of the transaction. Whether a sale or exchange is a sale not made in the regular course of business is a factual determination required to be made with respect to each property sold which will take into consideration such factors as the frequency of sales of similar properties and the relationship of the particular sale to other business transacted by the taxpayer.

4. Dividends, profits from the sale or exchange of capital assets consisting of incorporeal property or rights, and interest, other than interest on customers' notes and accounts and interest on securities having their situs in Louisiana received from a controlled corporation by its parent, shall be allocated to the state in which the securities or credits have their situs. If the securities or credits have been so employed as to acquire a business situs, the place of business situs controls. In the absence of a business situs the place of commercial domicile controls in the case of a corporation. (For special rules governing the situs of stock canceled in corporate liquidations see R.S. 47:287.747.) These rules are subject to the exception that dividends upon stock having a situs in Louisiana received by a corporation from another corporation which is controlled by the former, through ownership of 50 percent or more of the voting stock of the latter, shall be allocated to the state or states in which is earned the income from which the dividends are paid, such allocation to be made in proportion to the respective amounts of such income earned in each state.

5. Royalties or similar revenue received for the use of patents, trademarks, copyrights, secret processes and other similar intangible rights shall be allocated to the state or states in which such rights are used. The use referred to is that of the licensee rather than that of the licensor.

Example: X Company, Inc., a Delaware corporation with its commercial domicile in California, owns certain patents relating to the refining of crude oil, which at all times were kept in its safe in California. During 1987, the X Company, Inc. entered into an agreement with the Y Corporation whereby that company was given the right to use the patents at its refineries in consideration for the payment of a royalty based upon units of production. The Y Corporation used the patents exclusively at its Louisiana refinery and paid the X

Company, Inc. the amount of \$100,000 for such use. The entire royalty income of \$100,000 is allocable to Louisiana.

6. Income from construction, repair or other similar services is allocable. The phrase *other similar services* means any work which has as its purpose the improvement of immovable property belonging to a person other than the taxpayer where a substantial portion of such work is performed at the location of such property. For the purpose of this Section, mineral properties, whether under lease or not, constitute immovable properties. It is not necessary that the services rendered actually result in the improvement of the immovable property. Thus, the drilling of a well on a mineral lease is considered to have as its purpose the improvement of such property notwithstanding the fact that the well may have been dry. Examples of other similar services are:

- a. landscaping services;
- b. the painting of houses;
- c. the removal of stumps from farm land;
- d. the demolition of buildings.

7. Interest on securities and credits having a situs in Louisiana which is received by a corporation from another corporation controlled by the former through the ownership of 50 percent or more of the voting stock of the latter shall be allocated to the state or states in which the real and tangible personal property of the controlled corporation is located. The allocation shall be made on the basis of the ratio of the value of such property located in Louisiana to the value of such property within and without the state, determined as provided below. Whether the securities and credits have a situs in Louisiana shall be determined in accordance with the rules provided in §1130.A.4. For the purpose of this Section, real and tangible personal property includes all such property of the controlled corporation regardless of whether the property is idle or productive and regardless of the nature of the income which it produces.

a. Value of Property to be Used. For purposes of this Section, the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, depletion, and obsolescence. The reserves reflected on the books of the taxpayer shall be deemed reasonable, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

b. Average Values. For the purpose of this Section, the value of Louisiana real and tangible property and real and tangible property within and without the state shall be the average of such property at the beginning and close of the year, determined on a comparable basis.

B. From the total gross allocable income from all sources and from the gross allocable income allocated to Louisiana there shall be deducted all expenses, losses, and other deductions, except federal income taxes, allowable under the Louisiana income tax law which are directly attributable to such income plus a ratable portion of the allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income.

1. Direct and indirect expenses attributed to allocable income from foreign sources for federal purposes are deductible in arriving at total net allocable income. Expenses sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be attributed to such income.

2. The approach set forth in these regulations for the allocation and apportionment of interest expense is based upon the concept of the fungibility of money and requires that interest expense ordinarily be allocated to all the taxpayer's income-producing activities and properties, regardless of the specific purpose for which the borrowing was incurred; it does not directly require allocation of interest deductions to income. That is, these regulations assume that:

- a. money is fungible in that all the taxpayer's activities and properties need funds;
- b. the taxpayer's management has substantial flexibility in the source and use of its funds;
- c. the creditors of the taxpayer look to its general credit for repayment and thereby subject the money loaned to the risk of all the taxpayer's activities; and
- d. the use of money for one purpose frees funds for other purposes. Accordingly, the reasoning continues, it is appropriate to associate part of the cost of money borrowed for a specific purpose to other purposes as well.

3. Interest expense which is applicable to investments which produce or which are held for the production of allocable income within and without Louisiana, shall be an item of deduction in determining net allocable income or loss. For the purpose of this Subsection, investments which produce or which are held for the production of allocable income include but are not limited to investments in and advances or loans to affiliated corporations whether or not such investments, advances, or loans produce any income. The amount of interest which is applicable to such investments shall be determined by multiplying the total amount of interest expense by a ratio, the numerator of which is the average value of investments which produce or which are held for the production of allocable income, and the denominator of which is the average value of all assets of the taxpayer. Although interest on U.S. government bonds and notes is not taxable and hence is not included in allocable income, the adjustment for the amount of interest expense applicable to investments producing such income is computed in the same manner as in the case of investments producing allocable income. Thus for convenience of computation such investments are grouped with investments producing or held for the production of allocable income. Whenever interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments determined as provided above, exceeds the amount of income derived from such investments, the interest expense which is attributable to such investments shall be limited to the amount so derived. The amount of interest expense applicable to U.S. government bonds and notes which are held as temporary cash investments,

determined without reference to the income therefrom, is that portion of the interest expense applicable to investments which produce or which are held for the production of allocable income, which the ratio of the average value of U.S. government bonds and notes held as temporary cash investments bears to the average value of all investments which produce or which are held for the production of allocable income.

4. Interest expense which is applicable to investments which produce or which are held for the production of Louisiana allocable income shall be an item of deduction in determining net allocable income or loss from Louisiana. Except when Louisiana apportionable income is determined on the separate accounting method, the amount of interest which is applicable to such investments shall be determined by multiplying the amount of interest expense allocated to total allocable investments, determined without reference to the income limitation in the case of investments in U.S. government bonds and notes held as temporary cash investments, by a ratio, the numerator of which is the average value of investments which produce or which are held for the production of Louisiana allocable income and the denominator of which is the average value of investments which produce or which are held for the production of allocable income within and without Louisiana. When Louisiana net apportionable income is determined on the separate accounting method, refer to §1132.C.1 for rules pertaining to the determination of the amount of interest expense applicable to Louisiana allocable income.

5. Value to be Used. For purposes of this Section, value means cost to the taxpayer, less a reasonable reserve for depreciation, depletion, and obsolescence. The reserves reflected on the books of the taxpayer shall be considered reasonable, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

6. Average Value. For purposes of this Section, *average value* means the average of the value of the property at the beginning and at the close of the year.

7. Example: The XYZ Corporation has incurred interest expense in the amount of \$150,000 during the year 1986. During 1986 it derived total allocable income and Louisiana allocable income as follows:

	Louisiana	Total
*Interest on U.S. Treasury notes	\$ -0-	\$ 15,000
Dividends	-0-	5,000
Net rent income	10,000	10,000
Total	\$ 10,000	\$ 30,000

*Treated as allocable income only for convenience in computing the applicable expense.

Its assets, liabilities, and net worth as of January 1, 1986, and December 31, 1986, were as follows.

	12-31-86		1-1-86	
Cash		\$ 100,000		\$ 150,000
Accounts receivable		780,000		800,000
Inventories		600,000		1,000,000
Stocks		100,000		100,000
U.S. Treasury Notes		420,000		650,000
Real estate (rental property)	100,000		100,000	
Less depreciation reserve	<u>20,000</u>		<u>25,000</u>	
Net		80,000		75,000
Real estate	5,000,000		5,125,000	
Less depreciation reserve	<u>1,080,000</u>		<u>1,300,000</u>	
Net		3,920,000		3,825,000
Total Assets		<u>\$ 6,000,000</u>		<u>\$ 6,600,000</u>
Liabilities:				
Accounts payable	\$ 400,000		\$ 1,000,000	
Bonds	<u>3,000,000</u>		<u>3,000,000</u>	
Total Liabilities		\$ 3,400,000		\$ 4,000,000
Net Worth:				
Capital stock	\$ 2,000,000		\$ 2,000,000	
Earned surplus	<u>600,000</u>		<u>600,000</u>	
Net worth		\$ 2,600,000		\$ 2,600,000
Total Liabilities and Net Worth		<u>\$ 6,000,000</u>		<u>\$ 6,600,000</u>

The amount of interest which is applicable to the investments which produce or are held for the production of allocable income within and without Louisiana is \$16,963.50, determined as follows.

	Allocable Investments		Total Assets	
	1-1-86	12-31-86	1-1-86	12-31-86
U.S. Treasury Notes	\$ 420,000	\$ 650,000	\$ 420,000	\$ 650,000
Rental property (net)	\$ 80,000	75,000	80,000	75,000
Stock	100,000	100,000	100,000	100,000
Other assets	<u>0</u>	<u>0</u>	<u>5,400,000</u>	<u>5,775,000</u>
Totals	\$ 600,000	\$ 825,000	\$ 6,000,000	\$ 6,600,000
1-1-86 totals		<u>600,000</u>		<u>6,000,000</u>
Totals		\$ <u>1,425,000</u>		\$ <u>12,600,000</u>
Average		\$ <u>712,500</u>		\$ <u>6,300,000</u>
Ratio				.11309
Interest expense allocated to total allocable assets (.11309 x \$150,000)				<u>\$ 16,963.50</u>

The amount of interest expense which is applicable to the investments which produce or are held for the production of Louisiana allocable income is \$1,845.12, determined as follows.

Louisiana allocable assets (rental property):	
January 1, 1986	\$ 80,000
December 31, 1986	<u>75,000</u>
Total	\$ <u>155,000</u>
Average	\$ 77,500
Total allocable assets - average	712,500
Ratio	10.877
Interest expense allocated to total allocable assets	\$ 16,963.50
Interest expense allocated to Louisiana allocable assets (.10877 x \$16,963.50)	\$ 1,845.12

8. Overhead expense attributable to items of gross allocable income derived from sources within and without Louisiana, except gross allocable income from rent of immovable or corporeal movable property or from construction, repair or other similar services, may be determined by any reasonable method which clearly reflects net allocable income from such items of income.

9. Overhead expense attributable to total gross allocable income derived from rent of immovable or corporeal movable property or from construction, repair, or other similar services shall be deducted from such income

for the purposes of determining net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying total overhead expense by the arithmetical average of two ratios, as follows.

a. The ratio of the amount of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross income derived from all sources.

b. The ratio of the amount of direct cost incurred in the production of total gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of gross income from all sources.

10. Overhead expense attributable to Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services shall be deducted from such income for the purposes of determining Louisiana net allocable income or loss from such items of income. The amount of overhead expense attributable to such income shall be determined by multiplying overhead expense attributed to total gross allocable income derived from rent of immovable

or corporeal movable property and from construction, repair, or other similar services by the arithmetical average of two ratios, as follows.

a. The ratio of the amount of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total gross allocable income from such sources.

b. The ratio of the amount of direct cost incurred in the production of Louisiana gross allocable income derived from rent of immovable or corporeal movable property and from construction, repair, or other similar services to total direct cost incurred in the production of such income.

11. Special Rules

a. When a corporation has a Louisiana commercial domicile and directly owns 50 percent or more of the voting stock of another corporation, the stock shall be included in Louisiana allocable assets in calculating the amount of interest expense attributable to investments which produce or which are held for the production of Louisiana allocable income, except stock owned in a corporation exempt from Louisiana corporation income tax. The stock shall be attributed to Louisiana allocable assets on the basis of the respective amounts of income earned within Louisiana to the income earned everywhere of the controlled corporation.

b. When a corporation has a Louisiana commercial domicile and advances interest bearing funds to a corporation of which it directly owns 50 percent or more of the voting stock, the receivable shall be included in Louisiana allocable assets in calculating the amount of interest expense attributable to investments which produce or which are held for the production of Louisiana allocable income. The receivable shall be attributed to Louisiana allocable assets on the same basis as the income from which the receivable is attributed to Louisiana. For the purpose of this Subparagraph, real and tangible personal property includes all such property of the controlled corporation whether or not the property is idle or productive and regardless of the type of income which it produces.

c. Accounts or notes receivable resulting from advances on non-interest bearing funds from one corporation to another corporation are deemed to be assets producing or held for the production of allocable income for the purpose of determining the amount of interest expense applicable to investments which produce or which are held for the production of allocable income from sources within and without Louisiana.

d. When a corporation has a Louisiana commercial domicile, accounts or notes receivable resulting from advances of non-interest bearing funds from one corporation to another corporation shall not be included in the numerator of the interest expense allocation formula for the purpose of §1130.B.4, except when the secretary, in order to clearly reflect Louisiana apportionable and allocable net income, imputes interest income on such receivables.

e. For the purpose of §1130.B.11.a and b, direct ownership of 50 percent or more of the voting stock of a corporation constitutes control of that corporation.

f. The secretary is authorized to adjust the allocation of interest expense and/or overhead expense applicable to investments which produce or which are held

for the production of allocable income within and without Louisiana if he determines that such adjustment is necessary in order to clearly reflect apportionable and allocable net income.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.93.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:101 (February 1988), repromulgated by the Policy Services Division, LR 30:477 (March 2004).

§1132. Computation of Net Apportionable Income from Louisiana Sources

A. General

1. From the total gross apportionable income there shall be deducted all expenses, losses and other deductions except federal income taxes, allowable under this Chapter, which are directly attributable to such income, and there also shall be deducted a ratable portion of allowable deductions, except federal income taxes, which are not directly attributable to any item or class of gross income. Direct and indirect expenses attributed to total allocable income derived from foreign sources, for federal purposes, are not deductible in arriving at total net apportionable income. Expenses sourced pursuant to federal law and regulations to allocable income from foreign sources are presumed to be attributed to such income.

2. R.S. 47:287.94 provides two methods for computing the amount of net apportionable income from Louisiana sources, viz., the apportionment method and the separate accounting method. The apportionment method must be used unless it produces a manifestly unfair result and the conditions prescribed by R.S. 47:287.94 are met. Where the apportionment method is utilized, the apportionment percentage must be applied to the total apportionable net income without exception. For rules pertaining to the determination of the apportionment percentage refer to §1134.

B. Separate Accounting Method; Permission Obtained from Secretary. Any taxpayer desiring to use the separate accounting method in determining the portion of the total net apportionable income derived from Louisiana sources must first obtain permission from the secretary to use that method. A written request for such permission should be submitted to the secretary not more than 30 days after the close of the taxable year for which the first use of the separate accounting method is to be made if the permission is granted. The secretary will grant such permission if the taxpayer demonstrates to his satisfaction that the apportionment method as applied to the business operations of the taxpayer would produce a manifestly unfair result, that the separate accounting method produces a fair and equitable determination of the amount of net income taxable by Louisiana, and that the other conditions of R.S. 47:287.94 are met. The application of the taxpayer must be accompanied by the following information:

1. a complete description of the nature of the business operations of the taxpayer in Louisiana;

2. a complete description of the nature of the business operations of the taxpayer in other states;

3. a comprehensive statement as to the sources of goods or commodities sold by the taxpayer in Louisiana;

4. a comprehensive statement as to the disposition of goods or commodities produced by the taxpayer in Louisiana;

5. a computation for the preceding taxable year showing the Louisiana net apportionable income on the apportionment basis and on the separate accounting basis;

6. a statement of the particular circumstances in the taxpayer's business operations and the particular factors or elements in the apportionment formula which give rise to the difference between the amounts of Louisiana net apportionable income as computed under the two methods;

7. a statement as to whether the circumstances, factors, and elements mentioned in §1132.B.6 are relatively permanent so that the two methods would reasonably be expected to yield similar differences in results each year, or whether in the ordinary course of the taxpayer's business those circumstances have changed from time-to-time and may be expected to do so in the future; and

8. any other information which the taxpayer may consider pertinent.

C. Separate Accounting of Apportionable Income

1. When the separate accounting method is used, the net apportionable income taxable in Louisiana shall be determined by deducting from the gross apportionable income from sources in Louisiana all costs and expenses directly attributable to such income and a ratable part of overhead expenses and other expenses which are attributable in part to the Louisiana gross apportionable income.

2. When Louisiana net apportionable income is determined on the separate accounting method, interest expense applicable to Louisiana gross apportionable and allocable income shall be deducted from such gross income for the purposes of determining Louisiana net apportionable and allocable income or loss. The amount of interest expense applicable to Louisiana gross apportionable and allocable income shall be determined by multiplying total interest expense by a ratio, the numerator of which is the average value of assets in Louisiana and the denominator of which is the average value of all assets of the taxpayer.

3. For the purposes of this Paragraph, *value to be used* and *average value* mean the same as defined in §1130.B.6 and 7. Special rules as provided in §1130.B.11 also apply to this Section.

4. When Louisiana net apportionable income is determined on the separate accounting method, overhead expense shall be deducted from Louisiana gross apportionable income for the purposes of determining Louisiana net apportionable income or loss. The amount of such overhead expense shall be determined by multiplying total overhead expense attributable to gross apportionable income by a ratio, the numerator of which is the amount of direct cost incurred in the production of Louisiana gross apportionable income determined on a separate accounting method and the denominator of which is total direct cost incurred in the production of gross apportionable income from all sources. For the purpose of this Paragraph, the secretary is authorized to adjust the amount of overhead expense allocated to Louisiana gross apportionable income if he determines that such action is necessary in order to clearly reflect Louisiana apportionable net income. For rules pertaining to the determination of the amount of overhead

expense attributable to gross allocable income refer to §1130.B.8, 9 and 10.

5. Income from Natural Resources. If the separate accounting method is used by a taxpayer whose business includes the production of natural resources, such as oil, gas, other liquid hydrocarbons, or sulphur, (a) which are sold by the taxpayer prior to refining or processing, or (b) which are transported by the taxpayer into or from the state of Louisiana for refining or processing prior to sale and at the time of production or transfer into or from this state have an ascertainable market value, the Louisiana net apportionable income of such taxpayer shall be computed as set forth below.

a. The gross apportionable income of the taxpayer from sources in Louisiana shall be determined by dividing the activities of the taxpayer into three classes:

i. the production of natural resources;

ii. the marketing of refined or manufactured products; and

iii. all other activities.

b. The Louisiana gross apportionable income from the production of natural resources shall include:

i. sales of natural resources produced in Louisiana and sold in this state;

ii. the market value, at the time of transfer, of all natural resources produced in this state and transferred by the taxpayer to another state for sale, refining, or processing, provided that if the natural resources are sold by means of an "arm's length" transaction prior to refining or processing, the market value prescribed herein shall not exceed the selling price; and

iii. the market value, at the time of transfer, of all natural resources produced by the taxpayer in Louisiana and transferred to a refinery or processing plant of the taxpayer located in Louisiana.

c. The Louisiana gross apportionable income from the marketing of refined or manufactured products shall be the amount of gross sales of such products in this state. From such gross sales there shall be deducted, in lieu of the usual deduction for cost of goods sold, the market value of the products sold as of the time of transfer into this state. In determining the market value, the customary prices for the quantities transferred shall be applied.

d. The Louisiana gross apportionable income from all activities in this state other than the production of natural resources and the marketing of refined or manufactured products shall include all sales and other apportionable revenues derived in this state from such other activities.

e. The net income of the taxpayer from each of the three classes of income set forth in §1132.C.5.b, c, and d shall be determined by deducting from each such class of gross income all allowable deductions directly attributable to the production of such income and a ratable part of all allowable deductions which are attributable in part to the production of such class of income.

6. For the purpose of this Section, a natural resource shall be deemed to be sold in Louisiana if it is located in this state at the time title thereto passes to the purchaser.

7. In the absence of specific proof of the value of natural resources at the time of transfer from or into this state, the value of the natural resources at the time of production, to be determined in accordance with the methods

prescribed for the determination of "gross income from the property" for purposes of percentage depletion under R.S. 47:287.745(B), shall be deemed to be the market value at the time of transfer.

D. Change from Separate Accounting to Apportionment Method. A taxpayer who has obtained permission to use the separate accounting method, or who has been required by the secretary to use that method, shall continue to use that method for succeeding taxable years until a change occurs in the nature of the taxpayer's operations which would warrant a change in accounting method. When such a change occurs, the taxpayer shall report the facts to the secretary not later than 30 days after the close of the taxable year in which the change occurred. If the secretary finds, on the basis of the facts reported by the taxpayer or otherwise obtained by the secretary, that the apportionment method should be used, the taxpayer will be notified to use that method for the year in which the change in operations occurred. The apportionment method shall then be used until a change is made pursuant to R.S. 47:287.94.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.94.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:104 (February 1988), repromulgated by the Policy Services Division, LR 30:480 (March 2004).

§1134. Determination of Louisiana Apportionment Percent

A. General. R.S. 47:287.95 provides for an apportionment percent which is to be applied to the taxpayer's total net apportionable income in determining the Louisiana net apportionable income. Specific formulas are prescribed for air, pipeline, and other transportation businesses, certain service enterprises, and loan businesses. A general formula is prescribed for manufacturing, merchandising and any other business for which a formula is not specifically prescribed. The statute contemplates that only one specific formula be used in determining the apportionment percent, that being the formula prescribed for the taxpayer's primary business. As a general rule, where a taxpayer is engaged in more than one business, the taxpayer's primary business shall be that which is the primary source of the taxpayer's net apportionable income. When the numerator and denominator is zero in any one or more factors in the apportionment formula, such factor shall be dropped from the apportionment formula and the arithmetical average determined from the total remaining factors.

B. Property Factor

1. The value of immovable and corporeal movable property owned by the taxpayer and used in the production of net apportionable income is a factor in each formula except those provided for loan businesses and certain service businesses. Where only a part of the property is used in the production of apportionable income, only the value of that portion so used shall be included in the property factor. However, where the entire property is used in the production of both allocable and apportionable income, such as a railroad track owned by the taxpayer and used jointly with another, the value of the entire property shall be included in the property factor. Idle property and property under construction, during such construction and prior to being

placed in service, shall not be included in the property factor. Property held as reserve or standby facilities, or property held as a reserve source of materials shall be considered used. For example, a taxpayer who purchases a lignite deposit which is held as a reserve source of fuel, should include the value of such deposits in the property factor. Non-productive mineral leases are considered to be held for such use and should be included in the property factor. Aircraft owned by a taxpayer whose net apportionable income is derived primarily from air transportation should not be included in the property factor. The value of inventories of merchandise in transit shall be allocated to the state in which their delivery destination is located in the absence of conclusive evidence to the contrary.

2. Value of Property to be Used. For purposes of this Section, the value of property is cost to the taxpayer, less a reasonable reserve for depreciation, depletion and obsolescence. Such reserves, reflected on the books of the taxpayer, shall be used in determining value, subject to the right of the secretary to adjust the reserves when in his opinion such action is necessary to reflect the fair value of the property.

3. Proration of Rolling Stock and Other Mobile Equipment. The average value of rolling stock and other mobile equipment owned by the taxpayer shall be prorated within and without Louisiana as set forth below.

a. The value of diesel locomotives shall be allocated to Louisiana on the basis of the ratio of diesel locomotive miles in Louisiana to total diesel locomotive miles.

b. The value of other locomotives shall be allocated to Louisiana on the basis of the ratio of other locomotive miles in Louisiana to total other locomotive miles.

c. The value of freight train cars shall be allocated to Louisiana on the basis of the ratio of freight car miles in Louisiana to total freight car miles.

d. The value of passenger cars shall be allocated to Louisiana on the basis of the ratio of passenger car miles in Louisiana to total passenger car miles.

e. The value of passenger buses shall be allocated to Louisiana on the basis of the ratio of bus miles in Louisiana to total bus miles.

f. The value of diesel trucks shall be allocated to Louisiana on the basis of the ratio of diesel truck miles in Louisiana to total diesel truck miles.

g. The value of other trucks shall be allocated to Louisiana on the basis of the ratio of other truck miles in Louisiana to total other truck miles.

h. The value of trailers shall be allocated to Louisiana on the basis of the ratio of trailer miles in Louisiana to total trailer miles.

i. The value of towboats shall be allocated to Louisiana on the basis of the ratio of towboat miles in Louisiana to total towboat miles. In the determination of Louisiana towboat miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

j. The value of tugs shall be allocated to Louisiana on the basis of the ratio of tug miles in Louisiana to total tug miles. In the determination of Louisiana tug miles, one half of the mileage of all navigable streams bordering on both

Louisiana and another state shall be considered Louisiana miles.

k. The value of barges shall be allocated to Louisiana on the basis of the ratio of barge miles in Louisiana to total barge miles. In the determination of Louisiana barge miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana miles.

l. The value of work and miscellaneous equipment shall be allocated to Louisiana on the basis of the ratio of track miles in Louisiana to total track miles in the case of a railroad, on the basis of the ratio of bank miles operated in Louisiana to total bank miles operated in the case of inland waterway transportation and on the basis of the ratio of route miles operated in Louisiana to total route miles operated in the case of truck and bus transportation. In the determination of bank miles, one half of the bank mileage of navigable streams bordering on both Louisiana and another state shall be considered Louisiana bank miles.

m. The value of other floating equipment shall be allocated to Louisiana on the basis of the ratio of operating equipment miles within Louisiana to the total operating equipment miles, for the particular equipment to be allocated. In the determination of Louisiana operating equipment miles, one half of the mileage of all navigable streams bordering on both Louisiana and another state shall be considered Louisiana bank miles.

4. Insufficient Records. In any case where the information necessary to determine the ratios listed above is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the allocation of such equipment on any method deemed reasonable by him.

C. Wage Factor. Salaries, wages and other compensation for personal services as used in R.S. 47:287.95 includes only compensation paid to employees or to a deferred plan for the benefit of employees of the taxpayer for services rendered in connection with the production of net apportionable income. It does not include fees and commissions paid to independent contractors.

D. Revenue Factor. Revenue is a factor in each formula except that provided for loan businesses. This factor is generally composed of sales, charges for service, and other gross apportionable income.

1. Revenue from Transportation other than Air Travel. Gross apportionable income attributable to Louisiana from transportation other than air includes all such revenue derived entirely from sources within Louisiana plus a portion of revenue from transportation performed partly within and partly without Louisiana, based upon the ratio of the number of units of transportation service performed in Louisiana to the total of such units. A unit of transportation shall consist of the following:

a. in the case of the transportation of passengers, the transportation of one passenger a distance of one mile;

b. in the case of the transportation of liquid commodities, including petroleum or related products, the transportation of one barrel of the commodities a distance of one mile;

c. in the case of the transportation of property other than liquids, the transportation of one ton of the property a distance of one mile;

d. in the case of the transportation of natural gas, the transportation of one MCF a distance of one mile (see however, §1134.D.2);

e. transportation revenue should be segregated on the basis of the four classes enumerated above and the gross apportionable income attributable to Louisiana shall be determined by application of the respective ratios to each segregated amount. In any case where another method would more clearly reflect the gross apportionable income attributable to Louisiana, or where the above information is not readily available from the taxpayer's records, the secretary, in his discretion, may permit or require the use of any method deemed reasonable by him.

2. Sales Made in the Regular Course of Business

a. The sales attributable to Louisiana under R.S. 47:287.95 are those sales made in the regular course of business where the goods, merchandise or property are received in Louisiana by the purchaser. Similarly, where the goods, merchandise or property are received in some other state, the sale is attributable to that state. Sales made in the regular course of business include all sales of goods, merchandise or product of the business or businesses of the taxpayer. They do not include the sale of property acquired for use in the production of income. Where a taxpayer under a contract performs essentially a management or supervision function and receives therefor a reimbursement of his costs plus a stipulated amount, the amounts received as reimbursed costs are not sales although the contract so designates them. The stipulated amount constitutes other gross apportionable income and shall be attributed to the state where the contract was performed. Where goods are delivered into Louisiana by a public carrier, or by other means of transportation, including transportation by the purchaser, the place at which the goods are ultimately received after all transportation has been completed shall be considered as the place at which the goods are received by the purchaser. The transportation in question is the initial transportation relating to the sale by the taxpayer, and not the transportation relating to a sale or subsequent use by the purchaser.

b. Where the goods are delivered by the taxpayer-vendor in his own equipment, it is presumed that such transportation relates to the sale. Where the goods are delivered by a common or contract carrier, whether shipped F.O.B. shipping point, and whether the carrier be a pipeline, trucking line, railroad, airline or some other type of carrier, the place where the goods are ultimately received by the purchaser after the transportation by the carrier has ended is deemed to be the place where the goods are received by the purchaser. Actual delivery rather than technical or constructive delivery controls.

c. Where the transportation involved is transportation by the purchaser, in determining whether or not the transportation relates to the sale by taxpayer, consideration must be given to the following principles.

i. To be related to the initial sale, the transportation should be commenced immediately. However, before a lapse of time is conclusive, consideration must be given to the nature and character of the goods purchased, the availability of transportation, and other pertinent circumstances.

ii. The intent of the parties to the sale must also be considered. The intent and purpose of the purchaser may be determined directly, or by an evaluation of the nature and scope of his operation, customs of the trade, customary activities of the purchaser, and all pertinent actions and words of the purchaser at the time of the sale.

iii. In order for the transportation by the purchaser to be related to the initial sale by the taxpayer to the purchaser, such transportation must be generally the same in nature and scope as that performed by the vendor or by the carrier. There is no difference between a case where a taxpayer in Houston ships F.O.B., Houston, to a purchaser in Baton Rouge, by common carrier, and a case where all facts are the same except that the purchaser goes to Houston in his own vehicle and returns with the goods to Baton Rouge.

d. The sales of natural resources to a pipeline company are attributable to the state in which the goods are placed in the pipeline. Such purchasers are engaged in the business of moving or transporting their own property through their own lines. Thus, all transportation of the natural resources after introduction into the line is related to the use or sale by the pipeline, and is not related to the sale by the taxpayer.

e. Generally, transportation by public carrier pipelines is accorded the same treatment as transportation by any other type of public carrier. Actual delivery to the purchaser controls, rather than technical or constructive delivery. However, because of the nature and character of the property, the type of carrier, and customs of the trade, the natural resources in the pipeline carrier may become intermixed with other natural resources in the pipeline and lose their particular identity. Where delivery is made to a purchaser in more than one state, or to different purchasers in different states, peculiar problems of attribution arise. In solving such problems consideration must be given to the following principles.

i. Where it can be shown that a taxpayer in one state sold a quantity of crude oil to a purchaser in another state, and the oil was transported to the purchaser by pipeline carrier, the sale will be attributed to the state where the crude oil is received by the purchaser, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline. Custom of the trade indicates the purchaser buys a quantity of oil of certain quality rather than any specific oil.

ii. In situations involving several deliveries in several different states to one or more purchasers, the general rules should be applied with logic and common sense.

f. Examples

i. Three different taxpayers, A, B, C, all in Texas, each sells to X Refinery, in Louisiana, 10,000 barrels of crude oil, shipped F.O.B., Texas, by public carrier pipeline.

(a) If X Refinery received all 30,000 barrels in Louisiana, each taxpayer must attribute his total sale to Louisiana.

(b) If X Refinery receives 10,000 barrels in Louisiana, 10,000 barrels in Mississippi, and 10,000 barrels in Alabama, it cannot be said by any taxpayer that all his sale was received either in Louisiana or in one of the other states. Since each taxpayer contributed one-third of the mass of commingled crude oil, it follows that one-third of each

taxpayer's sale was received in Louisiana, and accordingly must be attributed to Louisiana.

ii. Three different taxpayers, A, B, and C, in Texas, sell to three different purchasers, X Refinery in Louisiana, Y Refinery in Mississippi, and Z Refinery in Alabama. If A sells to X Refinery in Louisiana and delivery is by public carrier pipeline, the oil is received in Louisiana and the entire sale is attributed to Louisiana, even though the crude oil delivered might not be the identical oil sold because of commingling in the pipeline with oil sold by B and C to Y Refinery and Z Refinery.

g. In determining the place of receipt by the purchaser after the initial transportation has ended, peculiar problems may be created by the storage of the property purchased immediately upon purchase at a place other than the place of intended use. The primary problem created by such storage is in determining whether or not the transportation after storage relates to the sale by the taxpayer. Generally, the rules and principles set forth above will control where the storage is of temporary nature, such as that necessitated by lack of transportation, by change from one means of transportation to another, or by natural conditions. In cases where the storage is permanent or semi-permanent, delivery to the place of storage concludes the initial transportation, and the sale is attributed to the place of storage.

E. Loans factor. Loans made by the taxpayer as provided in R.S. 47:287.95(E) is the arithmetical average of the loan balances outstanding at the beginning and end of the taxable period. This factor is to be used only by taxpayers whose income is derived primarily from the business of making loans. If the average at the beginning and end of the year does not fairly represent the average of loans outstanding during the year, the average may be obtained by dividing the sum of the monthly balances by 12.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.95.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:105 (February 1988), repromulgated by the Policy Services Division, LR 30:482 (March 2004).

§1137. Exceptions to Taxable Year of Inclusion; Taxable Year Deductions Taken

A. Improperly Reported Item of Income. R.S. 47:287.442(A) does not relieve a taxpayer of the responsibility of filing a true and correct return and immediately correcting any errors which are discovered after the return is filed. If an error is discovered, it is the obligation of the taxpayer to file promptly an amended return reflecting the correct tax liability. The purpose of R.S. 47:287.442(A), so far as it deals with improperly reported items of income, is to preclude a taxpayer's being required to pay again on an item of income which has borne tax in full previously, even though for a period in which it was not properly reportable. An item of income will be deemed to have previously borne tax in full if the item, when multiplied by the lowest tax rate applicable to the taxpayer, results in a tax not less than the amount of tax actually paid on the return. If the item has not previously borne tax in full, R.S. 47:287.442(A) is not applicable to that portion of the item which has not previously borne tax. That portion, which shall be the difference between the item of income and the

taxable balance of net income, shall be reported as income during the year it was properly reportable.

B. Example: The ABC Corporation, by mistake, reported on its 1982 income tax return an item of accrued interest in the amount of \$5,000 which was properly reportable in 1983. It paid the Louisiana income tax shown to be due on the return. The company never discovered its error. In 1987, the secretary discovers the error. The return for 1982 shows the following.

Accrued interest	\$ 5,000
Income from operations	20,000
Total income	\$ 25,000
Less total authorized deductions	\$ 21,000
Taxable income	\$ 4,000
Tax per return	\$ 160
Computation to determine if item has borne tax in full:	
Amount improperly reported	\$ 5,000
Tax at lowest rate of taxpayer	\$ 200
Tax paid	160
Amount of tax unpaid	\$ 40
Computation of portion of item to be reported in 1983:	
Improperly reported item	\$ 5,000
Taxable balance of net income in 1982	4,000
Portion of item to be reported	\$ 1,000

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.442.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:484 (March 2004).

§1140. Exemption from Tax on Corporations

A. An organization claiming exemption under R.S. 47:287.501 must submit a copy of the Internal Revenue Service ruling establishing its exempt status. Once an organization establishes with the department its right to an exemption, it need not file any further reports until such time its right to an exemption changes. An organization that has furnished information to the department establishing its right to exemption under the prior law need not submit additional information until such time its exempt status with the Internal Revenue Service changes. A corporation is either entirely exempt or it is wholly taxable. A partial exemption is not permitted.

B. Mutual savings banks, national banking corporations, building and loan associations, and savings and loan associations are exempt from the tax imposed by this Chapter regardless of where organized.

C. Banking corporations organized under the laws of the state of Louisiana which are required by other laws of this state to pay a tax for their shareholders, or whose shareholders are required to pay a tax on their shares of stock, are exempt. Banking corporations, other than those described above, organized under the laws of a state other than the state of Louisiana are not exempt from the corporation income tax.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.501.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:485 (March 2004).

§1147. Notice of Regulation, Requiring Records, Statements and Special Returns

A. Every corporation subject to the provisions of Part II.A of Chapter 1 shall, for the purpose of enabling the secretary to determine the correct amount of income subject to tax, keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income and the deductions, credits, and other information required to be shown in any return. Such books or records required by this Section shall be available at all times for inspection by the secretary, and shall be retained so long as the contents thereof may be material in the administration of the income tax law. The secretary may at any time require the taxpayer to submit statements of net worth as of the beginning and end of the taxable year.

AUTHORITY NOTE: Promulgated in accordance with R.S.47:287.601.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:485 (March 2004).

§1148. Corporation Returns

A. General Rules. Every corporation deriving income from Louisiana sources shall file a return on forms secured from the secretary, unless expressly exempt from the tax. The first return and the last return of a corporation are returns for a full year and not for a fractional part of a year. A corporation does not go out of existence by virtue of being managed by a receiver or trustee who continues to operate it.

B. Liquidation. Upon liquidation or dissolution of a corporation there shall be attached to the final return a statement showing:

1. an outline of the plan under which the corporation was dissolved;
2. the date the dissolution was formally commenced;
3. the date the dissolution was completed;
4. the name and address of each shareholder at dissolution and the number and par value of the shares of stock held by each;
5. a description of assets conveyed to each shareholder, creditor, or other person, showing book value, fair market value, and location, as well as the name and address of each such person;
6. the consideration paid by each person for the assets received; and
7. whether the plan is intended to qualify under one of the sections of the Internal Revenue Code relating to nonrecognition in whole or in part of gain by a shareholder, and, if so, the section involved.

C. Receivers. Receivers, trustees in dissolution, trustees in bankruptcy, and assignees, operating the property or business of corporations, must file returns for such corporations. If a receiver has full custody of and control over the business or property of a corporation, he shall be deemed to be operating such business or property within the meaning of R.S. 47:287.612 whether he is engaged in carrying on the business for which the corporation was organized or only in marshaling, selling, and disposing of its assets for purposes of liquidation. However, a receiver in charge of only part of the property of a corporation, as, for example, a receiver in mortgage foreclosure proceedings

involving merely a small portion of its property, need not file a return.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.612.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:108 (February 1988), repromulgated by the Policy Services Division, LR 30:485 (March 2004).

§1168. Notice of Fiduciary Relationship

A. Notice. As soon as the secretary receives notice that a person is acting in a fiduciary capacity, such fiduciary must, except as otherwise specifically provided, assume the powers, rights, duties, and privileges of the taxpayer with respect to the income tax imposed by Part II.A. of Chapter 1. If the person is acting as a fiduciary for a transferee or other person subject to the liability specified in R.S. 47:287.682, such fiduciary is required to assume the powers, rights, duties, and privileges of the transferee or other person under that section. The amount of the tax or liability is ordinarily not collectible from the personal estate of the fiduciary, but is collectible from the estate of the taxpayer or from the estate of the transferee or other person subject to the liability specified in R.S. 47:287.682. [See however R.S. 47:1673]. The "notice to the secretary" provided for in R.S. 47:287.683 shall be a written notice signed by the fiduciary and filed with the secretary. The notice must state the name and address of the person for whom the fiduciary is acting, and the nature of the liability of such person; that is, whether it is a liability for tax, and if so, the year or years involved, or a liability at law or in equity of a transferee of property of a taxpayer, or a liability of a fiduciary in respect of the payment of any tax from the estate of the taxpayer. Any such written notice which has previously been filed with the secretary shall be considered as sufficient notice. Unless there is already on file with the secretary satisfactory evidence of the authority of the fiduciary to act for such person in a fiduciary capacity, such evidence must be filed with and made a part of the notice. If the fiduciary capacity exists by order of court, a certified copy of the order may be regarded as such satisfactory evidence. When the fiduciary capacity has terminated, the fiduciary, in order to be relieved of any further duty or liability as such, must file with the secretary written notice that the fiduciary capacity has terminated as to him, accompanied by satisfactory evidence of the termination of the fiduciary capacity. The notice of termination should state the name and address of the person, if any, who has been substituted as fiduciary.

B. Effect of Failure to Give Notice. If the notice of the fiduciary capacity described in Subsection A above is not filed with the secretary before the sending of notice of assessment by registered mail to the last known address of the taxpayer, or the last known address of the transferee or other person subject to liability, no notice of the deficiency will be sent to the fiduciary. In such a case the sending of the notice to the last known address of the taxpayer, transferee, or other person, as the case may be, will be a sufficient compliance with the requirements of the income tax law, even though such taxpayer, transferee, or other person is deceased, or is under a legal disability, or in the case of a corporation, has terminated its existence. Under such circumstances if no petition is filed with the Board of Tax Appeals within 60 days after the mailing of the notice to the

taxpayer, transferee, or other person, the assessment becomes final upon the expiration of such 60-day period and demand for payment will be made.

C. Definition. The term *fiduciary* means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

D. Limitation. This regulation shall not be taken to abridge in any way the powers and duties of fiduciaries provided for in other sections of the income tax law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.683.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:109 (February 1988), repromulgated by the Policy Services Division, LR 30:486 (March 2004).

§1189. Situs of Stock Canceled or Redeemed in Liquidation

A. General Rule. R.S. 47:287.747 provides that the situs of stock canceled or redeemed in the liquidation of a corporation, whether domestic or foreign, shall be in Louisiana in the same ratio that property located in Louisiana, and received by a shareholder, bears to the total property received in the liquidation. *Property* as used in R.S. 47:287.747 means all the assets of the liquidating corporation without regard to liabilities. For the purpose of determining the situs of the stock canceled or redeemed in liquidation, the fair market value of the property distributed in liquidation shall be used. The location of the property of the corporation shall be determined in accordance with the provisions of R.S. 47:287.93.

B. Example: X, shareholder, owns 10 percent of the shares of ABC, Inc., a foreign corporation. The basis of X's shares is \$1,000. On July 1, 1986, ABC Inc., liquidates and exchanges the following property for its outstanding stock, which it cancels.

	Total Assets (Fair Market Value)	Louisiana Assets (Fair Market Value)
Cash	\$ 10,000	\$ 2,000
Accounts receivable	50,000	8,000
Buildings	60,000	30,000
Land	60,000	10,000
Stocks	20,000	0
	\$ 200,000	\$ 50,000

Since one-fourth of the assets distributed in liquidation are located in Louisiana, one-fourth of X's stock has its situs in Louisiana.

Gain is computed as follows.

Fair market value of property received	\$ 20,000
Basis of property received	1,000
Gain	\$ 19,000
Louisiana taxable gain (1/4 of \$19,000)	\$ 4,750

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:287.747.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Income Tax Section, LR 14:109 (February 1988), repromulgated by the Policy Services Division, LR 30:486 (March 2004).

Cynthia Bridges
Secretary

0403#035

RULE

**Department of Revenue
Tax Commission**

Ad Valorem Taxation

(LAC 61.V.303, 309, 703, 907, 1103, 1503, 2503, 2703, 2705, 2707, 2711, 2713, 2717, 3101, 3105, and 3501)

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, the Tax Commission has adopted, and/or amended sections of the Louisiana Tax Commission Real/Personal Property rules and regulations for use in the 2004 (2005 Orleans Parish) tax year.

This 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, 2004. Cost indexes required to finalize these assessment tables are not available to this office until late October 2003. The effective date of this Emergency Rule is January 1, 2004.

Title 61

REVENUE AND TAXATION

Part V. Ad Valorem Taxation

Chapter 3. Real and Personal Property

§303. Real Property

A. - B. ...

1. Improvements shall be added to the rolls based upon the condition of things existing on January 1 of each year (except Orleans Parish). New improvements for Orleans Parish shall be added to the next year's tax roll, based upon the condition of things existing on August 1 of each year. Value of the improvements will be indexed to the date of the last reappraisal.

B.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:2323.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 7:44 (February 1981), amended by the Department of Revenue and Taxation, Tax Commission, LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 16:1063 (December 1990), LR 17:611 (June 1991), LR 21:186 (February 1995), amended by the Department of Revenue, Tax Commission, LR 25:312 (February 1999), LR 26:506 (March 2000), LR 29:367 (March 2003), LR 30:487 (March 2004).

§309. Tax Commission Miscellaneous Forms

A. - C. ...

D. TC Forms C01, C02, C03, C04A and C04B, should be used to electronically process change order requests submitted by tax assessor's offices.

1. All change order forms TC-21, Alpha 4 (Electronic), and/or LTC web site format shall be submitted in accordance with the provisions of Title 47, Sections 1835, 1966, 1990 and 1991. The assessor shall provide each affected taxpayer with a copy of any change order that has been issued.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1712, R.S. 47:1835, R.S. 47:1837, R.S. 47:1966, R.S. 47:1990, R.S. 47:1991 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: 424 (March 2001), LR 28:517 (March 2003), LR 30:487 (March 2004).

Chapter 7. Watercraft

§703. Tables? Watercraft

A. Floating Equipment? Motor Vessels

Cost Index (Average)		Average Economic Life 12 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2003	.995	1	94	.94
2002	1.012	2	87	.88
2001	1.018	3	80	.81
2000	1.027	4	73	.75
1999	1.045	5	66	.69
1998	1.048	6	58	.61
1997	1.057	7	50	.53
1996	1.074	8	43	.46
1995	1.091	9	36	.39
1994	1.130	10	29	.33
1993	1.162	11	24	.28
1992	1.184	12	22	.26
1991	1.199	13	20	.24

B. Floating Equipment? Barges (Non-Motorized)

Cost Index Average		Average Economic Life 20 Years		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2003	.995	1	97	.97
2002	1.012	2	93	.94
2001	1.018	3	90	.92
2000	1.027	4	86	.88
1999	1.045	5	82	.86
1998	1.048	6	78	.82
1997	1.057	7	74	.78
1996	1.074	8	70	.75
1995	1.091	9	65	.71
1994	1.130	10	60	.68
1993	1.162	11	55	.64
1992	1.184	12	50	.59
1991	1.199	13	45	.54
1990	1.223	14	40	.49
1989	1.256	15	35	.44
1988	1.323	16	31	.41
1987	1.379	17	27	.37
1986	1.399	18	24	.34
1985	1.413	19	22	.31
1984	1.434	20	21	.30
1983	1.473	21	20	.29

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 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:487 (March 2004).

Chapter 9. Oil and Gas Properties

§907. Tables—Oil and Gas

A. ...

1. Oil, Gas and Associated Wells; Region 1 North 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.	13.61	38.78	2.04	5.82
1,250 – 2,499 ft.	13.54	22.68	2.03	3.40
2,500 – 3,749 ft.	16.46	20.35	2.47	3.05
3,750 – 4,999 ft.	20.09	25.06	3.01	3.76
5,000 – 7,499 ft.	25.20	25.01	3.78	3.75
7,500 – 9,999 ft.	35.74	35.38	5.36	5.31
10,000 – 12,499 ft.	47.55	44.67	7.13	6.70
12,500 – Deeper ft.	N/A	77.26	N/A	14.59

2. Oil, Gas and Associated Wells; Region 2 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.	66.58	92.73	9.99	13.91
1,250 – 2,499 ft.	66.22	124.84	9.93	18.73
2,500 – 3,749 ft.	73.23	102.78	10.98	15.42
3,750 – 4,999 ft.	47.12	76.04	7.07	11.41
5,000 – 7,499 ft.	75.30	73.24	11.30	10.99
7,500 – 9,999 ft.	88.46	77.47	13.27	11.62
10,000 – 12,499 ft.	96.34	87.88	14.45	13.18
12,500 – 14,999 ft.	92.51	108.85	13.88	16.33
15,000 – 17,499 ft.	142.72	135.14	21.41	20.27
17,500 – 19,999 ft.	109.17	164.69	16.38	24.70
20,000 – Deeper ft.	163.52	243.97	24.53	36.60

3. Oil, Gas and Associated Wells; Region 3? Offshore State Waters*

Producing Depths	Cost – New by depth, per foot		15% of Cost – 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.	363.54	494.92	54.53	74.24
2,500 – 3,749 ft.	272.56	369.11	40.88	55.37
3,750 – 4,999 ft.	279.91	406.55	41.99	60.98
5,000 – 7,499 ft.	231.95	239.64	34.79	35.95
7,500 – 9,999 ft.	224.79	214.19	33.72	32.13
10,000 – 12,499 ft.	229.55	220.43	34.43	33.06
12,500 – 14,999 ft.	227.13	209.90	34.07	31.49
15,000 – 17,499 ft.	189.70	243.52	28.46	36.53
17,500 – Deeper ft.	N/A	310.10	N/A	46.52

*As classified by Louisiana Office of Conservation.

B. - B.1. ...

2. Serial Number to Percent Good Conversion Chart

Year	Beginning Serial Number	Ending Serial Number	25 Year Life Percent Good
2003	227742	Higher	96
2002	226717	227741	92
2001	225352	226716	88
2000	223899	225351	84
1999	222882	223898	80
1998	221596	222881	76
1997	220034	221595	72
1996	218653	220033	68

1995	217588	218652	64
1994	216475	217587	60
1993	215326	216474	56
1992	214190	215325	52
1991	212881	214189	48
1990	211174	212880	44
1989	209484	211173	40
1988	207633	209483	36
1987	205211	207632	32
1986	Lower	205210	30*
VAR.	900000	Higher	50

*Reflects residual or floor rate.

3. Adjustments for Allowance of Economic Obsolescence

a. All wells producing 10 bbls oil or 100 mcf gas, or less, per day, as well as, all active service wells (i.e. injection, salt water disposal, water source, etc.) shall be allowed a 40 percent reduction. Taxpayer shall provide the assessor with proper documentation to claim this reduction.

B.3.b. - C.6. ...

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 27:425 (March 2001), LR 28:518 (March 2002), LR 29:368 (March 2003), LR 30:488 (March 2004).

Chapter 11. Drilling Rigs and Related Equipment

§1103. Drilling Rigs and Related Equipment Tables

A. Land Rigs

Depth "0" to 7,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
3,000	351,200	52,700
4,000	422,000	63,300
5,000	502,500	75,400
6,000	583,000	87,500
7,000	762,500	114,400
Depth 8,000 to 10,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
8,000	975,000	146,300
9,000	1,209,500	181,400
10,000	1,510,000	226,500
Depth 11,000 to 15,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
11,000	1,810,500	271,600
12,000	1,934,000	290,100
13,000	1,998,500	299,800
14,000	2,167,200	325,100
15,000	2,648,500	397,300
Depth 16,000 to 20,000 Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
16,000	3,129,000	469,400
17,000	3,612,900	541,900
18,000	4,096,600	614,500

19,000	4,525,500	678,800
20,000	4,790,000	718,500
Depth 21,000 + Feet		
Depth (Ft.)	Fair Market Value	Assessment
	\$	\$
21,000	5,054,500	758,200
25,000 +	6,112,500	916,900

B. Jack-Ups

Type	Water Depth Rating	Fair Market Value	Assessment
IC	0-199 FT.	\$ 13,500,000	\$ 2,025,000
	200-299 FT.	20,000,000	3,000,000
	300- Up FT.	50,000,000	7,500,000
IS	0-199 FT.	15,000,000	2,250,000
	200-299 FT.	25,000,000	3,750,000
	300- Up FT.	30,000,000	4,500,000
MC	0-199 FT.	5,000,000	750,000
	200-299 FT.	10,000,000	1,500,000
	300- Up FT.	20,670,000	3,100,500
MS	0-249 FT.	10,500,000	1,575,000
	250- Up FT.	20,670,000	3,100,500

* * *

C. ...

D. Well Service Rigs Land Only (Good Condition)

Class	Mast	Engine	Fair Market Value	Assessment
I	72' X 125M# 75' X 150M#	6V71	161,875	24,280
II	96' X 150M# 96' X 180M# 96' X 185M# 96' X 205M# 96' X 210M# 96' X 212M# 96' X 215M#	8V71	210,875	31,600
III	96' X 240M# 96' X 250M# 96' X 260M# 102' X 215M#	8V92	209,125	31,400
IV	102' X 224M# 102' X 250M# 103' X 225M# 103' X 250M# 104' X 250M# 105' X 225M# 105' X 250M#	12V71	259,875	39,000
V	105' X 280M# 106' X 250M# 108' X 250M# 108' X 260M# 108' X 268M# 108' X 270M# 108' X 300M#	12V71 12V92	285,250	42,800
VI	110' X 250M# 110' X 275M# 112' X 300M# 112' X 350M#	12V71 (2) 8V92	329,875	49,500
VII	117' X 215M#	(2) 8V92 (2) 12V71	422,625	63,400

* * *

Note: These tables assume complete rigs in good condition. If it is documented to the assessor that any rig is incomplete or is in less than good condition, these amounts should be adjusted.

* * *

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 27:426 (March 2001), LR 28:519 (March 2002), LR 30:488 (March 2004).

Chapter 15. Aircraft

§1503. Aircraft (Including Helicopters) Table

A. Aircraft (Including Helicopters)

Cost Index (Average)		Average Economic Life (10 Years)		
Year	Index	Effective Age	Percent Good	Composite Multiplier
2003	.995	1	92	.92
2002	1.012	2	84	.85
2001	1.018	3	76	.77
2000	1.027	4	67	.69
1999	1.045	5	58	.61
1998	1.048	6	49	.51
1997	1.057	7	39	.41
1996	1.074	8	30	.32
1995	1.091	9	24	.26
1994	1.130	10	21	.24
1993	1.162	11	20	.23

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 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004).

Chapter 25. General Business Assets

§2503. Tables Ascertaining Economic Lives, Percent Good and Composite Multipliers of Business and Industrial Personal Property

A. ...

* * *

B. Cost Indices

Year	Age	National Average 1926 = 100	January 1, 2003 = 100*
2003	1	1118.6	.995
2002	2	1100.0	1.012
2001	3	1093.4	1.018
2000	4	1084.3	1.027
1999	5	1065.0	1.045

Year	Age	National Average 1926 = 100	January 1, 2003 = 100*
1998	6	1061.8	1.048
1997	7	1052.7	1.057
1996	8	1036.0	1.074
1995	9	1020.4	1.091
1994	10	985.0	1.130
1993	11	958.0	1.162
1992	12	939.8	1.184
1991	13	928.5	1.199
1990	14	910.2	1.223
1989	15	886.5	1.256
1988	16	841.4	1.323
1987	17	806.9	1.379

Year	Age	National Average 1926 = 100	January 1, 2003 = 100*
1986	18	795.4	1.399
1985	19	787.9	1.413
1984	20	776.4	1.434
1983	21	755.8	1.473
1982	22	742.4	1.499
1981	23	709.2	1.570
1980	24	642.8	1.732
1979	25	584.4	1.905
1978	26	534.7	2.082

*Reappraisal Date: January 1, 2003 – 1113.1 (Base Year)

C. ...

D. Composite Multipliers 2004 (2005 Orleans Parish)

Age	3 Yr	5 Yr	8 Yr	10 Yr	12 Yr	15 Yr	20 Yr	25 Yr
1	.70	.85	.90	.92	.94	.95	.97	.98
2	.50	.70	.80	.85	.88	.91	.94	.96
3	.35	.53	.68	.77	.81	.87	.92	.95
4	.21	.35	.55	.69	.75	.81	.88	.92
5		.24	.45	.61	.69	.76	.86	.91
6		.21	.35	.51	.61	.71	.82	.88
7			.27	.41	.53	.66	.78	.86
8			.24	.32	.46	.59	.75	.84
9			.22	.26	.39	.53	.71	.82
10				.24	.33	.49	.68	.80
11				.23	.28	.43	.64	.79
12					.26	.37	.59	.76
13					.24	.31	.54	.72
14						.28	.49	.68
15						.26	.44	.65
16						.26	.44	.64
17							.37	.61
18							.34	.55
19							.31	.48
20							.30	.43
21							.29	.38
22								.34
23								.33
24								.35
25								.38
26								.42

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 27:427 (March 2001), LR 28:520 (March 2002), LR 29:370 (March 2003), LR 30:489 (March 2004).

Chapter 27. Guidelines for Application, Classification and Assessment of Land Eligible to be Assessed at Use Value

§2703. Eligibility Requirements and Application for Use Value Assessment

A. ...

1. meet the definition of bona fide agricultural, horticultural, marsh or timberland as described in Section 2302 of Title 47 of the Louisiana Revised Statutes of 1950 and the eligibility requirements of R.S. 47:2303; and

A.2 - B.1. ...

2. the landowner must sign an agreement that the land will be devoted to one or more of the designated uses as defined in Section 2302 of Title 47 of the Louisiana Revised Statutes of 1950 and meet the eligibility requirements of R.S. 47:2303.

C. ...

AUTHORITY NOTE: Promulgated in accordance with ISA 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), amended by the Department of Revenue, Tax Commission, LR 25:318 (February 1999), LR 26:510 (March 2000), LR 30:490 (March 2004).

§2705. Classification

A. - B. ...

Vernon

C. ...

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 27:428 (March 2001), LR 28:521 (March 2002), LR 29:372 (March 2003), LR 30:491 (March 2004).

§2711. Tables? Agricultural and Horticultural Lands

A. Weighted Average Income Per Acre 1999 - 2002

Commodity	Acres	Percent	Net Income	Weighted Fractional
Beef **	2,335,838	37.298	(27.22)	-0-
Soybeans (Wheat) *	845,000	13.493	(16.36)	-0-
Cotton	678,750	10.838	(44.37)	-0-
Rice (Crawfish) *	548,250	8.754	69.19	605.67
Sugarcane	456,250	7.285	205.39	1,496.33
Corn	403,750	6.447	(43.67)	-0-
Idle Crop ***	362,516	5.789		-0-
Grain Sorghum	217,500	3.473	(10.90)	-0-
Conservation Reserve	200,899	3.208	43.73	140.29
Dairy **	171,466	2.738	(126.61)	-0-
Sweet Potatoes	23,500	0.375	210.87	79.13
Catfish	13,466	0.215	(72.71)	-0-
Watermelon	2,975	0.047	(292.79)	-0-
Southern Peas	1,561	0.025	341.93	8.52
Tomatoes	562	0.009	10,841.73	97.21
Strawberries	388	0.006	9,779.33	60.51
Total	6,262,669	100.000	---	2,487.65

Weighted Average Net Income - \$24.88

B. Suggested Capitalization Rate for Agricultural and Horticultural Lands

Risk Rate	1.86%
Illiquidity Rate	0.09%
Safe Rate *	5.68%
Capitalization Rate **	7.63%

§2707. Map Index Table

A. 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

Parish	Date (General)	Map No. (General)	Date Published or Status(Modern)

Bienville	Nov., 1971	4-R-16791-B	August, 2003

Jeff Davis	Jan., 1970	4-R-28746-A	September, 2003

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 27:428 (March 2001), LR 28:521 (March 2002), LR 29:372 (March 2003), LR 30:491 (March 2004).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:764 (December 1987), LR 17:1213 (December 1991), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 26:511 (March 2000), LR 30:491 (March 2004).

§2713. Assessment of Timberland

A. - C.4. ...

D. Production Costs of Timberland. The average timberland production costs are hereby established to be \$10.46/acre/year.

E. Gross Returns of Timberland. The gross value per cubic foot of timber production is hereby established to be \$0.81/cubic/foot.

F. Capitalization Rate for Timberland. The capitalization rate for determining use value of timberlands is hereby established to be as follows.

Timberland	Class 1, 2, and 3	Class 4
Risk Rate	0.97%	4.47%
Illiquidity Rate	0.10%	3.60%
Safe Rate	5.68%	5.68%
Other Factors	5.55%	5.55%
Capitalization Rate	12.30%	19.30%

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 14:872 (December 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), amended by the Department of Revenue, Tax Commission, LR 26:511 (March 2000), LR 30:492 (March 2004).

§2717. Tables? Use Value

A. Average Assessed Value Per Acre of Agricultural and Horticultural Land, by Class

Class	Assessed Value	
	Per Acre Upper	Per Acre Lower
Class I	\$34.79	\$29.40
Class II	\$29.19	\$21.94
Class III	\$21.52	\$19.04
Class IV	\$18.62	\$12.40

B. Average Assessed Value Per Acre of Timberland, by Class

Class	Assessed Value Per Acre
Class 1	\$40.52
Class 2	\$29.34
Class 3	\$13.95
Class 4	\$8.89

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:2301 through R.S. 47:2308.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 8:102 (February 1982), amended LR 9:69 (February 1983), LR 12:36 (January 1986), LR 13:248 (April 1987), LR 13:764 (December 1987), LR 14:110 (February 1988), LR 17:1213 (December 1991), LR 22:117 (February 1996), LR 23:208 (February 1997), amended by the Department of Revenue, Tax Commission, LR 24:491 (March 1998), LR 26:511 (March 2000), LR 30:492 (March 2004).

Chapter 31. Public Exposure of Assessments; Appeals
§3101. Public Exposure of Assessments, Appeals to the Board of Review and Board of Review Hearings

A. - J. ...

Form 3101

Exhibit A

Appeal to Board of Review

By Taxpayer

For Real and Personal Property

I feel that the Fair Market Value of this real property as of January 1, 2003, the official reappraisal valuation date on which assessments are currently based was:

Form 3103.A

Exhibit A

Appeal To Louisiana Tax Commission

By Taxpayer or Assessor

For Real and Personal Property

I understand that property is assessed at a percentage of fair market value, which means the price for the property which would be agreed upon between a willing and informed buyer and a willing and informed seller, under usual and ordinary circumstances, the highest price the property would bring on the open market, if exposed for sale for a reasonable time. I feel that the Fair Market Value of this real property, as of January 1, 2003, the official reappraisal valuation date on which assessments are based, was:

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), amended by the Department of Revenue, Tax Commission, LR 25:319 (February 1999), LR 26:512 (March 2000), LR 30:492 (March 2004).

§3105. Practice and Procedure for Public Service Properties Hearings

A. - S. ...

Form 3105.A

Exhibit A

Appeal To Louisiana Tax Commission

By Taxpayer or Assessor

For Public Service Property

I feel that the Fair Market Value of this real property, as of January 1, 2003, the official reappraisal valuation date on which assessments are currently based, was:

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1837 and R.S. 47:1856.

HISTORICAL NOTE: Promulgated by the Louisiana Tax Commission, LR 4:339 (September 1978), amended by the Department of Revenue and Taxation, Tax Commission, LR 10:947 (November 1984), LR 15:1097 (December 1989), LR 20:198 (February 1994), LR 21:186 (February 1995), LR 23:209 (February 1997), amended by the Department of Revenue, Tax Commission,

LR 24:493 (March 1998), LR 25:320 (February 1999), LR 26:513 (March 2000), LR 30:492 (March 2004).

Chapter 35. Miscellaneous

§3501. Service Fees? Tax Commission

A. The Tax Commission is authorized by R.S. 47:1838 to levy and collect fees on an interim basis for the period beginning on July 1, 2003 and ending on June 30, 2004, in connection with services performed by the Tax Commission as follows:

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:1835 and R.S. 47:1838.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Tax Commission, LR 19:212 (February 1993), amended LR 20:198 (February 1994), amended by the Department of Revenue, Tax Commission, LR 24:494 (March 1998), LR 25:320 (February 1999), LR 26:513 (March 2000), LR 28:521 (March 2002), LR 30:493 (March 2004).

Elizabeth L. Guglielmo
Chairman

0403#028

RULE

**Department of Social Services
Office of Family Support**

**Food Stamp Program? Time Limitation for Certain Aliens
(LAC 67.III.1932 and 1995)**

The Department of Social Services, Office of Family Support, has amended the Louisiana Administrative Code, Title 67, Part III, Subpart 3, Food Stamps.

Pursuant to Public Law 107-171, The Food Stamp Reauthorization Act of 2002, the agency has amended §§1932 and 1995, to comply with mandates issued by the U. S. Department of Agriculture, Food and Nutrition Service. Section 4401 of P.L. 107-171 provides for the restoration of food stamp eligibility to qualified aliens who are otherwise eligible and under the age of 18 regardless of their date of entry into the United States. Section 4401 also eliminates the deeming requirements for any qualified alien under the age of 18. These requirements count the income and resources of the alien's sponsor when determining food stamp eligibility and benefit amounts for the alien child.

A Declaration of Emergency effecting these changes was signed October 1, 2003, and published in the October issue of the *Louisiana Register*.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter D. Citizenship and Alien Status

§1932. Time Limitations for Certain Aliens

A. ...

B. The following qualified aliens are eligible for an unlimited period of time:

1. - 5. ...

6. effective October 1, 2003, individuals who are lawfully residing in the United States and are under 18 years of age;

7. ...

AUTHORITY NOTE: Promulgated in accordance with P. L. 104-193, P. L. 105-33, P. L. 105-185, and P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:711 (April 1999), amended LR 29:606 (April 2003), LR 30:493 (March 2004).

**Subchapter K. Action on Households with Special
Circumstances**

§1995. Sponsored Aliens

A. The full amount of income and resources of an alien's sponsor and the sponsor's spouse are counted in determining the eligibility and allotment level of a sponsored alien until the alien becomes a citizen or has worked 40 qualifying quarters of Social Security coverage. These provisions do not apply to battered aliens, their children, the alien parent of a battered child, or effective October 1, 2003, any alien under 18 years of age.

AUTHORITY NOTE: Promulgated in accordance with F.R. 47:55463 et seq. and 47:55903 et seq., 7 CFR 273.11, P.L. 104-193, P. L. 104-208, P. L. 105-33, and P. L. 107-171.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:130 (March 1983), amended by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), LR 24:355 (February 1998), LR 30:493 (March 2004).

Ann S. Williamson
Secretary

0403#081

RULE

**Department of Social Services
Office of Family Support**

**Strategies to Empower People (STEP) Program
(LAC 67:III.1209, 1213, 1221, 1231,1237-1249, 1983, 1987,
5103-5107, 5111, 5321, 5335, 5339, 5341, 5701-5729)**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and pursuant to Act 58 of the 2003 Regular Session of the Louisiana Legislature, the Department of Social Services, Office of Family Support, has adopted LAC 67:III, Subpart 16, Chapter 57, Strategies to Empower People (STEP) Program and has amended Subpart 2, Chapter 12, Family Independence Temporary Assistance Program (FITAP), Subpart 3, Chapter 19, Food Stamps, Subpart 12, Chapter 51, Child Care Assistance Program (CCAP), and Subpart 13, Chapter 53, Kinship Care Subsidy Program (KCSP).

Title 67

SOCIAL SERVICES

Part III. Family Support

**Subpart 2. Family Independence Temporary Assistance
Program**

**Chapter 12. Application, Eligibility, and Furnishing
Assistance**

**Subchapter A. Application, Determination of Eligibility,
and Furnishing Assistance**

§1209. Notices of Adverse Actions

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A

concurrent notice shall be sent to the client at the time of action in the following situations:

1 - 9. ...

10. Repealed.

11. - 17. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B. and R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 26:349 (February 2000), LR 29:2565 (December 2002), LR 30:493 (March 2004).

§1213. Domestic Violence

A. The secretary shall waive, for as long as necessary, pursuant to a determination of good cause, any public assistance program requirement that will create obstacles for a victim of domestic violence to escape a domestic violence situation, including but not limited to, time limits on receipt of assistance; work, training, or educational requirements; limitations on TANF assistance to noncitizens; child support or paternity establishment cooperation requirements; residency requirements; and any other program requirements which will create obstacles for such victim to escape violence or penalize that victim for past, present, and potential for abuse. However, a victim of domestic violence shall develop a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of a domestic violence situation. This plan shall be made part of the participant's Family Success Agreement.

B. - C.5. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.1.B, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 30:494 (March 2004).

Subchapter B. Conditions of Eligibility

§1221. Age Limit

A. A dependent child must be:

1. under 18 years of age; or
2. 18 years of age, enrolled in a secondary school or its equivalent, and expected to graduate on or before his 19th birthday.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.2, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2448 (December 1999), amended LR 30:494 (March 2004).

§1231. Immunization

A. Failure to follow the schedule of immunizations as promulgated by the Louisiana Office of Public Health for any child under 18 years of age, without good cause, shall result in case closure.

1. The appropriate STEP sanction shall be imposed on a work-eligible family.
2. The case of a family that is not work-eligible shall be closed for at least one month and until the child is in compliance.

B. No person is required to comply with this provision if that person or his/her parent or guardian submits a written statement from a physician stating that the immunization procedure is contraindicated for medical reasons, or if the

person or his/her parent or guardian objects to the procedure on religious grounds.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.4, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2451 (December 1999), amended LR 30: 494 (March 2004).

§1237. School Attendance

A. Work-eligible FITAP recipients must meet the school attendance requirements outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.3, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR 30:494 (March 2004).

§1239. Assignment of Support Rights and Cooperation with Support Enforcement Services

A. - B.2.d. ...

3. Failure to cooperate in establishing paternity or obtaining child support will result in case closure. The appropriate STEP sanction shall be imposed on a work-eligible family. The case of a family that is not work-eligible shall be closed for at least one month and until the family cooperates.

B.4. - E. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR:30 494 (March 2004).

§1241. Sanctions for Refusal to Accept a Job

A. Refusal to accept a job will result in the appropriate sanction being imposed on a work-eligible family.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.1.B, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2452 (December 1999), amended LR:30:494 (March 2004).

§1243. Work Requirements

A. Recipients must meet the work requirements outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.7., 46:231.8 and 46:231.9, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR 30: 494 (March 2004).

§1245. Parenting Skills Education

A. Recipients must meet the requirements for parenting skills education as outlined in LAC 67:III.Chapter 57.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474 and R.S. 46:231.5, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR:30:494 (March 2004).

§1247. Time Limits

A. The Office of Family Support shall deny FITAP cash benefits to families if the parent has received FITAP for at least 24 months, whether consecutive or not, during the prior 60-month period. Only months of FITAP receipt after the

January 1, 1997 date of implementation count toward the 24-month limit.

B. The following situations represent exemptions from the 24-month time limit:

1. the household contains a permanently incapacitated or disabled individual; or

2. months after June 1999 in which a recipient receives the earned income disregard shall not count toward the 24-month time limit.

C. An extension of the 24-month time limit may be granted in the following situations:

1. an individual has been actively seeking employment by engaging in appropriate job-seeking activities and required work activities as specified in the participant's Family Success Agreement (FSA) but is unable to find employment;

2. factors relating to job availability are unfavorable;

3. an individual loses his job as a result of factors not related to his job performance;

4. an extension of benefits of up to one year will enable an individual to complete employment-related education or training, including workplace literacy, and is required as part of an FSA, where an individual has received an assessment that indicates such activities will likely result in long-term success in the workforce;

5. other hardships have occurred which affect the individual's ability to obtain employment.

D. Eligibility for cash assistance under a program funded by Part IV of the Social Security Act is limited to a lifetime limit of 60 months. No cash assistance will be provided to a family that includes an adult who has received assistance for 60 months (whether or not consecutive) unless one of the following hardships exists (in households with two caretaker relatives, both caretaker relatives must meet at least one of these criteria).

1. An individual has been actively seeking employment by engaging in appropriate job-seeking activities and required work activities as specified in the participant's Family Success Agreement (FSA) but is unable to find employment.

2. Factors relating to job availability are unfavorable.

3. An individual loses his job as a result of factors not related to his job performance.

4. An extension of benefits of up to one year will enable an individual to complete employment-related education or training, including workplace literacy, and is required as part of an FSA, where an individual has received an assessment that indicates such activities will likely result in long-term success in the workforce.

5. Other hardships have occurred which affect the individual's ability to obtain employment.

E. Any month for which such assistance was provided will be disregarded from the 24- and 60-month time limits with respect to the individual, if the individual was:

1. a minor child; and

2. not the head of a household or married to the head of a household.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.6. and R.S. 46:460.5(A)(3), Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December

1999), amended LR 26:349 (February 2000), LR 27:2263 (December 2001), amended LR 30:494 (March 2004).

§1249. Drug Screening, Testing, Education and Rehabilitation Program

A. - D. ...

E. Failure to Cooperate. Failure or refusal of a recipient to participate in drug screening, testing, or participation in the education and rehabilitation program, without good cause, will result in case closure.

1. The appropriate STEP sanction shall be imposed on a work-eligible family.

2. The case of a family that is not work-eligible shall remain closed for at least one month and until the client has complied.

F. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B., Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2453 (December 1999), amended LR:30:495 (March 2004).

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter I. Income and Deductions

§1983. Income Deductions and Resource Limits

A.1. - 2. ...

3. The maximum dependent care deduction is \$200 per month for each child under two years of age and \$175 for each other dependent.

a. A child care expense that is paid for or reimbursed by the STEP Program or the Child Care Assistance Program is not deductible except for that portion of the cost which exceeds the payment or reimbursement.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.9 (d)(2) and (d)(6), P.L. 104-193, P.L. 106-387 and P.L. 107-171, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 12:285 (May 1986), amended LR 12:423 (July 1986), LR 12:824 (December 1986), LR 13:181 (March 1987), LR 14:684 (October 1988), LR 15:14 (January 1989), amended by the Department of Social Services, Office of Family Support, LR 19:303 (March 1993), LR 19:905 (July 1993), LR 20:780 (July 1994), LR 20:990 (September 1994), LR 20:1362 (December 1994), LR 21:186 (February 1995), LR 23:82 (January 1997), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 29:607 (April 2003), LR 30:495 (March 2004).

Subchapter J. Determining Household Eligibility and Benefit Levels

§1987. Categorical Eligibility for Certain Recipients

A. Households Considered Categorically Eligible

1. Households in which a member is a recipient of benefits from the FITAP, STEP, and/or Kinship Care Subsidy Programs, and households in which all members are recipients of SSI, shall be considered categorically eligible for food stamps.

A.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274; F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended LR 12:755 (November 1986), amended

by the Department of Social Services, Office of Family Support, LR 18:142 (February 1992), LR 18:686 (July 1992), LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004).

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance Program

§5103. Conditions of Eligibility

A. Family Independence Temporary Assistance Program (FITAP) recipients who are satisfactorily participating in the Strategies to Empower People (STEP) Program, as determined by the case worker, are categorically eligible. The program will pay 100 percent of the FITAP/STEP participant's child care costs, up to the maximum amounts listed in 5109.B. The following eligibility criteria must be met:

A.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 30:496 (March 2004).

§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. The children of STEP participants shall be categorically eligible for child care benefits. The children of STEP participants whose FITAP eligibility is terminated due to earned income will be given priority status with slots available for them as long as other eligibility factors are met and funding is available.

A.2. - 2.a. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 26:2827 (December 2000), LR 30:496 (March 2004).

§5107. Child Care Providers

A. The head of household, or parent/caretaker relative in the case of a STEP 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. - C. ...

D. Under no circumstance can the following be considered an eligible child care provider:

1. ...

2. the child's parent or guardian; or parent/caretaker relative in the case of a STEP 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);

D.3. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:496 (March 2004).

§5111. Ineligible Payments

A. - B.2. ...

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. - 2. ...

3. 24 months for the third violation and for any additional violations. EXCEPTION: The disqualification process will be waived for STEP 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, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:2830 (December 2000), amended LR 30:496 (March 2004).

Subpart 13. Kinship Care Subsidy Program (KCSP) Chapter 53. Application, Eligibility, and Furnishing Assistance.

Subchapter B. Conditions of Eligibility

§5321. Age Limit

A. A dependent child must be:

1. under 18 years of age; or

2. 18 years of age, enrolled in a secondary school or its equivalent and expected to graduate on or before his nineteenth birthday.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B and R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:352 (February 2000), amended LR 30:496 (March 2004).

§5335. School Attendance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B and R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:354 (February 2000), repealed LR 30:496 (March 2004).

§5339. Parenting Skills Education

A. As a condition of eligibility for KCSP benefits any child under age 19 who is pregnant or the parent of a child under the age of one must attend a parenting skills education program. Failure to meet this requirement without good cause shall result in that minor's ineligibility. Ineligibility will continue until the child has complied.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:496 (March 2004).

§5341. Drug Screening, Testing, Education and Rehabilitation Program

A. - C. ...

D. Failure to Cooperate. Failure or refusal of a recipient to participate in drug screening, testing, or participation in the education and rehabilitation program, without good cause, will result in ineligibility of the noncompliant individual. Cooperation is defined as participating in the component in which the recipient previously failed to cooperate. This includes drug screening, drug testing, or satisfactory participation for two weeks in an education and rehabilitation program.

E. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:355 (February 2000), amended LR 30:497 (March 2004).

Subpart 16. Strategies to Empower People (STEP) Program

Chapter 57. Strategies to Empower People (STEP) Program

Subchapter A. Designation and Authority of State Agency

§5701. General Authority

A. The Strategies to Empower People Program is established in accordance with state and federal laws effective October 1, 2003, to assist recipients of cash assistance to become self-sufficient by providing needed employment-related activities and support services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:497 (March 2004).

§5703. Program Administration

A. The STEP program will be administered by OFS State Office, Regional and Parish staff.

B. The Department of Social Services will coordinate with the Louisiana Workforce Commission, who will identify, direct, and coordinate the provision of employment services offered through the STEP program. These services will include but are not limited to:

1. job readiness, job preparation, and job search;
2. workplace literacy and related assessments; and
3. applicable skill-based training, employer-based training, and other employment activities designed to meet the needs of Louisiana employers with a preference towards demand occupations.

C. The Louisiana Workforce Commission shall coordinate the provision of services utilizing the Department of Labor, one-stop services centers, the Louisiana Community and Technical College system, and the Department of Education adult literacy and community-based organizations.

D. A grievance procedure is available for resolving displacement complaints by regular employees or their representatives relating to STEP participants. A grievance procedure is also available for resolving complaints by, or on behalf of, STEP participants in a work-related activity. This grievance procedure hears complaints relating to on-the-job working conditions and workers' compensation coverage.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:497 ((March 2004).

§5705. Definitions

Family Assessment? consists of an initial employability assessment and a comprehensive assessment.

1. Initial employability assessment is designed to determine the applicant's level of employability, immediate needs, and family circumstances during the application process.

2. Comprehensive assessment is conducted once the applicant is certified for eligibility and shall include workplace literacy, basic skills and educational attainment, interests and aptitude related to employment, barriers to employment, need for education, supportive services such as child care and transportation, and other supportive services. Specialized assessments can occur for issues that arise after an initial assessment has been completed and could include substance abuse, domestic violence, mental health screening, or others as determined by the department.

Family Success Agreement (FSA)? the mutually developed contract between a Family Independence Temporary Assistance Program (FITAP) recipient, on behalf of their family, and the agency that sets forth mutual and time-bound responsibilities, expectations, activities, and goals designed to transition the family from receipt of FITAP to self-sufficiency.

Family Transition Assessment (FTA)? mutually developed plan between a FITAP recipient, on behalf of their family, and the agency, for those families nearing the end of their FITAP eligibility to identify the action plan necessary to enable a successful transition from receipt of FITAP to self-sufficiency.

Strategies to Empower People (STEP)? the program that provides education, employment, training and related services for families receiving FITAP assistance.

Temporary Exception? a limited time period in which the work-eligible recipient does not have to participate in an assigned work activity due to temporary incapacity or illness, unavailable child care, or a domestic violence situation.

Work-Eligible Family? a FITAP family (including cases which do not receive cash because their benefit would be less than \$10) which includes at least one adult under age 60 or a teen head of household who is not permanently disabled or incapacitated, or who is not caring for a family member who is permanently disabled or incapacitated as documented by a medical professional.

Work-Eligible Recipient? an adult under age 60 or a teen head of household who is included in a work-eligible family and who is not permanently disabled or incapacitated, or who is not caring for a family member who is permanently

disabled or incapacitated, as documented by a medical professional.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:497 (March 2004).

§5707. Domestic Violence

A. The secretary shall waive, for as long as necessary, pursuant to a determination of good cause, any public assistance program requirement that will create obstacles for a victim of domestic violence to escape a domestic violence situation, including but not limited to time limits on receipt of assistance, work, training or educational requirements, limitations on TANF requirements, residency requirements, and any other program requirements which will create obstacles for such victim to escape violence or penalize that victim for past, present, and potential for abuse. However, a victim of domestic violence shall develop a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of a domestic violence situation. Such plan shall be made a component of the participant's Family Success Agreement.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

Subchapter B. Participation Requirements

§5709. School Attendance

A. Work-eligible FITAP recipients, in order to ensure appropriate child development, educational attainment, and school attendance for each minor child included in the assistance unit, shall agree in the Family Success Agreement (FSA) to:

1. actively participate in their child's education through parent-teacher conferences, homework assistance, or other activities; and
2. provide documentation to the department that they are ensuring school attendance and are engaged in the child's learning.

B. Work-eligible, minor parents who have not yet received a high school diploma or its equivalent shall attend school or related education classes designed to obtain a high school diploma or its equivalent. School attendance shall be the primary work activity for those minor parents who do not have a high school diploma or its equivalent.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

§5711. Parenting Skills Education

A. Work-eligible recipients and minors who are pregnant or have a child under age one shall participate in parenting skills education as a primary work activity under the FSA. Applicable child care and transportation shall be provided to participants to enable their participation.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

§5713. Work Activities

A. Work-eligible recipients shall participate in appropriate work activities as agreed upon in the FSA. These activities may include but are not limited to:

1. subsidized or unsubsidized employment;
2. unpaid work experience;
3. on-the-job training;
4. job search;
5. job readiness;
6. vocational education;
7. attendance in secondary school for those individuals who have not graduated from high school;
8. participation in GED or basic skills training;
9. employment-related education;
10. job skills training;
11. community service; and
12. the provision of child care to an individual who is participating in community service.

B. Participants who are found not to possess basic workplace or basic literacy skills, as determined by an assessment, shall combine employment and job readiness and job search activities with activities designed to increase their basic and workplace literacy skills.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

§5715. Temporary Exceptions

A. A work-eligible applicant or recipient of cash assistance shall immediately participate in work activities for the minimum number of hours per week required by federal law unless one of the following exceptions applies. These temporary exceptions shall not exceed six months in a twelve-month period. The exceptions include:

1. temporary incapacity, illness or disability of household head as documented by a medical professional. The documentation shall include a description and reason for the incapacity, illness, or temporary disability, an indication of how long the condition is expected to persist, and a reasonable expectation of when the participant can return to a work activity. Incapacity, illness, or disability determined for a period of longer than six months shall be referred for eligibility to Supplemental Security Income assistance and to the Louisiana Rehabilitation Services;

2. inability to obtain appropriate child care; or

3. status as a victim of domestic violence based on evidence presented to the department which may include, but not limited to, information from law enforcement agencies or domestic violence providers. This exception shall only be granted if a participant develops a plan to address the domestic violence situation and incorporates this plan in the FSA.

B. During a period in which a participant receives a temporary exception to the work requirement, a revised FSA shall be developed to enable satisfactory progress toward meeting employment and educational activity requirements.

C. Participants who receive a temporary exception shall be informed that this time is counted against their time limits for receipt of cash assistance.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:498 (March 2004).

§5717. Sanctions

A. Sanctions shall be used as a last resort to inform participants that they have not met the expectations set forth in the FSA. Participants shall be sanctioned for the following violations:

1. failure of the participant to provide documentation to the department that they are ensuring school attendance and are engaged with their child's learning;
2. failure of a work-eligible, minor parent with a child who has not yet received a high school diploma or its equivalent, to attend school or related education classes designed to obtain a high school diploma or its equivalent;
3. failure of a public assistance recipient who is pregnant or has a child under age one to attend parenting education and other training conducive to the unique needs of new parents;
4. failure of work-eligible families to meet the required employment and education activities for the minimum number of hours without good cause, as specified in the FSA; or
5. failure of work-eligible families to meet other requirements such as but not limited to immunization, cooperation with Support Enforcement Services, compliance with substance abuse screening, testing, treatment, etc. as specified in the FSA.

B. If it is determined that a work-eligible family has failed to meet the required activities as specified in the FSA without good cause, that family shall be ineligible for FITAP benefits as follows:

1. first sanction? a minimum of one month or until compliance, whichever is longer;
2. second sanction? a minimum of two months or until compliance, whichever is longer;
3. third or subsequent sanction? a minimum of three months or until compliance, whichever is longer.

C. The following represent good cause for not complying with the requirements set forth in the FSA.

1. Appropriate child care or transportation is unavailable within a reasonable distance from the participant's home or worksite after efforts have been made, and assistance has been offered, to secure child care or transportation.

2. Situations related to domestic violence. Any participant that receives a good cause exception related to domestic violence shall complete a plan that specifies the necessary actions, goals, and services that may enable the victim to become free of the violence and incorporate this plan into their FSA.

3. Situations related to the treatment of a mental or physical illness, including substance abuse treatment, where there is verification that participation in required activities would impair a treatment plan of a mental health or medical professional. Any participant that receives a good cause exception related to mental or physical illness shall incorporate the completion of the identified treatment plan in the FSA.

4. Temporary, short-term illness, or the temporary care of a family member who is ill, as documented by a medical professional.

5. Temporary emergency crisis, such as homelessness, fire, accident, dislocation due to natural causes, hurricane, flood, or similar circumstances that can be substantiated.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004).

Subchapter C. STEP Program Process

§5719. Family Assessment

A. A Family Assessment shall be completed on all FITAP/STEP applicants in order to assist the worker in identifying family strengths, weaknesses, opportunities and barriers as well as determining programs that the applicants will need to become self-sufficient.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004).

§5721. Job Readiness

A. A work-eligible applicant for cash assistance shall participate in job readiness activities as part of the core services available under STEP. The applicant shall receive an initial employability assessment designed to determine their level of employability, immediate needs, and family circumstances.

B. Job developers, through performance-based contracts, will provide job readiness services that shall include, but are not limited to:

1. workplace literacy assessment;
2. résumé development;
3. interview skills;
4. job search;
5. workplace standards and soft-skills development;
6. work ethics;
7. interest inventories related to job market and skills;
8. assistance with identification of available jobs and employers;
9. life skills development;
10. budget and financial management; and
11. client follow-up.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004).

§5723. Comprehensive Assessment

A. Once the applicant is certified for eligibility, a comprehensive assessment shall be conducted and include workplace literacy, basic skills and educational attainment, interests and aptitude related to employment, barriers to employment, need for education, supportive services such as child care and transportation, and other supportive services.

B. Specialized assessments can occur for issues that arise after an initial assessment has been completed and could include substance abuse, domestic violence, mental health screening, or others as determined by the department.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:499 (March 2004).

§5725. Family Success Agreement (FSA)

A. Upon determination of eligibility and after completion of the comprehensive assessment, work-eligible participants shall enter into a contractual agreement, known as the Family Success Agreement (FSA), with the department. The FSA will specify:

- 1. the client's time-bound goals, responsibilities, and work activity participation; and
- 2. the department's obligation to provide necessary supportive services, assessments, notifications, information, and case management.

B. The FSA shall be updated at least every six months or as the client's needs, goals, barriers, and family circumstances change.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004).

§5727. Family Transition Assessment

A. The department shall complete a Family Transition Assessment (FTA) to assist participants with their transition from cash assistance. The plan will be completed with participants who:

- 1. have received three of the six months of earned income disregard; or
- 2. have received 18 months of FITAP assistance when subject to the 24-month time limit; or
- 3. have received 54 months of FITAP assistance when subject to the 60-month time limit; or
- 4. when it is determined that the family is leaving FITAP, whichever occurs first.

B. The FTA shall include but is not limited to:

- 1. a plan for on-going success in the work force;
- 2. identification of short and long-term goals;
- 3. identification of potential barriers and an action plan to overcome these barriers; and
- 4. information regarding eligibility for supportive services including, but not limited to: Medicaid benefits, Food Stamp benefits, Child Care, transportation, Louisiana Child Health Insurance Program, the earned income tax credit, and TANF-funded services.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004).

§5729. Support Services

A. Clients may be provided support services that include but are not limited to:

- 1. a full range of case maintenance and case management services designed to lead to self-sufficiency;
- 2. transportation assistance;
- 3. Food Stamp benefits;
- 4. Medicaid benefits;
- 5. Child Care;
- 6. TANF-funded services;

7. other services necessary to accept or maintain employment; and

8. transitional benefits (post-FITAP support services):

a. these services may be provided to participants who are or become ineligible for cash assistance due to earned income. They include a transportation payment of \$120 per month and other supportive service payments not to exceed a combined total of \$200 per state fiscal year and used to cover certain costs deemed necessary for employment. The payments may begin with the first month of FITAP ineligibility and continue through the twelfth month of ineligibility or through the last month of employment, whichever comes first. The 12 months need not be consecutive.

B. Support services may be provided to:

- 1. persons participating in the Family Assessment;
- 2. persons referred by the Agency to other activities, such as drug counseling, prior to their participation in a work activity;
- 3. FITAP recipients participating in approved activities necessary to meet exemptions to the FITAP time limits;
- 4. FITAP recipients to facilitate their attendance in the FITAP Drug Testing Program or Parenting Skills Program;
- 5. allow participation in educational activities for FITAP recipients who are exempt from STEP.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:231, R.S. 46:460, and Act 58, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:500 (March 2004).

Ann S. Williamson
Secretary

0403#082

RULE

**Department of Social Services
Office of Family Support**

TANF Initiatives? Teen Pregnancy Prevention Program
(LAC 67.III.5401-5407, 5505-5509,
5525, 5529, 5539, 5575, and 5577)

In accordance with R.S.49: 950 et seq., the Administrative Procedure Act, the Department of Social Services, Office of Family Support, has amended LAC 67:III, Subpart 15, Chapter 55, §§5505, 5507, 5509, 5525, and 5539, has repealed §5529 and Subpart 14, Chapter 54, the Teen Pregnancy Prevention Program, and has adopted §§5575 and 5577, pursuant to Act 14 of the 2003 Legislative Session.

The agency has repealed Section 5529, Youth in Transition, as funds are no longer being allocated for this program. Additionally, the agency has repealed Subpart 14, Chapter 54, Teen Pregnancy Prevention Program. The program will now be administered by the Department of Education through a Memorandum of Understanding with the agency. Program information has been incorporated into Chapter 55, TANF Initiatives and adopted as Section 5575, Teen Pregnancy Prevention Program. Section 5577, Skills Training for Incarcerated Fathers, has been adopted as a new TANF Initiative.

These changes were effected October 21, 2003, by a Declaration of Emergency that was published in the November issue of the *Louisiana Register*.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 14. Teen Pregnancy Prevention

Chapter 54. Teen Pregnancy Prevention Program

§5401. Authority

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1018 (July 2001), repealed LR 30:501 (March 2004).

§5403. Strategy

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1996 (September 2002), repealed LR 30:501 (March 2004).

§5405. Goals and Objectives

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1996 (September 2002), repealed LR 30:501 (March 2004).

§5407. Program Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1599 (July 2002), repealed LR 30:501 (March 2004).

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5505. Nonpublic School Early Childhood Development Program

A. ...

B. These services meet the TANF goal to reduce the incidence of out-of-wedlock births by placing children in learning environments at the pre-school level to foster an interest in learning, increase literacy levels, and increase the likelihood of developing responsible behavior.

C. Eligibility for services is limited to families in which the child is one year younger than the eligible age for public school kindergarten and who have earned income at or below 200 percent of poverty level.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474, Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:350 (February 2002), amended LR 29:715 (May 2003), LR 30:501 (March 2004).

§5507. Adult Education, Basic Skills Training, Job Skills Training, and Retention Services Program

A. The Office of Family Support shall enter into memoranda of understanding or contracts to create programs to provide adult education and literacy, basic skills training, jobs skills training, court-ordered training and job retention services to low-income families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474, Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:870 (April 2002), amended LR 30:501 (March 2004).

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474, Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 30:501 (March 2004).

§5525. Pre-GED/Skills Option Program

A. - B. ...

C. Eligibility for services is not limited to needy families; however certain populations are targeted for services provided by the Options Program and the JAG LA Program. They include:

1. Eligible participants in the Options Program shall be students 16 years of age or older and meet one or more of the following:

a. failed the eighth grade LEAP 21 English language arts or math test for one or more years;

b. failed English language arts, math, science, or social studies portion of the Graduation Exit Exam;

c. participated in alternate assessment; or

d. earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, and not more than 15 Carnegie units by age 19;

2. eligible participants in the JAG LA Program shall be 16-21 years of age (or at least 15 years of age in the middle school pilot program) and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474, Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 30:501 (March 2004).

§5529. Youth in Transition

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474, Act 12, 2001 Reg. Session of the Louisiana Legislature, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), repealed LR 30:502 (March 2004).

§5539. Truancy Assessment and Service Centers

A. OFS shall enter into memoranda of understanding or contracts for truancy assessment and service centers designed to identify, assess, and intervene to ensure that children in kindergarten through sixth grade attend school regularly.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 46:231 and R.S. 36:474, Act 12, 2001 Reg. Session, Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 30:502 (March 2004).

§5575. Teen Pregnancy Prevention Program

A. The Department of Social Services, Office of Family Support, shall enter into memoranda of understanding or contracts effective July 1, 2003, to prevent or reduce out-of-wedlock and teen pregnancies by enrolling youth ages 8 through 20 in supervised, safe environments, with adults leading activities according to a research-based model aimed at reducing teen pregnancy.

B. Services offered by providers meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing research-based prevention and intervention programming for students who live in poor communities and/or show evidence of academic underperformance, dropping out, or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, or imprisonment.

C. Eligibility for services is not limited to needy families. Custodial and non-custodial parents, legal guardians, or caretaker relatives of youth who are participants in the program may also receive parenting training and educational services.

D. Services are considered non-assistance by the agency.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004).

§5577. Skills Training For Incarcerated Fathers

A. The Office of Family Support shall enter into memoranda of understanding or contracts effective September 1, 2003, to provide educational rehabilitation services to incarcerated male inmates to assist them in becoming self-sustaining individuals upon release.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to male inmates housed in a local or state Louisiana correctional facility, who have served a majority of their sentence and are nearing release and who are the parents of minor children.

D. Services are considered non-assistance by the agency.

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

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:502 (March 2004).

Ann S. Williamson
Secretary

0403#083

RULE

**Department of Transportation and Development
Office of Weights and Measures**

**Minimum Standards for Reflectivity of Work-Site Materials
(LAC 73:III.Chapter 3)**

In accordance with the applicable provisions of the Administrative Procedure Act, R. S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development hereby amends Chapter 3 entitled "Minimum Standards for Reflectivity of Work-Site Materials," in accordance with the provisions of R.S. 48:35.

Title 73

WEIGHTS, MEASURES, AND STANDARDS

Part III. Weights and Standards

**Chapter 3. Minimum Standards for Reflectivity of
Work-Site Materials**

**§301. Minimum Standards for Reflective Sign
Sheeting**

A. Reflective sheeting shall be one of the following types as specified on the plans and complying with ASTM D 4956 except as modified herein. The sheeting shall be an approved product listed in QPL 13.

1. Type I. A medium-intensity retroreflective sheeting referred to as "engineering grade" and typically enclosed lens glass-bead sheeting.

2. Type II. A medium-high-intensity retroreflective sheeting sometimes referred to as "super engineering grade" and typically enclosed lens glass-bead sheeting.

3. Type III. A high-intensity retroreflective sheeting, that is typically encapsulated glass-bead retroreflective material.

4. Type VI. An elastomeric-high-intensity retroreflective sheeting without adhesive. This sheeting is typically a vinyl microprismatic retroreflective material.

5. DOTD Type VII (Fluorescent Orange). A super-intensity retroreflective sheeting, that is typically an unmetallized microprismatic retroreflective element material.

6. Type IX. A very high-intensity retroreflective sheeting having highest retroreflectivity at short distances as determined by the R_A values at 1??observation angle. This sheeting is typically an unmetallized microprismatic retroreflective element material.

B. Adhesive Classes. The adhesive required for retroreflective sheeting shall be Class 1 (pressure sensitive) or Class 2 (heat activated) as specified in ASTM D 4956.

C. Identification Marks. Type II sheeting shall be distinguished by integral identification marks that cannot be removed or affected by physical or chemical methods without causing damage to the sheeting. The markings shall be inconspicuously placed on 12-inch (300-mm) centers and shall be visible from a distance of not more than 3 feet (1.0 m).

D. Alternate Sheeting Type. DOTD Type VII (Fluorescent Orange). Minimum Coefficients of Retroreflection shall be as specified in Table 1015-1. Luminance factors and color requirements shall be as specified in Table 1015-2.

Table 1015-1 Coefficients of Retroreflection for DOTD Type VII (Fluorescent Orange) Sheeting¹

Observation Angle, degrees	Entrance Angle, degrees	Fluorescent Orange
0.2	-4	180
0.2	+30	90
0.5	-4	72
0.5	+30	36

¹Minimum Coefficient of Retroreflection (R_n) ($cd\ lx^{-1}m^{-2}$)

Table 1015-2 Fluorescent Orange Color Specification Limits (Daytime)

Color	1		2		3		4		Luminance Factor, min.
	x	y	x	y	x	y	x	y	Y%
Fluor. Orange	0.583	0.416	0.535	0.400	0.595	0.351	0.645	0.355	25

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant D65.)

E. Accelerated Weathering. Reflective sheeting, when processed, applied and cleaned in accordance with the manufacturer's recommendations shall perform in accordance with the accelerated weathering standards in Table 1015-3.

Table 1015-3 Accelerated Weathering Standards²

Type	Retroreflectivity ¹				Colorfastness ³	
	Orange		All Colors, except Orange		Orange	All Colors, except Orange
I	Not used		2 years	50 ⁷	Not used	2 Years
II	1 Year	65 ⁵	Not used		1 Year	3 Years
III	1 Year	80 ⁶	3 Years	80 ⁶	1 Year	3 Years
III (for drums)	1 Year	80 ⁶	1 Year	80 ⁶	1 Year	1 Year
VI	1/2 Year	50 ⁷	1/2 Year	50 ⁷	1/2 Year	1/2 Year
DOTD Type VII (Fluor. Orange)	1 Year	80 ⁸	Not Used		1 Year	Not used
IX	Not used		3 Years	80 ⁷	Not used	3 Years

¹Percent retained retroreflectivity of referenced table after the outdoor test exposure time specified.

²At an angle of 45° from the horizontal and facing south in accordance with ASTM G7.

³Colors shall conform to the color specification limits of ASTM D4956 and Table 1015-2 herein after the outdoor test exposure time specified.

⁴ASTM D4956, Table 4.

⁵ASTM D4956, Table 6.

⁶ASTM D4956, Table 7.

⁷ASTM D4956, Table 12.

⁸Table 1015-1.

⁹ASTM D4956, Table 3.

F. Performance. Reflective sheeting for signs, when processed, applied and cleaned in accordance with the manufacturer's recommendations shall perform outdoors in accordance with the performance standards in Table 1015-4.

Table 1015-4 Reflective Sheeting Performance Standards

Type	Retroreflectivity ¹ -- Durability ²			Colorfastness ³
	Orange		All Colors, except Orange	
I	Not used		7 years 50 ⁷	3 Years
II	3 Years	65 ⁵	Not used	
III	3 Years	80 ⁶	10 Years 80 ⁶	3 Years
DOTD Type VII (Fluor. Orange)	3 Years	80 ⁷	Not Used	
IX	Not used		7 Years 80 ⁸	3 Years

¹Percent retained retroreflectivity of referenced table after installation and the field exposure time specified.

²All sheeting shall maintain its structural integrity, adhesion and functionality after installation and the field exposure time specified.

³All colors shall conform to the color specification limits of ASTM D4956 and Table 1015-2 herein after installation and the field exposure time specified.

⁴ASTM D4956, Table 4.

⁵ASTM D4956, Table 6.

⁶ASTM D4956, Table 7.

⁷Table 1015-1.

⁸ASTM D4956, Table 3.

G Temporary Signs, Barricades, Channelizing Devices, Drums and Cones. Reflective sheeting for temporary signs, barricades and channelizing devices, shall meet the requirements of ASTM D 4956, Type III except that the initial sequence of temporary advanced warning construction signs used on the mainline of freeways and expressways shall meet the requirements of DOTD Type VII (Fluorescent Orange).

1. Reflective sheeting for vertical panels shall meet the requirements of ASTM D 4956, Type III.

2. Reflective sheeting for drums shall be a minimum of 6 inches (150 mm) wide and shall meet the requirements of ASTM D 4956, Type III, and the Supplementary Requirement S2 for Reboundable Sheeting as specified in ASTM D 4956. Reflective sheeting for traffic cone collars shall meet the requirements of ASTM D 4956, Type VI.

H. Sheeting Guaranty. The contractor shall provide the Department with a guaranty from the sheeting manufacturer stating that if the retroreflective sheeting fails to comply with the performance requirements of this Subsection, the sheeting manufacturer shall do the following:

Table 1015-5 Manufacturer's Guaranty-Reflective Sheeting

Type	Manufacturer shall restore the sign face in its field location to its original effectiveness at no cost to the Department if failure occurs during the time period ¹ specified below.		Manufacturer shall replace the sheeting required to restore the sign face to its original effectiveness at no cost to the Department if failure occurs during the time period specified below.
	Orange	All Colors, except Orange	All Colors, except Orange
I	Not used	<5 years	5-7 years
II	<3 years	<5 years	5-10 years
III	<3 years	<7 years	7-10 years
DOTD Type VII (Fluor. Orange)	<3 years	Not used	Not used
IX	Not used	<5 years	5-10 years

¹From the date of sign installation.

1. Replacement sheeting for sign faces, material, and labor shall carry the unexpired guaranty of the sheeting for which it replaces.

2. The sign fabricator shall be responsible for dating all signs with the month and year of fabrication at the time of sign fabrication. This date shall constitute the start of the guaranty obligation period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures LR 24:703 (April 1998), amended LR 26:357 (February 2000), LR 30:502 (March 2004).

§303. Minimum Standards for Striping

A. Temporary Pavement Markings

1. Temporary Tape. Temporary tape shall comply with ASTM D 4592, Type I (removable) or Type II (non-removable) and shall be an approved product listed in QPL-60.

2. Painted Stripe. Paint shall be an approved traffic paint complying with Subsection 1015.12. of the *Louisiana Standard Specifications for Roads and Bridges*. Glass beads for drop-on application shall comply with Subsection 1015.13 of the *Louisiana Standard Specifications for Roads and Bridges*.

3. Temporary Raised Pavement Markings for Asphaltic Surface Treatment. Temporary raised pavement markers for asphaltic surface treatment shall be flexible reflective tabs having a nominal width of 4 inches (10 cm). The markers shall be yellow with amber reflective area on both sides. The body of the marker shall consist of a base and vertical wall made of polyurethane or other approved material and shall be capable of maintaining a reasonable vertical position after installation. The initial minimum reflectivity at an entrance angle of -4 degrees and an observation angle of 0.2 degrees shall be 230 mcd/lx when measured in accordance with ASTM E 810.

a. The reflective material shall be protected with an easily removable cover of heat resistant material capable of withstanding and protecting the reflective material from the

application of asphalt at temperatures exceeding 325°F (160°C).

b. The markers shall be an approved product listed in QPL 74.

B. Traffic Paint. The contractor shall have the option of furnishing either alkyd traffic paint or water-borne traffic paint; however, the same type paint shall be used throughout the project. Each paint container shall bear a label with the name and address of manufacturer, trade name or trade-mark, type of paint, number of gallons, batch number and date of manufacture. Paints shall be approved products listed in QPL 36; shall show no excessive settling, caking or increase in viscosity during 6 months of storage, and shall be readily stirred to a suitable consistency for standard spray gun application. An infrared curve shall be generated in accordance with DOTD TR 610 and compared with the standard curve made during the initial qualification process.

1. Alkyd Traffic Paint. This material shall be a rapid-setting compound suitable for use with hot application equipment. The material shall meet the requirements of Table 1015-11.

Table 1015-11 Alkyd Traffic Paint Physical Properties

Property	Test Method	Requirements	
		Min	Max
Weight, kg/L	ASTM D 1475	1.5	---
Viscosity @ 25°C, Krebs Units	ASTM D 562	85	115
Dry to No Pick Up, s	ASTM D 711	---	180
Directional Reflectance, %	ASTM E 97		
White		80	---
Yellow		50	---
Bleeding	Fed. Spec. TTP-115	Pass	
Total Solids, % by mass	ASTM D 1644, Method A	70	---
Film Shrinkage	¹	Pass	
Hiding Power	²	Pass	
Pigment, %	ASTM D 2371	50	55
Nonvolatiles in Vehicle, % by mass	ASTM D 215	35	---
Flexibility	Fed. Spec. TTP-1952	Pass	
Pigment Composition	³	Pass	

¹Film Shrinkage: With a film applicator, cast a wet film with a thickness of 30 mils (750 µm) over a smooth glass plate. Allow sample to cure at room condition for 4 to 5 hours. Using a micrometer, measure the plate thickness before the film is cast using five measurements to obtain an average. The cured film shall have a minimum thickness of 12 mils (300 µm).

²Hiding Power: The paint shall have a wet hiding power of at least 350 square feet per gallon (8.6 m²/L). The compound shall have sufficient hiding power to cover any pavement when applied at a wet film thickness of 15 mils (375 µm).

³Pigment Composition: White paint shall contain at least 1.5 pounds (180 g) of titanium dioxide (TiO₂) pigment per gallon (L) as determined using DOTD TR 523 with at least 92 percent TiO₂ content. The TiO₂ shall comply with ASTM D 476. Yellow paint shall contain at least 1.3 pounds (160 g) of medium chrome yellow pigment per gallon (L) as determined using DOTD TR 523. Medium chrome yellow pigment shall comply with ASTM D 211, Type III.

2. Water Borne Traffic Paint. This material shall be a rapid setting waterborne compound suitable for use with hot application equipment. The material shall meet the requirements of Table 1015-12.

Table 1015-12 Water Borne Traffic Paint Physical Properties

Property	Test Method	Requirements	
		Min	Max
Weight, kg/L	ASTM D 1475	1.5	---
Viscosity, at 25 °C Krebs Units	ASTM D 562	75	90
Drying to No Pickup, min.	ASTM D 711	---	10
Dry through, min.	ASTM D 1640	---	20
Volume Solids, %	---	58	---
Total Solids, % by mass	ASTM D 2369	70	---
Pigment, % by mass	ASTM D 3723	45	55
Nonvolatile Vehicle, % by mass	Fed. Test 141B	40	---
Bleed Ratio	Fed. Spec. TT-P-1952	0.96	---
Daylight Reflectance, % White	Fed. Test 141B	85	---
Yellow		54	---
Hiding Power (Contrast Ratio) at 250 µm	Fed. Test 141B	0.96	---
Flexibility	Fed. Spec. TT-P-1952	Pass	
Drying Time, min.	¹	---	3
Fineness of Grind	ASTM D 1210	3	---
Freeze-Thaw	ASTM D 2243	Pass	
Heat Stability	Fed. Spec. TT-P-1952	Pass	
Color	²	Pass	
Volatile Organic Compounds (g/L)	---	---	150
Pigment Composition	³	Pass	

¹Drying Time to No Track - Paint applied at 15 mils (375 µm) wet on the road surface with paint heated to 120-150° F (50-65° C) shall not show tracking when a standard size automobile crosses in a passing maneuver at three minutes.

²Color? Yellow paint shall comply with the requirements of Table 1015-13 when tested in accordance with ASTM E 1349. White shall be a clean, bright, untinted binder.

³The white paint shall contain a minimum of 1.0 pound per gallon (120 g/L) of titanium dioxide (TiO₂) as determined using DOTD TR 523. The titanium dioxide shall comply with ASTM D 476.

Table 1015-13 Water Borne Traffic Paint Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE D31 Standard Colorimetric System measured with Standard Illuminant C.)

C. Large Embedment Coated Glass Beads for Pavement Markings. Large embedment coated glass beads for use with painted traffic striping and flat thermoplastic striping shall be transparent, clean, colorless glass, smooth and spherically shaped, free from milkiness, pits, or excessive air bubbles and conform to the specific requirements for the class designated. The beads shall be non-flotation, embedment coated and conform to the following specific requirements.

1. Gradation. The testing for gradation of the beads shall be in accordance with ASTM D 1214 and shall meet the gradation requirements specified below.

a. Painted Traffic Striping. Glass beads for painted traffic striping shall meet the gradation requirements of Table 1015-14.

Table 1015-14 Gradation of Large Embedment Coated Glass Beads for Painted Traffic Striping

U.S. Sieve (Metric Sieve)	Percent Retained
No. 12 (1.7 mm)	0
No. 14 (1.4 mm)	0-5
No. 16 (1.18 mm)	5-20
No. 18 (1.00 mm)	40-80
No. 20 (850 µm)	10-40
No. 25 (710 µm)	0-5
PAN	0-2

b. Flat Profile Thermoplastic Striping. Drop-on beads for flat profile thermoplastic striping shall meet the gradation requirements of Table 1015-15 as determined by the thickness of the striping.

Table 1015-15 Gradation of Embedment Coated Glass Beads for Flat Profile Thermoplastic Striping

Thickness	Number of Bead Drops	Application #1	Application #2
40 mils	Single Drop	See Table 1015-14	N/A
90 mils or greater	Double Drop	See Table 1015-16	AASHTO M247 Type I

Table 1015-16 Gradation of Large Embedment Coated Glass Beads for First Drop on Flat Thermoplastic Striping

U.S. Sieve (Metric Sieve)	Percent Retained
No. 10 (2.0 mm)	0
No. 12 (1.7 mm)	0-5
No. 14 (1.4 mm)	5-20
No. 16 (1.18 mm)	40-80
No. 18 (1.00 mm)	10-40
No. 20 (850 µm)	0-5
PAN	0-2

2. Roundness. The beads shall have a minimum of 80 percent rounds per screen for the two highest sieve quantities. The remaining sieve fractions shall have no less than 75 percent rounds as determined by microscopic examination.

3. Angular Particles. The beads shall have no more than three percent angular particles per screen.

4. Refractive Index. The beads shall have a refractive index of 1.50 to 1.52 when tested by the liquid immersion method.

5. Embedment Coating. The large beads for thermoplastic striping shall be coated with an adhesion assuring coating. The smaller AASHTO M247 Type I beads shall be coated to provide free flowing characteristics when tested in accordance with AASHTO M247 Section 4.4.1. and assure adhesion. Glass beads shall be properly coated and conform to the requirements when tested as described in DOTD TR 530 Determination of Embedment Coating on Large Embedment Coated Glass Beads for Pavement Markings.

6. Packaging and Marking. The beads shall be packaged in moisture proofed containers. Each container shall be stamped with the following information: Name and address of manufacturer, shipping point, trademark or name, the wording "Large Embedment Coated Glass Beads," class,

weight, lot number and the month and year of manufacture. The container for the AASHTO M 247 Type I beads shall be similarly stamped except that the wording shall be "Glass Beads."

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:705 (April 1998), amended LR 30:504 (March 2004).

§305. Minimum Standard for Thermoplastic Pavement Markings

A. Description. This specification covers hot-sprayed or hot-extruded reflective thermoplastic compound for pavement markings on asphaltic or portland cement concrete pavement. Thermoplastic marking material applied to asphaltic surfaces shall consist of an alkyd-based formulation. Thermoplastic marking material applied to portland cement concrete surfaces shall consist of either an alkyd-based or hydrocarbon-based formulation. Material shall be so manufactured as to be applied by spray or extrusion to pavement in molten form, with internal and surface application of glass spheres, and upon cooling to normal pavement temperature, shall produce an adherent, reflectorized pavement marking of specified thickness and width, capable of resisting deformation.

1. Material shall not scorch, break down, or deteriorate when held at the plastic temperature specified in Subsection 732.03(d)(1) for 4 hours or when reheated four times to the plastic temperature. Temperature-vs-viscosity characteristics of plastic material shall remain constant when reheated four times, and shall be the same from batch to batch. There shall be no obvious change in color of material as the result of reheating four times, or from batch to batch.

B. Suitability for Application. Thermoplastic material shall be a product especially compounded for pavement markings. Markings shall maintain their original dimension and placement and shall not smear or spread under normal traffic at temperatures of below 140° F (60° C). Markings shall have a uniform cross section. Pigment shall be evenly dispersed throughout its thickness. The exposed surface shall be free from tack and shall not be slippery when wet. Material shall not lift from pavement in freezing weather. Cold ductility of material shall be such as to permit normal movement with the pavement surfaced without chipping or cracking.

C. Standard Thermoplastic Pavement Markings. Materials shall be approved products listed in QPL 63 and shall comply with AASHTO M 249 and the specifications as stated herein with the following modifications:

1. Color. The yellow thermoplastic shall comply with the requirements of Table 1015-7 when tested in accordance with ASTM E 1349.

Table 1015-7 Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant C.)

2. Whiteness Index. The white thermoplastic shall have a minimum whiteness index of 40 when tested according to ASTM E 313.

D. Inverted Profile Thermoplastic Pavement Markings. Materials shall be approved products listed in QPL 63 and shall comply with AASHTO M 249 and these specifications as follows:

1. Bead Content. Glass bead content for inverted profile thermoplastic pavement markings shall be in accordance with Table 1015-8.

Table 1015-8 Bead Content

U.S. Standard Sieve Size (Microns)	Class A ¹ --10% min. (by wt.) of thermoplastic compound, Percent Retained	Class B ¹ --25% min. (by wt.) of thermoplastic compound
14 (1400)	0 - 1	Beads shall meet gradation requirement of AASHTO M 247, Type I.
16 (1190)	0 - 20	
18 (1000)	0 - 45	
20 (840)	30 - 80	
30 (595)	20 - 50	
Pan	0 - 10	

¹Refer to Section 732 when applying as drop-on beads for inverted profile thermoplastic pavement markings.

2. Bead Quality. The glass beads shall be coated with A-116 Silane or other adhesion promoting coating. The glass beads shall have a maximum of 3 percent irregular particles and a maximum of 5 percent air inclusions. The percentage of true spheres shall be 90 percent minimum for Class A beads and 80 percent minimum for Class B beads.

3. Binder Content. The binder content of the thermoplastic material shall be 19 percent minimum.

4. Titanium Dioxide. The titanium dioxide shall meet ASTM D476, Type II, Rutile grade, 93 percent minimum titanium content.

5. Yellow Pigment. The yellow pigment for the yellow thermoplastic material shall be 4 percent minimum.

6. Color. The yellow thermoplastic shall comply with the requirements of Table 1015-9 when tested in accordance with ASTM E 1349.

Table 1015-9 Color Specification Limits (Daytime)

Color	1		2		3		4	
	x	y	x	y	x	y	x	y
Yellow	0.4756	0.4517	0.4985	0.4779	0.5222	0.4542	0.4919	0.4354

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric System measured with Standard Illuminant C.)

7. Whiteness Index. The white thermoplastic shall have a minimum whiteness index of 40 when tested according to ASTM E 313.

8. Specific Gravity. The specific gravity of the thermoplastic pavement marking material shall not exceed 2.35.

9. Flowability. After heating the thermoplastic material for four hours ±5 minutes at 425±3° F (218±2° C) and testing flowability, the white thermoplastic shall have a maximum percent residue of 22 percent and the yellow thermoplastic shall have a maximum residue of 24 percent.

10. Reflectivity. The initial reflectance for the in-place marking shall have the minimum reflectance value of 450 mcd/lux/sq m for white and 350 mcd/lux/sq m for yellow when measured with a geometry of 1.5 degrees observation angle and 86.5 degrees entrance angle.

11. Wet Reflectivity. The minimum in-place marking when wet shall have the minimum reflectance value of 200 mcd/lux/sq m for white and 175 mcd/lux/sq m for yellow when measured with a geometry of 1.5 degrees observation angle and 86.5 degrees entrance angle. The stripe shall be wet utilizing a pump-type garden sprayer for 30 seconds. After 5 seconds, place the reflectometer on the stripe and measure the retro reflectance.

12. Retained Reflectivity. The thermoplastic pavement marking material shall retain the minimum reflectance value of 130 mcd/lux/sq m for at least four years after placement. Failure to meet this requirement shall require the contractor to replace the portion of the material shown to be below these minimums. The contractor shall provide a written warranty indicating the terms of this requirement.

13. Inverted Profile. The thermoplastic pavement marking material shall be applied to have individual profiles having a minimum height of 0.140 inches (3.5 mm) with the recessed inverted profiles having a thickness of 0.025 to 0.050 inches (0.6 mm to 1.25 mm). The profiles shall be well defined and not excessively run back together.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measure, LR 24:707 (April 1998), amended LR 30:506 (March 2004).

§307. Minimum Standards for Preformed Plastic Pavement Marking Tape

A. General. Preformed plastic pavement marking tape shall be approved products listed on QPL 64 and shall comply with ASTM D 4505 Type I, Type I - High Performance (as specified below) or Type V, except as modified herein. The marking tape shall be Grade A, B, C, D, or E. The type and color shall be in accordance with the plans and the *Manual on Uniform Traffic Control Devices* (MUTCD).

B. Thickness. All preformed plastic pavement marking tape shall have a minimum overall thickness of 0.060 inches (1.5 mm) when tested without the adhesive.

C. Friction Resistance. The surface of the Type I preformed plastic pavement marking tape shall provide a minimum frictional resistance value of 35 British Polish Number (BPN) when tested according to ASTM E 303. The surface of the Type I-High Performance and Type V preformed plastic pavement marking tape shall provide a minimum frictional resistance value of 45 BPN when tested according to ASTM E 303, except values for the Type V are calculated by averaging values taken at downweb and at a 45 degrees angle from downweb.

D. Retro Reflective Requirements. The preformed plastic pavement marking tape shall have the minimum specific luminance values shown in Table 1015-10 when measured in accordance with ASTM D 4061.

Table 1015-10 Specific Luminance

Type	Observation Angle, degrees	Entrance Angle, degrees	Specific Luminance (mcd/sq m/lx)	
			White	Yellow
I	0.2	86	500	400
	1.0	86.5	300	175
I-High Performance	0.2	86	700	560
	1.0	86.5	400	225
V	0.2	86	1100	800
	1.0	86.5	700	500

E. Durability Requirements. The Type I-High Performance preformed plastic pavement marking tape shall show no appreciable fading, lifting or shrinkage for at least 12 months after placement when placed in accordance with the manufacturer's recommended procedures on pavement surfaces having a daily traffic count not to exceed 15,000 ADT per lane.

1. The Type V preformed plastic pavement marking tape shall show no appreciable fading, lifting or shrinkage for at least 4 years after placement for longitudinal lines and at least 2 years after placement for symbols and legends.

2. The Type V preformed plastic pavement marking tape shall also retain the following reflectance values for at least 4 years after placement for longitudinal lines and at least 2 years after placement for symbols and legends.

Observation Angle, degrees	Entrance Angle, degrees	Specific Luminance (mcd/sq m/lx)	
		White	Yellow
1.0	86.5	100	100

F. Plastic Pavement Marking Tape Guaranty (Type I - High Performance and Type V). If the plastic pavement marking tape fails to comply with the performance and durability requirements of Subsection 1015.11 (§307) within 12 months for Type I High Performance and four years for Type V, the manufacturer shall replace the plastic pavement marking material at no cost to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:708 (April 1998), amended LR 30:507 (March 2004).

§309. Minimum Standards for Raised Pavement Markers

A. Markers shall be either nonreflectorized or reflectorized, as specified. Markers shall be approved products listed in QPL 9. Infrared curves of materials used in markers shall match approved curves on file at the department's Materials and Testing Section.

1. Nonreflectorized Markers

a. Description. Nonreflectorized markers shall consist of an acrylonitrile-butadiene-styrene polymer or other approved material, and shall be 4-by-6-inches (100-by-150-mm).

b. Physical Requirements. Markers shall comply with ASTM D4280. The color shall be in accordance with the plans and the MUTCD.

2. Reflectorized Markers. Reflectorized markers shall comply with ASTM D4280, Designation H Marker with

hard, abrasion-resistant lens surface. The type and color shall be in accordance with the plans and the MUTCD. The markers shall be either standard having approximate base dimensions of 4-by-4-inches (100-by-100-mm) and a maximum height of 0.80 inches (20 mm) or low profile having approximate base dimensions of 4-by-2-inches (100-by-50-mm) and a maximum height of 0.60 inches (15 mm).

3. Adhesives

a. Epoxy Adhesive. Epoxy adhesive shall be Type V epoxy resin system complying with Subsection 1017.02.

b. Bituminous Adhesive. The adhesive shall conform to ASTM D 4280 and shall be an approved product listed in QPL 59.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Standards, LR 24:709 (April 1998), amended LR 30:507 (March 2004).

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Secretary

0403#084

RULE

Department of the Treasury Parochial Employees' Retirement System

Internal Revenue Code Provisions
(LAC 58:XI.Chapter 1and 5)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Trustees for the Parochial Employees' Retirement System has approved for advertisement the adoption of Chapter 1 and 5 of Part XI, included in Title 58, Retirement, of the *Louisiana Administrative Code*. This Rule complies with the statutory law administered by the Board of Trustees for the Parochial Employees' Retirement System. The Rule is being adopted pursuant to newly reenacted R.S. 11:1931 (Acts 2003, Number 537, §§1 and 5), the effective date of reenactment of which will be the formal adoption of this Rule. Newly reenacted R.S. 11:1931 provides that rules and regulations be adopted which will assure that the Parochial Employees' Retirement System will remain a tax-qualified retirement plan under the United States Internal Revenue Code and the regulations thereunder. Newly repealed R.S. 11:1930, 1930.1, 1930.2, 1930.3 and 1931 (Acts 2003, Number 537, §§1, 2 and 5), the effective date of repeal of which will be the formal adoption of this Rule, has contained these tax-qualification provisions, which are now being embodied under this Rule without any change to the text. A preamble to this action has not been prepared.

Title 58

RETIREMENT

Part XI. Parochial Employees' Retirement System

Chapter 1. General Provisions

§103. Definitions

A. The following definitions shall apply in this Part.

Direct Rollover? a payment by the plan to the eligible retirement plan specified by the distributee.

Distributee? includes an employee or former employee. In addition, the employee's or former employee's surviving

spouse and the employee's or former employee's spouse or former spouse who is the alternative payee under a qualified domestic relations order, as defined in Internal Revenue Code Section 414(p), are *distributees* with regard to the interest of the spouse or former spouse.

Eligible Retirement Plan? an Individual Retirement Account described in Internal Revenue Code Section 408(a), an individual retirement annuity described in Section 408(b), an annuity plan described in Internal Revenue Code Section 403(a), or a qualified trust described in Internal Revenue Code Section 401(a), that accepts the distributee's eligible rollover distributions. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an Individual Retirement Account or individual retirement annuity.

Eligible Rollover Distribution? any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

a. any distribution that is one of a series of substantially equal periodic payments, not less frequently than annually, made for the life, or life expectancy, of the distributee or the joint lives, or joint life expectancies, of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

b. any distribution to the extent such distribution is required under Internal Revenue Code Section 401(a)(9);

c. the portion of any distribution that is not includable in gross income, determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:508 (March 2004).

Chapter 5. Scope of Benefits

§501. Limitation on Payment of Benefits

A.1. Unless the member has elected otherwise on or before December 31, 1983, the entire benefit of a member shall be distributed over a period not longer than the longest of the following periods:

a. the member's life;

b. the life of the member's designated beneficiary or the joint and last survivor lives of the member and his designated beneficiary;

c. the member's life expectancy;

d. the joint life and last survivor life expectancy of the member and his designated beneficiary.

2. If the member is married and his spouse survives him, the designated beneficiary shall be his spouse. If a member dies after the commencement of his benefits, the remaining portion of his benefit shall be distributed at least as rapidly as before his death.

B.1. If the member dies before his benefit has commenced, the remainder of such interest shall be distributed to the member's beneficiary within five years after the date of such member's death.

2. Paragraph 1 shall not apply to any portion of a member's benefit which is payable to or for the benefit of a designated beneficiary or beneficiaries, over the life of or over the life expectancy of such beneficiary, so long as such distributions begin not later than one year after the date of

the member's death, or, in the case of the member's surviving spouse, the date the member would have attained the age of 70 1/2 years. If the designated beneficiary is the member's surviving spouse and if the surviving spouse dies before the distribution of benefits commences, then Paragraph 1 shall be applied as if the surviving spouse were the member. If the designated beneficiary is a child of the member, for purposes of satisfying the requirement of Paragraph 1, any amount paid to such child shall be treated as if paid to the member's surviving spouse if such amount would become payable to such surviving spouse, if alive, upon the child's reaching age 18.

3. Paragraph 1 shall not apply if the distribution of the member's interest has commenced and is for a term certain over a period permitted in Subsection B.

C. If a survivor benefit is payable to a specified person or persons or if a benefit is payable at death under an option elected pursuant to R.S. 11:1932, the member shall be considered to have designated such person as a designated beneficiary hereunder. If there is more than one such person, then the oldest such person shall be considered to have been so designated, or, if none, then the oldest person entitled to receive a survivor benefit shall be considered to have been so designated. The designation of a designated beneficiary hereunder shall not prevent payment to multiple beneficiaries but shall only establish the permitted period of payments.

D. Distributions from the system shall be made in accordance with the requirements set forth in Internal Revenue Code Section 401(a)(9), including the minimum distribution incidental benefit rules applicable thereunder.

E.1. A member's benefits shall commence to be paid on or before the required beginning date.

2. The required beginning date shall be April 1 of the calendar year following the later of the calendar year in which the member attains 70 1/2 years of age, or the calendar year in which the employee retires.

F. The provisions of this Section shall be effective July 1, 1987.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:508 (March 2004).

§503. Early Payment of Benefits

A. In the event of plan termination, the benefit of any highly compensated employee including an active highly compensated employee and a former employee who was a highly compensated employee, is limited to a benefit that is nondiscriminatory under Internal Revenue Code, Section 401(a)(4) (see 26 U.S.C. 401 et seq.)

B.1. For plan years beginning on or after January 1, 1991, benefits distributed to any of the 25 most highly compensated active and former highly compensated employees are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of the employee under a single life annuity that is the actuarial equivalent of the sum of the employee's accrued benefit and the employee's other benefits under the plan.

2. Subsection A of this Section shall not apply if:

a. after the payment of the benefit to an employee described in Paragraph 1 of this Subsection, the value of plan assets equals or exceeds 110 percent of the value of current liabilities as defined in Internal Revenue Code Section 412(1)(7); or

b. the value of the benefits for an employee described above is less than 1 percent of the value of current liabilities.

3. For purposes of this Section, benefit includes loans in excess of the amount set forth in Internal Revenue Code Section 72(p)(2)(A), any periodic income, any withdrawal values payable to a living employee, and any death benefits not provided for by insurance on the employee's life.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:509 (March 2004).

§505. Compensation Limited

A. In addition to other applicable limitations set forth in the plan, and notwithstanding any other provisions of the plan to the contrary, for plan years beginning on or after January 1, 1994, the annual compensation of each employee taken into account under the plan shall not exceed the Omnibus Budget Reconciliation Act of 1993 annual compensation limit. The Omnibus Budget Reconciliation Act of 1993 annual compensation limit is \$150,000, as adjusted by the commissioner of Internal Revenue for increases in the cost of living in accordance with Section 401(a)(17)(B) of the Internal Revenue Code (see 26 U.S.C. 401 et seq.). The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which compensation is determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the Omnibus Budget Reconciliation Act of 1993 annual compensation limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12.

B. For plan years beginning on or after January 1, 1994, any reference in this plan to the limitations under Internal Revenue Code Section 401(a)(17) shall mean the Omnibus Budget Reconciliation Act of 1993 annual compensation limit set forth in this Section.

C. If compensation for a prior determination period is taken into account in determining an employee's benefits accruing in the current plan year, the compensation for that prior determination period is subject to the Omnibus Budget Reconciliation Act of 1993 annual compensation limit in effect for that prior determination period. For this purpose, for determination periods beginning before the first day of the first plan year beginning on or after January 1, 1994, the Omnibus Budget Reconciliation Act of 1993 annual compensation limit is \$150,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:509 (March 2004).

§507. Transfer of Benefits

A. This Section applies to distributions made on or after January 1, 1993. Notwithstanding any provisions of the plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the plan administrator, to have any portion of an eligible rollover distribution paid directly to a retirement plan specified by the distributee in a direct rollover.

B. If a distribution is one to which Sections 401(a)(11) and 417 of the Internal Revenue Code (see 26 U.S.C. 401 et seq.) do not apply, such distribution may commence less than 30 days after the notice required under Section 1.411(a)-11(c) of the Federal Income Tax Regulations is given, provided that:

1. the plan administrator clearly informs the participant that the participant has a right to a period of at least 30 days after receiving the notice to consider the decision of whether or not to elect a distribution (and, if applicable, a particular distribution option); and

2. the participant, after receiving the notice, affirmatively elects a distribution.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:510 (March 2004).

§509. Computation of Retirement Benefits

A. This Section is intended to comply with Internal Revenue Code Section 415. It shall cover only those who become members for the first time on or after January 1, 1990, and those qualified participants for whom the benefit is increased after October 14, 1987, to the extent of the benefit increase after October 14, 1987, including cost-of-living adjustments on any such increase.

B. The normal retirement benefit of a member of Plan A shall not exceed the amount set forth in R.S. 11:1942, the normal retirement benefit of a member of Plan B shall not exceed the amount set forth in R.S. 11:1962, and the normal retirement benefit of a member of Plan C shall not exceed the amount set forth in R.S. 11:1972.

C.1. Qualified Participant shall mean a member of the system who first became a member before January 1, 1990. In the case of the merger of, or transfer of assets and benefits of a member or members from, another plan maintained by an employer which joins this system, the accrued benefit under such predecessor plan shall be the accrued benefit referred to above, and the member shall be considered a qualified participant if his participation in such predecessor or merged plan commenced on or before January 1, 1990.

2. All employers contributing to the system on behalf of their employees, and all employers who may join the system, as a condition of such joining, shall elect, and such election is hereby implemented, to have the limitations of Internal Revenue Code Section 415(b) other than Paragraph 2G thereof applied without regard to Paragraph 2F thereof, which limitations are set forth in Subsection D. Such limitations shall apply to all members who are not qualified participants as described herein and to qualified participants to the extent of the benefit increase after October 14, 1987, including cost-of-living adjustments on any such increase.

D. The retirement benefit of any member of the retirement system who is not a qualified participant, as defined in Paragraph C.1 and which is not attributable to the member's after-tax employee contribution, when expressed as an annual benefit may not exceed the lesser of \$90,000 per year or 100 percent of such member's average compensation for his highest three years. For purposes of determining whether a member's benefit exceeds this limitation, the following shall apply.

1. Adjustment If Benefit Not Single Life Annuity

a. If the normal form of benefit is other than a single life annuity, such form shall be adjusted actuarially to the equivalent of a single life annuity. This single life annuity shall not exceed the maximum dollar or percent limitations outlined above.

b. No adjustment is required for the following:

- i. qualified joint and survivor annuity benefits;
- ii. pre-retirement disability benefits;
- iii. pre-retirement death benefits.

2. Adjustment If Benefit Commences before Social Security Retirement Age. If benefit distribution commences before social security retirement age, the actual retirement benefit shall not exceed the lesser of 100 percent of the member's average compensation or the adjusted dollar limitation. The adjusted dollar limitation shall be the equivalent, determined in a manner consistent with reduction of benefits for early retirement under the Social Security Act, of \$90,000 commencing at social security retirement age.

3. Adjustment If Benefit Commences after Social Security Retirement Age. If benefit distribution commences after social security retirement age, the dollar limitation shall be increased to the equivalent of \$90,000 commencing at social security retirement age.

4. Social Security Retirement Age Defined. For purposes of this Subsection, the term *social security retirement age* means the age used as the retirement age under 42 U.S.C.A. §416(l) of the Social Security Act, except that such section shall be applied:

- a. without regard to the age increase factor; and
- b. as if the early retirement age under Section 416(l)(2) of such Act were 62.

5. Interest Assumption. The interest rate used for adjusting the maximum limitations above shall be:

- a. for benefits commencing before social security retirement age and for forms of benefit other than straight life annuity, the greater of:
 - i. five percent; or
 - ii. the rate used to determine actuarial equivalence for other purposes of this retirement system;
- b. for benefits commencing after social security retirement age, the lesser of:
 - i. five percent; or
 - ii. the rate used to determine actuarial equivalence for other purposes under this retirement system.

6. Adjustment for Less than 10 Years of Participation or Service

a. If retirement benefits are payable under this retirement system to a member who has less than 10 years of participation in the retirement system, the dollar limitation referred to in the first Paragraph of this Subsection (\$90,000) will be multiplied by a fraction, the numerator of which is

the member's number of years of participation in the system (not greater than 10), and the denominator of which is 10.

b. If retirement benefits are payable under this retirement system to a member who has less than 10 years of service with the employer, the percentage limitation referred to in the first Paragraph of this Subsection (100 percent of compensation) and the dollar limitation referred to in Paragraph 9 below (\$10,000) will be multiplied by a fraction, the numerator of which is the member's number of years of service with the employer (not greater than 10) and the denominator of which is 10.

7. Annual Adjustment. The \$90,000 limitation provided in this Subsection shall be adjusted annually to the maximum dollar limits allowable by the secretary of the Treasury of the United States under Internal Revenue Code Section 415(d), such adjustments not to take effect until the first day of the fiscal year following December 31, 1987. The adjustment shall not exceed the adjustment in effect for the calendar year in which the fiscal year of the system begins. The adjusted earlier limitation is applicable to employees who are members of the system and to members who have retired or otherwise terminated their service under the system with a nonforfeitable right to accrued benefits, regardless of whether they have actually begun to receive benefits. This system shall be considered specifically to provide for such post-retirement adjustments. For any limitation year beginning after separation from service occurs, the annual adjustment factor is a fraction, the numerator of which is the adjusted dollar limitation for the limitation year in which the compensation limitation is being adjusted and the denominator of which is the adjusted dollar limitation for the limitation year in which the member separated from service. No adjustment shall be permitted with respect to limitations applicable after October 14, 1987.

8. Member or Participant in More than One Plan. If a member is a member or participant in more than one defined benefit pension plan maintained by the state, its agencies, or its political subdivisions, then such member's benefit, considered in the aggregate after taking into account the benefits provided by all such retirement plans, shall not exceed the limits provided in this Subsection.

9. Total Annual Benefits Not in Excess of \$10,000. Notwithstanding the preceding provisions of this Subsection, the benefits payable with respect to a participant under any defined benefit plan shall be deemed not to exceed the limitations of this Subsection if:

a. the retirement benefits payable with respect to such participant under such plan and under all other defined benefit plans of the employer do not exceed \$10,000 for the plan year, or for any prior plan year; and

b. the employer has not at any time maintained a defined contribution plan in which the participant participated.

10. Average Compensation

a. For purposes of R.S. 11:1942, 1962, and 1972, average compensation shall include any amounts properly considered as the regular rate of pay of the member, as defined in R.S. 11:231 and unreduced by amounts excluded from income for federal income tax purposes by reason of 26 U.S.C.A. 125, 414(h), or 457 or any other provision of federal law of similar effect.

b. For purposes of Subsection D, average compensation shall include total compensation payable by the employer and included in the employee's income for federal income tax purposes and shall exclude amounts not includable in the member's gross income by reason of 26 U.S.C.A. §§125, 414(h) and 457 or any other provision of federal law. A member's highest three years shall be the period of consecutive calendar years (not more than three) during which the member both was an active participant in the plan and had the greatest aggregate compensation from the employer.

11. Benefit Limitations at Age 62

a. Where a retirement benefit is provided at or after age 62 years, but prior to the member's social security retirement age, then the benefit as limited by the provisions of this Section shall not exceed an annual benefit of \$90,000 reduced by:

i. for a member whose social security retirement age is 65, 5/9 of 1 percent for each month by which benefits commence before the month in which the member attains age 65;

ii. for a member whose social security retirement age is greater than 65, 5/9 of 1 percent for each of the first 36 months and 5/12 of 1 percent for each of the additional months, up to 24 months, by which benefits commence before the month in which the member attains social security retirement age.

b. If the benefit begins before age 62, the benefit shall be limited to the actuarial equivalent of the member's limitation for benefits commencing at age 62 years, with the reduced dollar limitation for such benefits further reduced for each month by which benefits commence before the month in which the member attains age 62 years. In order to determine actuarial equivalence for this purpose, the interest rate assumption used by the plan may not be less than the greater of 5 percent or the rate specified in the plan for determining actuarial equivalence for early retirement. Social Security retirement age is age 65 years, if the member was born before January 1, 1938; age 66 years, if born before January 1, 1955; and age 67, if born after December 31, 1954.

12. Treasury Regulation Applicable. That portion of the benefit designated herein which is attributable to member contributions shall be determined in accordance with Treasury Regulations §1.415-3(d)(1).

E. The provisions of this Section shall apply if any member is covered, or has ever been covered, by another plan maintained by the employer, including a qualified plan, or a welfare benefit fund, as defined in Internal Revenue Code Section 419(e), or an individual medical account, as defined in Internal Revenue Code Section 415(l)(2), which provides an annual addition as described in Paragraph 5 of this Subsection.

1. If a member is, or has ever been, covered under more than one defined benefit plan maintained by the employer, the sum of the member's annual benefits from all such plans shall not exceed the maximum permissible amount set forth in Subsection D of this Section.

2. If the employer maintains or at any time maintained, one or more qualified defined contribution plans covering any member in this system, a welfare benefit fund, as defined in Internal Revenue Code Section 419(e), or an

individual medical account as defined in Internal Revenue Code Section 415(l)(2), the sum of the member's defined contribution fraction and defined benefit fraction shall not exceed 1.0 in any limitation year, and the annual benefit otherwise payable to the member under this system shall be limited in order to satisfy such limitation.

3.a. *Defined Benefit Fraction* shall mean a fraction, the numerator of which is the sum of the member's projected annual benefits under all of the defined benefit plans, whether or not terminated, maintained by the employer, and the denominator of which is the lesser of 125 percent of the dollar limitation determined for the limitation year under Internal Revenue Code Sections 415(b) and (d) and in accordance with Subsection D of this Section or 140 percent of the highest average compensation, including any adjustments under Internal Revenue Code Section 415(b).

b. Notwithstanding the provisions of Subparagraph 3.a of this Paragraph, if the member was a member as of the first day of the first limitation year beginning after December 31, 1986, in one or more defined benefit plans maintained by the employer which were in existence on May 6, 1986, the denominator of this fraction shall not be less than 125 percent of the sum of the annual benefits under such plans which the member had accrued as of the close of the last limitation year beginning before January 1, 1987, disregarding any changes in the terms and conditions of the plans after May 5, 1986. The preceding sentence applies only if the defined benefit plans individually and in the aggregate satisfied the requirements of Internal Revenue Code Section 415 for all limitation years beginning before January 1, 1987.

4.a. *Defined Contribution Fraction* shall mean a fraction, the numerator of which is the sum of the annual additions to the member's account under all of the defined contribution plans, whether or not terminated, maintained by the employer for the current and all prior limitation years, including the annual additions attributable to the member's nondeductible employee contributions to this and all other defined benefit plans maintained by the employer whether or not terminated and the annual additions attributable to all welfare benefit funds, as defined in Internal Revenue Code Section 419(e) or individual medical accounts, as defined in Internal Revenue Code Section 415(l)(2) that are maintained by the employer, and the denominator of which is the sums of the maximum aggregate amounts for the current and all prior limitation years of service with the employer, regardless of whether a defined contribution plan was maintained by the employer. The maximum aggregate amount in any limitation year is the lesser of 125 percent of the dollar limitation determined under Internal Revenue Code Sections 415(b) and (d) of the Internal Revenue Code in effect under Internal Revenue Code Section 415(c)(1)(A) or 35 percent of the member's compensation for such year.

b. If a member is, or ever has been covered under more than one defined contribution plan maintained by the employer, the sum of the member's annual additions to all such plans for each limitation year shall not exceed the maximum permissible amount and shall be taken into account for purposes of determining the defined benefit fraction.

c. If the employee was a member as of the first day of the first limitation year beginning after December 31,

1986, in one or more defined contribution plans maintained by the employer which were in existence on May 6, 1986, the numerator of this fraction shall be adjusted if the sum of this fraction and the defined benefit fraction would otherwise exceed 1.0 under the terms of this plan. Under the adjustment, an amount equal to the product of the excess of the sum of the fraction over 1.0 times the denominator of this fraction, shall be permanently subtracted from the numerator of this fraction. The adjustment is calculated using the fractions as they would be computed as of the end of the last limitation year beginning before January 1, 1987, and disregarding any changes in the terms and conditions of the plans made after May 5, 1986, but using the limitation provided in Internal Revenue Code Section 415 made applicable to the first limitation year beginning on or after January 1, 1987.

d. The annual addition for any limitation year beginning before January 1, 1987, shall not be recomputed to treat all employee contributions as annual additions.

5.a Annual Additions of a member for the limitation year shall mean the sum of the following amounts credited to a member's account for the limitation year:

- i. employer contributions;
- ii. employee contributions;
- iii. forfeitures.

b. Amounts allocated to an individual medical account, as defined in Internal Revenue Code Section 415(l)(2), which is a part of a pension or annuity plan maintained by the employer, are treated as annual additions to a defined contribution plan. Additionally, amounts derived from contributions paid or accrued after December 31, 1985, in taxable years ending after such date, which are attributable to post-retirement medical benefits allocated to the separated account of a key employee, as defined in Internal Revenue Code Section 419A(d)(3), or under a welfare benefit fund, as defined in Internal Revenue Code Section 419(e), maintained by the employer, are treated as annual additions to a defined contribution plan.

c. Until such time as employee contributions become picked up pursuant to Internal Revenue Code Section 414(h)(2), the employee contribution shall be deemed to be a defined contribution plan, and the defined contribution plan fraction shall apply to limit contributions and benefits under this Section. If a member has made nondeductible employee contributions pursuant to the provisions of this system, the amount of such contributions shall be treated as an annual addition to a qualified defined contribution plan, for purposes of this Section.

6. The amount of annual additions which may be credited to the member's account for any limitation year shall not exceed the maximum permissible amount. Contributions and benefits under any other plan of the employer, to the extent that an adjustment is required to satisfy the requirements of this Section in the aggregate, shall be limited or reduced to the extent necessary to satisfy such requirement without reducing accrued benefits; however, only after such other plans have been modified shall the benefits and contributions under this plan be reduced. As soon as it is administratively feasible after the end of the limitation year, the maximum permissible amount for the limitation year shall be determined on the basis of the member's actual compensation for the limitation year. If

there is an excess amount, the excess shall be disposed of as follows.

a. Any nondeductible voluntary employee contribution, to the extent it would reduce the excess amount, shall be returned to the member.

b. If after the application of Subparagraph a of this Paragraph, an excess amount still exists, then any nondeductible mandatory contribution to the extent it would reduce the excess amount, shall be returned to the member.

c. If after the application of Subparagraph b of this Paragraph, an excess amount still exists, and the member is covered by the plan at the end of the limitation year, the excess amount in the member's account shall be used to reduce employer contributions, including any allocation of forfeitures, for such member in the next limitation year if necessary.

d. If after the application of Subparagraph b of this Paragraph, an excess amount still exists, and the member is not covered by the plan at the end of the limitation year, the excess amount shall be held unallocated in a suspense account. The suspense account shall be applied to reduce future employer contributions for all remaining members in the next limitation year, and each succeeding limitation year if necessary.

e. If a suspense account is in existence at any time during a limitation year pursuant to the provisions of this Section, it shall not participate in the allocation of the trust's investment gains and losses. If a suspense account is in existence at any time during a particular limitation year, all amounts in the suspense account shall be allocated and reallocated to members' accounts before any employer or any employee contributions may be made to the plan for that limitation year. Excess amounts shall not be distributed to members or former members.

7. *Excess Amount* of a member for a limitation year shall mean the excess of the member's annual additions for the limitation year over the maximum permissible amount.

8. The *Limitation Year* shall be the calendar year, or the 12 consecutive month period elected by the employer hereunder.

9.a. The maximum permissible amount for a member for a limitation year shall be the maximum annual addition that may be contributed or allocated to a member's account under the plan for any limitation year and shall not exceed the lesser of:

i. the defined contribution dollar limitation;

ii. 25 percent of the member's compensation for the limitation year.

b. The compensation limitation provided for in Clause 9.a.ii. of Subparagraph a of this Paragraph, shall not apply to any contribution for medical benefits, within the meaning of Internal Revenue Code Sections 401(h) or 419A(f)(2), which is otherwise treated as an annual addition pursuant to Internal Revenue Code Sections 415(l) or 419A(d)(2).

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:1931.

HISTORICAL NOTE: Promulgated by the Department of the Treasury, Board of Trustees of the Parochial Employees' Retirement System, LR 30:510 (March 2004).

Thomas B. Sims
Administrative Director
and
Dainna S. Tully
Assistant Director

0403#004

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of the Commissioner

Testing Procedures and Quarantines of Pet Turtles (LAC 7:XXI.Chapter 23)

Editor's Note: This Notice of Intent is being repromulgated to correct errors, it was originally published in the January 20, 2004 issue of the *Louisiana Register* on pages 103-104.

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry proposes to amend regulations regarding microbiological testing procedures and quarantines for the farming and selling of Louisiana pet turtles.

The Department of Agriculture and Forestry is amending these rules and regulations to enhance the accuracy and consistency of the testing for salmonella by requiring that all follow up testing of positive samples be done by the same state operated reference laboratory; thereby providing maximum protection for the industry and the public in the production of a safe wholesome product and to further assist the industry in its efforts to lift the FDA ban that was imposed on the sale of pet turtles in the United States and to increase the industry's ability to control *Salmonella* spp.

This Rule complies with and are enabled by LSA-R.S. 3:2358.2. No preamble concerning the proposed rule is available.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

§2311. Microbiological Test Procedures

A. - B. ...

C. If any group of turtles or turtle eggs test positive for *Salmonella* spp, then the licensed pet turtle farmer (owner) may request a retest. Samples of the retest must be submitted when requested by representatives of the department. The owner may request a retest of the group as a whole using the same sampling procedures as used for the original test or the owner may subdivide the affected positive group into a maximum of four equal subgroups. Each such subgroup shall be separately identified, simultaneously randomly sampled and tested. The Louisiana Veterinary Medical Diagnostic Laboratory shall conduct the retesting, whether from the group as a whole or from any of the subgroups in accordance with normal protocol. The Louisiana Veterinary Medical Diagnostic Laboratory shall conduct the retesting, whether from the group as a whole or from any of the subgroups in accordance with normal protocol. The Louisiana Veterinary Medical Diagnostic Laboratory test results, whether from the group as a whole or from any of the subgroups shall be the final and conclusive test results. Any group or subgroup that tests positive for *Salmonella* spp shall be disposed of in accordance with the law and these regulations.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.12.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:351 (April 1991) amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), LR 30:

§2315. Quarantine

A. - A.3. ...

4. All groups of turtles or groups of turtle eggs that are found to be positive for *Salmonella* spp by the initial test shall be quarantined and disposed of as provided by law and these regulations unless a second test is being conducted. In the event that a second test is being conducted then the group, if tested as a whole, or any subgroup that test positive for *Salmonella* spp in the second test shall be disposed of in accordance with the law and these regulations within 21 days after the second test results are obtained.

5. Quarantined eggs or turtles shall be subject to identification, inventory and verification by agents of the department. Records, physical examination and photographs may be used to verify the inventory of quarantined eggs or turtles.

6. - 6.b. ...

7. All turtles and/or eggs belonging to a group which has either received a second notice of contamination with harmful bacteria or otherwise ordered disposed of by the department shall be disposed of in a manner approved by the department within 21 days of the receipt of the second notice.

8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.12.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:352 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), LR 30:

§2321. Proper Disposal

A. Because of the danger posed by the emergence of bacteria resistant to antibiotics used to kill *Salmonella* and other harmful bacteria, licensed pet turtle farmers shall follow approved disposal procedures including but not limited to the following.

1. Eggs or turtles that have been found to contain *Salmonella*, Arizona or other harmful bacteria shall be disposed of in a manner approved by the department.

2. Chlorine or antibiotic solutions shall be disposed of in a manner approved by the department.

B. Dead or deformed turtles and also those turtles not sold within 12 months of certification shall be disposed of in a manner as approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1571 (August 2000), LR 30:

Family Impact Statement

The proposed rules in Part XXI, Chapter 23, Pet Turtles should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons should submit written comments on the proposed Rule to Dr. Maxwell Lea through the close of business on April 26, 2004 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding this Rule is necessary.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Testing Procedures and Quarantines of Pet Turtles

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

No implementation costs or savings to state or local governmental units are anticipated. The Department of Agriculture and Forestry is amending these rules and regulations to enhance the accuracy and consistency of the testing for *Salmonella spp* by requiring that all follow up testing of positive samples be done by the same state operated reference laboratory; thereby providing maximum protection for the industry and the public in the production of a safe wholesome product and to further assist the industry in its efforts to lift the FDA ban that was imposed on the sale of pet turtles in the United States and to increase the industry's ability to control *Salmonella spp*.

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

There is estimated to be no effect on revenue collections of the state or local governmental units.

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

There is estimated to be no costs and/or economic benefits to directly affected persons or non-governmental units, other than any indirect benefit that comes from enhanced health and safety requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments are not anticipated to have an effect on competition and employment other than any indirect benefit that comes from enhanced health and safety requirements.

Skip Rhorer
Assistant Commissioner
0403#073

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Civil Service Civil Service Commission

Definition of Bona Fide Student

The State Civil Service Commission will hold a public hearing on Wednesday, April 7, 2004 to consider adoption of a proposed amendment to Rule 1.5.1.

The hearing will begin at 9 a.m. and will be held in the auditorium of the Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

Consideration will be given to the following.

Amend Rule 1.5.1 Bona Fide Student

1.5.1 Bona Fide Student means a person enrolled in an accredited high school, college, or university in the state, or a person enrolled in a state-operated vocational-technical school, in a sufficient number of courses and classes in such institution to be classified as a full-time regular student under the criteria used by the institution in which he is enrolled; or a person enrolled in an off-campus college work-study program in a proprietary institution of higher education as defined in Section 102(b) of the Higher Education Act of 1965, as amended. Less than full-time students may be considered for employment as bona fide student employees only for work performed under the Federal Work-Study Program. A bona fide student shall retain his status during breaks, which occur in the course of or between sessions, including summer breaks.

Explanation

The proposed change to the bona fide student definition will allow less than full-time students who are performing work under the Federal Work-Study Program to be hired as bona fide student employees.

Another change has been proposed to clarify that Section 102(b) of the Higher Education Act of 1965 defines proprietary institution of higher education.

In addition, the last sentence has been revised to clarify that a student does not need to be enrolled in summer school in addition to the regular academic year in order to be qualified as a *bona fide student*.

If you have any questions, you may contact Fran Williams at (225) 342-8274 or Fran.Williams@la.gov. If any accommodations are needed, please notify the Civil Service Department prior to the meeting.

Allen H. Reynolds
Director

0403#023

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111? The Louisiana School, District, and State
Accountability System
(LAC 28:LXXXIII.514, 421, 1301, and Chapter 43)

Editor's Note: Several sections were renumbered in this amendment. Section 4311 is renumbered as Section 4321, Section 4313 as 4321, and Section 4315 as 4325.

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 111? The Louisiana School, District, and State Accountability System* (LAC Part Number LXXXIII). Act 478 of the 1997 Regular Legislative Session called for the development of an Accountability System for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The states accountability system is an evolving system with different components. The proposed changes more clearly explain and refine existing policy as follows: school subgroup performance scores; pair/share relationships; rewards/recognition eligibility; district accountability.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111: The Louisiana School, District, and State Accountability System **Chapter 5. Calculating the NRT Index**

§514. Subgroup Performance Scores (GPS)

A. Subgroup performance scores are calculated for each subgroup (African American, American Indian/Alaskan Native, Asian, Hispanic, White, Economically Disadvantaged, Limited English Proficient, Students with Disabilities, and All Students) in the same manner as a SPS is calculated.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§521. Pairing/Sharing of Schools with Insufficient Test Data

A. In order to receive an SPS, a given school must have at least one grade level of CRT testing and at least one grade level of NRT testing. A school that does not meet this requirement must be either "paired or shared" with another school in the district as described below. For the purpose of the Louisiana Accountability System, such a school shall be defined as a "non-standard school."

B. A school with a grade-level configuration such that it participates in neither the CRT nor the NRT (e.g., a K, K-1, K-2 school) must be "paired" with another school that has at least one grade level of CRT testing and one grade level of NRT testing. This "pairing" means that a single SPS shall be calculated for both schools by averaging both schools' attendance and/or dropout data and using the test score data derived from the school that has at least two grade levels of testing.

C. A school with a grade-level configuration in which students participate in either CRT or NRT testing, but not both (e.g., a K-3, 5-6 school) must "share" with another school that has at least one grade level of the type of testing missing. Both schools shall "share" the missing grade level of test data. This shared test data must come from the grade level closest to the last grade level in the non-standard school. The non-standard school's SPS shall be calculated by using the school's own attendance, dropout, and testing data and the test scores for just one grade from the other school.

D. A district must identify the school where each of its non-standard schools shall be either "paired or shared". The "paired or shared" school must be the one that receives by

promotion the largest percentage of students from the non-standard school. In other words, the "paired or shared" school must be the school into which the largest percentage of students "feed." If two schools receive an identical percentage of students from a non-standard school, the district shall select the "paired or shared" school.

E. If a school is not paired/shared at the beginning of the school year for the baseline SPS, it shall not be paired/shared at the end of the school year for the growth SPS.

F. Requirements for the number of test units shall be the sum of the test units in a one-year period (not the number of test units in one year). A school's sharing/pairing status at the beginning of the school year for the baseline SPS shall be its status at the end of the school year for the growth SPS.

G. If a school has too few test units to be a "stand-alone" school, it may request to be considered stand-alone.

1. It shall receive an SPS that is calculated solely on that school's data, despite the small number of test units.

2. The request shall be in writing to the LDE from the LEA superintendent.

3. The school forfeits any right to appeal its growth status based on minimum test unit counts.

H. Once the identification of "paired or shared" schools has been made, this decision is binding for 10 years. An appeal to the SBESE may be made to change this decision prior to the end of 10 years, when redistricting or other grade configuration and/or membership changes occur.

I. If 10 years has not elapsed, but a paired/ shared school acquires a sufficient number of testing units, then the pair/ share relationship will be broken, and the school will be treated as a stand-alone school.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2741 (December 2003), amended LR 30:

Chapter 13. Rewards/Recognition

§1301. Reward Eligibility

A. For 2003, a school shall receive recognition and monetary awards (as appropriated by the Legislature) when it meets or surpasses its growth target and when it shows growth in the performance of students who are classified as high poverty and special education students (at least 0.1 points). Beginning in 2004, a school shall receive recognition and monetary awards (as appropriated by the Legislature) when it achieves a growth label of Exemplary or Recognized Academic Growth. Exemplary Academic Growth shall require, in addition to achieving the school's Growth Target, at least 2.0 points growth in every subgroup's GPS (African American, American Indian/Alaskan Native, Asian, Hispanic, White, Economically Disadvantaged, Limited English Proficient, Students with Disabilities, and All Students), and the school cannot be in any level of School Improvement. Recognized Academic Growth is earned by any school that meets its Growth Target, regardless of subgroup growth or School Improvement status.

B. School personnel shall decide how any monetary awards shall be spent; however, possible monetary rewards shall not be used for salaries or stipends.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2744 (December 2003), amended LR 30:

Chapter 43. District Accountability

§4301. Inclusion of All Districts

A. Every school district shall participate in a district accountability system based on the performance of schools as approved by the Louisiana State Board of Elementary and Secondary Education (SBESE).

B. Indicators for District Accountability. There shall be three statistics reported for each school district for district accountability:

1. a District Performance Score (DPS);
2. a District Responsibility Index (DRI); and
3. a Subgroup Component.

D. District Performance Score (DPS). A District Performance Score (DPS) shall be calculated in the same manner as a SPS, aggregating all of the students in the district. The DPS shall be reported as a numeric value and a label shall be assigned based on the numeric value.

E. District Responsibility Index (DRI). A District Responsibility Index (DRI) shall be the weighted average of four indicators with each indicator to be expressed as an index. A score of 100 = good and a score of 150 = excellent.

F. The DRI indicators:

1. summer school;
2. the change in SPS for all schools relative to growth targets;
3. the change in LEAP 21 first-time passing rate from one year to the next; and
4. certified teachers.

¹Indicators for school finance and graduation rate of high school students may be considered in the calculation of the district responsibility index at a later date.

Indicators and Weights	
Indicator	Weighting
1. Summer School.	30% (Part A 15% + Part B 15%)
2. The change in SPS for all schools relative to growth targets.	25%
3. The change in LEAP 21 first -time passing rate from one year to the next.	25% (Part A 12.5% + Part B 12.5%)
4. Certified Teachers	20% (Part A 15% + Part B 5%)

G Subgroup Component. District AYP shall be determined by evaluating the performance of subgroups as defined below.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2755 (December 2003), amended LR 30:

§4309. Indicator 4: Classes Taught by Certified Teachers

A. For the purpose of district accountability, the Louisiana Department of Education shall define certified teachers as those who hold a standard teaching certificate¹ in the state of Louisiana or who have been certified in accordance with the 12-hour rule. The Louisiana Department of Education shall use two statistics (listed below in B) when calculating an index score for the percentage of state core classes (English Language Arts, mathematics, science, social studies) taught by certified teachers.

B. Part A: The percentage of state core classes taught by certified teachers in schools with a Performance Label of one star or below. The Louisiana Department of Education shall calculate this statistic by multiplying 100 times the number of state core classes taught by certified teachers in the divided by the total number of state core classes taught in the district. If no schools in the district are scoring below an SPS of 80, Part A of this indicator shall not apply and the total weight of this indicator shall be applied to Part B.

1. Formula for converting Part A to an index: 5* (percent of state core classes taught by certified teachers - 70).

2. Implications of index for Part A:

a. 90 percent of state core classes taught by certified teachers shall yield an index of 100;

b. 100 percent of state core classes taught by certified teachers shall yield an index of 150.

C. Part B: The percentage of state core classes taught by certified teaches in the district. The Louisiana Department of Education shall calculate this statistic by multiplying 100 times the number of state core classes taught by certified teachers in the district divided by the number of state core classes taught in the district.

1. Formula for converting Part B to an index: 5* (percent of state core classes taught by certified teachers - 70)

2. Implications of index for Part B:

a. 90 percent of state core classes taught by certified teachers shall yield an index of 100;

b. 100 percent of state core classes taught by certified teachers shall yield an index of 150.

NOTE: Reference Bulletin 746.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2756 (December 2003), amended LR 30:

§4310. Subgroup Component AYP (Adequate Yearly Progress)

A. District Subgroup Component Indicators

1. Each district shall be evaluated on the subgroup component. A district shall pass the subgroup component provided that each subgroup of students meets the subgroup component, and the district, as a whole, meets the criteria for status or improvement on the additional academic indicator.

a. Passing the Subgroup Component

i. Participation rate test: 95 percent of the students within the subgroup participated in the standards-based assessments; and

ii. Annual Measurable Objective status test (AMO status test): the subgroup percent proficient score is at/or above the annual measurable objective in ELA and mathematics; or

iii. Safe Harbor Test:

(a) the percentage of non-proficient students within the subgroup reduced by at least 10 percent of the previous year's value; and

(b) the subgroup improved or met the criterion on the additional academic indicator (attendance rate for elementary and middle schools and non-dropout rate for high schools).

b. 2002-03 will be year one of judging districts based on the subgroup component.

- c. 2003-04 will be year two of judging districts based on the subgroup component.
- d. For the non-proficient reduction portion of the safe harbor test, a comparison of current year assessment data to the previous year assessment data shall be used. For the additional academic indicator check for the safe harbor test and for the whole district check, attendance and dropout data from two years prior will be compared to data from three years prior.
- e. To ensure high levels of reliability, Louisiana will apply a 99 percent confidence interval to the calculations of subgroup component determinations for:
 - i. AMO status test;
 - ii. reduction of non-proficient students (safe harbor test); and
 - iii. status attendance/non-dropout rate analyses.
- f. Louisiana will not apply a confidence interval to improvement analyses for attendance/non-dropout rate.

B. Inclusion of Students in the Subgroup Component

- 1. Students that meet the following criteria shall be included in all subgroup component analyses for the AMO status test and reduction of non-proficient students (safe harbor test).
 - a. Enrolled for the Full Academic Year (FAY):
 - i. at school level enrolled at the school on Oct. 1 and the date of testing;
 - ii. at district level enrolled in the district on Oct. 1 and the date of testing;
 - iii. at state level enrolled in a public LEA in the state on Oct. 1 and the date of testing.
 - b. First Administration of the Test:
 - i. only the first test administration will be used for the subgroup status and growth tests;
 - ii. excludes summer school results and repeaters.

2. For analyses involving the additional academic indicator, all students in each subgroup in the district shall be included.

3. Each subgroup (African American, American Indian/Alaskan Native, Asian, Hispanic, White, Economically Disadvantaged, Limited English Proficient, Students with Disabilities, and All Students) within each district shall be evaluated separately on ELA and mathematics.

a. In calculating the subgroup component for a district, the alternate academic achievement standards for students participating in LAA will be used, provided that the percentage of LAA students at the district level does not exceed 1.0 percent of all students in the grades assessed. If the district exceeds the 1.0 percent cap, the district shall request a waiver. If the district fails to request the waiver or if the district requests the waiver but it is determined by LDE that ineligible students were administered LAA, the students that exceed the cap or that are ineligible shall be assigned a zero on the assessment and considered non-proficient.

b. Students participating in LAA shall be included in the special education subgroup.

c. LEP students shall participate in the statewide assessments.

i. Scores of all LEP students shall be included in the subgroup component calculations.

- 4. Subgroups shall consist of:
 - a. at least 10 students in order to be evaluated for the subgroup component;
 - b. at least 40 students in order to be evaluated for the 95 percent participation rate.
- 5. Subgroups shall pass the participation rate test and either the AMO status test; or the safe harbor test in order to be considered as having passed the subgroup /component.

C. AMO

1. The Annual Measurable Objective (AMO) is the percent of students required to reach the proficient level in a given year on the standards-based assessments, which through 2005 will include English/language arts and mathematics tests for 4th, 8th, and 10th grades.

a. Proficient = a score of basic, mastery or advanced.

2. As required in NCLB, the AMOs have been established based on the baseline percent proficient score (proficient = CRT level of basic, mastery, or advanced) in English-language arts and mathematics in the 20th percentile school, using the 2002 CRT test scores in ELA and mathematics for grades 4, 8, and 10.

3. The AMOs for ELA and math are as follows.

School Year	ELA	Mathematics
2001-2002		
2002-2003	36.9%	30.1%
2003-2004	36.9%	30.1%
2004-2005	47.4%	41.8%
2005-2006	47.4%	41.8%
2006-2007	47.4%	41.8%
2007-2008	57.9%	53.5%
2008-2009	57.9%	53.5%
2009-2010	57.9%	53.5%
2010-2011	68.4%	65.2%
2011-2012	78.9%	76.9%
2012-2013	89.4%	88.6%
2013-2014	100.0%	100.0%

4. A 99 percent confidence interval shall be used when evaluating whether subgroups within a district have attained the Annual Measurable Objective (AMO).

5. A confidence interval is a statistic that creates a range of scores. Subgroups with a 95 percent participation rate that attain a percent proficient score within or above the confidence interval range for the AMO shall be considered as having passed the subgroup component. Confidence interval ranges are affected by subgroup size. Smaller subgroups will have a wider range and larger subgroups will have a narrower range.

D. Safe Harbor

1. Subgroups that do not pass the AMO status test by attaining a percent proficient score within or above the confidence interval range shall be evaluated for safe harbor.

2. Safe harbor is attained if:

- a. the subgroup makes a 10 percent reduction in its non-proficiency rate from the previous year:
 - i. a 99 percent confidence interval is applied to this reduction check; and
- b. the subgroup:
 - i. achieves a 90 percent non-dropout rate (any LEA without a 12th grade shall use attendance rate). (A 99 percent confidence interval is applied to the 90 percent attendance rate and 90 percent non-dropout rate check); or

ii. makes at least 0.1 percent improvement in non-dropout rate from the previous year (any LEA without a 12th grade shall use attendance rate).

3. The non-dropout rate shall be evaluated for students in grade 9 and above.

4. Subgroups passing the participation rate test and achieving safe harbor shall be considered as having passed the subgroup component.

E. Failing the Subgroup Component

1. A district shall fail the subgroup component if ANY subgroup within that district fails the participation rate test, the ELA or math AMO status test and the safe harbor test.

2. A district in which all subgroups have passed the subgroup component must also have the district pass the additional academic indicator:

a. achieved a 90 percent non-dropout rate (any LEA without a 12th grade shall use attendance rate). (A 99 percent confidence interval is applied to the 90 percent non-dropout or attendance rate check.); or

b. made at least 0.1 percent improvement in non-dropout rate from the previous year (any LEA without a 12th grade shall use attendance rate).

NOTE: If a district in which all subgroups have passed the subgroup component does not pass the additional academic indicator, it shall not pass the subgroup component.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§4311. Performance Labels

A. Districts shall be assigned a DPS performance label as follows:

Performance Label	District Performance Score
Academically Unacceptable	Below 45.0
Academic Warning?	45.0 – 59.9
?	60.0 – 79.9
? ?	80.0 – 99.9
? ? ?	100.0 – 119.9
? ? ? ?	120.0 – 139.9
? ? ? ? ?	140.0 and above

*Effective with the 2005 performance labels, the definition of an academically unacceptable district shall be any district with a DPS below 60.0. The academic warning label will be used only with the 2003 and 2004 district performance scores.

B. A label shall be reported for the District Responsibility Index (DRI) and for each of the four indicators.

District Responsibility Index	DRI Label
120.0 or more	Highly responsive
100.0-119.9	Adequately responsive
80.0-99.9	Responsive
60.0-79.9	Minimally responsive
0.0-59.9	Unresponsive

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:

§4313. Corrective Actions

A. The Louisiana Department of Education shall report district scores and labels on every school district. Consequences imposed on a district shall be based on its District Responsibility Index (DRI). Any district receiving a performance label of unsatisfactory for its DRI shall become subject to an operational audit. If a district scores unsatisfactory again within two years, the SBESE shall have the authority to act on the audit findings, including the withholding of funds to which the district might otherwise be entitled.

B. Beginning in 2004, Districts shall be evaluated on their District Responsibility Index Label and on the subgroup component. Districts that receive a DRI Index label of Unresponsive and/or fail to achieve Adequate Yearly Progress (AYP) in the subgroup component shall complete district self-assessments and submit it to the Louisiana Department of Education.

1. The DOE shall review each self-assessment.

2. The DOE may recommend that BESE schedule a District Dialogue with the District.

C. Districts that receive a DRI Index label of Unresponsive and/or fail to achieve AYP in the subgroup component for a second consecutive year shall write District Improvement Plans based on the prior years' self-assessments and submit those plan to the LDE.

1. The DOE shall review each District Improvement Plan.

2. The DOE may recommend that BESE schedule a District Dialogue with the District.

D. Districts that receive a DRI Index label of Unresponsive and/or fail to achieve AYP in the subgroup component for a third consecutive year shall be audited by the LDE. The audit shall include academic, fiscal, and support services.

E. BESE shall take action on the findings of the prior years audit for Districts that receive a DRI Index label of Unresponsive and/or fail to achieve AYP in the subgroup component for a fourth consecutive year. Actions taken shall be dependent upon whether identification was through the DRI label or the subgroup component.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:

§4315. Progress Report

A. The Louisiana Department of Education shall publish a district accountability report. The report shall contain the labels for the DPS and DRI and for each of the four indicators. The report shall also contain the percent poverty, poverty ranking, and percentage of students enrolled in public education for the district, as well as data from the subgroup component.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2757 (December 2003), amended LR 30:

Family Impact Statement

In accordance with Section 953 and 972 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

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

Interested persons may submit comments until 4:30 p.m., May 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no estimated implementation costs (savings) to state governmental units. The proposed changes clarify existing policy as it pertains to the school subgroup performance scores, pair/share relationships, rewards/recognition eligibility, and district accountability.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no estimated costs and/or economic benefits to persons or non-governmental groups directly affected.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0403#038

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 113? Louisiana's Reading and
Language Competencies for New Teachers
(LAC 28:XCXV.Chapters 1-17)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement the adoption of *Bulletin 113? Louisiana's Reading and Language Competencies for New Teachers*. Bulletin 113 will be printed in codified format as Part XCXV of the Louisiana Administrative Code. Bulletin 113 establishes competencies required for new teachers of reading/language arts in Louisiana that are aligned with scientifically based reading research.

Title 28

EDUCATION

Part XCXV. Bulletin 113? Louisiana's Reading and Language Competencies for New Teachers

Chapter 1. Foundational Concepts? Strand A §101. BESE Reading Competencies? Knowledge

A. Knows the progression (stages) of reading/language development. (A.1.1)

B. Knows the major components of reading and language instruction and the teaching activities that typically address each component. (A.1.2)

C. Understands at a general level the causal links between phonological skill, phonic decoding, spelling, word recognition, reading fluency, vocabulary, reading comprehension, and writing. (A.1.3)

D. Understands the most common intrinsic differences between proficient and poor readers (cognitive, physiological, and linguistic) and the major differences (language spoken at home, exposure to books, values, schooling itself.) (A.1.4)

E. Understands principles of teaching: model, lead, give guided practice, and independent practice. (A.1.5)

F. Knows how to question at multiple levels to assess and build comprehension at all levels from lower level factual to higher order thinking. (A.1.6)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§103. BESE/LDE Reading Competencies? Skills

A. Develops and implements instructional activities that appropriately utilize and demonstrate the concept of the continuum of skills in reading, writing, and oral language proficiencies.

B. Plans and implements instruction that demonstrates an understanding of the major components of reading, writing, and oral language instruction and addresses each component thoroughly and systematically with emphasis appropriate to students' grade levels or needs.

C. Designs and implements instructional activities that build on an understanding of the connections between phonological skill, phonic decoding, spelling, word recognition, reading fluency, vocabulary, reading comprehension, and writing.

D. Analyzes and selects instructional goals based on cognitive, physiological, cultural, environmental, and linguistic differences underlying good and poor reading.

E. Selects, develops and uses media (books, technology, non-print materials) to support instruction, based on considerations of student interests and cultural and linguistic backgrounds in reference to scientifically based reading research.

F. Asks questions at multiple levels, from lower level factual to higher order thinking, when assessing and building comprehension.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§105. Reading and Language Competencies? Knowledge

A. Understands how to select, develop, and use a large supply of books, technology-based information, and non-print materials to match the reading levels and needs of the students (e.g., decoding, fluency, vocabulary). Choices should also consider the students' interests, cultures, and linguistic backgrounds. (A.2.1)

B. Understands how to manage all students in a classroom while working with whole class/groups/individual students who are performing at multiple instructional levels. (A.2.2)

C. Understands how to provide instruction that is explicit and systematic across the reading components (e.g., phonemic awareness, phonics, vocabulary, fluency, comprehension, oral language, and writing. (A.2.3)

D. Knows how to plan for and use appropriate practices, including technology-based practices, in effective reading instruction for learners at various stages of reading, writing, and language development and from different cultural and linguistic backgrounds. (A.2.4)

E. Knows how to recognize reading research that is scientifically based and is aware of the histories of reading. (A.2.5)

F. Are committed to ethical and caring attitudes in classrooms. (A.2.6)

G. Are committed to the success of each student involved in literacy (reading, writing, and oral language). (A.2.7)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§107. Reading and Language Competencies? Skills

A. Selects, develops, and uses media (books, technology, non-print materials) to support instruction based on considerations of the reading level and instructional needs of the student, as well as students' interests, cultures, and linguistic backgrounds.

B. Creates learning environments that provide support for individual learner needs. Balances whole class/group/individual instructional activities to address multiple instructional levels. Provides small flexible

homogeneous group instruction to students who are below grade-level benchmarks.

C. Provides instruction that is explicit and systematic across reading components (e.g., phonemic awareness, phonics, vocabulary, fluency, comprehension, oral language, and writing).

D. Plans and uses appropriate practices, including technology-based practices, in effective reading instruction for learners at various stages of reading, writing, and language development and from different cultural and linguistic backgrounds.

E. Uses reading research that is scientifically based.

F. Demonstrates respect and concern for the needs of all students.

G. Demonstrates commitment to the success of all students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§109. Additional Reading and Language Competencies? Knowledge

A. Knows how and when to differentiate and/or provide additional instruction for students who are working above, on, or below grade level. (A.3.1)

B. Understands the components of effective literacy instruction and how they are represented in comprehensive reading programs. (A.3.2)

C. Understands that oral language is the expression of communication of thoughts and feelings by means of sounds, and combinations of such sounds, to which meaning is attributed. (A.3.3)

D. Knows the value and purpose of teacher-directed and student-directed assignments. (A.3.4)

E. Is enthusiastic about the teaching of reading, writing, and oral language skills. (A.3.5)

F. Is committed to reflection on practice to ensure that instruction is appropriate and results in improved student outcomes, as measured by student achievement data. (A.3.6)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§111. Additional Reading and Language Competencies? Skills

A. Designs and implements instructional activities that differentially address the needs of students who are working above, on, or below grade level.

B. Analyzes all reading materials and programs to determine if they are aligned with practices supported by scientifically based reading research and adapts programs as needed to provide comprehensive instruction.

C. Plans instruction that develops a student's oral language skills, recognizing the critical links between oral language, phonological awareness, and decoding abilities.

D. Incorporates teacher-directed and student-directed assignments into instructional routines that demonstrate an understanding of the role and value of each.

E. Demonstrates enthusiasm for the teaching of reading, writing, and oral language skills

F. Systematically examines student achievement data, including early literacy screening assessments and ongoing

outcome and progress monitoring data, and adjusts practice as needed to meet student reading goals.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 3. Assessment? Strand B

§301. BESE/LDE Reading Competencies? Knowledge Reserved.

§303. BESE/LDE Reading Competencies? Skills Reserved.

§305. NCATE Reading and Language Competencies? Knowledge

A. Knows how to select scientifically based, validated assessment tools and practices that include individual and standardized group tests; informal, individual, and group classroom assessment strategies; and technology-based assessment tools for measuring important components of reading/language development. (B.2.1)

B. Develops appropriate instructional and intervention strategies based on information produced by formal and informal assessments. Knows how to effectively communicate results of assessments to specific individuals (e.g., students, parents, caregivers, colleagues, administrators, policymakers, policy officials, community). (B.2.2)

C. Knows how to use assessment information to identify students' proficiencies and needs. Knows how to group students for small groups based on data, including small flexible intervention groups. Knows how to develop instruction that is targeted and linked to student deficits visible through screening assessments. (B.2.3)

D. Views reading/language assessment as instrumental in making decisions about appropriate instruction, rather than as a mechanical process for assigning grades and ranking students by ability or achievement. (B.2.4)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§307. NCATE Reading and Language Competencies? Skills

A. Administers, scores, analyzes, interprets, and communicates results of individual and group standardized measures of literacy achievement (i.e., screening, diagnosis, monitoring progress, and measuring outcomes).

B. Utilizes informal assessment strategies to identify and communicate student proficiencies and needs to students, parents, caregivers, colleagues, administrators, policymakers, policy officials, community, etc.

C. Demonstrates an ability to access and use technology-based (including web-based) assessments.

D. Develops appropriate instructional and intervention strategies based on information produced by formal and informal assessments. (Refer to §305.A-D)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§309. Additional Reading and Language Competencies? Skills

A. Understands that assessments are used for various purposes, including determining strengths and needs of

students in order to plan for instruction and flexible grouping; monitoring progress in relation to stages of reading/language development; assessing curriculum-specific learning; and using norm-referenced or diagnostic tests to inform practice. (B.3.1)

B. Knows how to design appropriate informal measures for ongoing assessment of students' reading/language development. (B.3.2)

C. Values reading/language assessment as an essential tool in the instructional process. (B.3.3)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§311. Additional Reading and Language Competencies? Skills

A. Refer to §307.A

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§313. Additional Reading and Language Competencies? Dispositions

A. Values reading/language assessment as an essential tool in the instructional process. (B.3.3)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§315. Additional Reading and Language Competencies? Skills

A. Refer to § 307.A.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 5. Phonemic Awareness and Letter Knowledge? Strand C

§501. BESE/LDE Reading Competencies? Knowledge

A. Knows the progression of development of phonological skill (e.g., rhyme, syllable, onset-rime, phoneme segmentation, blending, and substitution). (C.1.1)

B. Understands the difference between speech sounds (phonemes) and the letters/letter combinations (graphemes) that represent them. (C.1.2)

C. Knows how to identify and pronounce the speech sounds in standard English (consonant and vowel phoneme systems). (C.1.3)

D. Understands the print concepts young children must develop (e.g., directionality, connection of print to meaning). (C.1.4)

E. Knows how to segment and blend any single-syllable word at the onset-rime and phoneme level. (C.1.5)

F. Understands the role of fluency of letter name knowledge in reading and spelling. (C.1.6)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§503. BESE/LDE Reading Competencies? Skills

A. Selects and instructs a range of activities representing a developmental progression of phonological skill (words in sentences, rhyming; oral word repetition, syllable counting,

onset-time segmentation and blending, phoneme identification, segmentation, blending, and substitution).

B. Designs lessons that begin with auditory phonemic awareness activities and then links phonemes with letters as soon as students develop an adequate level of phonemic awareness.

C. Demonstrates appropriate enunciation in oral demonstrations, especially when conducting phonemic awareness lessons.

D. Explains and demonstrates through shared reading and oral reading how print is used when reading a book. (e.g., provides details that readers take for granted while reading such as sentences and paragraphs, and that the end of lines or a page does not necessarily mean the end of a unit of meaning).

E. Models and assists students in segmenting and blending single-syllable words at the onset-rime and phoneme levels using words with two, three, and four phonemes.

F. Uses techniques for teaching fluency of letter naming, matching, and writing, including multi-sensory strategies for teaching letter identification and letter formation.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§505. NCATE Reading and Language Competencies? Knowledge

Reserved.

§507. NCATE Reading and Language Competencies? Skills

Reserved.

§509. Additional Reading and Language Competencies? Knowledge

A. Understands the distinction between phonemic awareness and phonics. (C3.1)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§511. Additional Reading and Language Competencies? Skills

A. Distinguishes differences between high frequency, predictable and uncontrolled text from decodable text, reinforcing skills that have been taught previously.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 7. Phonics and Word Recognition? Strand 7

§701. BESE/LDE Reading Competencies? Knowledge

A. Understands the various structures of language that underlie the English spelling system (e.g., phoneme-grapheme, syllable pattern, morpheme units in print, and word origin). (D.1.1)

B. Understands explicit, systematic teaching and implicit, incidental, and opportunistic teaching of phonics. (D.1.2)

C. Understands the developmental progression in which orthographic knowledge is generally acquired. (D.1.3)

D. Knows how to recognize examples of sound-symbol correspondences, rules, and patterns in English and recognizes syllable types and morphemes. (D.1.4)

E. Possesses an awareness that second languages or dialects have varying phonological features that present a challenge to English pronunciation and phonics. (D.1.5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§703. BESE/LDE Reading Competencies? Skills

A. Identifies the kind of phonics and spelling instruction that is in an adopted comprehensive reading program (e.g., systematic, incidental, synthetic, analytic). Develops lessons that include practice in reading texts that are written for students to use their knowledge of language structure to decode and read words.

B. Teaches all steps in a decoding lesson, resulting in reading words fluently, accurately, and with appropriate intonation and expression. Uses the following systematic progression to teach word reading so as to make public the important steps involved in reading a word.

1. Students orally produce each sound in a word and sustain that sound as they progress to the next.

2. Students must be taught to put those sounds together to make a whole word.

3. Students sound out the letter-sound correspondences "in their head" or silently and then produce the whole word.

C. Selects and delivers grade-appropriate lessons on spelling, phonics, and word identification skills.

D. Explicitly teaches phoneme-grapheme association, blending, and segmentation, in addition to syllable pattern and morpheme recognition. Identifies the phonological, morphological, and orthographic differences in English and a second language.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§705. NCATE Reading and Language Competencies? Knowledge

Reserved.

§707. NCATE Reading And Language Competencies? Skills

Reserved.

§709. Additional Reading and Language Competencies? Knowledge

A. Knows how to identify and teach high frequency, irregular words. (D.3.1)

B. Distinguishes differences between high frequency, predictable, and uncontrolled text from decodable text reinforcing skills that have been taught previously. (D.3.2)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§711. Additional Reading and Language Competencies? Skills

A. Teaches words that are nonphonetic, using multiple strategies so that students can recognize them by sight. (D.3.1-D.3.2)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 9. Fluent, Automatic Reading of Text? Strand E

§901. BESE/LDE Reading Competencies? Knowledge

A. Understands the role of fluency in word recognition, oral reading, silent reading, and comprehension of written discourse. (E.1.1)

B. Knows how to define and identify examples of text at a student's frustration, instructional, and independent reading levels. (E.1.2)

C. Understands reading fluency from multiple perspectives: stages of normal reading development, intrinsic characteristic of some reading disorders, and consequence of practice and instruction. (E.1.3)

§903. BESE/LDE Reading Competencies? Skills

A. Provides opportunities for repeated readings of continuous text with corrective feedback to promote speed, accuracy, comprehension, and expression.

B. Determines the reading level of text and the student's reading level, and selects appropriate text to match the student's instructional and independent reading levels.

C. Implements instructional strategies, targeting the unique needs of each student to foster reading fluency.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§905. NCATE Reading and Language Competencies? Knowledge

Reserved.

§907. NCATE Reading and Language Competencies? Knowledge

Reserved.

§909. Additional Reading and Language Competencies? Knowledge

A. Understands the importance of language structure (syntactic awareness, discourse awareness) in developing fluency. (E.3.1)

B. Understands how to create opportunities for students to read aloud daily to provide a fluent reading model and to promote interest in independent reading. (E.3.2)

C. Understands how to carefully observe reading behaviors often associated with fluency problems. (E.3.3)

D. Understands how to provide interventions to develop fluency in struggling readers. (E.3.4)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§911. Additional Reading and Language Competencies? Skills

A. Guides student awareness of syntax and discourse and provides opportunities for developing fluency.

B. Provides daily read-alouds and multiple opportunities for independent reading.

C. Assesses specific behaviors (e.g., automaticity, substitution, omissions, repetitions, reading rates, accuracy) that often accompany difficult reading.

D. Matches appropriate intervention instruction to struggling readers.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 11. Vocabulary

§1101. BESE/LDE Reading Competencies? Knowledge (Strand F)

A. Understands the role of vocabulary development and vocabulary knowledge in comprehension. Understands the concept of building word consciousness. (F.1.1)

B. Understands the role and characteristics of both direct and contextual methods of vocabulary instruction. (F.1.2)

C. Knows varied techniques for rich vocabulary instruction before, during, and after reading/language instruction. (F.1.3)

D. Understands principles of word selection for rich vocabulary instruction (e.g., words with broad utility, specialty words). (F.1.4)

E. Knows reasonable goals and expectations for learners at various stages of literacy development (e.g., Biemiller's list); knows how to recognize the wide differences in students' vocabularies. (F.1.5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1103. BESE/LDE Reading Competencies? Skills

A. Structures lessons and selects appropriate words to develop students' vocabulary using strategies and materials.

B. Develops and teaches lessons to provide both direct and contextual vocabulary instruction that is robust and engages the student.

C. Identifies and applies varied techniques for vocabulary instruction before, during, and after reading, writing, and oral language.

D. Identifies and directly teaches words necessary for understanding text that should be taught before the passage is read, and differentiates specialty words from words with broad utility

E. Plans and adjusts vocabulary instruction based on the needs of students.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1105. NCATE Reading and Language Competencies? Knowledge

Reserved.

§1107. NCATE Reading And Language Competencies? Skills

Reserved.

§1109. Additional Reading and Language Competencies? Knowledge (Strand F)

A. Understands how to help students develop four types of vocabulary: listening, speaking, reading, and writing (i.e., receptive and expressive).

B. Understands how to model robust vocabulary, encourages students to use new vocabulary in the classroom, and extends its use beyond the classroom.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1111. Additional Reading and Language Competencies? Skills (Strand F)

A. Selects materials for teacher-directed and independent reading that will expand students' vocabularies. Actively

involves students in conversations about vocabulary as they listen, speak, read, and write.

B. Provides for frequent encounters with target words and multiple opportunities to use target words orally and in writing beyond the present context.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 13. Text Comprehension (Strand G)

§1301. BESE/LDE Reading Competencies? Knowledge

A. Understands comprehension monitoring strategies used by good readers. (G.1.1)

B. Differentiates among strategies that are appropriate before, during, and after reading. (G.1.2)

C. Knows the differences between characteristics of major text genres, including narration, exposition, and argumentation. (G.1.3)

D. Knows how to recognize text structure and syntax (phrases, clauses, sentences, paragraphs and "academic language") that could be a source of miscomprehension. (G.1.4)

E. Understands the similarities and differences between written composition and text comprehension and the usefulness of writing in building comprehension. (G.1.5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1303. BESE/LDE Reading Competencies? Skills (Strand G)

A. Organizes and provides instruction that models comprehension monitoring strategies and have students use them (e.g., asking questions, summarizing, predicting, making connections).

B. Utilizes instructional strategies that teach students differences between major text genres, including narration, exposition, and argumentation.

C. Models strategies to identify text structures and syntax and has students use the strategies to improve their comprehension.

D. Employs comprehension strategies across the content areas that emphasize the relationships among reading, writing, and oral language.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1305. NCATE Reading and Language Competencies? Knowledge

Reserved.

§1307. NCATE Reading And Language Competencies? Skills

Reserved.

§1309. Additional Reading and Language Competencies? Knowledge

A. Understands and knows how to teach comprehension of oral, visual (e.g., graphic organizers, maps, tables), and written texts. (G.3.1)

B. Understands how to teach students to adjust their reading as they encounter a variety of genres, structures, and formats. (G.3.2)

C. Understands the relationship between text structure and graphic representation that can be used to develop comprehension. (G.3.3)

D. Understands multiple ways students can demonstrate comprehension. (G. 3.4)

E. Understands how purposes for reading affect the use of comprehension strategies (e.g., knowledge, enjoyment). (G.3.5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1311. Additional Reading and Language Competencies? Skills

A. Applies instructional strategies for building comprehension of oral, visual, and written texts.

B. Guides students in adjusting their reading as they encounter different genres, structures, and formats.

C. Incorporates comprehension strategies that emphasize the relationship between text structure and graphic representation

D. Uses assessment strategies (formal and informal) that provide students with opportunities to demonstrate comprehension in multiple ways.

E. Assists students in matching comprehension strategies to purposes for reading.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 15. Spelling and Writing

§1501. BESE/LDE Reading Competencies? Knowledge (Strand H)

A. Understands the organizing principles of the English spelling system at the sound, syllable, and morpheme levels. (H.1)

B. Knows how to identify students' levels of spelling achievement and orthographic knowledge. (H.2)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1503. BESE/LDE Reading Competencies? Skills (Strand H)

A. Plans and teaches a sequence of lessons that incorporate spelling and word study activities appropriate for students at each developmental level. (refer to H.1)

B. Analyzes students' spelling, identifies their levels of development, and provides appropriate instruction to improve their spelling achievement. (refer to H.2)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1505. NCATE Reading and Language Competencies? Knowledge

Reserved.

§1507. NCATE Reading and Language Competencies? Skills

Reserved.

§1509. Additional Reading and Language Competencies? Knowledge (Strand H)

A. Understands that composition is a recursive process of planning, drafting, revising, and editing. (H.3.1)

B. Understands that different kinds of writing require different organizational approaches. (H.3.2)

C. Understands the need for diverse forms of writing to address specific audiences and purposes. (H.3.3)

D. Knows and understands the use of informal and formal written language in appropriate settings. (H.3.4)

E. Knows how to analyze, model, and teach the elements of legible penmanship. (H.3.5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1511. Additional Reading and Language Competencies? Skills (Strand H)

A. Develops and implements unit plans that incorporate multiple opportunities for different types of writing, and builds in opportunities for planning, drafting, revising, editing, and publishing written pieces for different purposes and audiences.

B. Same as above.

C. Same as above.

D. Provides appropriate responses to students' formal and informal uses of language. Supports students' development of informal and formal written language appropriate to a given context or purpose.

E. Analyzes students' handwriting for elements of legibility (e.g., letter formation, size and proportion, spacing, slant, alignment, and line quality). identifies elements that need improvement; and designs instruction that assists students with improving those that are problematic.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 17. Professional Development (Strand I)

§1701. BESE/LDE Reading Competencies? Knowledge Reserved.

§1703. BESE/LDE Reading Competencies? Skills Reserved.

§1705. NCATE Reading and Language Competencies? Knowledge Reserved.

§1707. NCATE Reading and Language Competencies? Skills Reserved.

§1709. Additional Reading and Language Competencies? Knowledge (Strand I)

A. Knows how to work collaboratively with colleagues to observe, evaluate, and provide feedback on professional practice. (I.3.1)

B. Knows how to create, implement, and evaluate individual professional development plans. (I.3.2)

C. Knows how to participate in and evaluate professional development programs. (I.3.3)

D. Knows how to differentiate between research and non-research based practices and programs. (I.3.4)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1711. Additional Reading and Language Competencies? Skills (Strand I)

A. Collaborates with colleagues to observe, evaluate, and provide feedback on professional practice.

B. Designs and implements professional development plans with follow-up evaluations.

C. Seeks out opportunities for professional development and critiques impact of development programs on professional growth and academic improvement of students.

D. Critiques the research base of professional development programs and selectively adopts practices most consistent with scientifically based research.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1713. Additional Reading and Language Competencies? Dispositions (Strand I)

A. Values and is committed to ongoing individual and collaborative professional development. (I.3.5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§1715 Additional Reading and Language Competencies? Skills (Strand I)

A. Actively pursues and continuously develops professional knowledge, skills, and dispositions. (refer to I.3.5)

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Sample: Phase 5? Development Of Reading And Language Rubrics

Draft Rubrics To Evaluate Portfolios For Teacher Candidates

Grades PK-3

The following is a sample of the grades PK-3 draft rubrics for the Reading and Language Competencies for Strand G: Text Comprehension.

Strand G: Text Comprehension

Performance Assessment G1:

Unsatisfactory

(Expectations for teacher candidates who fail to adequately address identified competencies.)

Emerging

(Expectations for teacher candidates at an initial stage of competency development in Teacher Preparation Programs.)

Meets Expectations

For Teacher Preparation Programs

(Expectations for teacher candidates as they exit Teacher Preparation Programs.)

Meets Expectations

For Experienced Teacher

(Expectations for teachers after their first three years of teaching.)

Lacks the knowledge and skills to appropriately model comprehension monitoring strategies and fails to have students use the strategies.

With guidance and support, models comprehension monitoring strategies and guides students' use when asking questions, summarizing, predicting, and making connections when working with individuals/small groups of students.

Accurately provides instruction that models comprehension monitoring strategies and guides all students' use when asking questions, summarizing, predicting, and making connections.

Accurately organizes and provides instruction that models comprehension monitoring strategies that address specific needs of individual students and guides students' use when asking questions, summarizing, predicting, and making connections.

Performance Assessment G2:

Unsatisfactory

(Expectations for teacher candidates who fail to adequately address identified competencies.)

Emerging

(Expectations for teacher candidates at an initial stage of competency development in Teacher Preparation Programs.)

Meets Expectations

For Teacher Preparation Programs

(Expectations for teacher candidates as they exit Teacher Preparation Programs.)

Meets Expectations

For Experienced Teacher

(Expectations for teachers after their first three years of teaching.)

Lacks the knowledge and skills to accurately model and employ instructional strategies that teach students differences between major text genres, including narration, exposition, and argumentation.

With guidance and support, models and employs instructional strategies that teach differences between major text genres, including narration, exposition, and argumentation when working with individuals/small groups of students.

Accurately models and employs instructional strategies that teach all students the differences between major text genres, including narration, exposition, and argumentation.

Accurately researches, organizes, utilizes, models, and employs instructional strategies that teach all students the differences between major text genres, including narration, exposition, and argumentation

Sample: Phase 5? Development Of Reading And Language Rubrics

Draft Rubrics To Evaluate Portfolios For Teacher Candidates Grades PK-3

The following is a sample of the grades PK-3 draft rubrics for the Reading and Language Competencies for Strand G: Text Comprehension.

Strand G: Text Comprehension

Performance Assessment G1:

Unsatisfactory

(Expectations for teacher candidates who fail to adequately address identified competencies.)

Emerging

(Expectations for teacher candidates at an initial stage of competency development in Teacher Preparation Programs.)

Meets Expectations

For Teacher Preparation Programs

(Expectations for teacher candidates as they exit Teacher Preparation Programs.)

Meets Expectations

For Experienced Teacher

(Expectations for teachers after their first three years of teaching.)

Lacks the knowledge and skills to appropriately model comprehension monitoring strategies and fails to have students use the strategies.

With guidance and support, models comprehension monitoring strategies and guides students' use when asking questions, summarizing, predicting, and making connections when working with individuals/small groups of students.

Accurately provides instruction that models comprehension monitoring strategies and guides all students' use when asking questions, summarizing, predicting, and making connections.

Accurately organizes and provides instruction that models comprehension monitoring strategies that address specific needs of individual students and guides students' use when asking questions, summarizing, predicting, and making connections.

Performance Assessment G2:

Unsatisfactory

(Expectations for teacher candidates who fail to adequately address identified competencies.)

Emerging

(Expectations for teacher candidates at an initial stage of competency development in Teacher Preparation Programs.)

Meets Expectations

For Teacher Preparation Programs

(Expectations for teacher candidates as they exit Teacher Preparation Programs.)

Meets Expectations

For Experienced Teacher

(Expectations for teachers after their first three years of teaching.)

Lacks the knowledge and skills to accurately model and employ instructional strategies that teach students differences between major text genres, including narration, exposition, and argumentation.

With guidance and support, models and employs instructional strategies that teach differences between major text genres, including narration, exposition, and argumentation when working with individuals/small groups of students.

Accurately models and employs instructional strategies that teach all students the differences between major text genres, including narration, exposition, and argumentation.

Accurately researches, organizes, utilizes, models, and employs instructional strategies that teach all students the differences between major text genres, including narration, exposition, and argumentation

Performance Assessment G3:

Unsatisfactory

(Expectations for teacher candidates who fail to adequately address identified competencies.)

Emerging

(Expectations for teacher candidates at an initial stage of competency development in Teacher Preparation Programs.)

Meets Expectations

For Teacher Preparation Programs

(Expectations for teacher candidates as they exit Teacher Preparation Programs.)

Meets Expectations

For Experienced Teacher

(Expectations for teachers after their first three years of teaching.)

Lacks the knowledge and skills to model strategies to identify text structures and syntax and lacks the skills to guide students as they utilize the strategies to improve their comprehension.

With guidance and support, models strategies to identify text structure and syntax when working with individuals/small groups of students and guides the students as they utilize the strategies to improve their comprehension.

Accurately models strategies to identify text structure and syntax when working with all students and guides the students as they utilize the strategies to improve their comprehension.

Accurately researches, organizes, selects, models, and employs strategies to identify text structure and syntax that are appropriate for students with special needs and guides the students as they utilize the strategies to improve their comprehension.

Examples Of Artifacts For Use With Draft

Rubrics To Demonstrate Competencies:

Categories	Descriptions
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Performance Task

Performance of candidate as he/she would need to do in real life (e.g., written lesson plans, written unit plans, sample tests, instructional/teaching activities, student work).

Observation

Information/data collected by watching the candidates teach lessons to students in site-based settings.

Survey

A paper-pencil or online questionnaire completed by a supervising teacher who possesses first-hand knowledge of the candidate's knowledge and skills.

Interview

A structured set of questions asked of all candidates by trained assessors. The structured interview requires the respondent to identify his/her practices, how those practices and procedures have been selected, and why they have been selected and carried out as they have been.

A structured set of questions asked of all supervising teachers/mentors by trained assessors about a candidate's performance.

Written Examination

Traditional paper-pencil examinations, using one or more item formats (e.g., completion, constructed response, matching, true/false).

Oral Examination

A question-answer session between an assessor and candidate. Questions should be tailored to the individual candidate.

Self Evaluation

An analysis of knowledge and skills completed by the candidate.

Family Impact Statement

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

1 Will The Proposed Rule Affect The Stability Of The Family? No

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

3 Will The Proposed Rule Affect The Functioning Of The Family? No

4 Will the proposed rule affect family earnings and family budget? No

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

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2004, to Nina A. Ford, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 113? Louisiana's Reading and Language Competencies for New Teachers

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

There are no estimated implementation costs (savings) to state governmental units. Bulletin 113 establishes competencies required for new teachers of reading/language arts in La. that are aligned with scientifically based reading research.

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0403#039

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? GED Age Waiver Requirements (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed revision will add language to the current policy to allow districts more definitive criteria in the determination of student eligibility to take the GED.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6(A) (10), (11), (15); R.S. 17:7 (5), (7), (11); R.S. 17:10, 11; R.S. 17:22 (2), (6).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975),

amended LR 28:269, 272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 29:2757 (December 2003), LR 30:

Standard 1.124.02

A student shall be 17 years of age or older in order to be authorized to be administered the General Educational Development (GED) test. A married or emancipated individual may be permitted to take the GED test at 16 years of age and above. A student who has attained the age of 16 and qualified to take the GED test may request an age waiver from the local school superintendents if one or more of the following hardships exist and appropriate documentation is on file at the local school board office:

- Pregnant or actively parenting;
- Incarcerated or adjudicated;
- Institutionalized or living in a residential facility;
- Chronic physical or mental illness;
- Family or economic hardship.

The local school superintendent or his/her designee may approve the request without requesting action from the Board of Elementary and Secondary Education (BESE). Such local action must occur prior to a qualified 16 year old student taking the GED test. If the request for an age waiver is denied at the local level, a student may request the waiver from the Department of Education for approval by BESE with documentation of reason for denial at the local level. All other requests for age waivers due to hardships not listed above, must be approved by BESE prior to taking the GED test. Individual 15 years of age and below shall not be permitted to take the GED test under any circumstances.

* * *

Family Impact Statement

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

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

Interested persons may submit comments until 4:30 p.m., May 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746? Louisiana Handbook for School Administrators? GED Age Waiver Requirements

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The change in policy reflects the addition of two criteria for approval of an age waiver for a sixteen-year old to take the GED. This is an addition to policy already in existence.
There will be no implementation costs (savings) to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections by state/local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no estimated costs or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0403#040

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Certification of Secondary Career and Technical Trade and Industrial Education Personnel (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. The proposed revision will change the Louisiana standards for state certification of Secondary Career and Technical Trade and Industrial Education personnel, allowing job applicants holding industry-based certification, or who have passed an approved NOCTI exam, credit for up to two years of work experience in meeting the qualifications for the position of Instructor. Industries have shown increased effort to require the certification of skills used in those industries to assure technical competence and public confidence. Recognizing industry certifications in the competition for trade and industrial instructors assures that instruction is directly related to the needs of industry and nationally recognized industry standards.

Title 28
EDUCATION

Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

* * *

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:183 (April 1975), LR 1:311 (July 1975), LR 1:399 (September 1975), LR 1:435 (October 1975), LR 1:541 (December 1975), LR 28:760, 763, 765 (April 2002), LR 28:990 (May 2002), LR 28:2505 (December 2002); LR 29:117, 119, 121 (February 2003), LR 30:200 (February 2004), LR 30:

* * *

Louisiana Standards for State Certification
of Secondary Career and Technical Trade
and Industrial Education Personnel

Career and Technical Trade and Industrial Education Certificate? Valid for one year

A Career and Technical Trade and Industrial Education (CTTIE) Certificate authorizes employment for instructors of Career and Technical Trade and Industrial Education classes. It does not apply to Technology Education. For renewal of this certificate, at least three semester hours in professional CTTIE must be earned each year until a minimum of 15 semester hours has been completed by those without a degree; 12 semester hours with an associate degree; nine semester hours with a degree, six semester hours with an education degree, at which time the CTTIE Certificate shall become permanent. The New Instructor Course is mandatory and will be counted toward permanent certification requirements.

Special requirements for various personnel are as follows:

I. Secondary Career and Technical Trade and Industrial Education Instructor

A. Education

1. A high school diploma or equivalent (an equivalency test approved by the State Department of Education).

B. Experience

1. A minimum of at least four years of successful full-time experience in the Career and Technical field in which the applicant is to teach. At least one full year of the above experience must have been served within the five years immediately prior to certification. Evidence of technical competency may be determined by the Career and Technical Education Section of the State Department of Education by a test given through such agencies as the State Department of Education may designate; (e.g.; NOCTI).

2. Graduates of Community and Technical Colleges will be given credit for up to two years of occupational experience if the training is in the area for which the applicant is applying.

3. Graduates with a bachelor's degree from a state approved or regionally accredited college or university will be given credit for two years of the four years of experience as required in B1. The remaining two years of work experience in B1 must be continuous full-time.

4. The applicant must show, if requested by the State Department of Education, that one year of the required years of work experience has been at a level above starting requirements and that he/she has progressed in knowledge and skills of the trade.

5. Applicants holding current approved industry-based certification or, if industry-based certification is not available, who pass the approved NOCTI exam, may be given credit for two of the required four year's work experience. An industry-based certification may not be combined with educational attainment to qualify for a waiver from all required work experience, except as stipulated in number 6 below.

6. Applicants with an earned baccalaureate degree and who hold an industry-based certification in an information technology area may apply years of education experience toward the required work experience.

C. When the applicant has met the requirements listed under Items A and B, a one year CTTIE Certificate will be issued. For renewal of this certificate, at least three semester hours in professional Career and Technical education must be earned each year until all hours required for certification have been completed, at which time the CTTIE Certificate shall become permanent.

D. The applicant being certified under these requirements may teach CTTIE programs at the secondary level only. To become certified to teach at the postsecondary level, the applicant must meet the requirements for certification of postsecondary instructors.

E. In addition to CTTIE certification, a current license must be held when a state or national license is required in the workplace. A state or national license will be recognized as an industry-based certification.

II. Health Occupations Nurse's Aide Instructor

A. Education

A graduate of a professional diploma nursing program with current licensure in Louisiana as a registered nurse.

B. Experience

Shall have a minimum of two of the past four years experience in staff nursing or nursing education.

C. When the applicant has met the requirements of Items A and B, he/she shall be issued a one year CTTIE Certificate. For renewal of this certificate, at least three semester hours in professional Career and Technical education must be earned each year until all hours required for certification have been completed, at which time the CTTIE Certificate shall become permanent.

D. Department Head

In addition to the requirements of Items A, B, and C, the applicant shall have had a minimum of three years of teaching experience as a certified Practical Nursing instructor in this state.

E. Part-Time

When the applicant has met requirements of Items A and B, he/she shall be issued a CTTIE Certificate. The professional Career and Technical Trade and Industrial education courses shall not be required, but the applicant shall complete such teacher training as may be prescribed by the State Department of Education to improve competencies.

III. Health Occupations-Related Health Fields

A. Education

A graduate of approved program in the area in which the applicant is to teach, with current state license or national certification where required. Nutrition Instructors in nursing programs may meet certification requirements with a degree in Family and Consumer Sciences and a minimum of 12 semester hours in Foods and Nutrition.

B. Experience

A minimum of two years of occupational experience in the area in which the applicant is to teach. One year of this experience must have been served within the last five years.

C. When an applicant has met the requirements of Items A and B, the applicant shall be issued a one year CTTIE Certificate. For renewal of this certificate, at least three semester hours in professional Career and Technical education must be earned each year until all semester hours required have been completed, at which time the CTTIE Certificate shall become permanent.

D. Part-Time

When the applicant has met the requirements of Items A and B, he/she shall be issued a CTTIE Certificate. The professional Career and Technical education courses shall not be required but the applicant shall complete such teacher training as may be prescribed by the State Department of Education to improve competencies.

IV. CTTIE Cooperative Coordinator

A. Education

Applicant must have an active CTTIE Certificate, having completed the CTTIE requirements or being in the process of completing them at the time of application.

B. For the individual in the process of completing CTTIE requirements, a one year Career and Technical Certificate as a Cooperative Coordinator at only the secondary level will be issued. For renewal of this certificate, at least three semester hours in professional technical education must be earned each year until all requirements for certification have been completed, at which time the CTTIE Certificate shall become permanent.

V. Principal or Director of Career Centers Operated by Local School Systems

A. Education

An applicant must be fully certified as a secondary school principal.

VI. Jobs for America's Graduates Louisiana Job Specialist

A. Education/Experience

1. A bachelor's degree from a state approved and regionally accredited college or university, preferably in education, business administration, marketing, or related field and two years of fulltime work experience, preferably in business, marketing, or related field; or

2. A high school diploma or general equivalency diploma (GED) and five years of full-time work experience, preferably in business, marketing, or related field. Exceptions to the number of required years of experience may be approved by the Board of Elementary and Secondary Education.

B. When the applicant has met the requirements listed under Item A1 or A2, a one year CTTIE Certificate will be issued. For renewal of this certificate, at least three semester hours in professional CTTIE must be

earned each year until a minimum of 15 semester hours has been completed by those without a degree; 12 semester hours with an associate degree; 9 semester hours with a degree, 6 semester hours with an education degree, at which time the CTTIE Certificate shall become permanent. The New Instructor Course is mandatory and will be counted toward permanent certification requirements.

* * *

Family Impact Statement

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

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

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

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

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

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

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Louisiana Standards for State
Certification of Secondary Career and Technical
Trade and Industrial Education Personnel**

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

The proposed revision will change the Louisiana standards for state certification of Secondary Career and Technical Trade and Industrial Education personnel, allowing job applicants holding industry-based certification, or who have passed an approved NOCTI exam, credit for up to two years of work experience in meeting the qualifications for the position of Instructor. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

There are no estimated costs. Economic benefits to persons directly affected or non-governmental groups cannot be determined. Individuals possessing industry-based certifications may compete more effectively for available jobs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed changes would offer increased opportunities in the public sector to individuals holding industry certifications in career and technical trades and industrial occupations.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0403#043

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Educational Technology Facilitation Endorsement (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This amendment to current Bulletin 746 policy adds a certification option that represents an additional pathway for obtaining the add-on endorsement for Educational Technology Facilitation. This broadens opportunities for teachers to add the Educational Technology Facilitation certification endorsement through a technology pathway that promotes increased technology proficiency while increasing educational technology knowledge.

**Title 28
EDUCATION**

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations**

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

* * *

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

HISTORICALNOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:183 (April 1975), LR 1:311 (July 1975), LR 1:399 (September 1975), LR 1:435 (October 1975), LR 1:541 (December 1975), LR 28:760, 763, 765 (April 2002), LR 28:990 (May 2002), LR 28:2505 (December 2002), LR 29:117, 119, 121 (February 2003), LR 30:200 (February 2004), LR 30:

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Educational Technology Facilitation

1. A valid Type B or Level 2 Louisiana Teaching Certificate*
2. Complete one of the following options:
Option A: A minimum of 9 semester hours of graduate credit in educational technology, to include the following:
 1. Design and Development of Multimedia Instructional Units.....3 semester hours

2. Educational Telecommunications, Networks, and the Internet.....3 semester hours
3. Technology Leadership in Schools.....3 semester hours

-or-

Option B: A minimum of three online courses, to include the following:

1. Effective Instructional Technology: An Introduction
Course focuses on the NETS-T and will include an introduction to educational telecommunications, networks and the Internet.
2. Effective Instructional Technology: Building a Portfolio of Exemplars
Course focuses on building a portfolio of teacher and student work that demonstrates the understandings and skills as they relate to the NETS-T and the Louisiana K-12 Educational Technology Standards.
3. An additional course to be selected from a menu of Department approved online course offerings. Courses that have been developed falling under this menu include the following: Lessons by Design; Bridging the Gap: Universal Design for Learning; Universal Design for Learning: Technology Support for Math and the K-12 Classroom; and Universal Design for Learning: Technology Support for Reading and the K-12 Classroom.
3. Persons who have met requirements of 1 and 2 (Option A or Option B) may be issued an Educational Technology Facilitation certification endorsement.
4. Certified teachers who have served as a facilitator of educational technology at the building level may petition the Office of Certification and Higher Education to be "grandfathered in" with an Educational Technology Facilitation endorsement if they meet the following qualifications by August 31, 2002:
 - a) Hold certification in computer literacy and have earned an additional six semester hours in educational technology, and have served as a facilitator of educational technology at the school, district, regional, or state level successfully for the past three years as verified by the employment authority.

-or-

- b) Have served as a facilitator of educational technology above the school, district, regional, or state level successfully for the past five years as verified by the employing authority.

* Requires three years of teaching experience.

* * *

Family Impact Statement

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

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Policy for Add-On of Teaching Levels and Teaching Areas within Levels (LAC 28:1.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:1.903.A. These changes to current Bulletin 746 policy amend language for the add-on (endorsement) of certification teaching levels and teaching areas within levels. This amended language streamlines current policy and aligns Bulletin 746 policy with No Child Left Behind Act of 2001 requirements.

Title 28

EDUCATION

**Part I. Board of Elementary and Secondary Education
Chapter 9. Bulletins, Regulations, and State Plans
Subchapter A. Bulletins and Regulations
§903. Teacher Certification Standards and Regulations
A. Bulletin 746**

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), amended LR 27:825, 828 (June 2001), LR 27:1189 (August 2001), LR 27:1516 (September 2001), LR 27:1676, 1680 (October 2001), LR 27:2096, 2099 (December 2001), LR 28:273 (February 2002), LR 28:1727 (August 2002), LR 28:2505 (December 2002); LR 29:117, 119, 121 (February 2003), LR 30:

**Additions to Existing Certificates
Permanent Authorization on a Certificate**

The holder of a valid Louisiana teacher's certificate, upon completing all requirements for an additional area of certification as outlined in this bulletin, may have the authorization on his certification extended to include the newly achieved qualifications.

Additional authorizations should be requested and must be substantiated by an official transcript from a regionally accredited institution. The final authority for approval of additional authorization is the State Department of Education.

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

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

**RULE TITLE: Bulletin 746? Louisiana Standards for State Certification of School Personnel
Educational Technology Facilitation Endorsement**

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

This amendment to current Bulletin 746 policy adds a certification option that represents an additional pathway for obtaining the add-on endorsement for Educational Technology Facilitation. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0403#042

H. Gordon Monk
Staff Director
Legislative Fiscal Office

Teaching Levels and Teaching Areas within Levels

The following requirements must be completed to add a certification level and/or a certification area within levels to an existing valid teaching certificate.

To Add Early Childhood (Grades PK-3):

?? Requirements for individual holding a valid elementary certificate (e.g., 1-4, 1-5, 1-6, or 1-8):

- 1. Achieve passing score for Praxis Early Childhood Education exam (#0020)

or

Accumulate 12 credit hours of combined Nursery School and Kindergarten coursework.

?? Requirements for individual holding a valid upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary school certificate (e.g., 7-12, 9-12), special education mild/moderate certificate, or all-level K-12 certificate (art, dance, foreign language, health, PE, H&PE, music):

- 1. Achieve passing score for Praxis Elementary Education: Content Knowledge (#0014).
- 2. Achieve passing score for Praxis Early Childhood Education Exam (#0020)

or

Accumulate 12 credit hours of combined Nursery School and Kindergarten coursework.

- 3. Accumulate 9 semester hours of reading coursework.

To Add Elementary (Grades 1-5):

?? Requirements for individual holding a valid early childhood certificate (e.g., PK-K, PK-3), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 7-12, 9-12), special education mild/moderate certificate, or all-level K-12 certificate (art, dance, foreign language, health, PE, H&PE, music):

- 1. Achieve passing score for Praxis Elementary Education: Content Knowledge (#0014).
- 2. Achieve passing score for PRAXIS Principles of Learning and Teaching K-6.
- 3. Accumulate 9 semester hours of reading, 12 semester hours of mathematics, 12 semester hours of science, and 12 semester hours of social studies coursework.

To Add Middle School (Grades 4-8) Specialty Area of English, Mathematics, Science, or Social Studies:

?? Requirements for individual holding a valid early childhood certificate (PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 7-12, 9-12), mild/moderate certificate, or an all-level K-12 certificate (art, dance, foreign language, health, PE, H&PE, music):

- 1. Achieve passing Praxis score for Middle School: Specialty Area Exam in the specific content area

or

Accumulate 30 credit hours in the specialty content area.

- 2. Achieve passing score for Praxis Principles of Learning and Teaching 5-9.
- 3. Accumulate 6 semester hours of reading.

To Add Secondary Specialty Core Content Area as Defined in the No Child Left Behind Act of 2001:

?? Requirements for individual holding a valid early childhood certificate (PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), or special education mild/moderate certificate:

- 1. Achieve passing Praxis score for secondary specialty area exam in the content area

or

Accumulate 30 credit hours in the specialty content area.

- 2. Achieve passing Praxis score for Principles of Learning and Teaching 7-12.

?? Requirements for individual holding a valid secondary certificate (e.g., 7-12, 9-12) or an all-level K-12 certificate [art, dance, foreign language, health, H&PE, music]:

- 1. Achieve passing Praxis score for secondary specialty area exam in the content area

or

Accumulate 30 credit hours in the specialty content area.

To Add Special Education Mild/Moderate:

?? Requirements for individual holding a valid early childhood certificate (PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 7-12, 9-12), or an all-level K-12 certificate [art, dance, foreign language, health, PE, H&PE, music]:

- 1. Complete 15 semester hours of special education coursework, as follows:

?Methods/Materials for Mild/Moderate Exceptional Children (3 hrs.)

?Assessment and Evaluation of Exceptional Learners (3 hrs.)

?Behavioral Management of Mild/Moderate Exceptional Children (3 hrs.)

?Vocational and Transition Services for Students with Disabilities (3 hrs.)

?Practicum in Assessment and Evaluation of M/M Exceptional Learners (3 hrs.)

- 2. Earn a passing score on the mild/moderate special education Praxis pedagogy exam(s) required in Louisiana.

To Add an All-Level (K-12) Area Governed by NCLB Requirements (foreign language, arts):

?? Requirements for individual holding a valid early childhood certificate (PK-3), elementary certificate (e.g., 1-4, 1-5, 1-6, 1-8), upper elementary or middle school certificate (e.g., 4-8, 5-8, 6-8), secondary certificate (e.g., 7-12, 9-12), all level K-12 certificate, or special education mild/moderate certificate:

- 1. Achieve passing score for Praxis specialty area exam in area of endorsement

or

Accumulate 30 semester hours in the specialty area.

Other Certification Areas

Computer Education

Computer Literacy.....9 semester hours

Certification in computer literacy may be added to an existing elementary or secondary certificate and is intended for those teachers who teach introductory computer literacy classes. The six-hour requirement for computer literacy certification in 1-a and 1-b below may be waived for teachers certified in business education subjects who have completed a data processing course and a word processing course which include computer applications.

1. Introduction to Computer Literacy and Microcomputers.....3 semester hours
2. Computer Science Education elective that includes evaluation and use of hardware and software.....3 semester hours
3. Computer Programming.....3 semester hours

NOTE: A person who has been successfully employed as a teacher of computer education for a minimum of three years prior to September 1, 1986, may be certified in Computer Literacy and have this authorization added to his/her Louisiana elementary or secondary teaching certificate entitling him/her to teach computer literacy at the elementary or the secondary level, depending upon the area of certification.

Mandatory 1986-87 School Year, *Revised 10/29/87*

Family Impact Statement

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

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

Interested persons may submit comments until 4:30 p.m., May 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746? Louisiana Standards for State Certification of School Personnel? Policy for Add-On of Teaching Levels and Teaching Areas within Levels

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

These changes to current Bulletin 746 policy amend language for the add-on (endorsement) of certification teaching levels and teaching areas within levels. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

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

This policy will have no effect on revenue collections.

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

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

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

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0403#037

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Twelve-Hour Rule Policy (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy amends the current Twelve-Hour Rule Policy to align it with requirements under the No Child Left Behind Act of 2001. The nature of the change concerns those teaching in the core academic subject areas, who must have attained "highly qualified" status by the 2006-2007 school year.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183 (April 1975), amended LR 1:311 (July 1975), LR 1:399 (September 1975), LR 1:435 (October 1975), LR 1:541 (December 1975), LR 28:760, 763 765 (April 2002), LR 28:990 (May 2002), LR 28:2505 (December 2002), LR 29:117, 119, 121 (February 2003), LR 30:200 (February 2004), LR 30:

Twelve-Hour Rule Policy

For the non-core academic subject areas, full-time secondary certified teachers in schools including grades 6 through 12 (or any combination thereof) may be allowed to teach a maximum of two periods in one subject out of their field of certification if they have earned 12 hours in that

subject. Secondary certified teachers shall not teach below the sixth grade level.

Teachers in core academic areas must meet the highly qualified requirements in order to teach in any core academic subject.

* * *

Family Impact Statement

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

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

Interested persons may submit written comments until 4:30 p.m., May 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 746? Louisiana Standards for State Certification of School Personnel? Twelve -Hour Rule Policy**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
This policy amends the current Twelve-Hour Rule Policy to align it with requirements under the No Child Left Behind Act of 2001. The nature of the change concerns those teaching in the core academic subject areas, who must have attained "highly qualified" status by the 2006-2007 school year. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This policy will have no effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0403#041

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 1530? Louisiana's IEP Handbook for Students with Disabilities (LAC 28:XCVII.Chapters 1-7)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement the proposed adoption of *Bulletin 1530? Louisiana's IEP Handbook for Students with Disabilities*. Bulletin 1530 will be printed in codified format as Part XCVII of the Louisiana Administrative Code. This document replaces any previously advertised versions. *Louisiana's IEP Handbook for Students with Disabilities*, revised 2000, provides information regarding the Individualized Education Program (IEP)—the basis for educational programming for students with disabilities in Louisiana. The handbook describes the IEP process and the legal procedures involved as mandated by the *Individuals with Disabilities Education Act* (IDEA) PL. 105-17, Section 504 of the *Rehabilitation Act of 1973*, and *Revised Statute 17:1941, et seq.*, and their regulations.

Louisiana's IEP Handbook for Students with Disabilities, revised 2000, provides information regarding the Individualized Education Program (IEP)—the basis for educational programming for students with disabilities in Louisiana. The handbook describes the IEP process and the legal procedures involved as mandated by the *Individuals with Disabilities Education Act* (IDEA) PL. 105-17, Section 504 of the *Rehabilitation Act of 1973*, and *Revised Statute 17:1941, et seq.*, and their regulations. Although the intent of this handbook is not to replace any regulations, it does outline "best practices" as well as mandatory procedures. It serves as a training vehicle for interested parties in the effort to improve the quality of IEPs in Louisiana.

The IEP Handbook for Gifted and Talented Students should be referred to for information regarding students identified as gifted and talented students in Louisiana. A separate IEP form described in the handbook must be used for all students identified as gifted and talented, with the exception of students in the following categories:

1. gifted and/or talented students who have an additional identified disability;
2. gifted and/or talented students who require a related service, including counseling;
3. gifted and/or talented students who require modifications/accommodations for the Louisiana Educational Assessment Program testing.

Extended School Year Program Handbook should be referred to for information regarding students with disabilities identified as needing extended school year services in Louisiana. A separate ESY-IEP form must be used for all students eligible for ESY.

The Best Practices Guidelines for Developing IEPs for Louisiana's Early Education Program has been written for families, early intervention personnel, and others working with young children with disabilities, 3-5 years of age. These guidelines, which reflect federal and state mandates, are interspersed throughout the *Louisiana's IEP Handbook for Students with Disabilities* in the appropriate sections.

Title 28

EDUCATION

Part XCVII. Bulletin 1530? Louisiana's IEP Handbook for Students with Disabilities

Chapter 1. Introduction

§101. The IEP Process and Evaluation/Reevaluation of Students with Disabilities

A. This section emphasizes the IEP process as one intertwined with the process of evaluation and re-evaluation of students with disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§103. The Three Types of IEPs

A. The three types of IEPs are outlined below as follows.

1. The INTERIM IEP shall be developed for students who have severe or low incidence impairments documented by a qualified professional concurrent with the conduct of an evaluation according to the *Pupil Appraisal Handbook*. The interim IEP may also be developed for students who have been receiving special educational services in another state concurrent with the conduct of an evaluation. An interim IEP may also be developed for students out of school, including students ages 3-5, who are suspected of having a disability and for former special education students, through the age of 22, who have left a public school without completing their public education by obtaining a state diploma.

2. The INITIAL IEP is developed for a student with disabilities who has met criteria for one or more exceptionalities outlined in the *Pupil Appraisal Handbook* and who has never received special educational services, except through an interim IEP, from an approved Louisiana school/program.

3. The REVIEW IEP is reviewed and revised at least annually or more frequently to consider the appropriateness of the program, placement, and any related services needed by the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 3. Initial Iep Development

§301. Responsibilities

A. A student is initially determined to be exceptional through the individual evaluation process. The responsibility for making a formal commitment of resources to ensure a free, appropriate public education (FAPE) for a student identified as exceptional rests with the local education agency (LEA) in which the student resides.

B. The LEA is responsible for initiating the assurance of FAPE regardless of whether the system will:

1. provide all of the service directly or through interagency agreements;

2. place the student in another system or in a nonpublic facility; or

3. refer the student to another LEA for educational purposes.

C. The responsibility for offering FAPE is met through the process of developing an initial IEP. This process includes:

1. communication between the LEA and the parents;

2. IEP meeting(s) at which parents and school personnel make joint decisions and resolve any differences about the student's needs and services;

3. a completed IEP/placement document, which describes the decisions made during the meeting(s), including the special education and related services that are to be provided;

4. a formal assurance by the LEA that the services described in the document will be provided;

5. parental consent for initial placement;

6. procedural safeguards for differences that cannot be resolved mutually; and

7. initial placement and provision of services as described in the IEP/placement document.

D. The LEA is required to offer FAPE to those students with disabilities whose ages fall between 3 and 21 years. The LEA may choose to offer and provide services to young children with disabilities, birth through 2 years of age. If the LEA chooses to provide services, all the requirements of FAPE apply.

1. The child is eligible for FAPE on his 3rd birthday.

2. The responsibility for providing services to a student with disabilities continues until

a. the student receives a state diploma; or

b. the student reaches his or her 22nd birthday. (If the 22nd birthday occurs during the course of the regular school session, the student shall be allowed to remain in school for the remainder of the school year.)

3. The LEA is not responsible for providing FAPE if, after carefully documenting that the agency has offered FAPE via an IEP, the parents choose to voluntarily enroll the student elsewhere or indicate their refusal of special educational services. Documentation of these parental decisions should be kept on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§303. Timelines

A. An initial evaluation is considered "completed" when the written report has been disseminated by the pupil appraisal staff to the administrator of special education programs. A LEA has a maximum of 30 calendar days to complete the IEP/placement document for an eligible student. During this time, two activities must take place and be documented.

1. Written Notice(s) that the LEA proposes to provide FAPE through the IEP process must be given to the parents.

a. The notice(s) must be provided in the parents' native language or must be given using other means of

communication, whenever necessary, to assure parental understanding.

b. The notice(s) must indicate the purpose, time, and location of the IEP meeting; who will be in attendance; the parents' right to take other participants to the meeting; the student's right to participate (when appropriate); and the name of the person in the LEA the parents can contact if and when they have questions or concerns.

c. The notice(s) must explain the procedural safeguards available to the parents: that they can negotiate the time and place of the IEP meeting, that they have the right to full and meaningful participation in the IEP decision-making process, that their consent is required before initial placement will be made, and that all information about the student shall be kept confidential.

d. If it appears that a student may be eligible to participate in alternate assessment, the notice must explain that data appear to support the student's participation in alternate assessment, that the students participating in alternate assessment are eligible to work toward a Certificate of Achievement, and that the decision for participation in alternate assessment will be made with the parent(s) at the IEP meeting.

e. Additionally, if the LEA has not already done so, the system must inform the parents of their right to an oral explanation of the evaluation report and of their right to an independent education evaluation (IEE) if the parents disagree with the current evaluation.

2. An IEP meeting(s) that results in a completed IEP/placement document must be held. The IEP meeting(s) should be a vehicle for communication between parents and school personnel to share formal and informal information about the student's needs, educational projections, and services that will be provided to meet the student's needs. The completed IEP/placement document is a formal record of the IEP team's decisions. The timeline for completion of the document is intended to ensure that there is no undue delay in providing a free, appropriate public education (FAPE) for the student. The document is "completed" when the form has been completed and signed by the LEA's officially designated representative or director/supervisor of special education.

B. Additional Notes About Timelines

1. Summer recess. When an initial evaluation report has been completed within the 30 days prior to the summer recess or during the recess, the LEA may request, through written documentation, parental approval to delay the initial IEP meeting until the first week of the next school session. However, if the parents wish to meet during the summer recess, the LEA must ensure that the appropriate IEP team members are present.

2. Children approaching age 3 years. ChildNet eligible children who are "turning three-years-old" suspected of being eligible for Part B services must be referred to the LEA and the IEP team 10 months prior to their 3rd birthday. The date on which a child first becomes eligible for services may occur after the child's evaluation or last required re-evaluation. In such a case, a LEA has the following options:

a. to develop the IEP/placement document following the evaluation or re-evaluation and to indicate the date that services are to begin; or

b. to develop the IEP/placement document immediately before the LEA is required to provide services.

3. Parents refuse services. In some cases, when the LEA is in the process of offering FAPE to an eligible student (i.e., after an IEP has been developed), the parents will clearly indicate that they do not wish to have any special educational services for the student.

a. If the parent's decision is to withhold consent for the initial evaluation or initial placement of the student in a special educational program, the LEA may appeal to the appropriate state court. If the parent withholds consent for a reevaluation, the LEA may request a due process hearing following the procedures outlined in §507 of *Bulletin 1706? Regulations for Implementation of the Children with Exceptionalities Act*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§305. Participants

A. At any initial IEP meeting, the following participants must be in attendance: an officially designated representative of the LEA, the student's regular education and special education teachers, the student's parent(s), and a person knowledgeable about the student's evaluation procedures and results. The student, as well as other individuals the parents and/or LEA may deem necessary, should be given the opportunity to attend. Documentation of attendance is required.

1. An officially designated representative of the LEA is one who is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities, is knowledgeable about the general curriculum, and is knowledgeable about the availability of resources of the LEA. The LEA may designate another LEA member of the IEP team to serve also as the agency representative, if the above criteria are satisfied. A LEA must have on file and must disseminate within the agency a policy statement naming the kinds of persons who may act as the official representative of the LEA. Representatives may include the director/ supervisor of special education, principals, instructional strategists, teachers, or any other LEA employee certified to provide or supervise special educational services. A member of the student's evaluation team may serve in this capacity.

2. Parents are equal participants in the IEP process in discussing the educational and related services needs of the student and deciding which placement and other services are appropriate. As such, one or both of the student's parents should participate in the initial IEP/placement meeting(s). Other team members must rely on parents to contribute their perspective of the student outside of school. Parental insight about the student's strengths and support needs, learning style, temperament, ability to work in various environments, and acquired adaptive skills is of vital importance to the team in making decisions about the student's needs and services. The concerns of the parents for enhancing the education of their child must be documented in the IEP.

a. *Parent?* a natural or adoptive parent of a child; a guardian, but not the state if the child is ward of the state; a person acting in the place of a parent of a child (such as a

grandparent or stepparent with whom the child lives or a person who is legally responsible for the child's welfare); or a surrogate parent who has been appointed. A foster parent may qualify as a "parent" when the natural parents' authority to make educational decisions on the child's behalf has been extinguished under state law, and the foster parent has an ongoing, long-term parental relationship with the child; is willing to participate in making educational decisions in the child's behalf; and has no interest that would conflict with the interests of the child.

b. The LEA must take measures to ensure that parents and all other team members, including sensorially impaired and non-English-speaking participants, can understand and actively participate in discussions and decision making. These measures (i.e., having an interpreter or translator) should be documented. Local education agencies shall further ensure that, for those parents who cannot physically attend the IEP meeting(s), every effort is made to secure parental participation. After documenting attempts to arrange a mutually convenient time and place, several possibilities remain.

i. The meeting(s) may be conducted via telephone conference calls.

ii. The IEP team may consider parental correspondence to the school regarding the student's learning environment, any notes from previous parental conferences, and any data gathered during the screening and evaluation period.

iii. Visits may be made to the parents' home or place of employment to receive parental suggestions.

c. If, however, every documented attempt fails and the IEP/placement document is developed without parental participation, the parents still must give written informed consent for initial placement before any special education or related services may begin.

d. When a student with disabilities has a legal guardian or has been assigned a surrogate parent by the LEA, that person assumes the role of the parent during the IEP process in matters dealing with special educational services. When a student with disabilities is emancipated, parental participation is not mandated. Additionally, if the LEA has been informed that a parent is legally prohibited from reviewing a student's records, that parent may not attend the IEP meeting(s) without permission of the legal guardian.

e. Beginning at least one year before the student reaches the age of majority, by the student's seventeenth birthday, the parents will be informed that the rights under Part B of the Act will transfer to the student, unless the student is determined incompetent under state law.

3. An evaluation representative is a required participant at an initial IEP meeting. The person may be a member of the pupil appraisal team that performed the evaluation or any person knowledgeable about and able to interpret the evaluation data for that particular student. The evaluation coordinator who coordinated the activities for the re-evaluation must be present at the reevaluation IEP meeting.

4. A regular education teacher is at least one of the student's regular teachers (if the student is, or may be, participating in the regular education environment). The teacher must, to the extent appropriate, participate in the

development, review, and revision of the student's IEP including the determination of appropriate positive behavioral interventions and strategies for the student; the determination of supplementary aids and services, program modifications, and supports for school personnel that will be provided for the student. When a regular education teacher calls for a reconvening of the individualized education program (IEP) team for any student with a disability assigned to his or her classroom on a full time basis in which the IEP requires an adjustment in the curriculum, instruction or services to be provided by the regular education teacher, this teacher shall participate on the IEP team and participate continuously thereafter for as long as the student is assigned to his or her classroom.

a. Thus, while a regular education teacher must be a member of the IEP team if the child is, or may be, participating in the regular education environment, the teacher need not (depending upon the child's needs and the purpose of the specific IEP team meeting) be required to participate in all decisions made as part of the meeting or to be present throughout the entire meeting or attend every meeting. For example, the regular education teacher who is a member of the IEP team must participate in discussions and decisions about how to modify the general curriculum in the regular classroom to ensure the child's involvement and progress in the general curriculum and participation in the regular education environment.

b. In determining the extent of the regular education teacher's participation at IEP meetings, LEAs and parents should discuss and try to reach agreement on whether the student's regular education teacher, who is a member of the IEP team, should be present at a particular IEP meeting and, if so, for what period of time. The extent to which it would be appropriate for the regular education teacher to participate in IEP meetings must be decided on a case-by-case basis.

5. A special education teacher is at least one of the student's special education teachers, or when appropriate, at least one special education provider of the student.

a. For example, if a student's only disability is speech or language impairment, then the speech/language pathologist is considered the special education provider.

6. The student should be given the opportunity to participate in the development of the IEP. In many cases, the student will share responsibility for goals and objectives.

a. The LEA must invite a student with a disability of any age to attend his or her IEP meeting if a purpose of the meeting will be to consider transition services needs or needed transition services, or both. The LEA must invite the student and, as part of the notification to the parents of the IEP meeting, inform the parents that the LEA will invite the student to the IEP meeting.

b. Beginning at least one year before the student reaches the age of majority, by the student's seventeenth birthday, the student must be informed that his or her rights under Part B of the Act will transfer to him or her unless he or she has been determined incompetent under state law.

7. Other individuals can be invited, at the discretion of the parent or LEA, who have knowledge or special expertise regarding the student, including related service personnel as appropriate. The LEA also must inform the parents of the right of both the parents and the agency to invite other

individuals who have knowledge or special expertise regarding the child, including related service personnel as appropriate to be members of the IEP team. The LEA may recommend the participation of other persons when their involvement will assist the decision-making process.

a. It is also appropriate for the agency to ask the parents to inform the agency of any individuals the parents will be taking to the meeting. Parents are encouraged to let the agency know whom they intend to take. Such cooperation can facilitate arrangements for the meeting and help ensure a productive, child-centered meeting.

NOTE: The determination of the knowledge or special expertise of any individual described above shall be made by the parent or LEA, whoever invited the individual to be a member of the IEP team.

b. When the LEA responsible for the initial IEP/placement process considers referring or placing the student in another LEA, the responsible LEA must ensure the participation of a representative of the receiving system at the IEP meeting.

c. The LEA must ensure the attendance of a representative of a private school if the student is voluntarily enrolled in a private school. If the representative cannot attend, the local education agency shall use other methods to ensure participation by the private school or facility, including individualized or conference telephone calls.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§307. Placement Decisions

A. The IEP team has the responsibility for determining the special educational needs and placement for a student with disabilities. Program decisions must be made and written on the IEP in the following areas that form the basis for the placement:

1. the student's strengths and support needs;
2. the concerns of the parents for enhancing the education of their child;
3. the results of the initial evaluation or most recent reevaluation of the student;
4. as appropriate, the results of the student's performance on any general state or district-wide assessment program;
5. the student's present levels of educational performance:
 - a. how the student's disability affects the student's involvement and progress in the general curriculum; and
 - b. for preschool students, as appropriate, how the disability affects the student's participation in appropriate activities;
6. the IEP team must also consider any of the following special factors:
 - a. in the case of a student whose behaviors impede his or her learning or that of others, if appropriate, strategies including positive behavioral intervention, strategies and supports to address that behavior;
 - b. in the case of a student with limited English proficiency, the language needs of the student as those needs relate to the student's IEP;
 - c. in the case of a student who is blind or visually impaired, provision of instruction in braille and the use of

braille unless the IEP team determines? after an evaluation of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in braille or the use of braille)? that instruction in braille or the use of braille is not appropriate for the student;

d. the communication needs of the student, and in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode;

e. whether the student requires assistive technology devices and services based on assessment/evaluation results;

f. in the case of a student who has health problems, the needs to be met during the school day. These needs would include such medical conditions as asthma, diabetes, seizures, or other diseases/disorders that may require lifting and positioning, diapering, assistance with meals, special diets, or other health needs;

7. the measurable annual goals, including benchmarks or short-term objectives, related to:

a. meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general curriculum;

b. meeting each of the student's other educational needs that result from the student's disability; and

c. appropriate activities for the preschool aged student.

NOTE: IEP teams may continue to develop short-term instructional objectives or, as an alternative, develop benchmarks that should be thought of as describing the amount of progress the student is expected to make within specified segment of the year. Generally, benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of their child's progress toward achieving the annual goals. An IEP team may use either short-term objectives or a combination of the two, depending on the nature of the annual goals and needs of the child.

8. the special educational and related services and supplementary aids and services to be provided to the student, or on behalf of the student, and the program modifications or supports for school personnel that will be provided for the student:

a. to advance appropriately toward attaining the annual goals;

b. to be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

c. to be educated and participate with other students with and without disabilities in the activities,

9. the explanation of the extent, if any, to which the student will not participate with students without disabilities in the regular class and extracurricular and other nonacademic activities including:

a. any individual modifications and/or accommodations in the administration of state or district-wide assessments of student achievement that are needed in order for the student to participate in the assessment; and

b. the student's participation in a particular state or district-wide assessment of student achievement (or part of an assessment);

10. the anticipated frequency, location, and duration of the special educational services and modifications;

11. possible extended school year program (ESYP) eligibility;

12. the type of physical education program to be provided;

13. for each student beginning at age 14, transition service needs that focus on the student's courses of study; and

14. for each student beginning at age 16, the needed transition services including any interagency responsibilities or linkages.

B. The IEP team, following a discussion of the student's educational needs, must choose a setting(s) in which the educational needs will be addressed. The term *placement* refers to the setting or class in which the student will receive special educational services.

1. Placement decisions for students whose ages are 6-21. For the location of instruction/ services, IEP team members should consider the following.

a. Where would the student attend school if he or she did not have a disability?

b. Has the student, as a special education student, ever received special educational instruction or services within the general education environment?

c. What accommodations and modifications have been used to support the student as a special education student in the general education class?

d. After a review of the modifications and accommodations form of the IEP, what additional strategies and supports have been determined to facilitate the student's success in the general education setting?

e. If the student is not currently receiving instruction and/or services in a general education setting, what strategies could be used for providing services in the general education classroom?

f. Based on IEP goals and objectives or benchmarks, what the instructional setting(s) would support the achievement of these goals and objectives or benchmarks?

g. If the decision has been made to provide the student with instruction and/or services outside the general education setting, what specific opportunities will the student have for integration in general education activities?

2. Placement decisions for students whose ages are 3-5. For the location of instruction/ services, the IEP team should consider the following.

a. Where would the student spend the majority of the day if he or she did not have a disability (natural environment)?

b. Can the services identified on the IEP be provided in the student's natural environment?

i. If not, what changes should be made in that environment to enable the required services to be delivered there?

ii. If not, what programming and/or placement(s)/ service(s) options are necessary to meet the student's identified needs while providing meaningful opportunities for interactions with peers without disabilities?

c. What accommodations, supports, and/or related services are needed to meet the student's identified needs?

3. For students aged 6-21. Utilizing the above information, the IEP team should choose the most appropriate setting from the continuum below:

a. regular classroom (less than 21 percent of the day outside the regular class);

b. resource with regular classes (at least 21 percent, but no more than 60 percent of the day outside the regular class);

c. self-contained class on a regular campus (more than 60 percent of the day outside the regular class);

d. special school; or

e. hospital/homebound.

4. For students aged 3-5. In determining the appropriate setting for a preschool aged student, each noted setting must be considered; but the list should not be considered a continuum of least restrictive environment. The settings for preschool-aged students, 3-5 years, are defined as follows.

a. Home. A child's home, caregiver's home, or any other home setting.

b. Regular Preschool Placement. Head Start, Title 1, kindergarten, pre-kindergarten, child care center, Even Start, 4 year-old at-risk program, infant/toddler class or any other program designed for children without disabilities.

c. Self-Contained. A preschool class, infant/toddler class or any other program designed for children with disabilities.

d. Special School. Any school designated in Special School District#1 or other SDE-approved Special Schools.

e. Hospital. A hospital in which a child is confined because of the child's physical illness, an accident, or treatment therapy.

f. Speech/Language Therapy Only. Speech/Language Therapy (SLT), when it is the only special educational service included on the child's IEP, regardless of the setting in which the child receives SLT.

g. Adapted Physical Education Only: Adapted Physical Education (APE), when it is the only special educational service included on the child's IEP, regardless of the setting in which the child receives APE.

C. The official designated representative shall be knowledgeable about placement considerations and shall be responsible for informing the IEP team members. The IEP team must participate in decisions made about the placement; however, the LEA has the right to select the actual school site in view of committee decisions.

NOTE: See "Forms and Instructions for Use," Section 2, for the complete instructions for writing the IEP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§309. Additional Clarification

A. Although throughout Louisiana most students with disabilities are served in their neighborhood schools, there are some extenuating circumstances that impact the decision to serve a student in a school other than his or her neighborhood school.

B. The following is provided as an example. In a small system, there may be only four multidisabled students who

need a multidisabled self-contained class. The local education agency may establish one classroom system wide. Those multidisabled students could be grouped together on a centrally located campus as age-appropriate as possible. Because of the limited number of students, the age span may be greater than the 3-year span. In this situation, ages may be from 10-14 years, with two children being 10-years-old, one being 11, and one being 14. If the administration decided to locate this class on an elementary K-6 campus because the majority of the class is of elementary age, there could be adequate justification to allow the 14-year-old to remain on the elementary campus. This placement, of course, is not a desirable situation but a necessity in some cases.

C. In addition to the questions on the IEP and Site Determination Form, the following issues must be considered:

1. students should be placed in programs on the basis of their unique needs, not as a result of their particular disabling condition;

2. placement cannot be based on either a particular local education agency's special education delivery system or on the availability of related services;

3. in order for effective integration, students should be served in schools where the ratio of the student with disabilities is comparable to the overall regular/special education ratio of the local education agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§311. Related Services Decisions

A. *Related Services?* transportation and such developmental, corrective, and other supportive services as are required to assist a student with a disability to benefit from special education. A LEA, as part of its requirement to provide a free, appropriate public education (FAPE), must provide any related service for which there is a documented need. However, for certain related services, specific eligibility criteria must be met. The decision regarding related services must be made in view of each student's unique needs. Sources of documentation can be the individual evaluation report and any subsequent evaluation reports submitted by therapists, physicians, psychologists, and so forth. Examples of related services may include speech/language pathology services, assistive technology, physical or occupational therapy, audiological services, orientation and mobility training, interpreter and counseling services, and transportation services.

B. The IEP team must consider each related service that is recommended on the evaluation report(s) and document its decisions on the IEP form. For example, the team must:

1. list all services recommended by the team and the service provision schedules, dates, and location, etc.;

2. explain the team's decisions not to include a recommended related service;

3. explain delays in providing any related service listed on the IEP.

NOTE: This delay, or hardship, in no way relieves a system from providing the service and from documenting every effort to provide it in a timely manner.

a. The participation of related service personnel is extremely important during the IEP meeting. Involvement

should be through either direct participation or written recommendations.

C. Additional Notes About Related Services

1. Adapted physical education (APE) is not a related service; APE is a direct instructional program. A student who requires only adapted physical education may be eligible for related services, since adapted physical education is a direct instructional program.

2. A student who is identified with only a speech or language impairment may be eligible for other related services, since in this case the speech therapy is the direct special educational program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§313. Parental Consent

A. A LEA must obtain formal parental consent before it can initially provide a student with special education and related services in any setting. Consent includes the following:

1. the parent and/or student has been fully informed of all relevant information in a manner that is clearly understandable to the parent and/or student; and

2. the parent and/or student formally agrees in writing.

B. After the parent and/or student has given written consent, the IEP is in effect. The parent and/or student must be provided a completed copy of the IEP/placement document signed by the official designated representative of the LEA.

NOTE: The student's consent is needed once the student reaches the "age of majority."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§315. Parental Withholding of Consent

A. Parents may disagree with all or some part(s) of the initial program, placement, or related services proposals. The LEA and the parents should make conciliatory attempts to resolve the disputes, including making modifications to the proposed program, placement, and related services. A LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§317. Mediation

A. Mediation is an informal, voluntary process by which the parent and the LEA are given an opportunity, through the help of a trained mediator, to resolve their differences and find solutions to enhance the overall learning environment for the student. Differences may arise in the planning and implementing of programs for students with disabilities. It is important for parents and LEAs to have an opportunity to present their viewpoint in a dispute.

1. See Louisiana's Educational Rights of Exceptional Children and the Mediation Services for Students with Exceptionalities brochure for more information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§319. Due Process

A. The parents and the LEA both have the right to an "impartial due process hearing" when disagreements arise between the parent and the LEA, relative to initiating or changing the identification, evaluation, or educational placement of a student with a disability. Due process hearings may be initiated by the parent or the LEA.

1. See Louisiana's Educational Rights of Exceptional Children and the Special Education Impartial Due Process Hearing brochure for more information.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§321. Implementation of the IEP

A. Implementation of the IEP means that the student begins participating in the special education placement and receives the related services as written on the IEP/placement document. A LEA must begin providing services as stated on the IEP within 10 calendar days. The date of initiation of services shall be noted on the IEP. When meetings occur during the summer or other vacation periods, a delay may occur. When meetings to develop the initial IEP/placement document occur just prior to the summer vacation, the date of implementation of services may be delayed to the beginning of the next school year if the parent(s) agree.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 5. Review IEP Development

§501. Responsibilities and Timelines

A. A LEA is required to initiate and conduct IEP meetings periodically, but not less than annually, to review each student's IEP in order to determine whether the annual goals for the student are being achieved and to revise the IEP as appropriate. The LEA must notify parents of the review IEP meeting or the review/reevaluation IEP meeting in accordance with the same procedures as the initial IEP.

B. An additional IEP/placement review meeting is not required when a LEA elects to move the student to another school site within the agency when all of the information on the IEP remains the same and the effect of the program has not been changed.

C. The IEP team shall:

1. review the student's progress toward achieving the annual goals and objectives/benchmarks;
2. review the student's progress in the general education curriculum;
3. discuss any lack of expected progress toward the annual goals and in the general education curriculum;
4. review the results of the student's performance on any state or district-wide assessment;
5. review the results of any reevaluation;
6. review information about the child provided to, or by, the parents;
7. discuss the student's anticipated needs;
8. review the student's special educational and related service needs; for the preschool-aged child, address his or her developmental needs;

9. incorporate, as needed, any behavior interventions and strategies that should be used;

10. make updated decisions about the student's program, placement, and related services;

11. consider whether the child requires assistive technology devices and services;

12. for each student beginning at age 14, discuss transition service needs that focus on the student's courses of study;

13. for each student beginning at age 16, discuss the needed transition services including any interagency responsibilities or linkages;

14. in making decisions for location of instruction/services, refer to pages 19-21 of this handbook for guidance;

15. discuss any other matters.

D. A review meeting must be conducted in addition to the required annual review when:

1. a student's teacher feels the student's IEP or placement is not appropriate for the student; or

2. the student's parents believe their child is not progressing satisfactorily or that there is a problem with the student's IEP;

3. the LEA proposes any changes regarding program or placement, such as to modify, add, or delete a goal or objective; to add or delete a related service; or to discuss the need for extended school year services;

4. the behavior of the student warrants a review by the IEP team to decide on strategies including positive behavioral intervention, strategies, and supports to address the behavior;

5. either a parent or a public agency believes that a required component of the student's IEP should be changed; the LEA must conduct an IEP meeting if it believes that a change in the IEP may be necessary to ensure the provision of FAPE;

6. a hearing officer orders a review of the student's IEP/placement document;

7. an out-of-district placement or referral is being proposed;

NOTE: A review IEP meeting must be conducted as part of the reevaluation process.

a. in the cases listed above, it may not be necessary to rewrite the entire IEP/placement document. However, the following documentation must be provided:

i. signatures of the team members;

ii. the date of the meeting;

iii. the changes made in the IEP; and

iv. the dated signatures of the official designated representative of the system and the parent who authorized the change;

c. in the case in which the IEP/placement document is entirely rewritten, the date of that meeting shall become the anniversary date for the next annual review meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§503. Participants

A. The LEA must ensure there is attendance by an officially designated representative of the system, the student's regular education and special education teachers,

the parents, and the student, as appropriate. At the discretion of the parent(s) or the LEA, other individuals who have knowledge or special expertise regarding the student may attend. The evaluation coordinator who coordinated the activities for the re-evaluation must be present at the reevaluation IEP meeting. A representative of another LEA or approved facility may be included if a placement in or referral to another LEA is proposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§505. Placement Decisions

A. The IEP team must address the placement of the student according to the same placement guidelines required for an initial IEP meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Chapter 7. Interim IEP Development

§701. Responsibilities and Timelines

A. The interim IEP provides a basis on which the student may begin to receive special educational and related services and provides an appraisal program to gather assessment data for the individual evaluation process.

B. A student must be offered enrollment in a LEA. This enrollment process, from initial entry into the LEA to placement, shall occur within 10 school days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§703. Placement Decisions

A. Local supervisors of special education may approve enrollment in special education after existing student information has been reviewed by pupil appraisal personnel. An interim IEP would be developed and formal parental approval obtained. The interim IEP remains in effect as long as the evaluation is in process and may be revised as necessary. During this time all regulations pertaining to students with disabilities shall apply. The interim IEP shall not exceed the duration of the evaluation.

B. Often, discussion about the current performance, goals, and objectives for the student will have to be conducted without the benefit of integrated assessment data or teacher observation. To gather information about current performance, the parent may be the prime source of information about the student's skills, development, motivation, medical history, etc. The goals and objectives should address the student's educational program during the assessment process. Related services may be provided for diagnostic purposes. When available information indicates that related services are required, services should be provided. The student's performance during an interim placement must be documented by the teacher and pupil appraisal personnel. This documentation should provide meaningful data for determining an appropriate program and placement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

§705. Parental Consent

A. Parental consent for the interim placement and related services must be obtained by parental signature on the IEP form. Parents should be informed that the student will exit from the special educational program if the student is found to be ineligible for special educational services according to the criteria of the *Pupil Appraisal Handbook*. If the student is eligible for special educational services, an initial IEP/placement meeting will be conducted within 30 calendar days from the date of dissemination of the written evaluation to the LEA's special education administrator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:1941 et seq.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 30:

Family Impact Statement

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

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

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

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

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

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

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

Interested persons may submit comments until 4:30 p.m., May 9, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 1530? Louisiana's IEP Handbook for Students with Disabilities

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

The Department of Education is codifying section 1 of the *IEP Handbook for Students with Disabilities* and the only cost associated with this change is the preparation and printing of the document and that is projected to be approximately \$1000.00. Publication can be accomplished via the Department's web site.

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition or employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0403#044

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

**Scholarship/Grant Programs? Discharge of Obligation
(LAC 28:IV.911, 1111, and 2105)**

The Louisiana Student Financial Assistance Commission (LASFAC) announces its intention to amend its Scholarship/Grant Rules (R.S. 17:3021-3025, R.S. 3041.10-3041.15, R.S. 17:3042.1, and R.S. 17:3048.1).

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

**Title 28
EDUCATION**

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

Chapter 9. TOPS Teacher Award

§911. Discharge of Obligation

A. - C.7. ...

D. Cancellation

1. The obligation to repay any remaining unpaid balance of the TOPS Teacher Award shall be canceled in the event either of the following occurs:

a. upon submission to LASFAC of a sworn affidavit from a qualified physician that the recipient is precluded from gainful employment because of a complete and permanent medical disability or condition; or

b. upon submission to LASFAC of a death certificate or other evidence conclusive under state law, that the recipient is deceased.

2. The obligation to repay any remaining unpaid balance of the TOPS Teacher Award may be canceled in the event the remaining unpaid balance is \$25 or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3041.10-3041.15, R.S. 17:3042.1-3042.8 and R.S. 17:3048.1.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998), amended LR 24:1907 (October 1998), LR 26:69 (January 2000), LR 26:1603 (August 2000), LR 27:1858 (November 2001), LR 28:774 (April. 2002), LR 30:

Chapter 11. Rockefeller State Wildlife Scholarship

§1111. Discharge of Obligation

A. - C.5.b. ...

D. Cancellation

1. The obligation to repay all or part of Rockefeller State Wildlife Scholarship Program funds shall be canceled in the event either of the following occurs:

a. upon submission to LASFAC of a sworn affidavit from a qualified physician that the recipient is precluded from completing the educational program and/or from gainful employment because of a complete and permanent medical disability or condition;

b. upon submission to LASFAC of a death certificate, or other evidence conclusive under state law, that the recipient is deceased.

2. The obligation to repay all or part of Rockefeller State Wildlife Scholarship Program funds may be canceled in the event the remaining unpaid balance is \$25 or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3041.10-3041.15, R.S. 17:3042.1-3042.8, R.S. 17:3048.1 and R.S. 56:797.D(2).

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:640 (April 1998), amended LR 24:1909 (October 1998), repromulgated LR 27:1860 (November 2001), amended LR 28:775 (April 2002), LR 30:

**Chapter 21. Miscellaneous Provisions and Exceptions
§2105. Repayment Obligation, Deferment, Cancellation
and Reduced Payments**

A. - F. ...

G Cancellation of Repayment Obligation. Upon submission of applicable proof, loans may be canceled for the following reasons:

1. death of the recipient; or

2. complete and permanent disability of the recipient which precludes the recipient from gainful employment; or

3. upon a determination by LASFAC that the remaining unpaid balance is \$25 or less.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, R.S. 17:3041.10-3041.15, R.S. 17:3042.1-3042.8, R.S. 17:3048.1 and R.S. 56:797.D(2).

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998), amended LR 24:1918 (October 1998), LR 26:1603 (August 2000), repromulgated LR 27:1868 (November 2001), amended LR 28:775 (April 2002), LR 30:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., April 5, 2004, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

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

**RULE TITLE: Scholarship/Grant Programs
Discharge of Obligation**

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

There are no implementation costs to state or local governmental units as a result of these changes. This change should result in a negligible net savings to the state.

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

No impact on revenue collections to the Office of Student Financial Assistance is anticipated to result from these changes.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition and employment resulting from these measures.

George Badge Eldredge
General Counsel
0403#008

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship/Grant Programs? Returning Students
(LAC 28:IV.503, 507, and 703)

The Louisiana Student Financial Assistance Commission (LASFAC) has exercised the provisions of the Administrative Procedure Act, R.S. 49:953(B) et seq., and has amended its Scholarship/Grant Rules.

**Title 28
EDUCATION**

**Part IV. Student Financial Assistance? Higher
Education Scholarship and Grant Programs
Chapter 5. Application; Application Deadlines
and Proof of Compliance**

§503. Application Deadlines

A. - B.2. ...

3. Returning Students

a. Notwithstanding the deadline established by §503.B.1 above, Returning Students, who graduated from high school during the 2001-2002 Academic Year (High School) and who enroll in an Eligible College or University in the spring semester of 2003, must submit the FAFSA to be received by the federal processor no later than July 1, 2004.

b. Notwithstanding the deadline established by §503.B.1 above, Returning Students, who enroll in an Eligible College or University in the fall semester of 2003 or later, must submit the FAFSA to be received by the federal processor no later than July 1 following the first semester of enrollment. Examples:

i. a student who seeks to enroll in an Eligible College or University for the spring semester of 2004 must submit his FAFSA to be received by the federal processor no later than July 1, 2004;

ii. a student who seeks to enroll in an Eligible College or University for the fall semester of 2004 must submit his FAFSA to be received by the federal processor no later than July 1, 2005.

C. - E. ...

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 24:635 (April 1998), repromulgated LR 24:1900 (October 1998), amended LR 25:655 (April 1999), LR 25:2396 (December 1999), LR 26:1994 (September 2000), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 28:1760 (August 2002), LR 29:554 (April 2003), LR 30:

§507. Final Deadline for Submitting Documentation of Eligibility

A. - B. ...

C.1. Returning Students, who graduated high school during the 2001-2002 Academic Years (High School) and who enroll in an Eligible College or University in the spring semester 2003, must submit documentation that establishes TOPS eligibility no later than May 1, 2004.

2. Returning Students, who enroll in an Eligible College or University in the fall semester of 2003 or later, must submit documentation that establishes TOPS eligibility no later than May 1 of the Academic Year (College) the student enrolls in an Eligible College or University. For example, a student who seeks to enroll in an Eligible College or University in the fall semester of 2003 must submit documentation that establishes TOPS eligibility no later than May 1, 2004.

D.1. A student who successfully completed an undergraduate degree prior to or during the 2001-2002 Academic Year (College) and wishes to receive his remaining award eligibility to attend a postgraduate school must provide the documentation and certifications required to establish student eligibility no later than May 1, 2004.

2. A student who successfully completes an undergraduate degree during the 2002-2003 Academic Year (College) or later and wishes to receive his remaining award eligibility to attend a postgraduate school must provide the documentation and certifications required to establish student eligibility no later than May 1 of the Academic Year (College) the student seeks to receive his remaining award eligibility. For example, to receive the remaining award for the 2003-2004 Academic Year (College), the student must submit the required documents no later than May 1, 2004.

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 24:635 (April 1998), repromulgated LR 24:1901 (October 1998), repromulgated LR 27:1847 (November 2001), amended LR 28:447 (March 2002), LR 30:

Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

§703. Establishing Eligibility

A.1. - 4.g.iii. ...

5.a. graduate from an eligible public or nonpublic Louisiana high school or non-Louisiana high school defined in §1701.A.1, 2, or 3; and

i.(a). For students graduating in Academic Year (High School) 2006-2007 and prior, at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work documented on the student's official transcript as approved by the Louisiana Department of Education 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 IA and IB (two units)
1	Algebra II

Units	Course
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	Foreign Language, both units in the same language
1/2	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 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1 credit) Computer/Technology Applications (1 credit) Computer Architecture (1 credit) Computer/Technology Literacy (1/2 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 (1/2 credit) Digital Graphics & Animation (1/2 credit) Introduction to Business Computer Applications (1 credit) Multimedia Productions (1 credit) Technology Education Computer Applications (1 credit) Telecommunications (1/2 credit) Web Mastering (1/2 credit) Word Processing (1 credit) Independent Study in Technology Applications (1 credit)

(b). Beginning with the graduates of Academic Year (High School) 2007-2008, at the time of high school graduation, an applicant must have successfully completed 17.5 units of high school course work that constitutes a core curriculum and is documented on the student's official transcript as approved by the Louisiana Department of Education.

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)

Units	Course
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	Foreign Language, both units in the same language
1 1/2	Computer Science, Computer Literacy or Business Computer Applications (or substitute at least one and one-half units of an elective course related to computers that is approved by the State Board of Elementary and Secondary Education (BESE). BESE has approved the following courses as computer related for purposes of satisfying the 1 1/2 unit computer science requirement for all schools (courses approved by BESE for individual schools are not included): Advanced Technical Drafting (1 credit) Computer/Technology Applications (1 credit) Computer Architecture (1 credit) Computer/Technology Literacy (1/2 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 (1/2 credit) Digital Graphics & Animation (1/2 credit) Introduction to Business Computer Applications (1 credit) Multimedia Productions (1 credit) Technology Education Computer Applications (1 credit) Telecommunications (1/2 credit) Web Mastering (1/2 credit) Word Processing (1 credit) Independent Study in Technology Applications (1 credit)

A.5.a.iii. - H.3. ...

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 24:2237 (December 1998), LR 25:257 (February 1999), LR 25:655 (April 1999), LR 25:1794 (October 1999), LR 26:64 and 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999 and 2001 (September 2000), LR 26:2268 (October 2000), LR 26:2753 (December 2000), LR 27:36 (January 2001), LR 27:702 (May 2001), LR 27:1219 and 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330 and 2332 (November 2002), LR 29:125 (February 2003), LR 30:

Interested persons may submit written comments on the proposed changes until 4:30 p.m., April 5, 2004, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, P.O. Box 91202, Baton Rouge, LA 70821-9202.

George Badge Eldredge
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Scholarship/Grant Programs
Returning Students**

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

Act 63 of the 2003 Session permits use of TOPS awards at eligible Louisiana institutions by otherwise qualified students who previously enrolled as first-time freshmen at an out-of-state college or university. This legislation will increase State General fund expenditures for TOPS awards by an unknown amount. Act 401 of the 2003 Session permits TOPS award

recipients who complete an academic undergraduate degree in less than eight semesters to be eligible to continue receiving award benefits for any remaining semesters not used for postgraduate study at an eligible institution. This legislation will increase State General fund expenditures for TOPS awards by an estimated \$45,000 per year.

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

There are no estimated effects on revenue collections of state or local governmental units resulting from these measures.

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

The proposed changes will allow students to pursue educational opportunities within Louisiana who would otherwise attend college out of state. A few Louisiana students will be able to use some of their TOPS award to pursue postgraduate study.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no estimated effects on competition or employment resulting from these measures.

George Badge Eldredge
General Counsel
0403#009

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

2003 Incorporation by Reference for Air Quality
(LAC 33:III.507, 1432, 2160, 3003,
5116, 5122, 5311, and 5901)(AQ241*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.507, 1432, 2160, 3003, 5116, 5122, 5311, and 5901 (Log #AQ241*).

This proposed Rule is identical to federal regulations found in 40 CFR Parts 51, Appendix M, 60, 61, 63, 68, 70.6(a), and 93, Subpart A, July 1, 2003, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rulemaking incorporates by reference into Louisiana's air quality regulations the corresponding federal regulations in 40 CFR Parts 51, Appendix M, 60, 61, 63, 68, 70.6(a), and 93, Subpart A, July 1, 2003. Exceptions to the incorporated regulations are explicitly listed in the proposed Rule. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the LAC. This rulemaking is necessary to maintain delegation, authorization, etc. granted to Louisiana by EPA. The basis and rationale for this Rule are to mirror the federal regulations as they apply to Louisiana's affected sources.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 5. Permit Procedures

§507. Part 70 Operating Permits Program

A. - B.1. ...

2. No Part 70 source may operate after the time that the owner or operator of such source is required to submit a permit application under Subsection C of this Section, unless an application has been submitted by the submittal deadline and such application provides information addressing all applicable sections of the application form and has been certified as complete in accordance with LAC 33:III.517.B.1. No Part 70 source may operate after the deadline provided for supplying additional information requested by the permitting authority under LAC 33:III.519, unless such additional information has been submitted within the time specified by the permitting authority. Permits issued to the Part 70 source under this Section shall include the elements required by 40 CFR 70.6. The department hereby adopts and incorporates by reference the provisions of 40 CFR 70.6(a), July 1, 2003. Upon issuance of the permit, the Part 70 source shall be operated in compliance with all terms and conditions of the permit. Noncompliance with any federally applicable term or condition of the permit shall constitute a violation of the Clean Air Act and shall be grounds for enforcement action; for permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application.

C. - J.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:

Chapter 14. Conformity

Subchapter B. Conformity to State or Federal

**Implementation Plans of Transportation
Plans, Programs, and Projects Developed,
Funded, or Approved Under Title 23
U.S.C. or the Federal Transit Act**

§1432. Incorporation by Reference

A. 40 CFR Part 93, Subpart A, July 1, 2003, is hereby incorporated by reference with the exclusion of Section 105.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:1280 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:697 (May 2003), LR 30:

Chapter 21. Control of Emission of Organic Compounds

Subchapter N. Method 43? Capture Efficiency Test Procedures

§2160. Procedures

A. Except as provided in Subsection C of this Section, the regulations at 40 CFR Part 51, Appendix M, July 1, 2003, are hereby incorporated by reference.

B. - C.2.b.iv. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:653 (July 1991), amended LR 22:1212 (December 1996), LR 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:1224 (August 2001), LR 29:698 (May 2003), LR 30:

Chapter 30. Standards of Performance for New Stationary Sources (NSPS)

Subchapter A. Incorporation by Reference (IBR)

§3003. IBR 40 Code of Federal Regulations (CFR) Part 60

A. Except as modified in this Section, Standards of Performance for New Stationary Sources, published in the *Code of Federal Regulations* at 40 CFR Part 60, July 1, 2003, are hereby incorporated by reference as they apply to the state of Louisiana.

B. - B.6. ...

7. 40 CFR Part 60, Subpart B, Adoption and Submittal of State Plans for Designated Facilities, and 40 CFR Part 60, Subpart C, Emission Guidelines and Compliance Times, are not included in this incorporation by reference.

8. The minimum standards of the following emission guidelines of 40 CFR Part 60 that are incorporated by reference shall be applied to applicable units in the state.

40 CFR Part 60	Subpart Heading
Subpart Cb	Emissions Guidelines and Compliance Times for Large Municipal Waste Combustors That Are Constructed on or Before September 20, 1994
Subpart Cc	Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills
Subpart Cd	Emission Guidelines and Compliance Times for Sulfuric Acid Production Units
Subpart Ce	Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators
Subpart AAA	Standards of Performance for New Residential Wood Heaters
Subpart BBBB	Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999
Subpart DDDD	Emission Guidelines and Compliance Times for Commercial and Industrial Waste Incineration Units That Commenced Construction On or Before November 30, 1999

C. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.gpoaccess.gov/cfr/index.html, from the Department of Environmental Quality, Office of Environmental Services, Permits Division, or from a public library.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 22:1212 (December 1996), amended LR 23:1681 (December 1997), LR 24:1287 (July 1998), LR 24:2238 (December 1998), LR 25:1239 (July 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1607 (August 2000), LR 26:2460, 2608 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 28:2179 (October 2002), LR 29:316 (March 2003), LR 29:698 (May 2003), LR 30:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter B. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

§5116. Incorporation by Reference of 40 CFR Part 61 (National Emission Standards for Hazardous Air Pollutants)

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants, published in the *Code of Federal Regulations* at 40 CFR Part 61, July 1, 2003, and specifically listed in the following table, are hereby incorporated by reference as they apply to sources in the state of Louisiana.

40 CFR Part 61	Subpart /Appendix Heading

[See Prior Text in Subpart A – Appendix C]	

B. - B.2. ...

C. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.gpoaccess.gov/cfr/index.html, from the Department of Environmental Quality, Office of Environmental Services, Permits Division, or from a public library.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1658 (December 1997), LR 24:1278 (July 1998), LR 25:1464 (August 1999), LR 25:1797 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2179 (October 2002), LR 29:699 (May 2003), LR 30:

Subchapter C. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

§5122. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Major Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2003, are hereby incorporated by reference as they apply to major sources in the state of Louisiana.

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent

of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.gpoaccess.gov/cfr/index.html, from the Department of Environmental Quality, Office of Environmental Services, Permits Division, or from a public library.

C. - C.2. ...

3. 40 CFR Part 63, Subpart E, Approval of State Programs and Delegation of Federal Authorities, is not included in this incorporation by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:61 (January 1997), amended LR 23:1659 (December 1997), LR 24:1278 (July 1998), LR 24:2240 (December 1998), LR 25:1464 (August 1999), LR 25:1798 (October 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:690 (April 2000), LR 26:2271 (October 2000), LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 29:1474 (August 2003), LR 30:

Chapter 53. Area Sources of Toxic Air Pollutants
Subchapter B. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

§5311. Incorporation by Reference of 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) as it Applies to Area Sources

A. Except as modified in this Section and specified below, National Emission Standards for Hazardous Air Pollutants for Source Categories, published in the *Code of Federal Regulations* at 40 CFR Part 63, July 1, 2003, and specifically listed in the following table, are hereby incorporated by reference as they apply to area sources in the state of Louisiana.

40 CFR Part 63	Subpart /Appendix Heading
*** [See Prior Text in Subparts A - VVV]	

B. Copies of documents incorporated by reference in this Chapter may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20242 or their website, www.gpoaccess.gov/cfr/index.html, from the Department of Environmental Quality, Office of Environmental Services, Permits Division, or from a public library.

C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:63 (January 1997), amended LR 23:1660 (December 1997), LR 24:1279 (July 1998), LR 25:1464 (August 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2230 (December 2001), LR 28:995 (May 2002), LR 28:2180 (October 2002), LR 29:699 (May 2003), LR 30:

Chapter 59. Chemical Accident Prevention and Minimization of Consequences

Subchapter A. General Provisions

§5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68, July 1, 2003.

B. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998), LR 25:425 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:70 (January 2000), LR 26:2272 (October 2000), LR 28:463 (March 2002), LR 29:699 (May 2003), LR 30:

A public hearing will be held on April 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ241*. Such comments must be received no later than April 26, 2004, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ241*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0403#077

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Skin Dose Limits, Corrections, and Clarifications
(LAC 33:XV.102, 110, 326, 410,
503, 541, and 1410)(RP036)

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 Radiation Protection regulations, LAC 33:XV.102, 110, 326, 410, 503, 541, and 1410 (Log #RP036).

This proposed Rule is amending the state's regulations regarding the definition and method of calculating shallow dose equivalent (SDE). A result of this amendment is to make the skin dose limit less restrictive when small areas of skin are irradiated and to address skin and extremity doses from all source geometries under a single limit. Reduced monitoring will result in reduced external dose, and reduced use of protective clothing will result in fewer industrial hazards in the workplace. This amendment, in LAC 33:XV.102 and 410, is taken verbatim from 10 CFR 20.1003 and 1203 and is required for the state radiation program/Nuclear Regulatory Commission compatibility. The amendments to sections regarding internal inspections, prohibited uses, and locks on radiation sources will correct conflicts that are present with other sections of LAC 33:Part XV. The definition of permanent radiographic installation is being amended in order to agree with its federal counterpart. This rulemaking is necessary to alleviate conflicts among sections within LAC 33:Part XV and to keep Louisiana's radiation protection program current with its federal counterpart. The basis and rationale for this Rule are to mirror the federal regulations and to alleviate conflicting sections and clarify the radiation regulations.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY
Part XV. Radiation Protection**

Chapter 1. General Provisions

§102. Definitions and Abbreviations

A. 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.

Shallow Dose Equivalent (H_s)? applies to the external exposure of the skin of the whole body or the skin of an extremity, and is taken as the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm²).

B. The following metric prefixes and abbreviations are used in these regulations:

c	centi	(=10 ⁻²)	f	femto	(=10 ⁻¹⁵)
m	milli	(=10 ⁻³)	k	kilo	(=10 ³)
?	micro	(=10 ⁻⁶)	M	mega	(=10 ⁶)
n	nano	(=10 ⁻⁹)	G	giga	(=10 ⁹)
p	pico	(=10 ⁻¹²)	T	tera	(=10 ¹²)

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), repealed and repromulgated by 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), LR 30:

§110. Prohibited Uses

A. - D. ...

E. No person shall intentionally apply or allow to be applied, either directly or indirectly, radiation to human beings except by, or under the supervision of, persons licensed by Louisiana to practice the healing arts and who are authorized to use radiation on humans.

1. *Supervision*, as used in this Subsection, shall mean the responsibility for, and control of, quality, radiation safety, and technical aspects of the application of radiation to human beings for diagnostic and therapeutic purposes.

2. This prohibition shall not be deemed to apply to persons who are exposed to radiation occupationally, or as otherwise provided in these regulations.

Note: Repealed.

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), 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 26:2564 (November 2000), LR 30:

**Chapter 3. Licensing of Radioactive Material
Subchapter D. Specific Licenses**

§326. Special Requirements for Issuance of Certain Specific Licenses for Radioactive Material

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

c. The applicant will have an adequate internal inspection system, or other management control, to ensure that license provisions, regulations, and the applicant's operating and emergency procedures are followed by radiographers; the inspection system shall include the performance of internal inspections not to exceed six months and the retention of records of such inspections for three consecutive years.

d. - k. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), 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 26:2569 (November 2000), LR 27:1228 (August 2001), LR 30:

Chapter 4. Standards for Protection Against Radiation

Subchapter B. Radiation Protection Programs

§410. Occupational Dose Limits for Adults

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

2. the annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities, which are:

a. ...

b. a shallow dose equivalent of 0.5 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

B. ...

C. The assigned deep dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. 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 monitoring device was not in the region of highest potential exposure or the results of individual monitoring are unavailable.

D. If a protective apron is worn while working with medical fluoroscopic equipment and monitoring is conducted as specified in LAC 33:XV.431, the effective dose equivalent for external radiation shall be determined using one of the following methods.

1. When only one individual monitoring device is used and it is located at the neck outside the protective apron, the reported deep dose equivalent shall be the effective dose equivalent for external radiation.

2. When only one individual monitoring device is used and it is located at the neck outside the protective apron, and the reported dose exceeds 25 percent of the limit specified in this Section, the reported deep dose equivalent value, multiplied by 0.3, shall be the effective dose equivalent for external radiation.

3. When individual monitoring devices are worn, both under the protective apron at the waist and outside the protective apron at the neck, the effective dose equivalent for external radiation shall be assigned the value of the sum of the deep dose equivalent reported for the individual monitoring device located at the waist under the protective apron, multiplied by 1.5, and the deep dose equivalent reported for the individual monitoring device located at the neck outside the protective apron, multiplied by 0.04.

E. Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in Table I of Appendix B and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits. See LAC 33:XV.476.

F. Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity. See Endnote 3 of Appendix B.

G. The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person. See LAC 33:XV.414.E and F.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), amended by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), LR 22:969 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2769 (December 2000), LR 30:

Chapter 5. Radiation Safety Requirements for Industrial Radiographic Operations

§503. Definitions

As used in this Chapter, the following definitions apply.

* * *

Permanent Radiographic Installation? an enclosed shielded room, cell, or vault, not located at a temporary jobsite, in which radiography is performed.

* * *

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), LR 27:1231 (August 2001), LR 29:34 (January 2003), LR 30:

Subchapter A. Equipment Control

§541. Locking of Sources of Radiation

A. Each radiographic exposure device must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. The exposure device and/or its container must be kept locked, with the key removed at all times for a keyed-lock, when not under the direct surveillance of a radiographer or a trainee except at permanent radiographic installations in accordance with LAC 33:XV.585. In addition, during radiographic operations the sealed source assembly must be secured in the shielded position each time the source is returned to that position.

B. Each sealed source storage container and source changer must have a lock or outer locked container designed to prevent unauthorized or accidental removal of the sealed source from its shielded position. Storage containers and source changers must be kept locked, with the key removed at all times for a keyed-lock, when containing sealed sources, except when under the direct surveillance of a radiographer or trainee.

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 27:1232 (August 2001), LR 28:306 (February 2002), LR 30:

Chapter 14. Regulation and Licensing of Naturally Occurring Radioactive Material (NORM)

§1410. General Licenses: Pipe Yards, Storage Yards, or Production Equipment Yards

A. A general license is hereby issued for pipe yards or storage yards or production equipment yards to receive, possess, process, and clean tubular goods or equipment that are contaminated with scale or residue but do not exceed 50 microrentgens per hour, provided:

1. the department is notified at least 90 days prior to receipt of tubular goods or equipment that are contaminated with scale or residue but do not exceed 50 microroentgens per hour;

2. - 6. ...

7. a plan for cleanup is submitted to the Office of Environmental Services, Permits Division within 180 days of the discovery of NORM contaminated soil in excess of the limit in LAC 33:XV.1410.A.6. The plan shall include a schedule for cleanup that is to be approved by the department. The general licensee may include in this plan an application to the department for a one time authorization to perform this cleanup or use a specific licensee; and

A.8. - B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Nuclear Energy Division, LR 15:736 (September 1989), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:605 (June 1992), amended LR 21:26 (January 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2599 (November 2000), LR 30:

A public hearing will be held on April 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by RP036. Such comments must be received no later than May 3, 2004, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of RP036.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Skin Dose Limits, Corrections, and Clarifications**

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

There are no expected implementation costs or savings to state or local governmental units by the proposed Rule.

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

There is no estimated effect on revenue collections of state or local governmental units by the proposed Rule.

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

There are no estimated costs or significant economic benefits to directly affected persons or non-governmental groups by the proposed Rule. Regulated entities may experience marginal savings from reduced monitoring and use of protective clothing.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment by the proposed Rule.

James H. Brent, Ph.D.
Assistant Secretary
0403#076

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of The Governor Division of Administration Office of Group Benefits

EPO Plan of Benefits
Technical Corrections and Clarifications
(LAC 32:V.103, 301, and 701)

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. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend certain provisions of the EPO Plan of Benefits in order to insert technical corrections and to clarify such provisions to assure the plan of benefits accurately reflects OGB's administrative interpretations and applications.

Accordingly, OGB hereby gives Notice of Intent to adopt the following Rule to become effective upon promulgation.

Title 32

EMPLOYEE BENEFITS

Part V. Exclusive Provider (EPO) Plan of Benefits

Chapter 1. Eligibility

§103. Continued Coverage

A. - C.3.e.iii. ...

D. Over-Age Dependents. If a never married dependent child is incapable of self-sustaining employment by reason of mental retardation or physical incapacity, became incapable prior attainment of age 21, and is dependent upon the covered employee for support, the coverage for the dependent child may be continued for the duration of incapacity.

1. Prior to such dependent child's attainment of age 21, an application for continued coverage must be submitted to the program together with current medical information from the dependent child's attending physician to establish eligibility for continued coverage as set forth above.

2. The program may require additional medical documentation regarding the dependent child's mental retardation or physical incapacity upon receipt of the application for continued coverage and as often as it may deem necessary thereafter.

3. For purposes of this Section, mental illness does not constitute mental retardation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees, State Employees Group Benefits Program, LR 25:1806 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits LR 30:

Chapter 3. Medical Benefits

§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person

A. - A.20.d. ...

21. services of a physical therapist and occupational therapist licensed by the state in which the services are rendered when:

- a. prescribed by a licensed physician and rendered in a non group setting;
- b. - e. ...
- f. approved through case management when rendered in the home;

22. - 30.c. ...

31.a. testing of sleep disorders only when the tests are performed at either:

- i. a sleep study facility accredited by the American Academy of Sleep Medicine or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or
- ii. a sleep study facility located within a healthcare facility accredited by JCAHO;

31.b. - 32. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees, State Employees Group Benefits Program, LR 25:1810 (October 1999), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:478 (March 2002), LR 29:334 (March 2003), LR 30:

Chapter 7. Schedule of Benefits? EPO

§701. Comprehensive Medical Benefits

A. - A.1. ...

2.a. Percentage Payable after Satisfaction of Applicable Deductibles

	Non-Participating Provider	EPO Participating Provider
Eligible expenses incurred for services of an EPO participating provider	N/A	100%
Eligible expenses incurred for services of a non-participating provider	70%	N/A
Eligible expenses incurred when Medicare or other Group Health Plan is primary, and after Medicare reduction	80%	N/A
Eligible expenses in excess of \$10,000 per person per Calendar Year	100%	N/A
?? Eligible expenses for services of an EPO participating provider are based upon contracted rates.		
?? Eligible expenses for services non-participating provider are based upon the OGB's fee schedule. Charges in excess of the fee schedule are not eligible expenses and do not apply to the coinsurance threshold.		

A.2.b. - D. ...

E. Durable Medical Equipment

	Non-Participating Provider	EPO Participating Provider
Lifetime Maximum per covered person	\$50,000	
Percentage payable	See percentage payable after applicable deductible (above)	20% member co-pay; 100% coverage after \$10,000 eligible expense for plan year

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Trustees, State Employees Group Benefits Program, LR 25:1823 (October 1999), amended LR 26:487 (March 2000), LR 27:717, 719 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1886 (November 2001), LR 28:476 (March 2002), LR 28:2342, 2343 (November 2002), repromulgated LR 28:2509 (December 2002), amended LR 29:338 (March 2003), LR 30:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy.

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on April 26, 2004.

A. Kip Wall
Chief Executive Officer

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: EPO Plan of Benefits
Technical Corrections and Clarifications**

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

This rule change is being made to add clarification to the EPO plan document language and bring it into line with current

interpretation and practice. The rule: 1) clarifies the eligibility provision regarding continued coverage for disabled dependent children, 2) clarifies the coverage for physical and occupational therapy, 3) modifies the coverage provision for sleep disorders to reflect the name of the accrediting organization 4) clarifies the schedule of benefits to "Eligible expenses incurred at at PPO" to "Eligible expenses incurred for the services of a PPO participating provider" and 5) corrects a technical error in earlier publication in the *Louisiana Register* indicating payment threshold for Durable Medical Equipment as \$50,000 when it should have been \$10,000. It is anticipated \$3000 in expenses will be incurred with the publishing of this rule.

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

Revenue collections of state and local governmental units will not be affected.

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

This rule should not directly impact any person or non-governmental group as it only serves to clarify plan document language contained in the EPO plan document to bring it into line with current interpretation and application. There should be no cost impact associated with this rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

A. Kip Wall
Chief Executive Officer
0403#031

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of The Governor
Division of Administration
Office of Group Benefits**

MCO Plan of Benefits
Technical Corrections and Clarifications
(LAC 32:IX:103 and 301)

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. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend certain provisions of the MCO Plan of Benefits in order to insert technical corrections and to clarify such provisions to assure the plan of benefits accurately reflects OGB's administrative interpretations and applications.

Accordingly, OGB hereby gives Notice of Intent to adopt the following Rule to become effective upon promulgation.

Title 32

EMPLOYEE BENEFITS

Part IX. Managed Care Option (MCO) Plan of Benefits

Chapter 1. Eligibility

§103. Continued Coverage

A. - C.3.e.iii. ...

D. Over-Age Dependents. If a never married dependent child is incapable of self-sustaining employment by reason of mental retardation or physical incapacity, became incapable prior to attainment of age 21, and is dependent upon the covered employee for support, the coverage for the dependent child may be continued for the duration of incapacity.

1. Prior to such dependent child's attainment of age 21, an application for continued coverage must be submitted to the program together with current medical information from the dependent child's attending physician to establish eligibility for continued coverage as set forth above.

2. The program may require additional medical documentation regarding the dependent child's mental retardation or physical incapacity upon receipt of the application for continued coverage and as often as it may deem necessary thereafter.

3. For purposes of this Section, mental illness does not constitute mental retardation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:885 (June 2003), amended LR 30:

Chapter 3. Medical Benefits

§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person

A. - A.20.d. ...

21. services of a physical therapist and occupational therapist licensed by the state in which the services are rendered when:

a. prescribed by a licensed physician and rendered in a non group setting;

b. - e. ...

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

22. - 30.c. ...

31.a. testing of sleep disorders only when the tests are performed at either:

i. a sleep study facility accredited by the American Academy of Sleep Medicine or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or

ii. a sleep study facility located within a healthcare facility accredited by JCAHO;

31.b. - 32. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(B)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Group Benefits LR 29:888 (June 2003), amended LR 30:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy.

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on April 26, 2004.

A. Kip Wall
Chief Executive Officer

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

**RULE TITLE: MCO Plan of Benefits
Technical Corrections and Clarifications**

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

This rule change is being made to add clarification to the MCO plan document language and bring it into line with current interpretation and practice. The rule: 1) clarifies the eligibility provision regarding continued coverage for disabled dependent children, 2) clarifies the coverage for physical and occupational therapy, and 3) modifies the coverage provision for sleep disorders to reflect the name of the accrediting organization. It is anticipated \$3000 in expenses will be incurred with the publishing of this rule.

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

Revenue collections of state and local governmental units will not be affected.

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

This rule should not directly impact any person or non-governmental group as it only serves to clarify plan document language contained in the MCO plan document to bring it into line with current interpretation and application. There should be no cost impact associated with this rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

A. Kip Wall
Chief Executive Officer
0403#032

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of The Governor
Division of Administration
Office of Group Benefits**

PPO Plan of Benefits
Technical Corrections and Clarifications
(LAC 32:III.103, 301, and 701)

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. 42:801(C) and 802(B)(2), as amended and reenacted by Act 1178 of 2001, vesting the Office of Group Benefits (OGB) with the responsibility for administration of the programs of benefits authorized and provided pursuant to Chapter 12 of Title 42 of the Louisiana Revised Statutes, and granting the power to adopt and promulgate rules with respect thereto, OGB finds that it is necessary to revise and amend certain provisions of the PPO Plan of Benefits in order to insert technical corrections and to clarify such provisions to assure the plan of benefits accurately reflects OGB's administrative interpretations and applications.

Accordingly, OGB hereby gives Notice of Intent to adopt the following Rule to become effective upon promulgation. The proposed Rule has no known impact on family formation, stability, or autonomy.

Title 32

EMPLOYEE BENEFITS

**Part III. Preferred Provider Organization (PPO)
Plan of Benefits**

Chapter 1. Eligibility

§103. Continued Coverage

A. - C.3.e.iii. ...

D. Over-Age Dependents. If a never married dependent child is incapable of self-sustaining employment by reason of mental retardation or physical incapacity, became incapable prior to attainment of age 21, and is dependent upon the covered employee for support, the coverage for the dependent child may be continued for the duration of incapacity.

1. Prior to such dependent child's attainment of age 21, an application for continued coverage must be submitted to the program together with current medical information from the dependent child's attending physician to establish eligibility for continued coverage as set forth above.

2. The program may require additional medical documentation regarding the dependent child's mental retardation or physical incapacity upon receipt of the application for continued coverage and as often as it may deem necessary thereafter.

3. For purposes of this Section, mental illness does not constitute mental retardation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(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), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 30:

Chapter 3. Medical Benefits

§301. Medical Benefits Apply When Eligible Expenses Are Incurred by a Covered Person

A. - A. 20.d. ...

21. services of a physical therapist and occupational therapist licensed by the state in which the services are rendered when:

a. prescribed by a licensed physician and rendered in a non group setting;

b. - e. ...

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

22. - 30.c. ...

31.a. testing of sleep disorders only when the tests are performed at either:

i. a sleep study facility accredited by the American Academy of Sleep Medicine or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO); or

ii. a sleep study facility located within a healthcare facility accredited by JCAHO;

31.b. - 32. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(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), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 28:480 (March 2002), LR 29:339, 343 (March 2003), LR 30:

Chapter 7. Schedule of Benefits? PPO

§701. Comprehensive Medical Benefits

A. - A.1. ...

2. Percentage Payable after Satisfaction of Applicable Deductibles

Eligible expenses incurred for services of a PPO participating provider	90%
Eligible expenses incurred for services of a non-participating provider when Plan Member resides outside of Louisiana	90%
Eligible expenses incurred for services of a non-participating provider when Plan Member resides in Louisiana	70%
?? Eligible expenses for services of a PPO participating provider are based upon contracted rates.	
?? Eligible expenses for services a non-participating provider are based upon the OGB's fee schedule. Charges in excess of the fee schedule are not eligible expenses and do not apply to the coinsurance threshold.	

A.3 - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:801 (C) and 802(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), amended LR 26:488 (March 2000), LR 27:719, 720, 722 (May 2001), amended by the Office of the Governor, Division of Administration, Office of Group Benefits, LR 27:1887 (November 2001), LR 28:2345 (November 2002), LR 29:340, 342, 343 (March 2003), LR 30:

Interested persons may present their views, in writing, to A. Kip Wall, Chief Executive Officer, Office of Group Benefits, Box 44036, Baton Rouge, LA 70804, until 4:30 p.m. on April 26, 2004.

A. Kip Wall
Chief Executive Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

**RULE TITLE: PPO Plan of Benefits
Technical Corrections and Clarifications**

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

This rule change is being made to add clarification to the PPO plan document language and bring it into line with current interpretation and practice. The rule: 1) clarifies the eligibility provision regarding continued coverage for disabled dependent children, 2) clarifies the coverage for physical and occupational therapy, 3) modifies the coverage provision for sleep disorders to reflect the name of the accrediting organization, and 4) clarifies the schedule of benefits to "Eligible expenses incurred at PPO" to "Eligible expenses incurred for the services of a PPO participating provider". It is anticipated \$3000 in expenses will be incurred with the publishing of this rule.

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

Revenue collections of state and local governmental units will not be affected.

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

This rule should not directly impact any person or non-governmental group as it only serves to clarify plan document language contained in the PPO plan document to bring it into

line with current interpretation and application. There should be no cost impact associated with this rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment will not be affected.

A. Kip Wall
Chief Executive Officer
0403#033

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Real Estate Commission**

**Residential Property Disclosure
(LAC 46:LXVII.Chapter 36)**

Under the authority of R.S. 9:3195 et seq. (Residential Property Disclosure) and R.S. 37:1430 et seq. (Louisiana Real Estate License Law), and in accordance with the provisions of the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Louisiana Real Estate Commission has initiated procedures to amend LAC 46:LXVII, Real Estate, to include Chapter 36. Residential Property Disclosure, §3601, Property Disclosure Document For Residential Real Estate.

This document sets forth minimum disclosure requirements for real estate licensees and sellers of certain residential real estate, which includes the Informational Statement for Louisiana Residential Property Disclosure, specific questions on condition of the property, and the Disclosure of Information on Lead-Based Paint and/or Lead-Based Paint Hazards. This document can be obtained on the Louisiana Real Estate Commission website at no charge.

In accordance with R.S. 49:953(A)(1)(a)(viii) and 972, the following Family Impact Statement is submitted with the Notice of Intent for publication in the March 20, 2004 *Louisiana Register*: The proposed Rules have no known impact on family formation, stability, or autonomy.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXVII. Real Estate

Chapter 36. Residential Property Disclosure

§3601. Property Disclosure Document for Residential Real Estate

A. In accordance with R.S. 9:3195 through 3199, unless exempted therein, the seller of residential real property shall complete a property disclosure document in a form prescribed by the Louisiana Real Estate Commission or a form that contains at least the minimum language prescribed by the Commission. The *Property Disclosure Document for Residential Real Estate* prescribed by the Louisiana Real Estate Commission is maintained in its entirety on the Commission website and is available for public use.

AUTHORITY NOTES: Promulgated in accordance with R.S. 9:3195 et seq.

HISTORICAL NOTES: Promulgated by the Office of the Governor, Real Estate Commission, LR 30:

Interested parties are invited to submit written comments on the proposed regulations through April 2, 2004 at 4:30

p.m., to Stephanie Boudreaux, Louisiana Real Estate Commission, Box 14785, Baton Rouge, LA 70898-4785 or to 9071 Interline Avenue, Baton Rouge, LA 70809.

Julius C. Willie
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Residential Property Disclosure**

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

In accordance with R.S. 9:3195-3199, the Louisiana Real Estate Commission has developed a *Property Disclosure Document for Residential Real Estate*. There were no implementation costs (savings) to state or local governmental units.

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

There is no estimated effect on revenue collections of state or local governmental units. The *Property Disclosure Document for Residential Real Estate* prescribed by the Louisiana Real Estate Commission will be provided on the agency website at no charge to real estate licensees or the general public.

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

The *Property Disclosure Document for Residential Real Estate* prescribed by the Louisiana Real Estate Commission is intended to protect both the seller and the purchaser in a real estate transaction. This document will serve to inform a purchaser of any known property defect and to provide proof that a seller has disclosed it. This document will be made available on the agency website and may be used by real estate licensees and the general public at no charge. This document represents the minimum language that must be contained in a property disclosure document. Nothing precludes a user from modifying this document with language that exceeds the minimum requirement; however, the user shall do so at the user's cost.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Real estate licensees who do not comply with the provisions of R.S. 9:3195-3199 and R.S. 37:1455(A)(33) may have their license censured, suspended, or revoked, and be subject to a fine or civil penalty.

Julius C. Willie
Executive Director
0403#052

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Wholesale Drug Distributors**

Required Information; Powers of the Board
(LAC 46:XCI.303 and 509)

The Louisiana Board of Wholesale Drug Distributors proposes to amend LAC 46:XCI.303 and 509 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 37:3467 et seq. of the Louisiana Board of Wholesale Drug Distributors Practice Act. These proposed Rule amendments will assist the board

in its ability to regulate and inspect licensees for the safeguard of life and health, and the promotion of the public's welfare with regard to wholesale distribution of drugs within and into the state. 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 XCI. Wholesale Drug Distributors

Chapter 3. Wholesale Distributors

§303. Required Information

A. - D. ...

E. Wholesale drug distributors with a place of business physically located in Louisiana must notify the board within three business days of the incident of any theft or diversion of legend or prescription drug product.

F. Wholesale drug distributors with a place of business physically located in Louisiana must notify the board within 24 hours of discovery of any counterfeit or misbranded legend or prescription drug product in their possession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 29:1480 (August 2003), LR 30:

Chapter 5. Powers and Functions of the Board

§509. Inspection Contracts

A. The board may contract with any person or agency it deems qualified to conduct any inspections required by state or federal law.

B. The board shall retain exclusive jurisdiction to adjudicate all complaints, allegations or misconduct, or noncompliance by any licensee and to impose appropriate sanctions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3461-3482.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Wholesale Drug Distributors, LR 18:382 (April 1992), amended LR 30:

Interested parties may submit written comments to John Liggio, Executive Director, Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, LA 70816. Comments will be accepted through the close of business on Tuesday, April 20, 2004. 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 Tuesday, April 27, 2004, at 11 a.m. at the office of the Louisiana Board of Wholesale Drug Distributors, 12046 Justice Avenue, Suite C, Baton Rouge, LA.

John Liggio
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Required Information;
Powers of the Board**

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

There will be no costs or savings to state or local government units, except for those associated with publishing

the Rule amendment (estimated at \$200 in FY 2004). 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 there will not be any increase in fees resulting 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 non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No impact on competition and employment is anticipated as a result of the proposed Rule change.

John Liggio
Executive Director
0403#025

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Durable Medical Equipment Program
HIPAA Implementation

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement for medical equipment, prosthetics, orthotics and supplies under the Durable Medical Equipment Program. The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). This includes standardized procedure codes and definitions. The department is required to implement these codes and definitions or face monetary sanctions.

In compliance with HIPAA requirements, the bureau promulgated an Emergency Rule that amended the Rules governing the billing procedures for durable medical equipment (*Louisiana Register*, Volume 30, Number 2). This Rule is being promulgated to continue the provisions of the March 1, 2004 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. 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 Health Services Financing amends the Rules governing the billing and reimbursement of all durable medical equipment. Current Standard Healthcare Common Procedure Coding System (HCPCS) codes and modifiers shall be used to bill for all durable medical equipment, prosthetics, orthotics and supplies.

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 responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, April 27, 2004, at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

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

**RULE TITLE: Durable Medical Equipment Program
HIPAA Implementation**

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

It is anticipated that there will be no programmatic costs to the state as a result of implementation of this proposed rule. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in SFY 2003-2004 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 implementation of this proposed rule will have no programmatic effect on federal revenue collections.

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

Implementation of this proposed rule continues the provisions of the March 1, 2004 emergency rule and amends the rules governing the billing procedures for durable medical equipment to comply with Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) standards. Implementation of this proposed rule will have no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Ben A. Bearden
Director
0403#059

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Early and Periodic Screening, Diagnosis
and Treatment Program? Eyeglasses
(LAC 50:XV.8501)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.8501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). This includes standardized procedure codes and definitions. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is required to implement these codes and definitions or face monetary sanctions. In compliance with HIPAA requirements, the bureau promulgated an Emergency Rule that revised procedure codes and definitions for Medicaid covered eye wear to comply with HIPAA compliant procedure code descriptions (*Louisiana Register*, Volume 30, Number 2). This proposed Rule continues the provisions of the March 1, 2004 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. 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 Health Services Financing amends the current rules governing billing and reimbursement for Early and Periodic Screening, Diagnosis and Treatment eyeglasses to conform to HIPAA compliant standardized procedure codes.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 85. Durable Medical Equipment—Eyeglasses

§8501. Eye Care

A. ...

B. Billing and Reimbursement. The Health Care Common Procedure Coding System (HCPCS) shall be used to bill for EPSDT eyewear. Claims for EPSDT eye wear shall be reimbursed in accordance with the Louisiana Medicaid Eye Wear Fee Schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:180 (February 2003), amended LR 30:

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 responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, April 27, 2004, at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Early and Periodic Screening, Diagnosis and Treatment Program? Eyeglasses

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

It is anticipated that there will be no programmatic costs to the state as a result of implementation of this proposed rule. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in SFY 2003-2004 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 implementation of this proposed rule will have no programmatic effect on federal revenue collections.

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

Implementation of this proposed rule continues the provisions of the March 1, 2004 emergency rule and revises procedure codes and definitions for Medicaid covered eye wear to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) compliant procedure code descriptions. Implementation of this proposed rule will have no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Ben A. Bearden
Director
0403#058

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Inpatient Hospitals—Private
Reimbursement Reduction

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2003-2004

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 proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule in June of 1994 that established the prospective reimbursement methodology for inpatient services provided in private (non-state) acute care general hospitals (*Louisiana Register*, Volume 20, Number 6). The June 20, 1994 Rule was subsequently amended to establish a weighted average per diem for each hospital peer group (*Louisiana Register*, Volume 22, Number 1). This 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).

Section 11B of Act 14 of the 2003 Regular Session of the Louisiana Legislature directed the Commissioner of Administration to reduce discretionary state general fund (direct) appropriations contained in the Act by 0.8 percent across-the-board, or so much thereof more or less as may be necessary, to effect savings of \$17,300,000. Subsequently, the commissioner directed the department to reduce its discretionary expenditures by 0.8 percent for state fiscal year 2003-2004. In response to the budgetary shortfall, the bureau reduced the reimbursement paid to private (non-state) hospitals for inpatient services to 99.2 percent (a 0.8 percent reduction) of the per diem rates in effect on September 30, 2003 (*Louisiana Register*, Volume 29, Number 9). However, in order to generate the amount of savings necessary to comply with the directives of Act 14, the reimbursement paid in state fiscal year 2003-2004 to private (non-state) hospitals for inpatient services shall be 98.75 percent (a 1.25 percent reduction) of the per diem rates in effect on September 30, 2003. Small rural hospitals as defined by the Rural Hospital Preservation Act (R.S. 40:1300.143) are excluded from this reimbursement reduction. Also, inpatient services provided to fragile newborns or critically ill children in either a Level III Regional Neonatal Intensive Care Unit or a Level I Pediatric Intensive Care Unit shall be excluded from this reimbursement reduction if the units have been recognized by the department on or before January 1, 2003. This proposed Rule is promulgated to continue the provisions contained in the October 1, 2003 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. 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 Health Services Financing reduces the reimbursement paid for inpatient services rendered in private (non-state) acute hospitals, including long term hospitals.

The reimbursement paid for inpatient services to private (non-state) hospitals with a Medicaid inpatient days utilization rate of less than 25 percent shall be as follows: in state fiscal year 2003-2004 only, 98.75 percent (a 1.25 percent reduction) of the per diem rates in effect on September 30, 2003 and for subsequent years, a 99.2 percent (a 0.8 percent reduction) of the per diem rates in effect on September 30, 2003 for private hospitals.

The Medicaid inpatient days utilization rate shall be calculated based on the filed cost report for the period ending in state fiscal year 2002 and received by the department prior to April 30, 2003. Only Medicaid covered days for inpatient hospital services, which include newborn days and distinct part psychiatric units, are included in this calculation. Inpatient stays covered by Medicare Part A can not be included in the determination of the Medicaid inpatient days utilization rate. Small rural hospitals as defined by the Rural Hospital Preservation Act (R.S. 40:1300.143) shall be excluded from this reimbursement reduction. Also, inpatient services provided to fragile newborns or critically ill children in either a Level III Regional Neonatal Intensive Care Unit or a Level I Pediatric Intensive Care Unit, shall be excluded from this reimbursement reduction if the units have been recognized by the Department on or before January 1, 2003.

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, April 27, 2004 at 9:30 a.m. in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Inpatient Hospitals Private Reimbursement Reduction

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

It is anticipated that implementation of this proposed rule will result in an estimated cost avoidance to the state of \$559,739 for SFY 2003-2004, \$600,280 for SFY 2004-2005 and \$561,351 for SFY 2005-2006. It is anticipated that \$340 (\$170 SGF and \$170 FED) will be expended in SFY 2003-04 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 implementation of this proposed rule will reduce federal revenue collections by \$1,407,276 for SFY 2003-2004, \$1,508,927 for SFY 2004-2005 and \$1,411,070 for

SFY 2005-2006. \$170 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed rule reduces the reimbursement paid to private hospitals (a 0.8 percent reduction as required by preamble language in the General Appropriations Act of 2003). It is anticipated that implementation of this proposed rule will reduce reimbursements to private hospitals (approximately 80) by approximately \$1,967,355 for SFY 2003-2004, \$2,109,207 for SFY 2004-2005 and \$1,972,421 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition or employment as a result of the implementation of this proposed rule.

Ben A. Bearden
Director
0403#057

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Bureau of Policy Research and Program Development**

Human Services Statewide Framework
(LAC 48:I.Chapter 26)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development proposes to adopt LAC 48:I.Chapter 26 as authorized by R.S. 28:382.1. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Act 254 of the 2003 Regular Session of the Legislature required the Department of Health and Hospitals to develop a statewide framework to govern the delivery of mental health, developmental disabilities, and addictive disorders services funded by appropriations from the state, and to implement such framework through rules and regulations to be effective not later than July 1, 2004. In compliance with Act 254, the department proposes to adopt the following provisions to develop a statewide framework governing the delivery of mental health, developmental disabilities and addictive disorders services.

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.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development adopts the following provisions to develop a statewide framework governing the delivery of mental health, developmental disabilities and addictive disorders services.

Title 48

PUBLIC HEALTH? GENERAL

Part I. General Provisions

Subpart 1. General

**Chapter 26. Community Human Services Framework
§2601. Mission and Vision for the Department of Health and Hospitals Community Human Services Framework Design**

A. Mission of the Department of Health and Hospitals Community Human Services System. The mission of the Louisiana Department of Health and Hospitals Community Human Services System is to provide a comprehensive and integrated system of services and supports that meets the needs of individuals and, where applicable, their family members. This service system respects individuals' choices to live, learn, work and socialize in the communities of their choice and provides services that are grounded on the best available evidence of service effectiveness and efficiency. In order to support and expand the Community Human Services System, the Office for Addictive Disorders (OAD), the Office for Citizens with Developmental Disabilities (OCDD), and the Office of Mental Health (OMH) provide overall program direction, technical support, planning, monitoring, evaluation, quality improvement and fiscal oversight.

B. Vision of the Louisiana Department of Health and Hospitals Community Human Services System. The Louisiana Community Human Services System will provide the citizens of Louisiana with a comprehensive and integrated system of community services and supports based on the following principles.

1. Services are most effective when they are tailored to individuals' needs and respect individual choices. Therefore, the systems of care will provide the most appropriate services when and where they are needed and in a way that supports individuals' preferences. Services will be offered in the least restrictive environment to foster community integration and individual autonomy.

2. Individuals and, where appropriate, their family members, will be involved in decisions about the outcomes they hope to achieve, the services that will best meet their needs, and the providers they use.

3. Services will strive to maximize human potential and community integration, including recovery where appropriate, and will encourage self-advocacy.

4. Services will be available to Louisiana citizens on an equitable basis regardless of the geographic area in which they live, their gender, age, race, creed, national origin, or sexual orientation.

5. All services will meet consistent statewide standards for access, quality, and effectiveness.

6. The Community Human Services System will enhance individual and community well-being by providing prevention and early intervention services.

7. The Community Human Services System will be responsive to Louisiana's cultural diversity and will foster a workforce that reflects this diversity and services that respect individuals' cultural preferences.

8. Services will be based on the best available scientific evidence. This requires a willingness to learn on the part of all stakeholders and a resource commitment that insures that all stakeholders have ready access to information about best practices and that the workforce has opportunities for professional development.

9. System planning will be a collaborative effort that includes individuals receiving services and, where appropriate, their family members, providers, program administrators, and other community stakeholders.

10. The Community Human Services System will insure consistency throughout the systems of care in collecting and reporting data related to individuals and services; the measurement of individual outcomes and system performance; and continuous improvement of the quality and effectiveness of the systems of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2603. Scope of the Rule for the DD, AD, and MH

Framework Design

A. The purpose of this Chapter 26 is to govern community human services funded by the Louisiana Legislature and provided under the auspices of the Office for Addictive Disorders (OAD), the Office for Citizens with Developmental Disabilities (OCDD), or the Office of Mental Health (OMH) of the Louisiana Department of Health and Hospitals. Funds included under this rule include state general fund appropriations, state interagency transfers, and the federal Substance Abuse Prevention and Treatment and Mental Health Block grant. Other fund sources may be included under this rule through the annual appropriations act.

B. It is also the intent of ACT 254 and the purpose of this Chapter 26 to assure that other services provided or contracted under the jurisdiction of OAD, OCDD and OMH be monitored, coordinated, planned and budgeted as much as possible in conjunction and collaboration with services and funding governed by this Chapter. These include residential treatment in substance abuse facilities under the jurisdiction of OAD; residential services in state-operated Developmental Centers under the jurisdiction of OCDD; inpatient hospital services in state mental health hospitals under the jurisdiction of OMH; and other inpatient hospital services provided in acute care settings and associated state hospital diversion programs.

C. Nothing in this Chapter 26 is intended to replace or override any requirements of the state of Louisiana Medicaid State Plan or any rules or guidelines issued pursuant to the Medicaid program in Louisiana. However, it is intended that Medicaid services for priority consumers under OAD, OCDD and OMH be fully coordinated and planned in concert with the community services under this Chapter.

D. This Chapter 26 shall apply to Statutory District/Authorities operating services under OAD, OCDD and OMH in the same manner and to the same degree as to regional community services under the jurisdiction of OAD, OCDD and OMH.

E. Nothing in this Chapter 26 is intended to supercede or negate other applicable state and federal mandates and

statutory requirements related to the programs, services and administrative functions of OAD, OCDD and OMH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2605. Eligible and Priority Populations

A. The Louisiana Department of Health and Hospitals provides mental health services, addictions services and developmental disabilities services for eligible residents of Louisiana. These eligibility criteria represent minimum standards. Regions/districts may expand the eligibility criteria, as resources permit, to meet defined local needs and priorities.

B. Eligibility criteria for OAD are as follows:

1. The Office for Addiction Disorders provides:

a. prevention and early intervention services for all citizens of Louisiana;

b. addiction treatment services for individuals with DSM IV (or subsequent editions of the DSM) substance abuse and/or gambling disorders and their families;

c. inpatient substance abuse treatment programs operated by the Office for Addictive Disorders for individuals who meet criteria as specified in Louisiana statute (*Louisiana Register* Vol. 29, No. 10, October 20, 2003, LAC 48:I.Chapter 16), and subsequent revisions; and

d. other populations as defined by legislation or Program Office policy will also be eligible for services.

2. Individuals who are determined not to be indigent will be billed for services according to state policies: R.S. 48:2107.D and F and in conformity with DHH Policy 4600-77 (Liability Limitation Policy). Additions and changes to the OAD eligibility criteria will be published annually in the state's Substance Abuse Block Grant Plan.

C. Eligibility Criteria for OCDD. The Office for Citizens with Developmental Disabilities provides:

1. community and residential services to individuals who meet the following criteria:

a. the individual has a severe, chronic disability that is attributable to mental retardation, cerebral palsy, epilepsy, autism or any other condition, other than mental illness, that results in impairment of general intellectual functioning or adaptive behavior similar to that of persons who have mental retardation, or requires treatment or services similar to those required for such persons;

b. the condition must result in substantial functional limitations in three or more of the following areas of major life activity:

i. self-care;

ii. understanding or use of language;

iii. learning;

iv. mobility;

v. self direction;

vi. capacity for independent living;

c. the condition must be manifested before the person reaches age 22;

d. the condition must be likely to continue indefinitely.

2. Services in Intermediate Care Facilities/Mental Retardation Facilities operated by the Office for Citizens with Developmental Disabilities for individuals who meet criteria as specified in Louisiana statute (*Louisiana Register*

Vol. 29, No. 10 October 20, 2003, LAC 48:I.Chapter 16), and subsequent revisions.

3. Other populations as defined by legislation or program office policy will also be eligible for services.

D. Eligibility criteria for OMH

1. The Office of Mental Health provides:

a. inpatient services in facilities operated by the Office of Mental Health for individuals who meet criteria as specified in Louisiana statute (*Louisiana Register* Vol. 29, No. 10 October 20, 2003, LAC 48:I.Chapter 16) and subsequent revisions; and

b. other populations as defined by legislation, court order or program office policy will also be eligible for services.

2. Individuals who are determined not to be indigent will be billed for services according to State Policies: R.S. 48:2107.D and F and in conformity with DHH Policy 4600-77 (Liability Limitation Policy).

3. Definitions of specific OMH target population criteria are contained in §2605.F.

4. Additions and changes to the OMH eligibility criteria will be published annually in Louisiana's Mental Health Block Grant Plan.

E. Priority populations for program and system development. OAD, OCDD and OMH periodically identify policy priorities that are intended to meet the needs of underserved population groups and to move the systems of services and supports in desired directions. Priority populations are identified through the annual Block Grant planning processes and annual regional/district planning processes based on regional performance report cards and regional profiles. Designation of a priority population means that the service needs of these groups will be embraced as statewide priorities and all regions/districts will comply with these mandated designations. Communities may add additional populations to be targeted based on local planning needs and as local resources permit. Priority populations include the following groups:

1. individuals with co-occurring disorders (OAD, OCDD, OMH);

2. pregnant women, women with dependent children, IV drug users, and individuals with HIV (OAD);

3. infants and toddlers for early intervention (OMH);

4. individuals at risk of institutionalization psychiatric hospitalization, homelessness, and/or abuse or neglect (OCDD, OMH);

5. children with involvement in multiple service systems including mental health, developmental disabilities, addictive disorders, juvenile justice, social services, public welfare, school, public health, etc., for whom inter-system collaboration and integration is necessary to achieve positive outcomes (OAD, OCDD, OMH);

6. individuals involved with the criminal justice system that are eligible for community-based services such as jail diversion, specialty courts, and re-entry programs (OAD, OCDD, OMH);

7. individuals transitioning out of Developmental Centers (OCDD);

8. individuals discharged from OMH operated acute psychiatric inpatient care units (OMH).

F. Specific Mental Health Target Population Definitions

1. An adult who has a serious and persistent mental illness meets the following criteria for Age, Diagnosis, Disability, and Duration:

a. age: 18 years of age or older;

b. diagnosis: severe non-organic mental illnesses including, but not limited to schizophrenia, schizoaffective disorders, mood disorders, and severe personality disorders, that substantially interfere with a person's ability to carry out such primary aspects of daily living as self-care, household management, interpersonal relationships and work or school.

c. disability: Impaired role functioning, caused by mental illness, as indicated by at least two of the following functional areas:

i. unemployed or has markedly limited skills and a poor work history or, if retired, is unable to engage in normal activities to manage income;

ii. employed in a sheltered setting;

iii. requires public financial assistance for out-of-hospital maintenance (i.e., SSI) and/or is unable to procure such without help; does not apply to regular retirement benefits;

iv. severely lacks social support systems in the natural environment (i.e., no close friends or group affiliations, lives alone, or is highly transient);

v. requires assistance in basic life skills (i.e., must be reminded to take medicine, must have transportation arranged for him/her, needs assistance in household management tasks);

vi. exhibits social behavior, which results in demand for intervention by the mental health and/or judicial/legal system;

d. duration: must meet at least one of the following indicators of duration:

i. psychiatric hospitalizations of at least six months in the last five years (cumulative total);

ii. two or more hospitalizations for mental disorders in the last 12 month period;

iii. a single episode of continuous structural supportive residential care other than hospitalization for a duration of at least six months;

iv. a previous psychiatric evaluation or psychiatric documentation of treatment indicating a history of severe psychiatric disability of at least six months duration.

2. Child/Youth with Emotional/Behavioral Disorder. A child or youth who has an emotional/behavioral disorder meets the following criteria for age, diagnosis, disability, and duration as agreed upon by all Louisiana child-serving agencies:

a. age: under age 18;

b. diagnosis: must meet one of the following:

i. exhibit seriously impaired contact with reality, and severely impaired social, academic, and self-care functioning, whose thinking is frequently confused, whose behavior may be grossly inappropriate and bizarre, and whose emotional reactions are frequently inappropriate to the situation; or

ii. manifest long-term patterns of inappropriate behaviors, which may include but are not limited to aggressiveness, anti-social acts, refusal to accept adult requests or rules, suicidal behavior, developmentally inappropriate inattention, hyperactivity, or impulsiveness; or

iii. experience serious discomfort from anxiety, depression, or irrational fears and concerns whose symptoms may include but are not limited to serious eating and/or sleeping disturbances, extreme sadness, suicidal ideation, persistent refusal to attend school or excessive avoidance of unfamiliar people, maladaptive dependence on parents, or non-organic failure to thrive; or

iv. have a DSM-IV (or successor) diagnosis indicating a severe mental disorder, such as, but not limited to psychosis, schizophrenia, major affective disorders, reactive attachment disorder of infancy or early childhood (non-organic failure to thrive), or severe conduct disorder. This category does not include children/youth who are socially maladjusted unless it is determined that they also meet the criteria for emotional/behavior disorder;

c. disability: there is evidence of severe, disruptive and/or incapacitating functional limitations of behavior characterized by at least two of the following:

i. inability to routinely exhibit appropriate behavior under normal circumstances;

ii. tendency to develop physical symptoms or fears associated with personal or school problems;

iii. inability to learn or work that cannot be explained by intellectual, sensory, or health factors;

iv. inability to build or maintain satisfactory interpersonal relationships with peers and adults;

v. a general pervasive mood of unhappiness or depression;

vi. conduct characterized by lack of behavioral control or adherence to social norms which is secondary to an emotional disorder. If all other criteria are met, then children determined to be "conduct disordered" are eligible;

d. duration: must meet at least one of the following:

i. the impairment or pattern of inappropriate behavior(s) has persisted for at least one year;

ii. there is substantial risk that the impairment or pattern or inappropriate behavior(s) will persist for an extended period;

iii. there is a pattern of inappropriate behaviors that are severe and of short duration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2607. Core and Targeted Services

A. OAD, OCDD and OMH shall implement core and targeted services as required by Louisiana Act 254. The Core and Targeted Services as defined in this §2607 represent the minimum set of services that will be made available across the state. The lists of Core and Targeted services, as well as service definitions, shall be reviewed annually as part of the Mental Health and Substance Abuse Block Grant planning processes and a comparable planning process conducted in conjunction with the annual budget process by OCDD. These processes shall be used to review systematically the status of services in the Planning Set and the transition of these services to the Targeted Services category. The annual budget submission of OAD, OCDD and OMH, including the budget submissions of the community human services districts, shall specify how resources will be spent to provide core and targeted services.

B. OAD, OCDD and OMH shall also plan and develop best practice services (Planning set services as described below) to the extent resources allow in order to develop a comprehensive statewide system of community services for persons with mental illness, addictive disorders and developmental disabilities in Louisiana. As described in §2019, OAD, OCDD and OMH shall engage in an annual budget planning process to prioritize services in the Planning Set for regional or statewide development.

C. Definition of Core, Targeted and Planning Set Services

1. Core Services. Core services are those minimum and essential services that are available to eligible populations in all urban and rural areas. The availability of Core Services is a priority of the Department of Health and Hospitals and access to Core Services will be monitored through systematic analysis of performance indicator data as described in §2609.B and C.

2. Targeted Services. Targeted services are mandated specialized services available to priority populations on a regional or statewide basis. Targeted services may be provided in and by the region/district or accessed by the region/district through MOU/contract with a DHH Program Office or other state agency, another region/district, or other provider. Through these means targeted services are available statewide, but funding limitations may prevent all in need from receiving targeted services.

3. Planning Set Services. Services in the planning set have been identified by the Program Offices as important services for statewide development. Specific services will be prioritized for statewide development through the Program Offices' annual planning processes.

D. The core community human services that must be available in all urban and rural areas are as follows.

1. Assessment Services. Each community shall have available general assessment services that can make rapid intake decisions and referrals to appropriate services (mental health, developmental disabilities, addictive disorders, or others) for further evaluation. OAD, OCDD and OMH shall identify and designate human service centers or other locations at which initial intake assessment and referral will be available. The goal is to have a uniform assessment without duplicating assessments; consumers can enter multiple doors but receive the same access, based on uniform protocols.

2. Community Human Services Care Coordination. Community care coordination is available for individuals referred within the DHH system to ensure that appropriate linkages are made within the community Human Services system. This is different from case management services in that it is less intensive and can be performed without face-to-face interventions, but will not exclude them.

3. Community Crisis Response. Individuals with urgent needs related to mental health, addictions or developmental disabilities will have access to community human services crisis response system which may include on-call, hotline, warm line, crisis counseling, behavioral management and intervention, mobile crisis team, crisis stabilization in an alternative setting, etc. DHH will assure that crisis response services are available statewide by July 1, 2005.

E. Targeted and Planning Set Service Definitions for the Office for Addictive Disorders include:

1. Social Detoxification? which meets OAD criteria for addictions diagnosis and is restricted to individuals who are not at imminent risk of medical complications. Social detoxification is a system of 24-hour supervision in controlled environment not attended directly by medical staff. Although medications may be use and administered by medical personnel, it is not necessary for medical personnel to be present at all times. MDs may supervise this level of care but are seldom directly involved except as consultants. There are usually nursing staff on call 24 hours, but not usually present.

2. Individual/Group Counseling? which meets OAD criteria for addictions diagnosis and is specified in an individualized treatment plan. Individual and group counseling is defined as treatment/recovery/aftercare or rehabilitation services provided to clients not residing in a treatment facility. The client receives alcoholism and/or drug abuse treatment services with or without medication, including counseling and supportive services.

3. Intensive Adult Outpatient? which meets OAD criteria for addictions diagnosis and is specified in an individualized treatment plan. Intensive outpatient services are provided to a client for three or more hours per day for three or more days per week. Day care is included in this category.

4. Residential Rehabilitation? which meets OAD criteria for addictions diagnosis and is specified in an individualized treatment plan. Residential rehabilitation includes a set of 24-hour residential programs that may include: residential halfway house services, three-quarter way house services, therapeutic community, or recovery homes.

5. Community-Based Residential Services? which Meets OAD criteria for addictions diagnosis and is specified in an individualized treatment plan. Community-based residential services provide treatment and rehabilitation services not to exceed 30 days of non-acute care which includes a planned and professionally implemented treatment regimen for persons suffering from alcohol and/or other drugs of abuse. Such services operate 24 hours a day, seven days a week.

6. Individualized Service Plan? which meets OAD criteria for addictions diagnosis. Service planning is the team process of developing the recipient's service agreement, periodically reviewing progress toward the goals of the service agreement, and modifying the service agreement as indicated. The service agreement is an individualized, structured, goal-oriented schedule of services developed jointly by the recipient and treatment team. Recipients must be actively involved in the planning process and have a major role in determining the direction of their service agreement. The service agreement must identify the goals, objectives, action strategies, and services which are based on the results of an assessment, indicated by an Integrated Summary, and agreed to by the adult recipient or the child recipient and their family.

7. Education Groups? provided with no eligibility restrictions or limitations on service scope or duration. Education groups are a regular part of the treatment regimen and provide information to consumers, families and others

about the physical, mental and social effects of alcohol, gambling and other drugs on the individual, family and community. This service is available to nonregistered clients.

8. Prevention? provided with no eligibility restrictions or limitations on service scope or duration. Prevention programs are planned activities that render professional guidance to individuals, families, organizations, communities and systems to help create or maintain healthy behaviors and environments. Alcohol, tobacco and other drug prevention make use of such processes as collaboration, cultural inclusion, advocacy, and networking. Prevention programs:

a. anticipate challenges to individuals and societal well-being;

b. work collaboratively to decrease risk factors and increase protective factors; and

c. reinforce conditions that promote health and reduce disease.

F. Planning set services for OAD include:

1. intensive adolescent outpatient services. These are outpatient services provided to a client for two or more hours per day for three or more days per week. Day Care is included in this category;

2. integrated treatment for individuals with co-occurring disorders. Dual diagnosis treatments combine or integrate mental health and substance abuse interventions at the level of the clinical encounter. Integrated treatment means that the same clinicians or teams of clinicians, working in one setting, provide appropriate mental health and substance abuse interventions in a coordinated fashion. The caregivers take responsibility for combining the intervention into one coherent package. For the individual with a dual diagnosis, the services appear seamless, with a consistent approach, philosophy, and set of recommendations. The need to negotiate with separate clinical teams, programs, or systems disappears. The goal of dual diagnosis interventions is recovery from two serious illnesses;

3. gender-specific treatment. Gender-specific treatments include services and supports that are sensitive to the relationships in a woman's life and responsive to factors that may interfere with treatment completion;

4. medical detoxification. Twenty-four hours/day medical services which provide immediate acute care for the alcoholic/substance abuser at extreme risk (either from an illness/health problem co-morbid with the substance abuse problem or from medical problems resulting from the process of detoxifying). Medical detoxification operates seven days a week;

5. methadone detoxification. Methadone detoxification is an abstinence-based outpatient detoxification program that includes counseling and other ancillary services.

G. Targeted service definitions for the Office for Citizens with Developmental Disabilities include:

1. personal outcome-based planning for individuals who meet OCDD criteria for developmental disabilities and are receiving OCDD services. Personal outcome-based planning is an ongoing process of developing a plan of support through identification of a person's needs, preferences and desired personal outcomes. The process

assures inclusion of services and supports aimed at meeting the person's identified outcomes;

2. case management for individuals who meet OCDD criteria for developmental disabilities and are leaving public developmental centers and choose OCDD as their case manager, and choose non-OCDD service providers. Case management means a department mechanism for linking, coordinating, and developing segments of a mental retardation and developmental disabilities services system to insure appropriate residential living options or mental retardation and developmental disabilities services or both to meet a recipient's needs to the greatest extent possible, including those recipients who are served by multiple agencies. Such case management services shall be conducted in accordance with established department procedures;

3. cash subsidy is a flat monthly payment to families of eligible children aged birth to 17 who have severe or profound developmental disabilities as defined by LAC 48:I.16103-16129 and meet program criteria (individuals who meet the requirements of the cash subsidy program as defined in *Louisiana Register*, Vol. 28, No. 5, May 20, 2002);

4. individual and family support for individuals who meet OCDD criteria for developmental disabilities and priority designation. Individual and family supports are tailored to enable an individual with a disability to be in the community. Family supports include dental and medical care that are not covered by Medicaid, respite care, recreation, homemaker services, transportation, personal assistance services, home health services, equipment and supplies, counseling services, communication services, crisis intervention, specialized utility costs, child care, specialized diagnosis and evaluation, specialized nutrition, clothing and parent education training;

5. vocational services for individuals who meet OCDD criteria for developmental disabilities and are 22 years of age or older. These are habilitative services provided directly or through cooperating agencies to an individual in accordance with his or her individualized plan and designed to improve or enhance skills and behaviors necessary for successful placement in a work setting.

H. Planning set services for OCDD include:

1. behavioral analysis and treatment includes provision of positive behavioral supports to serve people with developmental disabilities and intensive behavioral needs who are at risk of long term placement. These supports are provided through regional community supports resources using a broad positive behavioral supports model to assist people in reaching their desired outcomes and to live successfully in the community. Services may include initial and ongoing assessment, psychiatric services, positive behavioral support planning, family support and education, support coordination and any other services or supports critical to an individual's ability to live in the community;

2. expansion of temporary, short-term respite care of individuals who are unable to care for themselves because of the absence of or need for relief of the primary caregiver;

3. transitional services for individuals moving from school to work. Transitional services that assist in the shift from children's services to adult services. Transition services consist of joint planning between personnel in both settings

to determine the appropriate services to assist the child and family with the adjustment.

I. Targeted adult mental health services for OMH include:

1. individualized treatment planning for individuals meeting OMH eligibility criteria with the exception of individuals that do not meet criteria for ongoing care, with no limitations on scope or duration. Individualized treatment planning is the team process of developing the recipient's treatment plan/service agreement, periodically reviewing progress toward the goals of the treatment plan/service agreement, and modifying the service agreement as indicated. The treatment plan/service agreement is an individualized, structured, goal-oriented schedule of services developed jointly by the recipient and treatment team. Recipients must be actively involved in the planning process and have a major role in determining the direction of their treatment plan/service agreement. The treatment plan/service agreement must identify the goals, objectives, action strategies, and services which are based on the results of an assessment, indicated by an Integrated Summary, and agreed to by the adult recipient or the child recipient and their family;

2. medication management for individuals meeting OMH eligibility criteria with the exception of individuals that do not meet criteria for ongoing care, as specified by individualized treatment plan. Medication management is provided to: assess; monitor a recipient's status in relation to treatment with medication; instruct the recipient, family, significant others or caregivers of the expected effects of therapeutic doses of medications or; administer prescribed medication when ordered by the supervising physician;

3. medication therapy for individuals meeting OMH eligibility criteria with the exception of individuals that do not meet criteria for ongoing care, as specified by individualized treatment plan. Medication therapy includes prescription, administration, assessment of drug effectiveness and monitoring of potential side effects of psychotropic medications;

4. community support services for individuals meeting OMH eligibility criteria with the exception of individuals that do not meet criteria for ongoing care, as specified by individualized treatment plan. Community support services are a comprehensive set of services designed to promote recovery. Service types may include:

- a. assessment;
- b. service planning;
- c. community support services;
- d. individual and supportive counseling;
- e. group counseling;
- f. psychosocial skills training medication management; and
- g. parent/family interventions;

5. consumer supported services as specified by the district/region and as specified by individualized treatment plan. Programs in each region must be planned by the consumers living in that region;

- a. initiatives include:
 - i. peer support and counseling activities;
 - ii. consumer planning;
 - iii. staff/stakeholder education, etc;
- b. consumer education activities may include:

- i. purchase of printed and training materials and training equipment;
 - ii. training stipends;
 - iii. consumer training;
 - iv. education; and
 - v. skill development including:
 - (a). participation in conferences and workshops;
 - (b). transportation related to training, etc.;
6. inpatient services for individuals meeting criteria defined in the *Louisiana Register* and as specified by individualized treatment plan. Inpatient services are provided in a hospital setting where the individual is provided room, board and routine monitoring by nursing staff and active treatment under the direction of a psychiatrist;
7. individual, group and family counseling for individuals meeting OMH criteria for serious and persistent mental illness as specified by individualized treatment plan. These include:
- a. individual counseling: services provided to eliminate psychosocial barriers that impede the development or modification of skills necessary to function in the community. Specifically, counseling and therapy services:
 - i. maximize strengths;
 - ii. reduce behavioral problems and/or functional deficits to change behavior;
 - iii. promote problem solution;
 - iv. improve interpersonal skills;
 - v. assist in the development of interest areas and natural supports;
 - vi. provide illness education;
 - vii. explore and clarify values;
 - viii. facilitate interpersonal growth; and
 - ix. increase psychological understanding;
 - b. family/couple counseling: a service that addresses issues such as symptom/behavior management; development or enhancement of specific problem solving skills and coping mechanisms; development or enhancement of adaptive behavioral and skills; development or enhancement of interpersonal skills; management of resources; cognitive issues; and development or enhancement of skills necessary to access resources and support systems. Family/couple training/counseling provides systematic interactions between staff and consumers' family members directed towards the restoration, enhancement or maintenance of functioning of the identified consumer/family unit and includes support of the family. As applicable may assist the family to understand addiction, the steps to recovery and the methods of intervention the family can use;
 - c. group counseling: group counseling is a treatment modality using face to face verbal interaction between two or more persons and the therapist/counselor to promote emotional, behavioral or psychological change as identified in the treatment plan of each group member. It is a professional therapeutic intervention utilizing psychotherapy theory and techniques. Group counseling is direct personal involvement with the group of recipients. The service is time limited and directed to the goals on the treatment plan;
8. consumer care resources for individuals meeting criteria for OMH consumer care resources policy, and as specified by individualized treatment plan and not to exceed

limits established in OMH consumer care resources policy. The purpose of CCR is to access needed supports, services or goods to achieve, maintain or improve individual/family community living status and level of functioning in order to continue living in the community. CCR may only be utilized when the need is clinically indicated and that need cannot be met through other community sources. Consumer Care Resources are administered either directly by the regional mental health office or through a contract between a nonprofit agency and the regional mental health office. In all cases, the mental health regional/district manager will exercise ongoing administrative oversight for authorization/utilization of these funds.

J. Planning Set Adult Mental Health Services for OMH

1. Case Management?

a. treatment and interventions to assist consumers to gain access to necessary medical and rehabilitative services to reduce psychiatric and addiction symptoms and develop optimal community living skills. Services include:

- i. convening a service planning team that includes the consumer and caregiver (if appropriate) to develop and revise the individual service plan;
- ii. coordinating the necessary treatment and supports identified in the service plan (including services provided by other systems); and
- iii. providing oversight of the implementation of the service plan.

b. The case manager will also provide aggressive outreach to the individual to ensure initial and ongoing engagement in the services.

2. Assertive Community Treatment? an intensive case management community service for individuals discharged from the multiple or extended stays in public hospitals, or who are difficult to engage in treatment. ACT provides intensive, integrated rehabilitative, crisis, treatment and community support services provided by an interdisciplinary staff team and available 24-hours/seven days a week. Services offered by the ACT team must be documented in an individual service plan (ISP) and must include (in addition to those provided by other systems):

- a. medication administration and monitoring;
- b. self medication;
- c. crisis assessment, management and individual supportive therapy;
- d. substance abuse training and counseling;
- e. psychosocial rehabilitation and skill development;
- f. personal, social and interpersonal skill training;
- g. consultation, and psycho-educational support for individuals and their families;

3. Family Psycho-Social Educational Services. Family psychosocial education is a service for multi-family groups utilizing a structured and pragmatic format to help individuals with mental illness and the important people in their support networks develop a better understanding of severe mental illness, to develop coping strategies, and strengthen social supports. Groups typically meet every other week for at least six months.

4. Integrated Treatment for Co-Occurring Mental and Substance Abuse Disorders. Treatments that combine or integrate mental health and substance abuse interventions at the level of the clinical encounter. Hence, integrated

treatment means that the same clinicians or teams of clinicians, working in a single setting, provide appropriate mental health and substance abuse interventions in a coordinated fashion. In other words, the caregivers take responsibility for combining the intervention into one coherent package. For the individual with co-occurring mental and substance abuse disorders, the services appear seamless, with a consistent approach, philosophy, and set of recommendations. The need to negotiate with separate clinical teams, programs, or systems disappears. The goal of dual diagnosis interventions is recovery from two serious illnesses.

5. **Community Education.** Services which assist other professionals or community members who have regular or frequent contact with the consumer to better understand the consumer's/family's condition or situation, and to respond more effectively/appropriately to that consumer's/family's needs and problems. They are often of the nature of explanations of diagnoses, behaviors, or treatment plans/regimens, and suggestions as to how the person can best work to facilitate treatment and not exacerbate the consumer's condition.

6. **Supported Housing.** Those services that assist a person to live in permanent, regular housing through specialized supports that are available in the intensity and quality needed but is not present when there is no need. Supported housing refers to assisting people with mental illness to live in permanent, individual housing in a genuine community environment which is not inherently a treatment or service setting, by providing as needed a flexible range of formal and informal supports that are necessary for an individual to maintain that housing.

7. **Supported Employment.** Supportive services that include assisting individuals in finding work; assessing individuals' skills, attitudes, behaviors, and interest relevant to work; providing vocational rehabilitation and/or other training; and providing work opportunities.

8. **Supported Education.** Supported education assists people with psychiatric disabilities to achieve educational goals in a college campus setting. Built on a psychosocial rehabilitation model, supported education addresses problems related to achieving educational success, such as managing stress, improving academic skills, problem solving, self confidence, and career development. Its aim is to help students overcome the obstacles that prevent them from successfully completing their higher education.

9. **Services for Persons with Co-Occurring Serious Mental Illness and Developmental Disabilities.** Services designed to address the needs of people with both psychiatric illness and mental retardation or developmental disabilities.

10. **Interagency Service Coordination.** A process for interweaving the components of services provided by the various agencies involved in serving an individual into a coherent and effective seamless system.

11. **Community Forensic Services.** Services that effectively integrate the treatment and support services needed by individuals involved with the criminal justice system. Services may include jail diversion programs, mental health courts, and re-entry programs.

12. **Brief Intervention Services.** Brief therapy is short-term and focused on helping a person to resolve

or effectively manage a specific problem or challenge, or to make a desired change. The therapy is typically solution-oriented, and sessions are more geared towards here-and-now aspects of the problem than on exploration of historical material. Goal setting is the hallmark of this approach, and the therapist is more active in sessions than is typically the case in traditional psychotherapy. Most often, those who practice brief therapy take a cognitive, behavioral, or cognitive-behavioral approach to treatment.

K. **Targeted Child and Youth Mental Health Services for OMH**

1. **Individualized treatment planning for individuals meeting OMH eligibility criteria with the exception of individuals that do not meet criteria for ongoing care, with no limitations on scope or duration.** Individualized treatment planning is the team process of developing the recipient's treatment plan/service agreement, periodically reviewing progress toward the goals of the treatment plan/service agreement, and modifying the service agreement as indicated. The treatment plan/service agreement is an individualized, structured, goal-oriented schedule of services developed jointly by the recipient and treatment team. Recipients must be actively involved in the planning process and have a major role in determining the direction of their treatment plan/service agreement. The treatment plan/service agreement must identify the goals, objectives, action strategies, and services which are based on the results of an assessment, indicated by an Integrated Summary, and agreed to by the adult recipient or the child recipient and their family.

2. **Medication management for individuals meeting OMH eligibility criteria with the exception of individuals that do not meet criteria for ongoing care, as specified by individualized treatment plan.** Medication management is provided to: assess; monitor a recipient's status in relation to treatment with medication; instruct the recipient, family, significant others or caregivers of the expected effects of therapeutic doses of medications or; administer prescribed medication when ordered by the supervising physician.

3. **Medication therapy for individuals meeting OMH eligibility criteria with the exception of individuals that do not meet criteria for ongoing care, as specified by individualized treatment plan.** Medication therapy includes prescription, administration, assessment of drug effectiveness and monitoring of potential side effects of psychotropic medications.

4. **Individual, group, and family counseling for individuals meeting OMH criteria for serious emotional/behavioral disorders as specified by individualized treatment plan.** These include:

- a. individual counseling? services provided to eliminate psychosocial barriers that impede the development or modification of skills necessary to function in the community. Specifically, counseling and therapy services:
 - i. maximize strengths;
 - ii. reduce behavioral problems and/or functional deficits to change behavior;
 - iii. promote problem solution;
 - iv. improve interpersonal skills;
 - v. assist in the development of interest areas and natural supports;
 - vi. provide illness education;

- vii. explore and clarify values;
- viii. facilitate interpersonal growth; and
- ix. increase psychological understanding;

b. family/couple counseling: a service that addresses issues such as symptom/behavior management; development or enhancement of specific problem solving skills and coping mechanisms; development or enhancement of adaptive behavioral and skills; development or enhancement of interpersonal skills; management of resources; cognitive issues; and development or enhancement of skills necessary to access resources and support systems. Family/couple training/counseling provides systematic interactions between staff and consumers' family members directed towards the restoration, enhancement or maintenance of functioning of the identified consumer/family unit and includes support of the family. As applicable, may assist the family to understand addiction, the steps to recovery and the methods of intervention the family can use;

c. group counseling: group counseling is a treatment modality using face to face verbal interaction between two or more persons and the therapist/counselor to promote emotional, behavioral or psychological change as identified in the treatment plan of each group member. It is a professional therapeutic intervention utilizing psychotherapy theory and techniques. Group counseling is direct personal involvement with the group of recipients. The service is time limited and directed to the goals on the treatment plan.

5. Family support services/family preservation (e.g. respite care, parent mentoring) for individuals meeting OMH criteria for serious emotional/behavioral disorders as specified by individualized treatment plan. Family support/preservation is a structured, time-limited service involving the recipient and one or more of his/her family members and/or two or more of his/her family members intended to stabilize the living arrangement, promote reunification, or prevent utilization of out of home therapeutic resources (i.e., psychiatric hospitalization, therapeutic foster care, and residential treatment facility) for the recipient. These services are delivered primarily to children and adolescents in their family's home with a family focus. It is a team-based service and there must be evidence of team coordination and interaction with the recipient and their family in as a single organizational unit.

6. Consumer care resources for individuals meeting criteria for OMH consumer care resources policy, and as specified by individualized treatment plan and not to exceed limits established in OMH consumer care resources policy. The purpose of CCR is to access needed supports, services or goods to achieve, maintain or improve individual/family community living status and level of functioning in order to continue living in the community. CCR may only be utilized when the need is clinically indicated and that need cannot be met through other community sources. Consumer care resources are administered either directly by the regional mental health office or through a contract between a nonprofit agency and the regional mental health office. In all cases, the mental health regional/district manager will exercise ongoing administrative oversight for authorization/utilization of these funds.

7. Inpatient services for individuals meeting criteria defined in the *Louisiana Register* and as specified by

individualized treatment plan. Inpatient services are provided in a hospital setting where the individual is provided room, board and routine monitoring by nursing staff and active treatment under the direction of a psychiatrist.

8. Cash subsidy for individuals meeting OMH criteria for serious emotional/behavioral disorders.

9. Parent and family intervention for individuals meeting OMH criteria for serious emotional/behavioral disorders as specified by individualized treatment plan.

10. Interagency coordination for individuals meeting OMH criteria for serious emotional/behavioral disorders. This is a process for interweaving the components of services provided by the various agencies involved in serving an individual into a coherent and effective seamless system.

L. Planning Set Mental Health Services for Children and Youth for OMH

1. Multi-Systemic Therapy

a. a program designed to enhance the skills of youth ages 9-17 and their families who:

- i. have anti-social, aggressive/violent behaviors;
- ii. are at risk of out-of-home placement;
- iii. are chronic or violent juvenile offenders;

and/or

iv. are youth with serious emotional disturbances involved in the juvenile justice system.

b. provides an intensive model of treatment based on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions. The purpose of this program is to keep youth in the home by delivering an intensive therapy to the family within the home. Services are provided through a team approach to youth and their families. Services include:

- i. an initial assessment to identify the focus of the MST intervention;
- ii. individual therapeutic interventions with the youth and the family;
- iii. peer intervention;
- iv. case management;
- v. crisis stabilization; and
- vi. respite.

c. Specialized therapeutic and rehabilitative interventions are available to address special areas such as substance abuse, sexual abuse, sex offending, and domestic violence. Services are available in-home, at school and in other community settings. The duration of MST intervention is three to five months. MST involves families and other systems such as the school, probation officers, extended families and community connections.

2. Therapeutic Foster Care

a. A service that provides intensive, time-limited (9 to 12 months) treatment services to children with serious emotional disturbances that reside in a licensed foster home in order to maximize functioning and achieve family reunification or community reintegration. Specialized therapeutic foster care supports incorporate clinical treatment services, which are behavioral, psychological and psychosocial in orientation. Services include clinical interventions by the specialized therapeutic foster parents throughout the child's length of stay. Services include:

- i. coordination of the treatment team;

- ii. treatment plan development;
- iii. support to the families of children;
- iv. community liaison and advocacy;
- v. crisis intervention;
- vi. in-service behavioral training to the therapeutic foster care parents;
- vii. collateral contacts with the case manager;
- viii. regularly scheduled face-to-face meetings with the specialized therapeutic foster parents in order to monitor the child's progress and discuss treatment strategies and services.

b. These services are provided in a licensed home and are provided by a mental health professional or staff under the supervision of a mental health professional with 24-hour on-call coverage by a licensed psychiatrist or psychologist. Therapeutic foster care may be used for natural, kinship, adoptive, or foster family.

3. **Wrap-Around Services.** A unique set of community services and natural supports for a child or adolescent with serious emotional/behavioral disorders disturbances based on a definable planning process, individualized for the child and family to achieve a positive set of outcomes.

4. Case Management

a. Treatment and interventions to assist children and youth to gain access to necessary medical and rehabilitative services to reduce psychiatric and addiction symptoms and develop optimal community living skills. Services include:

- i. convening a service planning team that includes the consumer and caregiver (if appropriate) to develop and revise the individual service plan;
- ii. coordinating the necessary treatment and supports identified in the service plan (including services provided by other systems); and
- iii. providing oversight of the implementation of the service plan.

b. The case manager will also provide aggressive outreach to the individual to ensure initial and ongoing engagement in the services.

5. **Prevention and Early Intervention Services.** These are services oriented to persons who have not been identified as needing clinical treatment/intervention, or whose condition is thought to be able to be arrested by preventive intervention. These services typically involve:

- a. promotion of positive behaviors and mental health practices, increasing necessary and sufficient supports as a mechanism for preventing deterioration; or
- b. training recipients with information regarding recognition and coping effectively with risk factors.

6. Social Skills Building

a. The psychosocial skill training components provide all of the following services:

- i. on-site group skills training;
- ii. off-site group skills training;
- iii. on-site individual skills training;
- iv. off-site skills training.

b. Psychosocial skills training teaches skills necessary for the consumer to succeed in his/her environment including, but not limited to:

- i. daily and community living skills;
- ii. socialization skills;
- iii. adaptation skills;

- iv. development of interests and skills in using leisure time;
- v. symptom management skills;
- vi. education in mental health/mental illness issues related to the consumer's individual diagnosis and needs; and
- vii. psychologically supportive individual and/or group activities.

7. **Supported Living.** Those services that assist a person to live in permanent, regular housing through the specialized support that is available in the intensity and quality needed but is not present when there is no need. Supported housing refers to assisting people with mental illness to live in permanent, individual housing in a genuine community environment which is not inherently a treatment or service setting, by providing as needed a flexible range of formal and informal supports that are necessary for an individual to maintain that housing.

8. **Integrated Treatment for Children/Youth with Co-Occurring Mental and Substance Abuse Disorders.** Dual diagnosis treatments combine or integrate mental health and substance abuse interventions at the level of the clinical encounter. Hence, integrated treatment means that the same clinicians or teams of clinicians, working in one setting, provide appropriate mental health and substance abuse interventions in a coordinated fashion. In other words, the caregivers take responsibility for combining the intervention into one coherent package. For the individual with a dual diagnosis, the services appear seamless, with a consistent approach, philosophy, and set of recommendations. The need to negotiate with separate clinical teams, programs, or systems disappears. The goal of dual diagnosis interventions is recovery from two serious illnesses.

9. **School-Based Intervention.** Clinical mental health social work position for the purpose of providing comprehensive in-school and in-home services to students with E/BD and their families as part of comprehensive health services.

10. **Services for Children/Youth with Co-Occurring Emotional/Behavioral Disturbance and Developmental Disabilities.** Services designed to address the needs of people with both psychiatric illness and mental retardation or developmental disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2609. Standards for Geographic Scope of Service Delivery

A. **Definition of DHH Geographic Regions.** The 10 geographic regions defined by the Department of Health and Hospitals are the basic building blocks of the Community Human Services system. Any new districts that are established will conform to the existing regional boundaries. A district may incorporate more than one region, but regions may not be split into smaller units. The service areas established by OMH, and any other geographic groupings to be developed, shall continue to use the 10 DHH regions as the basic building blocks. In addition, all data related to service access and utilization, budget planning and related information (including information included in the regional profiles and the regional Performance Indicator report cards shall comply with the DHH regions.

B. Measurement of Service Access. Beginning January 1, 2005, OAD, OCDD and OMH shall collect and analyze data related to access to core and targeted services on the part of eligible and priority citizens of Louisiana. Such indicators of access will be included in the regional profile reports and the regional Performance Indicator report Cards. At a minimum these measures of service access shall include the elapsed time from service request to service initiation and the population adjusted (See §2619.D for definition of methods for population adjustments) per capita penetration rates of priority consumers into OAD, OCDD and OMH services. Such service access data shall be used, in conformance with §2619.E and F for budget development and resource allocation formulas. At the discretion of the secretary such data may also be considered in the distribution of performance incentives on an annual basis. In addition, OAD, OCDD and OMH shall use the service access data to determine service access standards and benchmarks for future performance evaluation and incentive payments.

C. Development of Standards for Geographic Access. OAD, OCDD and OMH shall each develop standards for eligible and priority consumer access to core and targeted services under their respective jurisdictions for implementation no later than July 1, 2006. To the extent applicable, service access standards may also be implemented for best practice services in the planning set service categories. The service access standards to be developed and implemented shall include but not be limited to the following domains:

1. timeliness of access to core services for people with emergent, urgent and routine service needs;
2. timeliness of access to targeted services following intake/assessment and referral;
3. distance and/or time traveled to access core and targeted services;
4. cultural and linguistic competency for all applicable service types;
5. standards for barrier-free access/ADA compliance;
6. special access strategies for difficult to serve populations (individuals who are homeless, elderly, have physical disabilities, or live in rural areas, etc.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2611. Standards and Process for Service Intake and Admission to Community and Facility-based Services

A. Required Elements of the Standardized Intake, Assessment and Admission Processes. The Office for Addictive Disorders (OAD), the Office for Citizens with Developmental Disabilities (OCDD), and The Office of Mental Health (OMH) shall jointly develop standardized procedures for intake, assessment and admission or referral to community and/or facility-based services in each of its three program areas. The assessment and admission protocol(s) will contain common data elements across the three program areas that are sufficient to construct a uniform client identifier. The specific assessment procedures will be standard within program areas.

B. Effective July 1, 2004 OAD, OCDD and OMH shall establish a task force that includes representatives from the Program Offices, Regions/Districts, providers and individuals who use services to design and field-test all intake, assessment and admission procedures. These procedures will contain any necessary special provisions to cover core and targeted services for children, adults and elders delivered in the community and those delivered by facilities. The procedures will be finalized by July 1, 2006. At a minimum, the standardized intake and assessment procedures will address each of the following elements.

1. Locations. The plans will identify all locations at which intakes and assessments will be conducted.

2. Credentials of Assessors. The plans will specify minimum requirements for individuals conducting intakes and assessments. Minimum requirements will specify both professional training and experience.

3. Ongoing Training of Assessors. The plans will identify training protocols for intake and assessment personnel as well as provisions for periodic booster training to assure the consistency of procedures across regions/districts.

4. Screening Protocol. A screening protocol will be developed that is consistent with the requirements of the Uniform Client Record and contains, at a minimum, the following elements:

- a. standard reporting of individual demographics;
- b. standard review of clinical and functional history;
- c. standard tools for clinical assessment (when applicable) (including an assessment of risk) that have established reliability and validity;
- d. standard tools for functional assessment (when applicable) that have established reliability and validity;
- e. standard tools for assessment of psychosocial supports (when applicable) that have established reliability and validity;
- f. standardized financial assessment (when applicable);
- g. standardized eligibility determination that operationalizes program area eligibility criteria for services.

5. Process for Assigning Priority For Services. The plan will include guidelines for determining priority for services in those cases where there is insufficient capacity to meet demand for specific service types.

6. Cultural Competency of the Intake and Admission Process. The plan will specify how the intake and admission processes will meet the needs of racial and cultural minorities.

7. Appeal and Grievance Procedures. The plan will describe standard requirements for procedures that allow individuals to appeal the outcomes of the eligibility determination process and assignment to services and supports. The appeals process will contain at least two levels one of which is at the regional/district level and the other at the state level. The process will include provisions that protect individuals from any negative consequences related to exercising their right to appeal.

8. Data Processing Standards. The plan will specify minimum standards for reporting uniform data elements, timeliness of reporting and data accuracy.

9. Intake and Assessment Standards. The plan will include performance standards for the intake and admission

process that allow both the state and the regions/districts to monitor access to services for individuals in emergent and non-emergent situations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2613. Unified Consumer Record(s)

A. Process and Standards for OAD, OCDD and OMH Multi-Agency Uniform Client Record. No later than July 1, 2005 the intake and assessment task force as described in §2611 shall produce this list of common data elements and data definitions for uniform client records in concert with the uniform intake, screening and assessment process. At a minimum the common data elements in uniform consumer record used by all three offices must include:

1. demographic information sufficient to generate a unique consumer identifier (UCI) and to match data categories in the Performance Indicators and regional profiles reports;

2. financial eligibility information;

3. insurance, entitlements and/or other payer source information;

4. referral source;

5. referral disposition if referred to another state or nonstate organization;

6. multi-disability initial assessment/diagnosis/level of functioning (from intake screening at all intake points);

7. initial diagnosis;

8. initial referral information, including triage data related to the intensity and urgency of initial service provision;

9. consumer (or legal guardian or legally authorized representative) informed consent signature.

B. Process and Standards for Uniform Consumer Records within Each of the Three Offices. OAD, OCDD and OMH shall each determine and define standard instruments, forms and data elements to be used for all client records within each Office. These may vary among the three offices based on different diagnostic assessment, level of functioning and treatment planning processes for the different disability populations. For each Office, in addition to the information defined in §2613.A, the minimum requirements for uniform client records shall include:

1. standard diagnostic assessment resulting in a diagnostic category or definition that meets external standards for billing and reporting (e.g., SAMHSA SAPT Block Grant diagnostic categories, Medicaid HIPAA data set standards, etc.);

2. standards level of functioning assessment that results in a level of functioning score sufficient for assigning consumers to levels of care and for tracking changes in level of functioning over time (if applicable);

3. for each office the combined diagnostic and level of functioning data must be sufficient to determine clinical eligibility and priority for service access consistent with the consumer eligibility standards and criteria in §2605.

4. standard individual service plan/person centered plan that meets external requirements for reimbursement for each disability population, and in which the services to be delivered under the plan are directly linked to specific

treatment, rehabilitation or habilitation goals and choices of the consumer and (if applicable) her/his family.

5. standard method for review and update of the diagnostic, level of care and service planning components of the uniform client record on a predetermined schedule and also as individual consumer needs and choices change.

6. standard method for documenting service encounters that meet external requirements for revenue billing and which include for each encounter information on the service provided, the provider of the service, the location and duration of service, and a clinical progress note or related information about the results/effects of the encounter (Note: encounters of some service types may include a variety of types of contacts over a number of different time periods).

7. standard methods for documenting inter-agency service planning, coordination, and referrals.

8. standard documentation of the consumer's participation in service planning, agreement with the plan of care, and informed consent with regard to services and providers as applicable.

9. standard discharge plan document that specifies place of residence and community work/education and/or other applicable community activities and supports as well as reason for discharge.

C. Other Requirements Applicable to Uniform Client Records in OAD, OCDD and OMH. The following items shall be addressed in the standards and requirements for uniform client records in OAD, OCDD and OMH:

1. uniform Medicaid recordkeeping and documentation requirements (as applicable);

2. uniform HIPAA compliance requirements, including use of HIPAA code sets for all applicable service encounters;

3. uniform data submission requirements;

4. uniform data integrity review process and standards;

5. uniform client record quality management and quality improvement requirements and procedures, including standards for periodic record documentation and compliance review, and standards and procedures for clinical quality review;

6. standards for record storage and maintenance;

7. standards for record confidentiality protections, including 42CFR and HIPAA requirements as applicable.

D. Timeframes for implementation of Uniform Client Records. All client records under the jurisdiction of OAD, OCDD and OMH shall comply with the standard common data requirements outlined in §2613.A no later than January 1, 2006. Standards for each office's uniform client records under §2613.B and C shall be implemented by July 1, 2006. All client records under the jurisdiction of OCDD, OAD and OMH shall comply with the standards outlined in §2613.B and C shall no later than January 1, 2007.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2615. Formal Mechanisms for Interagency Coordination

A. State Level Interagency Coordination among OAD, OCDD and OMH. Effective July 1, 2004, the secretary of

DHH and the assistant secretaries of OAD, OCDD and OMH shall convene and appoint representatives from within their jurisdictions to the Human Services Interagency Council. The secretary shall annually appoint one of the assistant secretaries to function as the chair of the Interagency Council. The purposes of the Interagency Council shall include:

1. oversight and coordination of joint planning for community service system development and resource deployment;
2. oversight and coordination of other related planning efforts including the substance abuse prevention and treatment and mental health block grants and other mutual planning and development efforts;
3. oversight and coordination of joint planning for provision of integrated services and service access mechanisms for individuals with co-occurring mental illness, addictive disorders and/or developmental disabilities;
4. oversight and coordination of joint development and implementation of common intake, assessment, service planning, service authorization, and clinical record keeping requirements, instruments, protocols and systems;
5. oversight and coordination of joint development of common outcome and performance measurement and data reporting and synthesis procedures and requirements;
6. oversight and coordination of joint development of strategies to coordinate and integrate inpatient and other facility-based services with community service systems; and
7. oversight and coordination of joint implementation of policies and procedures for resolving specific client service issues arising between or among the three offices.

B. Consistent with the work of the interagency council, the secretary and assistant secretaries shall appoint one individual from within DHH to function as the single point of contact, communication and oversight for each region and district.

C. Agreements Related to Medicaid. Effective January 1, 2005, and under the direction of the secretary of DHH, OAD, OCDD and OMH shall enter into a memorandum of agreement with the Louisiana Medicaid single state agency for the purpose of joint planning and coordination of Medicaid-funded services with services funded and provided under this Chapter 26. This agreement is to be signed by the assistant secretaries and the Medicaid director. At a minimum this memorandum of agreement shall address the coordination of:

1. Medicaid services provided under home and community-based service waivers;
2. Medicaid services provided under the Medicaid mental health rehabilitation option plan amendment;
3. other Medicaid services, including inpatient and outpatient mental health services and ICF/MR group homes, as are applicable to the community systems of care for eligible and priority populations served by OAD, OCDD and OMH.

D. Other State Level Agreements. The Interagency Council established under Subsection A of this §2615 shall oversee and coordinate memoranda of agreements among and between OAD, OCDD and OMH and other applicable state agencies. Such agreements shall incorporate mechanisms for joint planning and coordination; facilitated access to services or other resources; and problem resolution

at both a system and individual consumer level. Services and resources under the jurisdiction of other state agencies to be included under these memoranda of agreements shall at a minimum include:

1. affordable housing;
2. education;
3. employment and vocational rehabilitation services;
4. child welfare services;
5. adult corrections;
6. juvenile justice;
7. public health services.

E. OAD, OCDD and OMH Management of Grievances, Appeals and Critical Incidents. Effective July 1, 2005 OAD, OCDD and OMH shall jointly implement a process for receipt of and response to grievances and appeals. The process shall allow for response to grievances and appeals at the region/district level, but shall also permit direct appeals and grievances to the state Offices. OAD, OCDD and OMH shall also jointly implement a process for critical incident reporting and investigations. The process shall define critical incidents to be reported directly to the Offices, and the process for involving regions/districts in any investigations of critical incidents. Decisions on appeals and grievances, and any plans of corrections or other actions resulting from investigations of critical incidents shall be recorded at the office level and reported as part of the annual quality improvement strategic planning process.

F. Joint Administration of Statutory Districts. Effective July 1, 2004 the secretary of DHH and the assistant secretaries of OAD, OCDD and OMH shall jointly develop a written protocol for the management of statutory district/authorities. The protocol shall specify a single point of accountability for coordinated oversight of each of the district/authorities, and shall specify a process for communications and resolving any differences that may arise between a district/authority and one or more offices.

G Interagency Coordination at the Region/District Level. The DHH Interagency Council established under §2615.A shall develop a process and implementation steps through which the interagency agreements established among the state level agencies shall be replicated and implemented at the region/district level. The state interagency planning council shall assure that implementation of interagency agreements established at a region/district level is appropriately monitored, and that interagency issues arising at a region/district level are resolved with assistance from the state interagency council members.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2617. Statewide Strategies for the Provision of Technical Assistance

A. The interagency performance and quality management group established under §2621.E shall recommend an annual technical assistance plan to OAD, OCDD and OMH. The annual technical assistance plan shall address:

1. statewide and local technical assistance strategies designed to foster implementation of best practice service models;

2. statewide and local technical assistance strategies targeted to service gaps, priorities and quality improvement needs identified the regional Performance Indicator report cards and regional profiles;

3. statewide and local technical assistance strategies associated with efforts to improve performance related to the performance payment system.

B. The Interagency Council established under §2615.A shall annually develop a statewide and local technical assistance plan based on the recommendations of the performance and quality management group. The technical assistance plan shall specify detailed strategies, means of financing and timelines for technical assistance, and shall identify the sources of technical assistance to be provided under the plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2619. Statewide Strategies for Funding Services

A. Statewide Analysis of Funding Allocations and Resource Expenditure Patterns: the Regional Profiles

1. The Department of Health and Hospitals, in consultation with the Louisiana Office of Budget and Planning, shall develop regional profiles of the 10 DHH regions on an annual basis. Where possible, data for the regional profiles will first be summarized at the parish level, and then aggregated to the 10 DHH regions. The Office of Mental Health (OMH) may further aggregate information to the OMH service area level. The regional profiles shall contain demographic, consumer, service, and financial data as specified in Subsection B of this §2619.

2. The regional profiles shall be completed and updated for each fiscal quarter. The update for each quarter shall be completed no later than four months after the end of the quarter. An annual report of regional profile data for each fiscal year shall be compiled no later than the fourth month after the end of the fiscal year. The annual regional profile report shall be used in concert with the regional outcome and performance report cards for overall system evaluation, priority setting, and strategic planning.

3. The initial model version of the regional profiles must be completed as much as possible with existing data by November 1, 2004 and incorporate data from FY 2003. This model version shall constitute the baseline for trend analyses of changes in the OAD, OCDD and OMH systems of care and assist in planning and analysis functions related to the FY 2006 budget.

NOTE: not all data elements of the regional profiles may be available for the baseline period.

4. The secretary of DHH shall designate a person in her/his office to have lead responsibility to collate and report regional profile reports, and assure the timeliness and accuracy of the regional profiles. The assistant secretaries for OAD, OCDD and OMH shall designate a person within their respective offices to collect and assemble data within their domains of responsibility, and to assure the data's timeliness and accuracy. The secretary shall also assure that other DHH offices collaborate in the collection and reporting of data. In collaboration with the statewide data integrity committee and statewide quality and performance advisory committee as defined in §2621, the designated staff shall

define data elements, sources and timelines for data collection and reporting for the regional profiles, and shall revise these data definitions and data sources as part of the annual regional profile report process.

5. In addition to assuring complete and accurate completion of the regional profiles for each fiscal year, these designated office personnel shall be members of or serve as liaison to the OAD/OCDD/OMH statewide quality advisory committee and other interagency committees that are responsible for data collection planning, data integrity monitoring, and information system design specifications. It shall be the responsibility of the statewide data integrity and analysis committee to integrate and synthesize information from the regional profiles with information from the Performance Indicator report cards and other related information from the Quality Improvement process.

B. The regional profiles shall contain at least the following data elements.

1. Demographic data shall at a minimum include, but not be limited to, general population by:

- a. gender;
- b. age (0 - 18, 19 - 64, and 65+);
- c. race/ethnicity (White/non-Hispanic, African/American, Hispanic/Latino, Asian/Pacific Islander, and other);
- d. per capita income;
- e. poverty rate;
- f. Medicaid enrollment by age and aggregated eligibility categories (e.g., TANF, SSI-Disabled, SSI-Aged);
- g. unemployment rate;
- h. uninsured rate; and
- i. population density.

2. Consumer data shall include total unduplicated consumers and average consumers per month for each Office by payer source and socio-demographic characteristics of unduplicated total consumers.

3. Service data shall include unduplicated consumers by service type/category:

NOTE: these will potentially be duplicated across service categories.

- a. socio-demographic characteristics of consumers by each service type;
- b. payer source by service type and consumer category;
- c. unduplicated consumers admitted to and discharged from each state facility; and
- d. average length of stay for both the admission and discharge cohorts for each state facility.

4. Resource allocation/utilization data, to include general fund allocations/expenditures. Medicaid paid claims, allocations of bed days and costs associated with state facility utilization, and any special grant funds, revenues, local levies (split by recurring and non-recurring fund types), etc.

5. To the extent possible, all types of information collected and aggregated for the regional profiles shall also be capable of being aggregated or disaggregated to meet federal reporting requirements for the mental health and substance abuse block grants and other applicable external reporting requirements.

C. Adjustments to Regional Profile Data Related to Estimates of Prevalence and Demand for Services. No later than January 1, 2006, OAD, OCDD and OMH shall

calculate formulas to adjust raw population data (by age) to account for variations in the incidence/prevalence of disabilities and to adjust for variations in estimated demand for public sector services within their jurisdictions (note: OAD has already met this requirement). The formulas shall be based on the most recent reliable scientific information available related to prevalence and demand for services and revised and updated as new research data becomes available. The prevalence and demand-adjusted population data by age shall be used to the extent applicable and practicable to calculate per capita resource allocation and service penetration rates. The population-adjusted per capita resource allocation and service penetration rate data shall be synthesized with consumer outcome and system performance analyses as specified in §2621.

D. Use of Regional Profiles for System and Budget Planning

1. In consultation with the Office of Budget and Planning and under the direction of the secretary of DHH, the four most recent available quarters of regional profile data shall be considered in the development of the annual budget requests for OAD, OCDD and OMH. Specifically, regional profile data shall be used to the extent practicable to show in the annual budget request:

a. the degree of equity (based on adjusted population) in per capita resource allocation among the ten DHH regions;

b. the degree of equity (based on adjusted population) in service access and utilization among the 10 DHH Regions; and

c. the extent to which each DHH region has implemented core and targeted services and priority new best practice services as specified for each office. Requests for the deployment or re-deployment of resources, requests for new resources, and, if necessary, the allocation of funding reductions shall be analyzed in the context of the foregoing regional profile factors as well as other factors selected by the offices.

2. OAD, OCDD and OMH shall develop annual budget submissions that specifically address region-by-region priorities for achieving equity of access to services and for development of new best practice service models. These region-specific resource deployment and funding request priorities, to the extent possible and consistent with the policy objectives of the three offices, shall be based on identified local gaps in core and targeted services, local strategies to develop equity of access to core and targeted services, and/or local priorities for development of new best practice services. Region/district budget plans shall address state and local funding for community based services, but shall also reflect facility based and Medicaid service resources and utilization patterns as identified in the regional profiles. Such region/district budget plans shall also identify how performance and quality improvement issues as identified in the regional Performance Indicator report cards are used to set priorities and directions for region/district budget plans.

3. OAD, OCDD and OMH shall aggregate the region/district resource deployment and budget requests into unified statewide budget requests. Supporting documentation shall show how service gaps, inequities in access and service development priorities identified in the

Regional profiles, the Performance Indicator report cards and the local budget planning processes are addressed in the annual budget request.

E. Regional/District Funding Allocation Formulas

1. Beginning with the FY 2007 budget submission, OAD, OCDD and OMH shall develop budget allocation formulas that incorporate population adjusted per capita funding levels, service access, and service utilization patterns. Each formula shall be incorporated into the supporting documentation of each office's annual budget request. The funding formula may also take in account historical funding levels, urban/rural differences in service delivery models and costs, funds reserved for state level administration and planning and state discretionary grants, and such other factors as determined applicable by the offices. When inequities in resource deployment or service access are identified in the regional profiles, then the allocation formulas must include incremental strategies to increase equity of access to services and in the distribution of public DD, AD and MH resources. Districts/regions that have been successful in securing additional revenues, discretionary grant funds or public donations shall not be penalized in the allocation formulas for their efforts to secure these funds.

2. For the purposes of this §2619, the term *general fund dollars* includes legislative appropriations of state funds, interagency transfers of state funds or other funds tied to state matching funds, and any other recurring fund sources that are within the discretion of OAD, OCDD or OMH to allocate to regions/districts. Specifically, these funds include:

a. in the case of OAD, the allocation formula must include state general fund and federal Substance Abuse Prevention and Treatment Block Grant (SAPT) funding and show how consideration is given to the relative availability of OAD inpatient and residential treatment resources;

b. in the case of OCDD, the allocation formula must include allocation of state general fund resources and give consideration to Medicaid funded services provided through regions/districts and the availability of Medicaid (ICF/MR and the HCBS waivers) and state DD facility resources in addition to general fund resources;

c. in the case of OMH, the allocation formula must include state general fund and federal Center for Mental Health Services (CMHS) Mental Health Block Grant funding, and give consideration to the availability of state inpatient facility resources and Medicaid payments for adult and child mental health services;

d. to the extent applicable, the funding allocation formulas of each office shall also give consideration to the availability and distribution of TANF funds, tobacco and gambling funds, and such other fund sources as are directly applicable to services for the priority service populations of each offices.

F. Financial Incentives Related to Attainment of Performance Standards and Targets

1. Beginning with the FY 2006 Budget request, the secretary of DHH shall request appropriation into a separate account funds equal to no more than one half of one percent of the sum of OAD, OCDD and OMH general funds appropriations, for the purpose of paying financial incentives to reward attainment of performance targets for OAD,

OCDD and OMH under this Chapter 26. Such funds shall be in addition to the regular appropriations of state general funds to OAD, OCDD and OMH. The secretary of DHH shall work with the Secretary of Administration to develop the most appropriate budget mechanism for the appropriation and expenditure of these incentive funds.

2. The supporting documentation for this annual incentive fund appropriation shall identify measurable performance targets specified performance indicators jointly established by OAD, OCDD and OMH, the secretary of DHH, and the Office of Budget and Planning as provided in §2621; how Offices would earn incentive payments; and the purposes for which incentive payments may be used once earned by each Office. Once performance payments are earned by OAD, OCDD or OMH, these funds may be distributed prospectively to regions, districts and facilities within the jurisdiction of the Office based on a plan to be approved by the secretary.

3. OAD, OCDD and OMH, and the regions, districts, facilities and providers under the jurisdiction of these offices, must meet certain minimal performance standards to qualify for one or more incentive payments in any fiscal period. These minimum performance standards shall be established annually by the secretary of DHH, but at a minimum shall include:

- a. timely and accurate submission of all required data;
- b. compliance with all documentation and service delivery standards for reimbursement or grant funds receipt from applicable federal programs (e.g., Medicaid, SAPT Block Grant, CMHS block grant); and
- c. compliance with state requirements for consumer rights, consumer confidentiality, consumer grievance and appeal rights, and investigation of critical incidents.

4. OAD, OCDD and OMH shall oversee the attainment of performance targets for all regions, districts and facilities within their jurisdictions, and shall earn incentive payments only if performance targets and minimum performance standards are met system-wide within their Offices. Statutorily created districts shall earn a share of performance incentive payments to the extent they meet minimum performance expectations and contribute to the overall attainment of performance targets within each office.

5. Each year, the statewide quality advisory committee as established by §2621 shall make recommendations to the secretary and the assistant secretaries about the degree to which each Office has successfully attained performance targets and the percentage of each Offices' share of the performance fund entitled to be paid out. The quality advisory committee shall also make recommendations about priorities for use of the awarded incentive payments, based on performance, service access, and quality improvement data analyzed by the committee.

6. The use of incentive payments shall be restricted to:

- a. expansion of direct services for priority consumers;
- b. development of new priority best practice services for priority consumers; or
- c. technical assistance or related quality improvement strategies incorporated in the technical assistance plan described in §2617 and designed to enhance

the effectiveness of services for priority consumers. If funds remain unearned in the incentive pool at the end of a fiscal period, they shall be retained in the incentive pool for incentive payments in future fiscal periods. Funds unearned after two consecutive fiscal periods shall be used at the discretion of the secretary to initiate technical assistance and training activities designed to improve performance within the Office or Offices that do not meet performance targets.

7. As a component of the performance measurement and reward system, the secretary of DHH shall establish region/district performance targets concerning the use of facility bed days in state operated or contracted developmental centers, addictive disorder treatment facilities, and state psychiatric inpatient hospitals. Regions/districts utilizing less than their allocated target of bed days shall earn incentive payment(s) from the incentive fund in accordance with policies established by the secretary on an annual basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2621. Statewide Monitoring of Human Services Performance

A. Domains for Consumer-Focused Outcome and Systems Performance Measurement. In consultation with the Office of Planning and Budget, OCDD, OAD and OMH shall annually develop consumer outcome and system performance measures and other quality (non-performance) measures. At a minimum these measures shall address the following four domains.

1. Access to Services

a. Areas of measurement focus on the ability of individuals to secure timely access to services and supports.

b. Intake and Initiation of Services includes timeliness of intake and initiation of services as well as the degree to which people utilize available services and supports. This domain encompasses the following sub-domains:

i. health and wellness? areas of measurement including the degree to which people have access to needed health care services and have routine preventive examinations;

ii. transportation? areas of measurement focus whether people have access to affordable and accessible transportation.

2. Efficiency and Cost Effectiveness? areas of measurement focus on comparative costs and expenditures for services, supports and treatment.

3. Consumer Outcomes? areas of measurement focus on specific outcomes for individual service participants. This domain encompasses the following sub-domains:

a. employment and education? areas of measurement focus on inclusion in employment and education such as the degree to which people are working in the community, receiving adequate wages and benefits and are achieving positive outcomes in their educational programs;

b. housing? areas of measurement focus on the degree to which people have stable living arrangements;

c. service and treatment outcomes? areas of measurement focus on the degree to which people achieve their service or treatment goals.

4. Quality of Services? areas of measurement focus on the performance of the system with respect to the protection of individual rights, well-being and freedom of choice. This domain encompasses the following sub-domains:

a. choice and control? areas of measurement include the degree to which people make major treatment and service decisions, choices in providers and where they live and work.

b. freedom from harm? areas of measurement include serious safety and rights concerns such as reports of serious injuries, deaths, substantiated abuse and neglect and the use of restrictive procedures.

c. rights? areas of measurement focus on whether people's rights are actualized and the degree to which grievances reported by individuals are responded to and resolved.

B. In the first year, at least one indicator shall be developed that encompasses each of the foregoing four domains and shall include:

1. inter-agency indicators that cross populations and are measured across regions, districts and facilities; and

2. intra-agency indicators that apply to specific populations and are measured across districts, regions and facilities.

C. In succeeding years, OCDD, OAD and OMH shall consider the addition of additional indicators within each domain. The three offices will continue to review the indicators on an ongoing basis in order to ensure the relevance and validity of the measures. The three offices may also consider ways in which external accreditation of service providers and/or facilities can substitute for certain domains of quality measurement. Regions, districts and facilities shall also be encouraged to develop locally relevant indicators to measure performance.

D. OCDD, OAD and OMH shall each establish a committee to develop population-specific indicators within the above domains. Membership of the committee shall include representatives from the regions, districts and facilities. Memberships may also include, at the discretion of the Offices, individuals, family members and other external stakeholders.

E. Interagency and Stakeholder Committees for Performance and Quality Management

1. Effective July 1, 2004 OCDD, OAD and OMH shall designate representative(s) to an internal performance and quality management group. Responsibilities of this group shall include:

a. developing an initial set of performance and systems indicators. The set shall also include indicators required by state and federal mandates;

b. identifying intra- and inter-agency priority indicators based on an analysis of the meaningfulness of the indicator and the feasibility of collecting the data. The group shall ensure that the final set of priority indicators include at least one indicator in each of the domains described above;

c. ensuring that the indicators are reliable, valid, understandable, measurable, definable, clearly directional and actionable;

d. submitting the priority indicators to the statewide quality advisory committee prior to the beginning of the legislative session;

e. reviewing recommendations from the statewide quality advisory committee before the legislative session;

f. submitting the final proposed indicators to the Secretary of DHH (or designee) for review and approval before the legislative session;

g. reviewing and modifying the indicators based upon mandates from federal or state funding sources. In accordance with R.S.39.31 (strategic planning) the domains and indicators must be reviewed, at a minimum, once every five years;

h. determining which domains and indicators shall be reported to the legislature and which shall be used by the agencies for quality improvement.

2. Effective January 1, 2005 a statewide quality advisory committee shall be appointed by the secretary of DHH to review and periodically make recommendations for revisions to the performance and systems indicators.

a. Members of the committee shall include, but are not limited to, representatives from:

i. individuals in the population served by the agencies and family members;

ii. DHH agencies (e.g., OAD, DMH, OCDD, DSS, BCSS, BPS; HSS);

iii. DHH agency regional offices;

iv. district offices;

v. Division of Administration, Office and Planning and Budget;

vi. the Children's Cabinet;

vii. Department of Education;

viii. Department of Corrections;

ix. House and Senate;

x. external organizations (e.g., DD Council, Mental Health Planning Council, Governor's Commission on Substance Abuse, Protection and Advocacy, UAP); and

xi. service providers.

b. Responsibilities of the statewide quality committee shall include:

i. reviewing and modifying (with the exception of those required by state or federal mandate) the initial indicator set;

ii. on an annual basis reviewing the results of the data collection over the past year and make recommendations for system-wide improvements in service delivery and review the current priority indicators to determine if any changes are warranted.

F. Performance Measurement, Data Collection and Reporting.

1. Effective January 1, 2005 OCDD, OAD and OMH shall implement policies and procedures governing data collection and reporting. These policies and procedures shall at a minimum address:

a. procedures to ensure that the will be reliably and consistently collected;

b. identification of persons responsible for defining the data elements;

c. identification of person in each region, district and facility responsible for data collection, integrity and submission;

d. data submission time frames;

- e. procedures for verifying the quality and integrity of the data;
- f. procedures for data synthesis and analysis; and
- g. procedures for accessing the data by regions, districts and facilities.

2. To develop these policies and procedures, and to provide ongoing technical and analytic support to performance measurement and quality management tasks, DHH shall establish a data integrity and analysis committee to develop a process to ensure the collection of valid and reliable data. This committee shall be established by July 1, 2004 and shall be comprised of agency, district and facility representatives and other professionals who have expertise in performance measurement and statistical analysis. The committee shall establish processes for the following:

- a. identification and definitions of common data elements required to be collected for each priority indicator;
- b. review of instruments and measurement scales to ensure reliable and valid data collection and, where appropriate, in collaboration with the regions, districts and facilities, the development of data collection instruments and protocols for use throughout the system;
- c. periodically review of the data and make changes as necessary in the definitions of the common data elements;
- d. provision of training and technical assistance to agencies, districts and facilities responsible for data collection and submission; and
- e. routine communication to the regions, districts and facilities regarding changes in the data definitions.

3. Each region, district and facility shall assign an official who will be responsible for collecting and reviewing the data. Responsibilities of this official include, but are not limited to:

- a. being knowledgeable about data elements and able to provide guidance to staff who are collecting the data;
- b. reviewing the data before submission to DHH to ensure that it conforms to the definitions;
- c. communicating any problems identified concerning data definitions to the data integrity and analysis committee.

4. A process shall be developed for the submission of data to DHH. The process shall include: a schedule for data submissions; issuance of a periodic data submission report that identifies on-time and chronically late and/or incomplete submissions and corrective actions for late submissions and rewards for data routinely submitted on time. A person shall be designated in each agency, region, district and facility to oversee the timeliness and accuracy of the data submission.

5. A process shall be developed to ensure the integrity of the data submitted for the performance measures. This process shall include:

- a. review of the submissions for adherence to data definitions;
- b. technical assistance to the regions, districts and facilities;
- c. issuance of periodic reports displaying consistencies/inconsistencies in the data;
- d. reporting of problems in data collection to the data integrity and analysis committee.

6. The statewide data integrity and analysis committee shall develop a process for integration, analysis and interpretation of the data submitted by the regions, districts

and facilities. The committee shall be responsible for the development of the outcome and performance report cards. The analysis shall incorporate regional profile data including population-adjusted per capita resource allocation and service penetration data. The committee shall be responsible for submission of required reports to the Secretary of DHH for review and approval.

7. A policy and procedure shall be developed by DHH governing data access including but not limited to:

- a. specifying the data may be shared between and among the regions, districts and facilities;
- b. access by specifically designated DHH officials; and
- c. conformity to HIPPA requirements.

G Statewide and Regional Performance Report Cards

1. No later than January 1, 2005 OCDD, OAD and OMH shall implement a process and design for the statewide, regional, district, facility, and provider (when applicable) outcome and performance report cards and systems reports for routine monitoring and to benchmark progress in meeting the goals and objectives of the quality management and improvement strategic plan. The process shall include:

- a. format, content and frequency of regional, district and statewide performance/systems benchmarking reports and reports to meet requirements strategic planning contained in R.S. 39:31 and §2623 of this Chapter;
- b. format, content, frequency and indicators used for routine monitoring in such areas as individuals' health and safety, service utilization and efficiency;
- c. format and content of reports for provider, the public and statewide use.

2. Outcome and performance report cards along with regional Profile data shall be used to develop the annual budget requests for OCDD, OAD and OMH in accordance with §2619.D.

H. Consistency with Louisiana Strategic Plan and Budget Development Processes. This §2621 describes a new system for developing and using performance indicators. As specified in R.S. 39.31 (Strategic planning), OMH, OAD and OCDD are required to submit reports on a current set of indicators that are mandated through the legislative budget process. Given this mandate the agencies shall continue to report performance concerning these indicators until July 1, 2005 pursuant to legislative authorization. DHH shall develop a process and schedule for phasing in the new system that includes specifications on the maintaining the process for data collection on the current indicators.

1. A phase-in schedule for measuring at including at least one measure in each domain per this §2621.

2. Development and field testing of new measures and data definitions/reporting requirements reflecting domains: December 31, 2004.

3. Implementation of new measurement and data reporting requirements: March 31, 2005.

4. Integration of the new measures into the regional/district performance reports: October 1, 2005 (for the period 7/1/04-6/30/05).

5. Development of integrated OCDD, OAD and OMH information management systems to facilitate the collection and analysis of data: July 1, 2006.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2623. Statewide Monitoring to Assure Quality of Care and Consumer Rights

A. OCDD, OAD and OMH Quality Management and Improvement Strategic Planning Process. Effective January 1, 2006 OCDD, OAD and OMH shall develop an integrated strategic planning process that shall cross populations and shall adhere to the following requirements.

1. The process shall be developed in accordance with the five-year strategic planning process described in Title 39 of the Louisiana Revised Statutes.

2. The strategic plan shall be developed by the statewide quality advisory committee.

3. The quality management and improvement strategic plan shall include, but not be limited to, the following components:

- a. mission and vision of the department;
- b. statement of goals the reflect the benefits the department expects to achieve on behalf of the individuals served by OCDD, OAD and OMH;
- c. a statement of objectives which the department expects to achieve in attaining its goals;
- d. action plan for achieving each objective;
- e. identification of state of the art and best practices in the action plan;
- f. identification internal or external assessments that were used in identifying the goals and objectives;
- g. identification of external factors beyond control of the department that could affect achievement of its goals and objectives;
- h. the provision of technical assistance assist regions, district, and facilities attaining the goals and objectives;
- i. identification of specific priority performance or system indicators for each objective;
- j. format, content and frequency to report progress in accordance with §2621.D; and
- k. frequency with which the plan will be updated.

4. Data shall be collected and submitted on all priority performance and systems indicators in accordance with §2621.

5. An annual report published by the department documenting progress in meeting its goals and objectives.

The report shall:

- a. be clearly written and easy to understand;
- b. be issued prior to the beginning of the legislative session;
- c. be disseminated to the regions, districts and facilities;
- d. be easily accessible to consumers and families through published or web-based summary reports.

6. The statewide quality committee shall review the department's progress in meeting its goals and objectives. Recommendations by the committee may include:

- a. maintaining the current goals, objectives and performance measures; or
- b. modifying the goals, objectives or performance measures.

7. Recommendations of the statewide quality advisory committee shall be reviewed by the internal performance

and quality management group and is subject to approval by the secretary of DHH.

B. In addition to meeting the requirements of this §2623, each region and facility shall develop an integrated quality management and improvement strategic planning process for the specific population that shall conform to the following requirements.

1. The plan shall be developed and a committee comprised of internal and external stakeholders.

2. The components of the plan shall conform to the specifications for quality management plans contained in this §2623.

3. An annual report shall be developed that conforms to the requirements of §2623.A.5.

C. All provider agencies (excluding independent, sole practitioners) shall develop a quality management and improvement strategic planning process that shall meet state licensing and/or contract requirements and shall, at a minimum include:

1. mission and vision;
2. statement of goals and objectives;
3. action plan for achieving each objective;
4. identification of measures to benchmark progress in meeting the objectives;
5. a schedule for issuing progress reports and annual summary report.

D. A process shall be established for routine provider monitoring that shall include:

1. frequency of monitoring;
2. requirements for on-site monitoring; and
3. sharing reports where providers cross populations; and
4. where possible collaboration on monitoring where providers cross populations.

E. The following elements of quality assurance shall also be present in each region, district and facility:

1. case management/service brokerage;
2. period consumer satisfaction surveys;
3. incident reporting and investigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2625. Uniform Budgeting and Accounting Requirements

A. All regions, districts and facilities under the jurisdiction of OCDD, OAD and OMH, and their subcontractors, shall comply with standard State of Louisiana budget, accounting, financial reporting and audit requirements, as determined by the secretary of DHH in consultation with the secretary of Administration. The secretary of DHH shall work with the secretary of Administration and the Office of Budget and Planning to develop budget documents, charts of accounts, and financial reporting requirements that are consistent with the data reporting and budget planning components of this Chapter 26, and to minimize duplication of accounting and financial reporting requirements.

B. Effective July 1, 2005 the human services districts shall be responsible for implementing their own budget and financial management functions and capacities.

Administrative functions to be managed directly by districts and within their budgets include accounting; revenue billing and tracking; personnel and payroll; information system development and maintenance; and facility management. The purpose of this is to assure that districts have the ability and capacity to assure fiduciary accountability for funds appropriated to districts; and to assure that the costs of administering districts are accurately calculated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

§2627. Provider Agreements

A. This §2627 is not intended to replace or supercede any other relevant State of Louisiana requirements related to:

1. the terms and conditions of contracts;
2. the processes for selecting and negotiating with contractors;
3. the process for establishing rates of payment or other financial terms of contracts; or
4. the process for approval of contracts.

B. This §2627 also does not apply to individual service contracts or any business related contracts (e.g., independent audit, facility or vehicle maintenance, etc.).

C. The purpose of this §2627 is to expand existing state contract terms and conditions by applying the intent and contents of this rule to entities and organizations providing services to priority consumers under contracts with OCDD, OAD and OMH and/or using funds appropriated or allocated to OCDD, OAD and OMH. This includes purchase of service providers as well as any statutory Human Service districts or authorities carrying out OCDD, OAD and/or OMH functions.

D. OCDD, OAD and OMH, and regions, districts and facilities under their jurisdiction shall incorporate contract language that binds service provider contractors to all applicable contents of this rule and any policies, procedures or guidelines developed under this Chapter 26. These additional terms and conditions shall include:

1. definitions of eligible and priority service populations;
2. definitions of core and targeted services and such other services as are applicable;
3. uniform requirements for intake, assessment, service planning, and uniform client recordkeeping;
4. submission of service contact, service utilization, and other data as necessary to complete regional profiles;
5. submission of consumer outcome and performance data necessary to complete the regional performance indicator report cards;
6. participation in interagency service planning and coordination on behalf of defined priority consumers;
7. participation in all applicable strategic planning and quality improvement activities; and
8. compliance with consumer rights, appeals, grievances and related requirements.

E. Beginning with Fiscal Year 2006, service provider contracts shall include specific performance targets as applicable based on the service population, service(s) being contracted, and source of funding. Such contracts shall also

specify how the service provider agency may qualify for a proportion of performance incentive payments if such payments are available.

F. Statutory district human services authorities shall use the same contract terms with their contract service provider agencies as are used by OAD, OCDD and OMH for their service provider contracts.

G. Contracts Between DHH and Any Statutory District Community Human Services Authorities.

1. Under the leadership of the secretary of DHH, OAD, OCDD and OMH shall mutually enter into a uniform contract with statutory community Human Services districts. This contract shall replace the current separate memoranda of agreement with each district, and shall bind the districts to all requirements of this rule in the same manner and to the same degree as all other region and facility programs, both directly operated and contracted, under the jurisdiction of OAD, OCDD and OMH.

2. In addition to specifying accountability for performance expectations applicable to districts, the uniform contract shall also define expectations for participation in state level planning, budget development, quality improvement, interagency collaboration, and other program development and policy-related functions in collaboration with OAD, OCDD and OMH regions and facilities. The standard contract shall also define a process for issue identification and resolution related to policy and program issues and consumer service access issues. To the extent a district hosts a program with capacity to be shared with other districts or regions, the contract shall specify the amount of service capacity to be shared, the priority of access to the service, and the methods for resolving issues related to access to shared service capacities.

3. Beginning with Fiscal Year 2006, the uniform contract between OCDD, OAD and OMH and the statutory districts shall include specific performance targets applied in the same manner as for regions and facilities under the jurisdiction of OCDD, OAD and OMH. Such contracts shall also specify how the district authority may qualify for a proportion of performance incentive payments if such payments are available.

4. Effective July 1, 2004 the secretary of DHH shall appoint an individual to be the single point of contact for the purposes of coordinating communications and negotiating contracts with the statutory districts/ authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:382.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Policy Research and Program Development, LR 30:

Interested persons may submit written comments to Jennifer Steele at the Bureau of Policy Research and Program Development, P.O. Box 629, Baton Rouge, Louisiana 70821-0629. She is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed rule is scheduled for Tuesday, April 27, 2004 at 9:30 am in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, 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.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Human Services Statewide Framework**

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

It is estimated that \$7,480 SGF will be expended in SFY 2003-04 of the state's administrative expense for promulgation of this proposed Rule and the final Rule. Beyond such administrative expense, it is anticipated that the implementation of this proposed Rule will have no other fiscal impact for SFY 2003-04.

It is anticipated that the implementation of this proposed Rule may have a fiscal impact for SFYs 2004-05 or 2005-06, however, the amount of such impact cannot be quantified at this time.

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 effect on state or local revenue collections for SFY 2003-04, 2004-05, or 2005-06.

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

It is estimated that the implementation of this proposed Rule will have no cost or economic benefit to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the proposed Rule will have no effect on competition.

Frederick P. Cerise, M.D., M.P.H.
Secretary
0403#087

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

State Owned or Operated Hospitals
Inpatient Psychiatric Services
Reimbursement Increase

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopted a Rule which established the prospective reimbursement methodology for inpatient psychiatric hospital services provided in either a free-standing psychiatric hospital or distinct part psychiatric unit of an acute care general hospital (*Louisiana Register*, Volume 19, Number 6). This Rule was subsequently amended to discontinue the practice of

automatically applying an inflation adjustment to the reimbursement rates for inpatient psychiatric services in those years when the rates are not rebased (*Louisiana Register*, Volume 25, Number 5). The bureau promulgated an Emergency Rule that rebased the reimbursement rates paid to public state owned or operated hospitals for inpatient psychiatric hospital services to the 50th percentile of costs per day for services based on cost reports ending in state fiscal year 2002 (*Louisiana Register*, Volume 29, Number 10). This proposed Rule is promulgated to continue the provisions contained in the October 20, 2003 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. 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 Health Services Financing increases the reimbursement for inpatient psychiatric services provided in a state owned or operated free-standing psychiatric hospital or distinct part psychiatric unit to a per diem rate based on the 50th percentile facility for costs as reported on the cost report for the year ending between July 1, 2001 and June 30, 2002. The costs utilized to determine the 50th percentile facility will include all free-standing psychiatric hospitals and distinct part psychiatric units providing services to Medicaid recipients in the state. Costs will be trended to the midpoint of the rate year using the Medicare PPS Market Basket Index. The application of inflationary adjustments in subsequent years shall be contingent on the appropriation of funds by the Legislature.

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Tuesday, April 27, 2004, at 9:30 am in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Frederick P. Cerise, M.D., M.P.H.
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: State Owned or Operated Hospitals
Inpatient Psychiatric Services
Reimbursement Increase**

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

It is anticipated that the implementation of this proposed rule will increase state program costs by approximately \$769,950 for SFY 2003-2004, \$1,341,736 for SFY 2004-2005

and \$1,381,988 for FY 2005-2006. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in SFY 2003-2004 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,935,273 for SFY 2003-2004, \$3,372,726 for SFY 2004-2005 and \$3,473,908 for SFY 2005-2006. \$102 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed rule and the final rule.

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

This proposed rule continues the provisions contained in the October 20, 2003 emergency rule and increases the reimbursement for inpatient psychiatric hospital services provided in state owned or operated free-standing psychiatric hospitals or distinct part psychiatric units (approximately 13). It is anticipated that implementation of this proposed rule will increase expenditures for inpatient psychiatric services by \$2,705,019 for SFY 2003-2004, \$4,714,462 for SFY 2004-2005 and \$4,855,896 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this rule will not have an effect on competition and employment.

Ben A. Bearden
Director
0403#056

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation**

Ground Water Management (LAC 43:VI.Chapters 1-29)

Editor's Note: In accordance with OSR uniform formatting procedure, these rules have been moved from Title 33 to Title 43 for topical placement.

R.S. 38:3097 et seq. states that Commissioner of Conservation (commissioner) has authority to make rules for the determination of critical ground water areas and possible limitation of access to ground water sources, response to emergency situations and prior notification of new water well construction.

Failure to have hearing procedures for critical ground water area applications and procedures for collecting information on proposed well locations may endanger the commissioner's ability to manage the ground water resources of the state. R.S. 38:3097 et seq. specifically requires that public hearings be held in such matters and the attached rules provide the mechanism to meet that requirement.

Title 43

NATURAL RESOURCES

Part VI. Water Resources Management

Subpart 1. Ground Water Management

Chapter 1. General Provisions

§101. Applicability

A. The rules and regulations of Chapter 1 through 29 shall be applicable to the commissioner's jurisdiction regarding:

1. critical ground water areas;
2. ground water emergencies; and
3. management of the state's ground water resources.

B. The rules shall not alter or change the right of the commissioner to call a hearing for the purpose of taking action with respect to any matter within the commissioner's jurisdiction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§103. Definitions

A. The words defined herein shall have the following meanings when used in these rules and regulations Chapters 1 through 29. All other words used and not defined shall have their usual meanings unless specifically defined in Title 38 of the Louisiana Revised Statutes.

Aquifer? a ground water bearing stratum of permeable rock, sand, or gravel.

Beneficial Use? the technologically feasible use of ground water for domestic, municipal, industrial, agricultural, recreational, or therapeutic purposes or any other advantageous purpose.

Commission? Ground Water Resources Commission authorized by R.S. 38:3097.4.

Commissioner? Commissioner of Conservation.

Critical Ground Water Area? an area in which, under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained due to either movement of a salt water front or water level decline, or subsidence, resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts.

Domestic Well? a well used exclusively to supply the household needs of the owner lessee or his family. Uses may include drinking, cooking, washing, sanitary purposes, lawn and garden watering and caring for pets. Domestic wells shall also include wells used on private farms and ranches for the feeding and caring of pets and watering of lawns, excluding livestock, crops, and ponds

Ground Water? water suitable for any beneficial purpose percolating below the earth's surface which contains less than 10,000 mg/l total dissolved solids, including water suitable for domestic use or supply for a domestic water system.

Ground Water Emergency? an unanticipated occurrence as a result of a natural force or a man-made act which causes a ground water source to become immediately unavailable for beneficial use for the foreseeable future or drought conditions determined by the commissioner to warrant the temporary use of drought relief wells to assure the sustained production of agricultural products in the state.

Large Volume Well? a well with an 8 inch or greater diameter screen size or as further defined within these regulations.

Person? any natural person, corporation, association, partnership, receiver, tutor, curator, executor, administrator, fiduciary, or representative of any kind, or any governmental entity.

Replacement Well? a well located within 1,000 feet of the original well and within the same property boundary as the original well, installed within the same aquifer over an equivalent interval with an equivalent pumping rate, and used for the same purpose as the original well.

Spacing? the distance a water well may be located in relation to an existing or proposed water well, regardless of property boundaries.

Sustainability? the development and use of ground water in a manner that can be maintained for the present and future time without causing unacceptable environmental, economic, social, or health consequences.

User? any person who is making any beneficial use of ground water from a well or wells owned or operated by such person.

Well or Water Well? any well drilled or constructed for the principal purpose of producing ground water.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

Chapter 3. Critical Ground Water Area Application Procedure

§301. Who May Apply? Applicant

A. Any owner of a well that is significantly and adversely affected as a result of the movement of salt water front, water level decline, or subsidence in or from the aquifer drawn on by such well shall have the right to file an application to request the commissioner to declare that an area underlain by such aquifer is a critical ground water area.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§303. Notice of Intent

A. A The applicant shall have published a Notice of Intent to file an application for a critical ground water area designation the official parish journal of each parish affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;
2. a brief description of the subject matter of the proposed application;
3. a brief description of location including parish, section, township, range, and a map, which shall be sufficiently clear to readily identify the location of the proposed area;
4. a statement that, if the area is designated a critical ground water area, ground water use may be restricted;
5. a statement indicating where in the application can be viewed; and
6. a statement that all comments should be sent to:
Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Director, Ground Water Resources Division

B. A Notice of Intent to apply for the removal or modification of a critical ground water area designation shall be published in the official parish journal of each parish

affected by the proposed application. Such notice shall include:

1. name, address, and telephone number of the applicant;
2. a brief description of the subject matter of the proposed application;
3. a brief description of location including parish, section, township, range, and a map, which shall be sufficiently clear to readily identify the location of the proposed area;
4. a statement that, if the critical ground water area designation is removed or modified, current restrictions, if any, shall be rescinded or modified;
5. a statement indicating where in the application can be viewed; and
6. a statement that all comments should be sent to:
Commissioner of Conservation
Post Office Box 94275
Baton Rouge, LA 70804-9275
ATTN: Director, Ground Water Resources Division

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1584 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§305. Critical Ground Water Area Application Content

A. An application for a critical ground water area designation or the removal or a modification of a critical ground water area designation shall be filed with the commissioner of conservation at the above address no sooner than 30 days and no later than 60 days after publication of the Notice of Intent. Five copies of the application shall be filed, and must include:

1. the name, address, telephone number, and signature of applicant;
2. a statement identifying the applicant's interest which is or may be affected by the subject matter of the application;
3. identification of the source of ground water (aquifer) to which the application applies;
4. identification of the proposed critical ground water area or area proposed to be modified or removed from a critical ground water area designation, including but not limited to:
 - a. its location (section, township, range and parish);
 - b. a map clearly identifying the boundaries of the subject area of the application, such as but not limited to:
 - i. U.S. Geological Survey topographic map of appropriate scale (1:24,000, 1:62,500, 1:100,000); or
 - ii. LA-DOTD Louisiana parish map outlining the perimeter of the area; or
 - iii. if digital map data is submitted in vector and/or raster formats, then the supporting metadata should be included;
5. statement of facts and evidence supporting one of the following claims:
 - a. that no action would likely negatively impact ground water resources in the aquifer, if the application is pursuant to §307.A;
 - b. that alleviation of stress to the aquifer has occurred; if the application is pursuant to §307.B;

6. the proof of publication of Notice of Intent to apply to the Commissioner.

B. Direct Action by the Commissioner for Critical Ground Water Area Hearing

1. The commissioner may initiate a hearing to consider action with respect to a specific ground water area.

2. The commissioner shall notify the public pursuant to §303 and §501.A prior to issuing an order.

3. The information presented by the commissioner at the hearing shall include but not be limited to information pursuant to §305.A and §307.

C. Application for Groundwater Emergency Hearing

1. Notwithstanding the provisions of Subsections A and B hereof, the commissioner may initiate action in response to an application of an interested party or upon the commissioner's own motion in response to a ground water emergency.

2. Subsequent to adoption of a proposed emergency order that shall include designation of a critical ground water area and/or adoption of a emergency management plan for an affected aquifer, the commissioner shall promptly schedule a public hearing pursuant to §501.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§307. Criteria for a Critical Ground Water Area Designation

A. Application for designation of a critical ground water area must contain a statement of facts and supporting evidence substantiating that under current usage and normal environmental conditions, sustainability of an aquifer is not being maintained resulting in unacceptable environmental, economic, social, or health impacts, or causing a serious adverse impact to an aquifer, considering the areal and temporal extent of all such impacts caused by at least one of the following criteria:

1. water level decline; and/or
2. movement of a saltwater front; and/or
3. subsidence in or from the aquifer caused by overall withdrawals.

B. If the applicant is applying for modification or removal of a critical ground water area designation, the application must contain a statement of facts and supporting evidence substantiating the alleviation of the original cause of designation.

C. Applicant shall also submit recommendations regarding the critical ground water area including but not be limited to the following:

1. the proposed boundaries of the critical ground water area; and
2. a proposal to preserve and manage the ground water resources in the critical ground water area pursuant to R.S. 38:3097.6.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§309. Review of Critical Ground Water Area Application

A. Within 30 days of receipt of an application pursuant to §305.A, the applicant shall be notified whether or not the application is administratively complete.

B. If the commissioner determines an application is incomplete, the applicant shall be notified in writing of the information needed to make such application administratively complete.

C. The applicant shall have 180 days to respond to a request for more information by the commissioner, pursuant to Subsection B of this Section.

D. The commissioner may reject and return any application determined to be:

1. without merit or frivolous; or
2. incomplete after applicant's response to the commissioner's request for more information, pursuant to Subsection B of this Section, unless the remaining information required by the commissioner is minor in its nature.

E. Using available data, an analysis shall be made by the commissioner to determine if the area under consideration meets the criteria to be designated a critical ground water area or can be modified or removed from a critical ground water designation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1585 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§311. Recordkeeping

A. The commissioner shall compile and maintain at the Office of Conservation a record of all public documents relating to any application, hearing, or decision filed with or by the commissioner.

B. The commissioner shall make records available for public inspection free of charge and provide copies at a reasonable cost during all normal business hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

Chapter 5. Hearings

§501. Notice of Hearings

A. Critical Ground Water Area Preliminary Hearing Pursuant to §305.A or §305.B

1. Upon determination that an application is administratively complete and if the commissioner deems it necessary, a preliminary public hearing may be scheduled at a location determined by the commissioner in the locality of the area affected by the application.

2. Notice of the preliminary hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

3. Such notice shall be published in the official state journal and official parish journal of each parish affected by the application at least 30 calendar days before the date of such hearing.

4. A copy of the notice shall be sent to the applicant, any person requesting notice, and local, state and federal agencies that the commissioner determines may have an interest in the decision relating to the application.

B. Critical Ground Water Area Hearing Pursuant to §305.C and §505.B

1. Should the commissioner determine that a preliminary hearing is not necessary, a draft order shall be issued, pursuant to R.S. 38:3097.6.A and a hearing shall be scheduled, pursuant to this Subsection.

2. The commissioner shall notify the public of any hearing initiated by the commissioner as a result of an action, pursuant to §305.C or §505.B, a minimum of 15 days prior to the hearing.

3. Hearings initiated by the commissioner shall be held in the locality of those affected by the draft order under §305.C or §505.B.

4. Notice of the hearing shall contain the date, time and location of the hearing and the location of materials available for public inspection.

5. Such notice shall be published in the official state journal and official parish journal of each parish affected by the commissioner's petition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§503. Rules of Conduct

A. Hearings scheduled pursuant to this subpart shall be fact-finding in nature and cross-examination of the witnesses shall be limited to the commissioner and staff.

1. The commissioner, or a designee, shall serve as presiding officer, and shall have the discretion to establish reasonable limits upon the time allowed for statements.

2. The applicant may first present all relative information supporting their proposal followed by testimony and/or evidence from local, state and federal agencies and others.

3. All interested parties shall be permitted to appear and present testimony, either in person or by their representatives.

4. All hearings shall be recorded verbatim.

5. Copies of the transcript shall be available for public inspection at the Office of Conservation.

6. The testimony and all evidence received shall be made part of the administrative record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§505. Decision of the Commissioner

A. After hearings held pursuant to §305.C or §501.A, the commissioner shall issue a written decision in the form of a draft order based on scientifically sound data gathered from the application, the participants in the public hearing, and any other relevant information. The draft order shall contain a statement of findings, and shall include but shall not be limited to:

1. the designation of the critical ground water area boundaries; and

2. the recommended plan to preserve and manage the ground water resources of the critical ground water area pursuant to R.S. 38:3097.6.B.

B. The commissioner shall make the draft order and proposed plan to preserve and manage ground water resources of the proposed critical ground water area available to the applicant, participants in the original application hearing and any other persons requesting a copy thereof. The commissioner in accordance with §501.B shall initiate hearings on the draft order and proposed management controls in the locality of those affected by the commissioner's draft order.

C. Final Orders. The commissioner shall adopt final orders and plan to preserve and manage ground water resources after completion of §501.B. The final orders shall be made a part of the permanent records of the commissioner in accordance with §311 and shall be made available to the public upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Groundwater Management Commission, LR 28:1586 (July 2002), amended by the Department of Natural Resources, Office of Conservation, LR 30:

§507. Right of Appeal

A. Critical Ground Water Area Designation orders of the commissioner may be appealed only to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

Chapter 7. Water Well Notification Requirements in Non-Critical Ground Water Areas

§701. Applicability

A. All new water wells, pursuant to Subsections B and C of this Section, are required to be installed by a licensed drilling contractor, pursuant to LAC 46:LXXXIX, and registered through the Department of Transportation and Development (DOTD) pursuant to LAC 57:I et seq. within 30 days after completion.

B. All new water wells except those types specifically listed in Subsection D of this Section, require a Water Well Notification form be submitted to the Commissioner at least 60 days prior to installation by the owner of the well.

C. All new water wells, pursuant to Subsections D of this Section, require a Water Well Notification form be submitted to the Commissioner no later than 60 days after installation by the owner of the well, pursuant to R.S. 38:3097.3.C(4)(a).

D. Water well types that require notification to the commissioner after installation are:

1. domestic well;
2. replacement well;
3. drilling rig supply well;
4. drought relief well;

a. use of the drought relief well type must be approved by the commissioner, pursuant to R.S. 38:3097.3(C)(9), prior to installation; and

5. all other wells the commissioner exempts for just cause:

- a. there shall be no just cause exemptions granted for large volume wells;
- b. the commissioner shall base exemptions on, but not limited to:
 - i. proximity to other wells;
 - ii. beneficial use; or
 - iii. latest scientific data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

§703. Notification Requirements

A. Pursuant to R.S. 38:3097.3.C(4)(a), the commissioner is authorized to collect the following information on the Water Well Notification form:

- 1. date drilled or estimated date to be drilled;
- 2. name of driller;
- 3. current ownership;
- 4. projected location of the well in longitude and latitude;
- 5. depth;
- 6. casing size; and
- 7. other reasonable information required by the commissioner.

B. Pursuant to §703.A.7, the following reasonable information is required by the commissioner on the Water Well Notification form:

- 1. Purpose of Form, including but not limited to:
 - a. prior notification, pursuant to §701.C;
 - b. post notification, pursuant to §701.D;
 - c. well exempted for just cause, pursuant to R.S. 38:3097.3.C(4)(a)(v);
 - d. drought well authorization, pursuant to R.S. 38:3097.3.C(9);
 - e. information change; or
 - f. cancellation of notification because well not drilled;
- 2. Well Information, including but not limited to:
 - a. owner's well number;
 - b. well use;
 - c. aquifer screened; and
 - d. estimated pumping rate;
- 3. Well Location, including but not limited to:
 - a. parish; and
 - b. longitude and latitude; or
 - c. if longitude and latitude is unavailable;
 - i. a map with the well location marked; or
 - ii. a hand drawn map that includes enough detail that someone unfamiliar with the area can find the well;
- 4. Drilling Contractor, including but not limited to:
 - a. driller's contact information;
 - b. driller's license number; and
 - c. third party or consultant's contact information;
- 5. Owner's signature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

§705. Notification Review Process

A. The commissioner shall review the submitted information, pursuant to §701.B, within 30 days.

- 1. The commissioner may:
 - a. issue an order placing restrictions on the well; or
 - b. request further reasonable information; or
 - c. take no action.

2. Should the commissioner request additional reasonable information for new wells, pursuant to §705.A.1, the commissioner shall have an additional 30 days from the time the information is received to review the Water Well Notification form.

B. For a large volume well, the commissioner may issue to the owner an order within 30 days of receiving prior notification, pursuant to §701.B, with one or more of the following restrictions:

- 1. fixing allowable production;
- 2. spacing; and
- 3. metering.

C. For all other wells in a non-critical ground water area, the commissioner may issue an order to the owner within 30 days of receiving prior notification, pursuant to §701.B, which may only fix spacing of the well.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

§707. Right of Appeal

A. Within 30 days of the date of the correspondence regarding Paragraphs 1 and 2 of this Subsection, the applicant may appeal to the Ground Water Resources Commission to determine one of the following:

- 1. the reasonableness of the commissioner's request, pursuant to Section §705.A; or
- 2. the justification for the commissioner's well restriction order, pursuant to Section §705.B and C.

B. The appeal shall be addressed to:

Ground Water Resources Commission
 Post Office Box 94275
 Baton Rouge, LA 70804-9275

ATTN: Chairperson, Ground Water Resources Commission

C. The Commission may make a determination within 45 days from the date of the appeal, pursuant to R.S. 38:3097.3.C(4)(b)(iii), regarding the reasonableness of the commissioner's request, pursuant to Subsection A.1 of this Section.

D. The Commission may review the appeal of an applicant, pursuant to Subsection A.2 of this Section, and may make a determination regarding the commissioner's well restriction order.

1. The Commission may reject the commissioner's order and require the commissioner to reconsider such order.

2. An order that has been returned to the commissioner twice shall be considered a final decision.

E. Final decisions of the commissioner must be appealed to the Nineteenth Judicial District Court as provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3097 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

Family Impact Statement

In accordance with R.S. 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. The proposed Rule will have no effect on the stability of the family.

2. The proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The proposed Rule will have no effect on the functioning of the family.

4. The proposed Rule will have no effect on family earnings and family budget.

5. The proposed Rule will have no effect on the behavior and personal responsibility of children.

6. Family or local government are not required to perform any function contained in the proposed Rule.

Interested persons may submit written comments on the proposed Rule until 4:30 p.m., April 27, 2004, to Anthony J. Duplechin, Jr., Director, Ground Water Resources Division, P.O. Box 94275, Baton Rouge, LA 70804-9275 or to fax (225) 342-5529. Interested persons may also contact the Director at (225) 342-8244.

A public hearing will be held April 29, 2004, at 9 a.m. in the LaSalle Building, in the Conservation and Mineral Resources Hearing Room, 617 N. Third Street, Baton Rouge, LA 70802-5428. Interested persons are invited to attend and submit oral comments on the proposed Rule.

James H. Welsh
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Ground Water Management**

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

There are no additional implementation costs to the State or local governmental units relative to the proposed rule for the Commissioner of Conservation to conduct public hearings in the locality of those affected by applications for designation of a Critical Ground Water Area. The anticipated costs associated with each hearing is approximately \$3,500 and will be absorbed in the Ground Water Resources Program's existing operating budget.

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

There will be no anticipated effect on the revenue collections of the State or local governmental units.

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

The rule itself will have no costs and/or economic benefit; however, actions taken by the Commissioner of Conservation may result in costs and/or economic benefits, and will be determined on a case-by-case basis. At this time it is impossible to determine the estimated costs and/or economic benefits to directly affected persons or non-governmental groups; however, economic benefits would include the proper management of the state's groundwater resources to maintain a sufficient supply to the public for continued economic growth.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The rule itself will have no effect on competition or employment; however, actions taken by the Commissioner of Conservation may result in competition and employment, and will be determined on a case-by-case basis. At this time, it is

impossible to determine whether there will be any effects on competition and employment.

Felix J. Boudreaux
Assistant Commissioner
0403#068

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Natural Resources
Office of Conservation
Pipeline Division**

Hazardous Liquids Pipeline Safety
(LAC 33:V.30452 and 30905)

The Louisiana Office of Conservation proposes to amend LAC 43:XIII.101 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and pursuant to power delegated under the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Section 30:501 et seq. This proposed Rule amends the minimum pipeline safety requirements for hazardous liquids pipelines with new codification, technical changes and the addition of new requirements.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 3. Natural Resources

Chapter 304. Transportation of Hazardous Liquids by Pipeline? Operation and Maintenance [49 CFR 195.400]

§30452. Pipeline Integrity Management in High Consequence Areas [49 CFR 195.452]

A. - J.5.c. ...

6. Repealed.

K. - M. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2830 (December 2003), amended LR 30:

§30905. Appendix C to Subpart 3? Guidance for Implementation of Integrity Management Program [49 CFR Part 195 Appendix C]

* * *

I.-II.B.ii. ...

Age of pipeline: Assume 30 years old (refer to ?Age of Pipeline risk table)

Risk Value = 5

Pressure tested: Tested once during construction

Risk Value = 5

Coated: (yes/no)? yes

Coating condition: Recent excavation of suspected areas showed holidays in coating (potential corrosion risk)

Risk Value = 5

Cathodically Protected: (yes/no)? yes

Risk Value = 1

Date cathodic protection installed: Five years after pipeline was constructed (Cathodic protection installed within one year of the pipeline's construction is generally considered low risk.)

Risk Value = 3

Close interval survey: (yes/no)? no

Risk Value = 5

Internal inspection tool used: (yes/no)? yes

Date of pig run: In last five years
 Risk value = 1
Anomalies found: (yes/no)?yes, but do not pose an immediate safety risk or environmental hazard
 Risk value = 3
Leak History: yes, one spill in last 10 years.
 (refer to ?Leak History? risk table)
 Risk Value = 2
Product transported: Diesel fuel. Product low risk.
 (refer to ?Product? risk table)
 Risk Value = 1

NOTICE OF INTENT
Department of Natural Resources
Office of Conservation
Pipeline Division

Natural Gas Pipeline Safety
 (LAC 43:XIII.Chapters 1-65)

II.B.iii.-VII.F. ...
 AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Natural Resources, Pipeline Division, LR 29:2840 (December 2003), amended LR 30:

A public hearing will be held on this matter on April 26, 2004. Interested persons may submit written comments to Mariano G. Hinojosa, Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. Written comments will be accepted through April 23, 2004.

James H. Welsh
 Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
 FOR ADMINISTRATIVE RULES
 RULE TITLE: Hazardous Liquids Pipeline Safety**

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

There will be no implementation costs or savings to state or local governmental units since Louisiana already has Hazardous Liquids Pipeline Safety rules in effect. The proposed amendments will keep Louisiana's Hazardous Liquids Pipeline Safety Program in conformance with federal regulations. This action amends and adopts recent federal Hazardous Liquids Pipeline Safety regulations.

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

Louisiana presently receives approximately \$45,000 in federal funds and \$71,000 in pipeline fees to administer the Hazardous Liquids Pipeline Safety Program. Failure to amend the Louisiana rules to make them consistent with federal regulations would cause the state to lose federal funding.

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

There will be negligible cost to directly affected persons or hazardous liquids pipeline operators. benefits will be realized by persons near hazardous liquids pipeline through safer construction and operation standards imposed by the amendments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendment will bring the Louisiana Hazardous Liquids Pipeline Safety Program into conformance with federal regulations and will have no effect of competition and employment.

James H. Welsh
 Commissioner
 0403#065

H. Gordon Monk
 Staff Director
 Legislative Fiscal Office

The Louisiana Office of Conservation proposes to amend LAC 43:XIII.101 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and pursuant to power delegated under the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Section 30:501 et seq. These proposed Rules amend the minimum pipeline safety requirements for natural gas pipelines with new codification, technical changes and the addition of new requirements.

There will be negligible costs to directly affected persons or natural gas pipeline operators. Benefits will be realized by persons near natural gas pipelines through safer construction and operation standards imposed by the Rule amendments. Moreover, Louisiana presently receives approximately \$441,000 in federal funds and \$660,000 in pipeline fees to administer the Natural Gas Pipeline Safety Program. Failure to amend the Louisiana rules to make them consistent with federal regulations would cause the state to lose federal funding.

The following table shows the current placement and the proposed new placement of the Sections being promulgated.

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Title 43

NATURAL RESOURCES

**Part XIII. Office of Conservation? Pipeline Safety
Subpart 1. General Provisions**

Chapter 1. General

§101. Applicability

A. This regulation shall apply to all persons engaged in the transportation of gas by pipeline within the state of Louisiana, including the transportation of gas within the coastal zone limits as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

B. Notwithstanding the criteria in §101.A above, this regulation shall apply only to those persons identified in the certification or agreement in effect, pursuant to Section 5 of the Natural Gas Pipeline Safety Act of 1968, as amended (Federal Act), duly executed by the secretary of the Department of Natural Resources and the United States Secretary of Transportation.

C. As to gas odorization, this regulation shall apply to all persons engaged in the business of handling, storing, selling, or distributing natural and other toxic or combustible odorless gases, except as hereinafter provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:509 (July 1984), LR 18:852 (August 1992), LR 20:442 (April 1994), LR 27:1535 (September 2001), LR 30:

§103. Purpose

A. The purpose of these rules is to establish minimum requirements for the design, construction, quality of materials, location, testing, operation and maintenance of facilities used in the gathering, transmission and distribution of gas, to safeguard life or limb, health, property and public welfare and to provide that adequate service will be maintained by gas utilities operating under the jurisdiction of the commissioner of conservation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:503 (July 1984), LR 30:

§105. Incorporation by Reference

A. Any documents or portions thereof incorporated by reference in this Part are included in this Part as though set out in full. When only a portion of a document is referenced, the remainder is not incorporated in this Part.

B. To the extent consistent with this regulation, all persons shall be governed by the provisions of Parts 191, 192, 199 and 40 of Part 49 of the Code of Federal Regulations, sometimes hereinafter referred to as the "Federal Code," including all standards or specifications referenced therein, insofar as same are applicable and in effect on the date of this regulation, and by any deletions, additions, revisions, or amendments thereof, made after said date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:509 (July 1984), LR 24:1306 (July 1998), LR 30:

§107. Deviations from the Regulations [49 CFR 104]

A. There shall be no deviation from Part XIII except after authorization by the commissioner. If hardship results from application of any provisions, rules, standards, and specifications herein prescribed because of special facts, application may be made to the commissioner to waive compliance with such regulation in accordance with Section 3(e) of the Natural Gas Pipeline Safety Act of 1968. Each request for such waiver shall be accompanied by a full and complete justification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:509 (July 1984), LR 30:

§109. Recommendation for Revision of Regulations

A. For the purpose of keeping the provisions, rules, standards, and specifications of this regulation effective, any persons subject to this regulation, either individually or collectively, shall file an application setting forth such recommended changes in rules, standards, or specifications as they deem necessary to keep this regulation effective in keeping with the purpose, scope, and intent thereof. However, nothing herein shall preclude other interested

parties from initiating appropriate formal proceedings to have the commissioner of conservation consider any changes they deem appropriate, or the commissioner of conservation from acting upon his own motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:509 (July 1984), LR 30:

§111. Records, Reports

A. All persons subject to this regulation shall maintain records, such as plans, programs, specifications, maps and permits, necessary to establish compliance with this regulation. Such records shall be available for inspection at all times by the commissioner.

B. Every person who engages in the sale or transportation of gas subject to the jurisdiction of the commissioner shall file with the commissioner a list including the names, addresses and telephone numbers of responsible officials or such persons who may be contacted in the event of an emergency. Such a list shall be kept current.

C. Notices, reports and plans pertinent to facilities covered by §101 of this regulation and which are submitted to the United States Department of Transportation pursuant to the provisions of the federal code shall be forwarded simultaneously to the commissioner. These filings shall be deemed in full compliance with all obligations imposed for submitting such notices and reports, and when accomplished, shall release and relieve the person making same from further responsibility therefor.

D. Where a person is required to prepare and submit a report of an accident or incident pertinent to facilities covered by §101 of this regulation to a federal agency in compliance with the outstanding order of such agency, a copy of such report shall be submitted to the commissioner in lieu of filing a similar report which may be required by the state.

E. To accomplish the purpose of Section 557(G) of the Act the commissioner may request the filing of additional information and reports upon such forms and in such manner as prescribed by him.

F. An updated and comprehensive system map(s) containing location and component description information on all facilities (excluding individual service lines), must be maintained by the operator and made available to the commissioner of conservation upon demand. An updated and comprehensive record of individual service lines containing location and component description information must be maintained by the operator and made available to the commissioner of conservation upon demand. The aforementioned maps and records must be accompanied by information showing the location, size and type of pipe, and locations of key valves (system isolation valves), regulator stations, odorization injection and test locations and cathodic protection test locations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:218 (April 1983), amended LR 10:510 (July 1984), LR 30:

Subpart 2. Transportation of Natural and Other Gas By Pipeline [49 CFR Part 191]

Chapter 3. Annual Reports, Incident Reports and Safety Related Condition Reports [49 CFR Part 191]

§301. Scope [49 CFR 191.1]

A. This Chapter prescribes requirements for the reporting of incidents, safety-related conditions, and annual pipeline summary data by operators of gas pipeline facilities located in Louisiana. [49 CFR 191.1(a)]

B. This Chapter does not apply to: [49 CFR 191.1(b)]

1. offshore gathering of gas in state waters upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream; [49 CFR 191.1(b)(1)]

2. pipelines on the Outer Continental Shelf (OCS) that are producer operated and cross into state waters without first connecting to a transporting operator's facility on the OCS, upstream (generally seaward) of the last valve on the last production facility on the OCS. Safety equipment protecting RSPA-regulated pipeline segments is not excluded. Producing operators for those pipeline segments upstream of the last valve of the last production facility on the OCS may petition the administrator, or designee, for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9. [49 CFR 191.1(b)(2)]

3. pipelines on the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator; or [49 CFR 191.1(b)(3)]

4. onshore gathering of gas outside of the following areas: [49 CFR 191.1(b)(4)]

a. an area within the limits of any incorporated or unincorporated city, town, or village; [49 CFR 191.1(b)(4)(i)]

b. any designated residential or commercial area such as a subdivision, business or shopping center, or community development. [49 CFR 191.1(b)(4)(ii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:218 (April 1983), amended, LR 11:255 (March 1985), LR 18:854 (August 1992), LR 27:1536 (September 2001), LR 30:

§303. Definitions [49 CFR 191.3]

A. As used in Part XIII and in the RSPA Forms referenced in this Part: [49 CFR 191.3]

Administrator? the administrator, research and special programs administration or his or her delegate.

Commissioner? the commissioner of Conservation or any person to whom he has delegated authority in the matter concerned.

Gas? natural gas, flammable gas, or gas which is toxic or corrosive.

Incident? any of the following events:

a. an event that involves a release of gas from a pipeline or of liquefied natural gas or gas from an LNG facility; and

i. a death, or personal injury necessitating in-patient hospitalization; or

ii. estimated property damage, including cost of gas lost, of the operator or others, or both, of \$50,000 or more;

b. an event that results in an emergency shutdown of an LNG facility;

c. an event that is significant, in the judgement of the operator, even though it did not meet the criteria of Subparagraphs a or b.

LNG Facility? a liquefied natural gas facility as defined in §193.2007 of Part 193 of the federal pipeline safety regulations.

Master Meter System? a pipeline system for distributing gas within, but not limited to, a definable area such as a mobile home park, housing project, apartment complex or university, where the operator purchases meter gas from an outside source for resale through a gas pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as rents.

Municipality? a city, parish, or any other political subdivision of a state.

Offshore? beyond the line of ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

Operator? a person who engages in the transportation of gas.

Person? any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof.

Pipeline or Pipeline System? all parts of those physical facilities through which gas moves in transportation, including but not limited to, pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery station, holders, and fabricated assemblies.

State? the state of Louisiana.

Transportation of Gas? the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in or affecting intrastate, interstate or foreign commerce.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:255 (March 1985), amended LR 18:854 (August 1992), LR 20:442 (April 1994), LR 27:1536 (September 2001), LR 30:

§305. Telephonic Notice of Certain Incidents [49 CFR 191.5]

A. At the earliest practicable moment, within two hours following discovery, each operator shall give notice in accordance with Subsection B of this Section of each incident as defined in §303. [49 CFR 191.5(a)]

B. Each notice required by Subsection A of this Section shall be made by telephone to 1-(800) 424-8802 (federal) and (225) 342-5585 (day) or (225) 342-5505 (after working hours)(state) and shall include the following information: [49 CFR 191.5(b)]

1. names of operator and person making report and their telephone numbers; [49 CFR 191.5(b)(1)]

2. the location of the incident; [49 CFR 191.5(b)(2)]

3. the time of the incident; [49 CFR 191.5(b)(3)]

4. the number of fatalities and personal injuries, if any; [49 CFR 191.5(b)(4)]

5. all other significant facts that are known by the operator that are relevant to the cause of the incident or extent of the damages. [49 CFR 191.5(b)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:218 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 20:442 (April 1994), LR 30:

§307. Addressee for Written Reports [49 CFR 191.7]

A. One copy of each written report, required by Part XIII, for intrastate facilities subject to the jurisdiction of the Office of Conservation pursuant to certification under Section 5(a) of the Natural Gas Pipeline Safety Act must be submitted to the Commissioner of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. One copy of each written report required by Part XIII, must be submitted to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW, Washington, DC 20590. Safety-related condition reports required by §323 for intrastate pipeline transportation must be submitted concurrently to that state agency, and if that agency acts as an agent of the secretary with respect to interstate transmission facilities, safety-related condition reports for these facilities must be submitted concurrently to that agency. [49 CFR 191.7]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 20:442 (April 1994), LR 27:1536 (September 2001), LR 30:

§309. Distribution System: Incident Report [49 CFR 191.9]

A. Except as provided in Subsection C of this Section, each operator of a distribution pipeline system shall submit Department of Transportation Form RSPA F 7100.1 as soon as practicable but not more than 30 days after detection of an incident required to be reported under §305. [49 CFR 191.9(a)]

B. When additional relevant information is obtained after the report is submitted under Subsection A of this Section, the operator shall make supplementary reports as deemed necessary with a clear reference by date and subject to the original report. [49 CFR 191.9(b)]

C. The incident report required by this Section need not be submitted with respect to master meter systems or LNG facilities. [49 CFR 191.9(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 10:510 (July 1984), LR 11:255 (March 1985), amended LR 30:

§311. Distribution System: Annual Report [49 CFR 191.11]

A. Except as provided in Subsection B of this Section, each operator of a distribution pipeline system shall submit an annual report for that system on Department of Transportation Form RSPA F 7100.1-1. This report must be submitted each year, not later than March 15, for the preceding calendar year. [49 CFR 191.11(a)]

B. The annual report required by this Section need not be submitted with respect to: [49 CFR 191.11(b)]

1. petroleum gas systems which serve fewer than 100 customers from a single source; [49 CFR 191.11(b)(1)]

2. master meter systems; or [49 CFR 191.11(b)(2)]

3. LNG facilities. [49 CFR 191.11(b)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:255 (March 1985), LR 30:

§313. Distribution Systems Reporting Transmission Pipelines: Transmission or Gathering Systems Reporting Distribution Pipelines [49 CFR 191.13]

A. Each operator, primarily engaged in gas distribution, who also operates gas transmission or gathering pipelines shall submit separate reports for these pipelines as required by §§315 and 317. Each operator, primarily engaged in gas transmission or gathering, who also operates gas distribution pipelines shall submit separate reports for these pipelines as required by §§309 and 311. [49 CFR 191.13]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:255 (March 1985), LR 30:

§315. Transmission and Gathering Systems: Incident Report [49 CFR 191.17]

A. Except as provided in Subsection C of this Section, each operator of a transmission or a gathering pipeline system shall submit Department of Transportation Form RSPA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under §305. [49 CFR 191.15(a)]

B. Where additional related information is obtained after a report is submitted under Subsection A of this Section, the operator shall make a supplemental report as soon as practicable with a clear reference by date and subject to the original report. [49 CFR 191.15(b)]

C. The incident report required by Subsection A of this Section need not be submitted with respect to LNG facilities. [49 CFR 191.15(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:255 (March 1985), LR 30:

§317. Transmission and Gathering Systems: Annual Report [49 CFR 191.17]

A. Except as provided in Subsection B of this Section, each operator of a transmission or a gathering pipeline system shall submit an annual report for that system on Department of Transportation Form RSPA 7100.2-1. This report must be submitted each year, not later than March 15, for the preceding calendar year. [49 CFR 191.17(a)]

B. The annual report required by Subsection A of this Section need not be submitted with respect to LNG facilities. [49 CFR 191.17(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:256 (March 1985), LR 30:

§319. Report Forms [49 CFR 191.19]

A. Copies of the prescribed report forms are available without charge upon request from the address given in §307. Additional copies in this prescribed format may be reproduced and used if in the same size and kind of paper. In addition, the information required by these forms may be submitted by any other means that is acceptable to the commissioner/administrator. [49 CFR 191.19]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 11:256 (March 1985), LR 20:442 (April 1994), LR 24:1307 (July 1998), LR 30:

§321. OMB Control Number Assigned to Information Collection [49 CFR 191.21]

A. This Section displays the control number assigned by the Office of Management and Budget (OMB) to the gas pipeline information collection requirements of the Office of Pipeline Safety pursuant to the Paperwork Reduction Act of 1980, Public Law 96-511. It is the intent of this Section to comply with the requirements of Section 3507(f) of the Paperwork Reduction Act which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement. [49 CFR 191.21]

OMB Control Number 2137-0522.

Section of 49 CFR Part 191 where identified	Form No.
191.5	Telephonic
191.9	RSPA 7100.1
191.11	RSPA 7100.1-1
191.15	RSPA 7100.2
191.17	RSPA 7100.2-1

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 11:256 (March 1985), amended LR 20:442 (April 1994), LR 30:

§323. Reporting Safety-Related Conditions [49 CFR 191.23]

A. Except as provided in Subsection B of this Section, each operator shall report in accordance with §325 the existence of any of the following safety-related conditions involving facilities in service: [49 CFR 191.23(a)]

1. in the case of a pipeline (other than an LNG facility) that operates at a hoop stress of 20 percent or more of its specified minimum yield strength, general corrosion that has reduced the wall thickness to less than that required for the maximum allowable operating pressure, and localized corrosion pitting to a degree where leakage might result; [49 CFR 191.23(a)(1)]

2. unintended movement or abnormal loading by environmental causes, such as an earthquake, landslide, or flood, that impairs the serviceability of a pipeline or the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG; [49 CFR 191.23(a)(2)]

3. any crack or other material defect that impairs the structural integrity or reliability of an LNG facility that contains, controls, or processes gas or LNG; [49 CFR 191.23(a)(3)]

4. any material defect or physical damage that impairs the serviceability of a pipeline that operates at a hoop stress of 20 percent or more of its specified minimum yield strength; [49 CFR 191.23(a)(4)]

5. any malfunction or operating error that causes the pressure of a pipeline or LNG facility that contains or processes gas or LNG to rise above its maximum allowable operating pressure (or working pressure for LNG facilities) plus the build-up allowed for operation of pressure limiting or control devices; [49 CFR 191.23(a)(5)]

6. a leak in a pipeline or LNG facility that contains or processes gas or LNG that constitutes an emergency; [49 CFR 191.23(a)(6)]

7. inner tank leakage, ineffective insulation, or frost heave that impairs the structural integrity of a LNG storage tank; [49 CFR 191.23(a)(7)]

8. any safety-related condition that could lead to an imminent hazard and causes (either directly or indirectly by remedial action of the operator), for purposes other than abandonment, a 20 percent or more reduction in operating pressure or shutdown of operation of a pipeline or a LNG facility that contains or processes gas or LNG. [49 CFR 191.23(a)(8)]

B. A report is not required for any safety-related condition that: [49 CFR 191.23(b)]

1. exists on a master meter system or a customer-owned service line; [49 CFR 191.23(b)(1)]

2. is an incident or results in an incident before the deadline for filing the safety-related condition report; [49 CFR 191.23(b)(2)]

3. exists on a pipeline (other than an LNG facility) that is more than 220 yards (200 meters) from any building intended for human occupancy or outdoor place of assembly, except that reports are required for conditions within the right-of-way of an active railroad, paved road, street, or highway; or [49 CFR 191.23(b)(3)]

4. is corrected by repair or replacement in accordance with applicable safety standards before the deadline for filing the safety-related condition report, except that reports are required for conditions under Paragraph A.1 of this Section other than localized corrosion pitting on an effectively coated and cathodically protected pipeline. [49 CFR 191.23(b)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, amended LR 30:

§325. Filing Safety-Related Condition Reports [49 CFR 191.25]

A. Each report of a safety-related condition under §323.A must be filed concurrently and (received by the commissioner and associate administrator, OPS) in writing within five working days (not including Saturday, Sunday, state or federal holidays) after the day a representative of the operator first determines that the condition exists, but not later than 10 working days after the day a representative of the operator discovers the condition. Separate conditions may be described in a single report if they are closely related. To file a report by facsimile (FAX), dial (225) 342-5529 (state) and (202) 366-7128 (federal). [49 CFR 191.25]

B. The report must be headed "Safety-Related Condition Report" and provide the following information: [49 CFR 191.25(b)]

1. name and principal address of operator; [49 CFR 191.25(b)(1)]
2. date of report; [49 CFR 191.25(b)(2)]
3. name, job title, and business telephone number of person submitting the report; [49 CFR 191.25(b)(3)]
4. name, job title, and business telephone number of person who determined that the condition exists; [49 CFR 191.25(b)(4)]
5. date condition was discovered and date condition was first determined to exist; [49 CFR 191.25(b)(5)]
6. location of condition, with reference to the state (and town, city, or parish) or offshore site, and as appropriate, nearest street address, offshore platform, survey station number, milepost, landmark, or name of pipeline; [49 CFR 191.25(b)(6)]
7. description of the condition, including circumstances leading to its discovery, any significant effects of the condition on safety, and the name of the commodity transported or stored; [49 CFR 191.25(b)(7)]
8. the corrective action taken (including reduction of pressure or shutdown) before the report is submitted and the planned follow-up future corrective action, including the anticipated schedule for starting and concluding such action. [49 CFR 191.25(b)(8)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 18:854 (August 1992), amended LR 20:443 (April 1994), LR 24:1307 (July 1998), LR 30:

§327. Filing Offshore Pipeline Condition Reports [49 CFR 191.27]

A. Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to §2712.A, report the following information: [49 CFR 191.27(a)]

1. name and principal address of operator; [49 CFR 191.27(a)(1)]
2. date of report; [49 CFR 191.27(a)(2)]
3. name, job title, and business telephone number of person submitting the report; [49 CFR 191.27(a)(3)]
4. total length of pipeline inspected; [49 CFR 191.27(a)(4)]
5. length and date of installation of each exposed pipeline segment, and location, including, if available, the location according to the Minerals Management Service or state offshore area and block number tract; [49 CFR 191.27(a)(5)]
6. length and date of installation of each pipeline segment, if different from a pipeline segment identified under Paragraph A.5 of this Section, that is a hazard to navigation, and the location, including, if available, the location according to the Minerals Management Service or state offshore area and block number tract. [49 CFR 191.27(a)(6)]

B. The report shall be mailed to the Commissioner of Conservation, Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275 and concurrently to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. [49 CFR 191.27(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 18:854 (August 1992), amended LR 20:443 (April 1994), LR 30:

Subpart 3. Transportation of Natural or Other Gas By Pipeline: Minimum Safety Standards [49 CFR Part 192] Chapter 5. General [Subpart A? General] §501. Scope of Part [49 CFR 192.1]

A. This Subpart prescribes minimum safety requirements for pipeline facilities and the transportation of gas by pipeline within the state of Louisiana, including pipeline facilities and the transportation of gas within the coastal zone limits as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331). [49 CFR 192.1(a)]

B. This regulation does not apply to: [49 CFR 192.1(b)]

1. offshore gathering of gas in state waters upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream; [49 CFR 192.1(b)(1)]

2. pipelines on the Outer Continental Shelf (OCS) that are producer-operated and cross into state waters without first connecting to a transporting operator's facility on the OCS, upstream (generally seaward) of the last valve on the last production facility on the OCS. Safety equipment protecting RSPA-regulated pipeline segments is not excluded. Producing operators for those pipeline segments upstream of the last valve of the last production facility on the OCS may petition the administrator, or designee, for approval to operate under RSPA regulations governing pipeline design, construction, operation, and maintenance under 49 CFR 190.9; [49 CFR 192.1 (b)(2)]

3. pipelines on the Outer Continental Shelf upstream of the point at which operating responsibility transfers from a producing operator to a transporting operator; [49 CFR 192.1 (b)(3)]

4. onshore gathering of gas outside the following areas: [49 CFR 192.1(b)(4)]

a. an area within the limits of any incorporated or unincorporated city, town, or village; [49 CFR 192.1(b)(4)(i)]

b. any designated residential or commercial area such as a subdivision, business or shopping center, or community development; [49 CFR 192.1(b)(4)(ii)]

5. onshore gathering of gas within inlets of the Gulf of Mexico except as provided in §2712; or [49 CFR 192.1(b)(5)]

6. any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to: [49 CFR 192.1(b)(6)]

a. fewer than 10 customers, if no portion of the system is located in a public place; or [49 CFR 192.1(b)(6)(i)]

b. a single customer, if the system is located entirely on the customer's premises (no matter if a portion of the system is located in a public place). [49 CFR 192.1(b)(6)(ii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

§503. Definitions

A. As used in this Part:

Abandoned? permanently removed from service.

Administrator? the administrator, Research and Special Programs Administration or his or her delegate.

Building? any structure in which gas can accumulate.

Business? a permanent structure occupied for the express usage of wholesale or retail sales, services, the manufacture or storage of products, or a public building.

Business District? an area of two or more businesses within 100 yards (300 feet) of each other and within 100 yards along the linear length of any gas pipeline. The district will extend 100 feet past the defined boundaries of the last business in the district.

Commissioner? the commissioner of Conservation or any person to whom he has delegated authority in the matter concerned.

Customer Meter? the meter that measures the transfer of gas from an operator to a customer.

Distribution Line? a pipeline other than a gathering or transmission line.

Exposed Pipeline? a pipeline where the top of the pipe is above the seabed in water less than 15 feet (4.6 meters) deep, as measured from the mean low water.

Gas? natural gas, flammable gas, or gas which is toxic or corrosive.

Gathering Line? a pipeline that transports gas from a current production facility to a transmission line or main.

Gulf of Mexico and its Inlets? the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet (4.6 meters), as measured from the mean low water.

Hazard to Navigation? for the purpose of this Subpart, a pipeline where the top of the pipe is less than 12 inches (305 millimeters) below the seabed in water less than 15 feet (4.6 meters), as measured from the mean low water.

High Pressure Distribution System? a distribution system in which the gas pressure in the main is higher than the pressure provided to the customer.

Line Section? a continuous run of transmission line between adjacent compressor stations, between a compressor station and storage facilities, between a compressor station and a block valve, or between adjacent block valves.

Listed Specification? a specification listed in Section I of Appendix B of this Subpart.

Low-Pressure Distribution System? a distribution system in which the gas pressure in the main is substantially the same as the pressure provided to the customer.

Main? a distribution line that serves as a common source of supply for at least one service line.

Master Meter System? a pipeline system for distributing gas within, but not limited to, a definable area such as a mobile home park, housing project, apartment complex or university, where the operator purchases meter gas from an outside source for resale through a gas pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as rents.

Maximum Actual Operating Pressure? the maximum pressure that occurs during normal operations over a period of one year.

Maximum Allowable Operating Pressure (MAOP)? the maximum pressure at which a pipeline or segment of a pipeline may be operated under this Subpart.

Municipality? a city, parish, or any other political subdivision of Louisiana.

Natural Gas Distribution System? a company, municipality, or political subdivision that purchases or receives natural gas, and through its own intrastate pipeline system, distributes natural gas to end users in Louisiana such as residential, commercial, industrial, and wholesale customers, and shall include master meter systems.

Non Rural Area?

a. an area within the limits of any incorporated city, town, or village;

b. any designated residential or commercial area such as a subdivision, business or shopping center, or community development;

c. any Class 3 or 4 location as defined in §503; or

d. any other area so designated by the commissioner.

Offshore? beyond the line or ordinary low water along that portion of the coast of the United States that is in direct contact with the open seas and beyond the line marking the seaward limit of inland waters.

Operator? a person who engages in the transportation of gas.

Outer Continental Shelf? all submerged lands lying seaward and outside the area of lands beneath navigable water as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person? any individual, firm, joint venture, partnership, corporation, association, state, municipality, cooperative association, or joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

Petroleum Gas? propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 208 psi (1,434 kPa) gage at 100°F (38°C).

Pipe? any pipe or tubing used in the transportation of gas, including pipe-type holders.

Pipeline? all parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies.

Pipeline Facility? new and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

Production Facility? piping or equipment used in the production, extraction, recovery, lifting, stabilization, separation or treating of hydrocarbons, or associated storage or measurement. (To be a production facility under this definition, piping or equipment must be used in the process of extracting hydrocarbons from the ground and preparing it for transportation by pipeline.)

Public Building? a structure which members of the public may congregate such as schools, hospitals, nursing homes, churches, civic centers, post offices, and federal, state and local government buildings.

School System? a pipeline system for distributing natural gas to a public or private pre-kindergarten,

kindergarten, elementary, secondary, or high school. Upon request for a revision of service by the school, or by the school system of which the school is a component, the local distribution company providing natural gas service to the school shall, within a reasonable period of time and upon mutual agreement, install a meter at the building wall of each building of the school that utilizes natural gas. The gas piping from the outlet of the meter to the inside of the building shall be installed above ground, and shall be maintained by the school in accordance with the requirements of the Office of the State Fire Marshal. The outside piping that is upstream of the meter to the outlet of the meter shall be owned and maintained by the local distribution company in accordance with minimum pipeline safety regulations. The pipeline system of a school that does not request a revision of service described by this Paragraph shall be deemed a special class system, and subject to the requirements of such system.

Service Line? a distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

Service Regulator? the device on a service line that controls the pressure of gas delivered from a higher pressure to the pressure provided to the customer. A service regulator may serve one customer or multiple customers through a meter header or manifold.

SMYS? specified minimum yield strength is:

- a. for steel pipe manufactured in accordance with a listed specification, the yield strength specified as a minimum in that specification; or
- b. for steel pipe manufactured in accordance with an unknown or unlisted specification, the yield strength determined in accordance with §907.B.

Special Class System? a pipeline system for distributing gas to a federal, state, or local government facility or a private facility performing a government function, where the operator receives or purchases gas from an outside source and distributes the gas through a pipeline system to more than one outlet beyond the meter or regulator, which ultimate outlet may, but need to be, individually metered or charged a fee for the gas. Any exemption from pipeline safety regulation granted to master meter systems will apply to special class systems.

State? each of the several states, the District of Columbia, and the Commonwealth of Puerto Rico.

Transmission Line? a pipeline, other than a gathering line, that:

- a. transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center;
- b. operates at a hoop stress of 20 percent or more of SMYS; or
- c. transports gas within a storage field.

A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

Transportation of Gas? the gathering, transmission, or distribution of gas by pipeline, or the storage of gas, in or affecting intrastate, interstate or foreign commerce.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

§505. Class Locations [49 CFR 192.5]

A. This Section classifies pipeline locations for purposes of this Part. The following criteria apply to classifications under this Section. [49 CFR 192.5(a)]

1. A class location unit is an onshore area that extends 220 yards (200 meters) on either side of the centerline of any continuous one-mile (1.6 kilometers) length of pipeline. [49 CFR 192.5(a)(1)]

2. Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy. [49 CFR 192.5(a)(2)]

B. Except as provided in Subsection C of this Section, pipeline locations are classified as follows: [49 CFR 192.5(b)]

1. a Class 1 location is: [49 CFR 192.5(b)(1)]

a. an offshore area; or [49 CFR 192.5(b)(1)(i)]

b. any class location unit that has 10 or fewer buildings intended for human occupancy; [49 CFR 192.5(b)(1)(ii)]

2. a Class 2 location is any class location unit that has more than 10 but fewer than 46 buildings intended for human occupancy; [49 CFR 192.5(b)(2)]

3. a Class 3 location is: [49 CFR 192.5(b)(3)]

a. any class location unit that has 46 or more buildings intended for human occupancy; or [49 CFR 192.5(b)(3)(i)]

b. an area where the pipeline lies within 100 yards (91 meters) of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least five days a week for 10 weeks in any 12-month period (the days and weeks need not be consecutive); [49 CFR 192.5(b)(3)(ii)]

4. a Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent. [49 CFR 192.5(b)(4)]

C. The length of Class locations 2, 3, and 4 may be adjusted as follows. [49 CFR 192.5(c)]

1. A Class 4 location ends 220 yards (200 meters) from the nearest building with four or more stories above ground. [49 CFR 192.5(c)(1)]

2. When a cluster of buildings intended for human occupancy requires a Class 2 or 3 location, the class location ends 220 yards (200 meters) from the nearest building in the cluster. [49 CFR 192.5(c)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:219 (April 1983), amended LR 10:511 (July 1984), LR 20:443 (April 1994), LR 24:1307 (July 1998), LR 27:1537 (September 2001), LR 30:

§507. Incorporation by Reference [49 CFR 192.7]

A. Any documents or portions thereof incorporated by reference in this Part are included in this Part as though set out in full. When only a portion of a document is referenced, the remainder is not incorporated in this Part. [49 CFR 192.7(a)]

B. All incorporated materials are available for inspection in the Research and Special Programs Administration, 400 Seventh Street, SW, Washington, DC, and at the Office of the *Federal Register*, 800 North Capitol Street, NW, Suite 700, Washington, DC. These materials have been approved for incorporation by reference by the Director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. In addition, the incorporated materials are available from the respective organizations listed in §5101, Appendix A to this Part. [49 CFR 192.7(b)]

C. The full titles for the publications incorporated by reference in this Part are provided in §5101, Appendix A to this Part. Numbers in parentheses indicate applicable editions. Earlier editions of documents listed or editions of documents formerly listed in previous editions of §5101, Appendix A may be used for materials and components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR for a listing of the earlier listed editions or documents. [49 CFR 192.7(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

§509. Gathering Lines [49 CFR 192.9]

A. Except as provided in §§501 and 1110, each operator of a gathering line must comply with the requirements of this Subpart applicable to transmission lines. [49 CFR 192.9]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:220 (April 1983), amended LR 10:511 (July 1984), LR 20:443 (April 1994), LR 21:821 (August 1995), LR 24:1307 (July 1998), LR 30:

§510. Outer Continental Shelf Pipelines

A. Operators of transportation pipelines on the Outer Continental Shelf (as defined in the Outer Continental Shelf Lands Act 43 U.S.C. 1331) must identify on all their respective pipelines the specific points at which operating responsibility transfers to a producing operator. For those instances in which the transfer points are not identifiable by a durable marking, each operator will have until September 15, 1998 to identify the transfer points. If it is not practicable to durably mark a transfer point and the transfer point is located above water, the operator must depict the transfer point on a schematic located near the transfer point. If a transfer point is located subsea, then the operator must identify the transfer point on a schematic which must be maintained at the nearest upstream facility and provided to RSPA upon request. For those cases in which adjoining operators have not agreed on a transfer point by September 15, 1998 the regional director and the MMS regional supervisor will make a joint determination of the transfer point. [49 CFR 192.10]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1537 (September 2001), amended LR 30:

§511. Petroleum Gas Systems [49 CFR 192.11]

A. Each plant that supplies petroleum gas by pipeline to a natural gas distribution system must meet the requirements of this Subpart and ANSI/NFPA 58 and 59. [49 CFR 192.11(a)]

B. Each pipeline system subject to this Subpart that transports only petroleum gas or petroleum gas/air mixtures must meet the requirements of this Subpart and of ANSI/NFPA 58 and 59. [49 CFR 192.11(b)]

C. In the event of a conflict between this Subpart and ANSI/NFPA 58 and 59, ANSI/NFPA 58 and 59 prevail. [49 CFR 192.11(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 9:220 (April 1983), amended LR 10:511 (July 1984), LR 20:443 (April 1994), LR 21:821 (August 1995), LR 24:1307 (July 1998), LR 30:

§513. General [49 CFR 192.13]

A. No person may operate a segment of pipeline that is readied for service after March 12, 1971, or in the case of an offshore gathering line, after July 31, 1977, unless: [49 CFR 192.13(a)]

1. the pipeline has been designed, installed, constructed; initially inspected, and initially tested in accordance with this Subpart; or [49 CFR 192.13(a)(1)]

2. the pipeline qualifies for use under this Subpart in accordance with §514. [49 CFR 192.13(a)(2)]

B. No person may operate a segment of pipeline that is replaced, relocated, or otherwise changed after November 12, 1970, or in the case of an offshore gathering line, after July 31, 1977, unless that replacement, relocation, or change has been made in accordance with this Subpart. [49 CFR 192.13(b)]

C. Each operator shall maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under this Part. [49 CFR 192.13(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:220 (April 1983), amended LR 10:511 (July 1984), LR 30:

§514. Conversion to Service Subject to this Part [49 CFR 192.14]

A. A steel pipeline previously used in service not subject to Part XIII qualifies for use under this Part if the operator prepares and follows a written procedure to carry out the following requirements: [49 CFR 192.14(a)]

1. the design, construction, operation, and maintenance history of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in a satisfactory condition for safe operation; [49 CFR 192.14(a)(1)]

2. the pipeline right-of-way, all aboveground segments of the pipeline, and appropriately selected underground segments must be visually inspected for physical defects and operating conditions which reasonably could be expected to impair the strength or tightness of the pipeline; [49 CFR 192.14(a)(2)]

3. all known unsafe defects and conditions must be corrected in accordance with this Part; [49 CFR 192.14(a)(3)]

4. the pipeline must be tested in accordance with Chapter 23 of this Subpart to substantiate the maximum allowable operating pressure permitted by Chapter 27 of this Subpart. [49 CFR 192.14(a)(4)]

B. Each operator must keep for the life of the pipeline a record of investigations, tests, repairs, replacements, and alterations made under the requirements of Subsection A of this Section. [49 CFR 192.14(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:220 (April 1983), amended LR 10:512 (July 1984), LR 30:

§515. Rules of Regulatory Construction

[49 CFR 192.15]

A. As used in this regulation: [49 CFR 192.15(a)]

Includes? including but not limited to;

May? "is permitted to" or "is authorized to;"

May not? "is not permitted to" or "is not authorized to;"

Shall? used in the mandatory and imperative sense.

B. In Part XIII: [49 CFR 192.15(b)]

1. words importing the singular include the plural; [49 CFR 192.15(b)(1)]

2. words importing the plural include the singular; and [49 CFR 192.15(b)(2)]

3. words importing the masculine gender include the feminine. [49 CFR 192.15(b)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:217 (April 1983), amended LR 10:509 (July 1984), LR 30:

§516. Customer Notification [49 CFR 192.16]

A. This Section applies to each operator of a service line who does not maintain the customer's buried piping up to entry of the first building downstream, or, if the customer's buried piping does not enter a building, up to the principal gas utilization equipment or the first fence (or wall) that surrounds that equipment. For the purpose of this Section, customer's buried piping does not include branch lines that serve yard lanterns, pool heaters, or other types of secondary equipment. Also, maintain means monitor for corrosion according to §2117 if the customer's buried piping is metallic, survey for leaks according to §2923, and if an unsafe condition is found, shut off the flow of gas, advise the customer of the need to repair the unsafe condition, or repair the unsafe condition. [49 CFR 192.16(a)]

B. Each operator shall notify each customer once in writing of the following information: [49 CFR 192.16(b)]

1. the operator does not maintain the customer's buried piping; [49 CFR 192.16(b)(1)]

2. if the customer's buried piping is not maintained, it may be subject to the potential hazards of corrosion and leakage; [49 CFR 192.16(b)(2)]

3. buried gas piping should be: [49 CFR 192.16(b)(3)]

a. periodically inspected for leaks; [49 CFR 192.16(b)(3)(i)]

b. periodically inspected for corrosion if the piping is metallic; and [49 CFR 192.16(b)(3)(ii)]

c. repaired if any unsafe condition is discovered; [49 CFR 192.16(b)(3)(iii)]

4. when excavating near buried gas piping, the piping should be located in advance, and the excavation done by hand; [49 CFR 192.16(b)(4)]

5. the operator (if applicable), plumbing contractors, and heating contractors can assist in locating, inspecting, and repairing the customer's buried piping. [49 CFR 192.16(b)(5)]

C. Each operator shall notify each customer not later than August 14, 1996 or 90 days after the customer first receives gas at a particular location, whichever is later. However, operators of master meter systems may continuously post a general notice in a prominent location frequented by customers. [49 CFR 192.16(c)]

D. Each operator must make the following records available for inspection by the administrator or a state agency participating under 49 U.S.C. 60105 or 60106: [49 CFR 192.16(d)]

1. a copy of the notice currently in use; and [49 CFR 192.16(d)(1)]

2. evidence that notices have been sent to customers within the previous three years. [49 CFR 192.16(d)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:1307 (July 1998), amended LR 27:1537 (September 2001), LR 30:

Chapter 7. Materials [Subpart B? Materials]

§701. Scope [49 CFR 192.51]

A. This Chapter prescribes minimum requirements for the selection and qualification of pipe and components for use in pipelines. [49 CFR 192.51]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:220 (April 1983), amended LR 10:512 (July 1984), LR 30:

§703. General [49 CFR 192.53]

A. Materials for pipe and components must be: [49 CFR 192.53]

1. able to maintain the structural integrity of the pipeline under temperature and other environment conditions that may be anticipated; [49 CFR 192.53(a)]

2. chemically compatible with any gas that they transport and with any other material in the pipeline with which they are in contact; and [49 CFR 192.53(b)]

3. qualified in accordance with the applicable requirements of this Chapter. [49 CFR 192.53(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:220 (April 1983), amended LR 10:512 (July 1984), LR 30:

§705. Steel Pipe [49 CFR 192.55]

A. New steel pipe is qualified for use under this Subpart if: [49 CFR 192.55(a)]

1. it was manufactured in accordance with a listed specification; [49 CFR 192.55(a)(1)]

2. it meets the requirements of: [49 CFR 192.55(a)(2)]

a. Section II of §5103, Appendix B to this Subpart; or [49 CFR 192.55(a)(2)(i)]

b. if it was manufactured before November 12, 1970, either Section II or III of §5103, Appendix B to this Subpart; or [49 CFR 192.55(a)(2)(ii)]

3. it is used in accordance with Subsection C or D of this Section. [49 CFR 192.55(a)(3)]

B. Used steel pipe is qualified for use under this Subpart if: [49 CFR 192.55(b)]

1. it was manufactured in accordance with a listed specification and it meets the requirements of Paragraph II-C of §5103, Appendix B to this Subpart; [49 CFR 192.55(b)(1)]

2. it meets the requirements of: [49 CFR 192.55(b)(2)]

a. Section II of §5103, Appendix B to this Subpart; or [49 CFR 192.55(b)(2)(i)]

b. if it was manufactured before November 12, 1970, either Section II or III of §5103, Appendix B to this Subpart; [49 CFR 192.55(b)(2)(ii)]

3. it has been used in an existing line of the same or higher pressure and meets the requirements of Paragraph II-C of §5103, Appendix B to this Subpart; or [49 CFR 192.55(b)(3)]

4. it is used in accordance with Subsection C of this Section. [49 CFR 192.55(b)(4)]

C. New or used steel pipe may be used at a pressure resulting in a hoop stress of less than 6,000 psi (41 MPa) where no close coiling or close bending is to be done, if visual examination indicates that the pipe is in good condition and that it is free of split seams and other defects that would cause leakage. If it is to be welded, steel pipe that has not been manufactured to a listed specification must also pass the weldability tests prescribed in Paragraph II-B of §5103, Appendix B to this Subpart. [49 CFR 192.55(c)]

D. Steel pipe that has not been previously used may be used as replacement pipe in a segment of pipeline if it has been manufactured prior to November 12, 1970, in accordance with the same specification as the pipe used in constructing that segment of pipeline. [49 CFR 192.55(d)]

E. New steel pipe that has been cold expanded must comply with the mandatory provisions of API Specification 5L. [49 CFR 192.55(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:220 (April 1983), amended LR 10:512 (July 1984), LR 27:1537 (September 2001), LR 30:

§709. Plastic Pipe [49 CFR 192.59]

A. New plastic pipe is qualified for use under this Subpart if: [49 CFR 192.59(a)]

1. it is manufactured in accordance with a listed specification; and [49 CFR 192.59(a)(1)]

2. it is resistant to chemicals with which contact may be anticipated. [49 CFR 192.59(a)(2)]

B. Used plastic pipe is qualified for use under this Subpart if: [49 CFR 192.59(b)]

1. it was manufactured in accordance with a listed specification; [49 CFR 192.59(b)(1)]

2. it is resistant to chemicals with which contact may be anticipated; [49 CFR 192.59(b)(2)]

3. it has been used only in natural gas service; [49 CFR 192.59(b)(3)]

4. its dimensions are still within the tolerances of the specification to which it was manufactured; and [49 CFR 192.59(b)(4)]

5. it is free of visible defects. [49 CFR 192.59(b)(5)]

C. For the purpose of Paragraphs A.1 and B.1 of this Section, where pipe of a diameter included in a listed specification is impractical to use, pipe of a diameter between the sizes included in a listed specification may be used if it: [49 CFR 192.59(c)]

1. meets the strength and design criteria required of pipe included in that listed specification; and [49 CFR 192.59(c)(1)]

2. is manufactured from plastic compounds which meet the criteria for material required of pipe included in that listed specification. [49 CFR 192.59(c)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:512 (July 1984), LR 30:

§713. Marking of Materials [49 CFR 192.63]

A. Except as provided in Subsection D of this Section each valve, fitting, length of pipe, and other component must be marked: [49 CFR 192.63(a)]

1. as prescribed in the specification or standard to which it was manufactured, except that thermoplastic fittings must be marked in accordance with ASTM D 2513; or [49 CFR 192.63(a)(1)]

2. to indicate size, material, manufacturer, pressure rating, and temperature rating, and as appropriate, type, grade, and model. [49 CFR 192.63(a)(2)]

B. Surfaces of pipe and components that are subject to stress from internal pressure may not be field die stamped. [49 CFR 192.63(b)]

C. If any item is marked by die stamping, the die must have blunt or rounded edges that will minimize stress concentrations. [49 CFR 192.63(c)]

D. Subsection A of this Section does not apply to items manufactured before November 12, 1970, that meet all of the following. [49 CFR 192.63(d)]

1. The item is identifiable as to type, manufacturer, and model. [49 CFR 192.63(d)(1)]

2. Specifications or standards giving pressure, temperature, and other appropriate criteria for the use of items are readily available. [49 CFR 192.63(d)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:512 (July 1984), LR 18:854 (August 1992), LR 20:443 (April 1994), LR 24:1308 (July 1998), LR 30:

§715. Transportation of Pipe [49 CFR 192.65]

A. In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness ratio of 70 to 1, or more, that is transported by railroad unless: [49 CFR 192.65]

1. the transportation is performed in accordance with API RP 5L1; [49 CFR 192.65(a)]

2. in the case of pipe transported before November 12, 1970, the pipe is tested in accordance with Chapter 23 of this Subpart to at least 1.25 times the maximum allowable

operating pressure if it is to be installed in a Class 1 location and to at least 1.5 times the maximum allowable operating pressure if it is to be installed in a Class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Chapter 23 of this Subpart, the test pressure must be maintained for at least eight hours. [49 CFR 192.65(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:513 (July 1984), LR 20:444 (April 1994), LR 30:

Chapter 9. Pipe Design [Subpart C? Pipe Design]

§901. Scope [49 CFR 192.101]

A. This Chapter prescribes the minimum requirements for the design of pipe. [49 CFR 192.101]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:513 (July 1984), LR 30:

§903. General [49 CFR 192.103]

A. Pipe must be designed with sufficient wall thickness, or must be installed with adequate protection, to withstand anticipated external pressures and loads that will be imposed on the pipe after installation. [49 CFR 192.103]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:513 (July 1984), LR 30:

§905. Design Formula for Steel Pipe [49 CFR 192.105]

A. The design pressure for steel pipe is determined in accordance with the following formula: [49 CFR 192.105(a)]

$$P = (2St/D) \times F \times E \times T$$

P = Design pressure in pounds per square inch (kPa) gauge.

S = Yield strength in pounds per square inch (kPa) determined in accordance with §907.

D = Nominal outside diameter of the pipe in inches (millimeters).

t = Nominal wall thickness of the pipe in inches. If this is unknown, it is determined in accordance with §909. Additional wall thickness required for concurrent external loads in accordance with §903 may not be included in computing design pressure.

F = Design factor determined in accordance with §911.

E = Longitudinal joint factor determined in accordance with §913.

T = Temperature derating factor determined in accordance with §915.

B. If steel pipe that has been subjected to cold expansion to meet the SMYS is subsequently heated, other than by welding or stress relieving as a part of welding, the design pressure is limited to 75 percent of the pressure determined under Subsection A of this Section if the temperature of the pipe exceeds 900°F (482°C) at any time or is held above 600°F (316°C) for more than one hour. [49 CFR 192.105(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:513 (July 1984), LR 24:1308 (July 1998), LR 27:1537 (September 2001), LR 30:

§907. Yield Strength(S) for Steel Pipe [49 CFR 192.107]

A. For pipe that is manufactured in accordance with a specification listed in Section I of §5103, Appendix B of this Subpart, the yield strength to be used in the design formula in §905 is the SMYS stated in the listed specification, if that value is known. [49 CFR 192.107(a)]

B. For pipe that is manufactured in accordance with a specification not listed in Section I of §5103, Appendix B to this Subpart or whose specification or tensile properties are unknown, the yield strength to be used in the design formula in §905 is one of the following: [49 CFR 192.107(b)]

1. if the pipe is tensile tested in accordance with Section II-D of §5103, Appendix B to this Subpart, the lower of the following: [49 CFR 192.107(b)(1)]

a. 80 percent of the average yield strength determined by the tensile tests: [49 CFR 192.107(b)(1)(i)]

b. the lowest yield strength determined by the tensile tests; [49 CFR 192.107(b)(1)(ii)]

2. if the pipe is not tensile tested as provided in Paragraph B.1 of this Section, 24,000 psi (165 MPa). [49 CFR 192.107(b)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221 (April 1983), amended LR 10:513 (July 1984), LR 30:

§909. Nominal Wall Thickness (t) for Steel Pipe [49 CFR 192.109]

A. If the nominal wall thickness for steel pipe is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one end. [49 CFR 192.109(a)]

B. However, if the pipe is of uniform grade, size, and thickness and there are more than 10 lengths, only 10 percent of the individual lengths, but not less than 10 lengths, need be measured. The thickness of the lengths that are not measured must be verified by applying a gauge set to the minimum thickness found by the measurement. The nominal wall thickness to be used in the design formula in §905 is the next wall thickness found in commercial specifications that is below the average of all the measurements taken. However, the nominal wall thickness used may not be more than 1.14 times the smallest measurement taken on pipe less than 20 inches (508 millimeters) in outside diameter, nor more than 1.11 times the smallest measurement taken on pipe 20 inches (508 millimeters) or more in outside diameter. [49 CFR 192.109(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:221(April 1983), amended LR 10:513 (July 1984), LR 27:1537 (September 2001), LR 30:

§911. Design Factor (F) for Steel Pipe [49 CFR 192.111]

A. Except as otherwise provided in Subsections B, C, and D of this Section, the design factor to be used in the design formula in §905 is determined in accordance with the following table. [49 CFR 192.111(a)]

Class Location	Design Factor (F)
1	0.72
2	0.60
3	0.50
4	0.40

B. A design factor of 0.60 or less must be used in the design formula in §905 for steel pipe in Class 1 locations that: [49 CFR 192.111(b)]

1. crosses the right-of-way of an unimproved public road, without a casing; [49 CFR 192.111(b)(1)]

2. crosses without a casing, or makes a parallel encroachment on, the right-of-way of either a hard surfaced road, a highway, a public street, or a railroad; [49 CFR 192.111(b)(2)]

3. is supported by a vehicular, pedestrian, railroad, or pipeline bridge; or [49 CFR 192.111(b)(3)]

4. is used in a fabricated assembly, (including separators, mainline valve assemblies, cross-connections, and river crossing headers) or is used within five pipe diameters in any direction from the last fitting of a fabricated assembly, other than a transition piece or an elbow used in place of a pipe bend which is not associated with a fabricated assembly. [49 CFR 192.111(b)(4)]

C. For Class 2 locations, a design factor of 0.50, or less, must be used in the design formula in §905 for uncased steel pipe that crosses the right-of-way of a hard surfaced road, a highway, a public street, or a railroad. [49 CFR 192.111(c)]

D. For Class 1 and Class 2 locations, a design factor of 0.50, or less, must be used in the design formula in §905 for: [49 CFR 192.111(d)]

1. steel pipe in a compressor station, regulating station, or measuring station; and [49 CFR 192.111(d)(1)]

2. steel pipe, including a pipe riser, on a platform located offshore or in inland navigable waters. [49 CFR 192.111(d)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:222 (April 1983), amended LR 10:513 (July 1984), LR 30:

§913. Longitudinal Joint Factor (E) for Steel Pipe [49 CFR 192.113]

A. The longitudinal factor to be used in the design formula in §905 is determined in accordance with the following table.

Specification	Pipe Class	Longitudinal Joint Factor (E)
ASTM A 53	Seamless	1.00
	Electric resistance welded	1.00
	Furnace butt welded	.60
ASTM A 106	Seamless	1.00
	Seamless	1.00
ASTM A 333/A 333M	Electric resistance welded	1.00
	Double submerged arc welded	1.00
ASTM A 381	Electric fusion welded	1.00
ASTM A 671	Electric fusion welded	1.00
ASTM A 672	Electric fusion welded	1.00
ASTM A 691	Electric fusion welded	1.00
API 5L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
	Furnace butt welded	.60

Specification	Pipe Class	Longitudinal Joint Factor (E)
Other	Pipe over four inches (102 millimeters)	.80
Other	Pipe four inches (102 millimeters) or less	.60

B. If the type of longitudinal joint cannot be determined, the joint factor to be used must not exceed that designated for "Other." [49 CFR 192.113]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:222 (April 1983), amended LR 10:514 (July 1984), LR 18:855 (August 1992), LR 20:444 (April 1994), LR 27:1538 (September 2001), LR 30:

§915. Temperature Derating Factor (T) for Steel Pipe [49 CFR 192.115]

A. The temperature derating factor to be used in the design formula in §905 is determined as follows.

Gas Temp. in degrees Fahrenheit (Celsius)	Temp. derating factor (T)
250°F (121°C) or less	1.000
300°F (149°C)	0.967
350°F (177°C)	0.933
400°F (204°C)	0.900
450°F (232°C)	0.867

B. For intermediate gas temperatures, the derating factor is determined by interpolation. [49 CFR 192.115]

AUTHORITY NOTE: Promulgated in accordance with R.S. 501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:222 (April 1983), amended LR 10:514 (July 1984), LR 20:444 (April 1994), LR 27:1538 (September 2001), LR 30:

§921. Design of Plastic Pipe [49 CFR 192.121]

A. Subject to the limitations of §923, the design pressure for plastic pipe is determined in accordance with either of the following formulas.

$$P \leq 2S \frac{t}{D - t}^{0.32}$$

$$P \leq \frac{2S}{SDR - 1}^{0.32}$$

where:

P = Design pressure, gauge, psig (kPa).

S = For thermoplastic pipe, the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to 73°F (23°C), 100°F (38°C), 120°F (49°C), or 140°F (60°C); for reinforced thermosetting plastic pipe, 11,000 psi (75,842 kPa).

t = Specified wall thickness, in. (mm).

D = Specified outside diameter, in. (mm).

SDR = Standard dimension ratio, the ratio of the average specified outside diameter to the minimum specified wall thickness, corresponding to a value from a common numbering system that was derived from the American National Standards Institute preferred number series 10. [49 CFR 192.121]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:222 (April 1983), amended LR 10:515 (July 1984), LR 18:855 (August 1992), LR 24:1308 (July 1998), LR 27:1538 (September 2001), LR 30:

§923. Design Limitations for Plastic Pipe
[49 CFR 192.123]

A. The design pressure may not exceed a gauge pressure of 100 psig (689 kPa) for plastic pipe used in: [49 CFR 192.123(a)]

1. distribution systems; or [49 CFR 192.123(a)(1)]
2. Classes 3 and 4 locations. [49 CFR 192.123(a)(2)]

B. Plastic pipe may not be used where operating temperatures of the pipe will be: [49 CFR 192.123(b)]

1. below -20°F (-29°C), or -40°F (-40°C) if all pipe and pipeline components whose operating temperature will be below -20°F (-29°C) have a temperature rating by the manufacturer consistent with that operating temperature; or [49 CFR 192.123(b)(1)]

2. above the following applicable temperatures: [49 CFR 192.123(b)(2)]

a. for thermoplastic pipe, the temperature at which the long-term hydrostatic strength used in the design formula under §921 is determined; [49 CFR 192.123(b)(2)(i)]

b. for reinforced thermosetting plastic pipe, 150°F (66°C). [49 CFR 192.123(b)(2)(ii)]

C. The wall thickness for thermoplastic pipe may not be less than 0.062 in. (1.57 millimeters). [49 CFR 192.123(c)]

D. The wall thickness for reinforced thermosetting plastic pipe may not be less than that listed in the following table. [49 CFR 192.123(d)]

Nominal Size in Inches (Millimeters)	Minimum Wall Thickness Inches (Millimeters)
2 (51)	0.060 (1.52)
3 (76)	0.060 (1.52)
4 (102)	0.070 (1.78)
6 (152)	0.100 (2.54)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:222 (April 1983), amended LR 10:515 (July 1984), LR 24:1308 (July 1998), LR 27:1538 (September 2001), LR 30:

§925. Design of Copper Pipe [49 CFR 192.125]

A. Copper pipe used in mains must have a minimum wall thickness of 0.065 inches (1.65 millimeters) and must be hard drawn. [49 CFR 192.125(a)]

B. Copper pipe used in service lines must have wall thickness not less than that indicated in the following table. [49 CFR 192.125(b)]

Standard Size Inch (millimeter)	Nominal O.D. Inch (millimeter)	Wall Thickness Inch (millimeter)	
		Nominal Tolerance	
1/2 (13)	.625 (16)	.040 (1.06)	.0035 (.0889)
5/8 (16)	.750 (19)	.042 (1.07)	.0035 (.0889)
3/4 (19)	.875 (22)	.045 (1.14)	.004 (.102)
1 (25)	1.125 (29)	.050 (1.27)	.004 (.102)
1 1/4 (32)	1.375 (35)	.055 (1.40)	.0045 (.1143)
1 1/2 (38)	1.625 (41)	.060 (1.52)	.0045 (.1143)

C. Copper pipe used in mains and service lines may not be used at pressures in excess of 100 psi (689 kPa) gauge. [49 CFR 192.125(c)]

D. Copper pipe that does not have an internal corrosion resistant lining may not be used to carry gas that has an average hydrogen sulfide content of more than 0.3 grains/100 ft³ (6.9/m³) under standard conditions. Standard conditions refers to 60°F and 14.7 psia (15.6°C and one atmosphere) of gas. [49 CFR 192.125(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:515 (July 1984), LR 18:855 (August 1992), LR 27:1539 (September 2001), LR 30:

Chapter 11. Design of Pipeline Components
[Subpart D? Design of Pipeline Components]

§1101. Scope [49 CFR 192.141]

A. This Chapter prescribes minimum requirements for the design and installation of pipeline components and facilities. In addition, it prescribes requirements relating to protection against accidental overpressuring. [49 CFR 192.141]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:515 (July 1984), LR 30:

§1103. General Requirements [49 CFR 192.143]

A. Each component of a pipeline must be able to withstand operating pressures and other anticipated loadings without impairment of its serviceability with unit stresses equivalent to those allowed for comparable material in pipe in the same location and kind of service. However, if design based upon unit stresses is impractical for a particular component, design may be based upon a pressure rating established by the manufacturer by pressure testing that component or a prototype of the component. [49 CFR 192.143]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:515 (July 1984), LR 30:

§1104. Qualifying Metallic Components
[49 CFR 192.144]

A. Notwithstanding any requirement of Part XIII which incorporates by reference an edition of a document listed in §5101, Appendix A of Part XIII, a metallic component manufactured in accordance with any other edition of that document is qualified for use under this Part if: [49 CFR 192.144]

1. it can be shown through visual inspection of the cleaned component that no defect exists which might impair the strength or tightness of the component; and [49 CFR 192.144(a)]

2. the edition of the document under which the component was manufactured has equal or more stringent requirements for the following as an edition of that document currently or previously listed in Appendix A: [49 CFR 192.144(b)]

- a. pressure testing; [49 CFR 192.144(b)(1)]
- b. materials; and [49 CFR 192.144(b)(2)]
- c. pressure and temperature ratings. [49 CFR 192.144(b)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, amended LR 10:515 (July 1984), LR 30:

§1105. Valves [49 CFR 192.145]

A. Except for cast iron and plastic valves, each valve must meet the minimum requirements, or equivalent, of API 6D. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements. [49 CFR 192.145(a)]

B. Each cast iron and plastic valve must comply with the following: [49 CFR 192.145(b)]

1. the valve must have a maximum service pressure rating for temperatures that equal or exceed the maximum service temperature; [49 CFR 192.145(b)(1)]

2. the valve must be tested as part of the manufacturing, as follows: [49 CFR 192.145(b)(2)]

a. with the valve in the fully open position, the shell must be tested with no leakage to a pressure at least 1.5 times the maximum service rating; [49 CFR 192.145(b)(2)(i)]

b. after the shell test, the seat must be tested to a pressure no less than 1.5 times the maximum service pressure rating. Except for swing check valves, test pressure during the seat test must be applied successively on each side of the closed valve with the opposite side open. No visible leakage is permitted; [49 CFR 192.145(b)(2)(ii)]

c. after the last pressure test is completed, the valve must be operated through its full travel to demonstrate freedom from interference. [49 CFR 192.145(b)(2)(iii)]

C. Each valve must be able to meet the anticipated operating conditions. [49 CFR 192.145(c)]

D. No valve having shell components made of ductile iron may be used at pressures exceeding 80 percent of the pressure ratings for comparable steel valves at their listed temperature. However, a valve having shell components made of ductile iron may be used at pressures up to 80 percent of the pressure ratings for comparable steel valves at their listed temperature, if: [49 CFR 192.145(d)]

1. the temperature-adjusted service pressure does not exceed 1,000 psi (7 MPa) gauge; and [49 CFR 192.145(d)(1)]

2. welding is not used on any ductile iron component in the fabrication of the valve shells or their assembly. [49 CFR 192.145(d)(2)]

E. No valve having pressure containing parts made of ductile iron may be used in the gas pipe components of compressor stations. [49 CFR 192.145(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:515 (July 1984), LR 18:855 (August 1992), LR 27:1539 (September 2001), LR 30:

§1107. Flanges and Flange Accessories

[49 CFR 192.147]

A. Each flange or flange accessory (other than cast iron) must meet the minimum requirements of ASME/ANSI B16.5, MSS SP-44, or the equivalent. [49 CFR 192.147(a)]

B. Each flange assembly must be able to withstand the maximum pressure at which the pipeline is to be operated and to maintain its physical and chemical properties at any

temperature to which it is anticipated that it might be subjected in service. [49 CFR 192.147(b)]

C. Each flange on a flanged joint in cast iron pipe must conform in dimensions, drilling, face and gasket design to ASME/ANSI B16.1 and be cast integrally with the pipe, valve, or fitting. [49 CFR 192.147(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:515 (July 1984); LR 18:856 (August 1992), LR 20:444 (April 1994), LR 30:

§1109. Standard Fittings [49 CFR 192.149]

A. The minimum metal thickness of threaded fittings may not be less than specified for the pressures and temperatures in the applicable standards referenced in Part XIII, or their equivalent. [49 CFR 192.149(a)]

B. Each steel butt-welding fitting must have pressure and temperature ratings based on stresses for pipe of the same or equivalent material. The actual bursting strength of the fitting must at least equal the computed bursting strength of pipe of the designated material and wall thickness, as determined by a prototype that was tested to at least the pressure required for the pipeline to which it is being added. [49 CFR 192.149(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:515 (July 1984), LR 30:

§1110. Passage of Internal Inspection Devices

[49 CFR 192.150]

A. Except as provided in Subsections B and C of this Section, each new transmission line and each line section of a transmission line where the line pipe, valve, fitting, or other line component is replaced must be designed and constructed to accommodate the passage of instrumented internal inspection devices. [49 CFR 192.150(a)]

B. This Section does not apply to: [49 CFR 192.150(b)]

1. manifolds; [49 CFR 192.150(b)(1)]

2. station piping such as at compressor stations, meter stations, or regulator stations; [49 CFR 192.150(b)(2)]

3. piping associated with storage facilities, other than a continuous run of transmission line between a compressor station and storage facilities; [49 CFR 192.150(b)(3)]

4. cross-overs; [49 CFR 192.150(b)(4)]

5. sizes of pipe for which an instrumented internal inspection device is not commercially available; [49 CFR 192.150(b)(5)]

6. transmission lines, operated in conjunction with a distribution system which are installed in Class 4 locations; [49 CFR 192.150(b)(6)]

7. offshore pipelines, other than transmission lines 10 inches (254 millimeters) or greater in nominal diameter, that transport gas to onshore facilities; and [49 CFR 192.150(b)(7)]

8. other piping that, under 49 CFR Part 190 and LAC 43:XI.Subpart 3 the commissioner/administrator finds in a particular case would be impracticable to design and construct to accommodate the passage of instrumented internal inspection devices. [49 CFR 192.150(b)(8)]

C. An operator encountering emergencies, construction time constraints or other unforeseen construction problems

need not construct a new or replacement segment of a transmission line to meet Subsection A of this Section, if the operator determines and documents why an impracticability prohibits compliance with Subsection A of this Section. Within 30 days after discovering the emergency or construction problem the operator must petition, under 49 CFR Part 190 and LAC 43:XI.Subpart 3 for approval that design and construction to accommodate passage of instrumented internal inspection devices would be impracticable. If the petition is denied, within one year after the date of the notice of the denial, the operator must modify that segment to allow passage of instrumented internal inspection devices. [49 CFR 192.150(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 21:821 (August 1995), amended LR 27:1539 (September 2001), LR 30:

§1111. Tapping [49 CFR 192.151]

A. Each mechanical fitting used to make a hot tap must be designed for at least the operating pressure of the pipeline. [49 CFR 192.151(a)]

B. Where a ductile iron pipe is tapped, the extent of full-thread engagement and the need for the use of outside-sealing service connections, tapping saddles, or other fixtures must be determined by service conditions. [49 CFR 192.151(b)]

C. Where a threaded tap is made in cast iron or ductile iron pipe, the diameter of the tapped hole may not be more than 25 percent of the nominal diameter of the pipe unless the pipe is reinforced, except that: [49 CFR 192.151(c)]

1. existing taps may be used for replacement service, if they are free of cracks and have good threads; and [49 CFR 192.151(c)(1)]

2. a 1 1/4 inch (32 millimeters) tap may be made in a 4 inch (102 millimeters) cast iron or ductile iron pipe, without reinforcement.

D. However in areas where climate, soil, and service conditions may create unusual external stresses on cast iron pipe, unreinforced taps may be used only on 6 inch (152 millimeters) or larger pipe. [49 CFR 192.151(c)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:515 (July 1984), LR 27:1539 (September 2001), LR 30:

§1113. Components Fabricated by Welding [49 CFR 192.153]

A. Except for branch connections and assemblies of standard pipe and fittings joined by circumferential welds, the design pressure of each component fabricated by welding, whose strength cannot be determined, must be established in accordance with Paragraph UG-101 of Section VIII, Division 1 of the ASME Boiler and Pressure Vessel Code. [49 CFR 192.153(a)]

B. Each prefabricated unit that uses plate and longitudinal seams must be designed, constructed, and tested in accordance with Section VIII, Division 1, or Section VIII, Division 2 of the ASME Boiler and Pressure Vessel Code, except for the following: [49 CFR 192.153(b)]

1. regularly manufactured butt-welding fittings; [49 CFR 192.153(b)(1)]

2. pipe that has been produced and tested under a specification listed in Appendix B to Part XIII; [49 CFR 192.153(b)(2)]

3. partial assemblies such as split rings or collars; [49 CFR 192.153(b)(3)]

4. prefabricated units that the manufacturer certifies have been tested to at least twice the maximum pressure to which they will be subjected under the anticipated operating conditions. [49 CFR 192.153(b)(4)]

C. Orange-peel bull plugs and orange-peel swages may not be used on pipelines that are to operate at a hoop stress of 20 percent or more of the SMYS of the pipe. [49 CFR 192.153(c)]

D. Except for flat closures designed in accordance with Section VIII of the ASME Boiler and Pressure Code, flat closures and fish tails may not be used on pipe that either operates at 100 psi (689 kPa) gage, or more, or is more than 3 inches (76 millimeters) nominal diameter. [49 CFR 192.153(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:516 (July 1984), LR 20:444 (April 1994), LR 27:1539 (September 2001), LR 30:

§1115. Welded Branch Connections [49 CFR 192.155]

A. Each welded branch connection made to pipe in the form of a single connection, or in a header or manifold as a series of connections, must be designed to ensure that the strength of the pipeline system is not reduced, taking into account the stresses in the remaining pipe wall due to the opening in the pipe or header, the shear stresses produced by the pressure acting on the area of the branch opening, and any external loadings due to thermal movement, weight, and vibration. [49 CFR 192.155]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:224 (April 1983), amended LR 10:516 (July 1984), LR 30:

§1117. Extruded Outlets [49 CFR 192.157]

A. Each extruded outlet must be suitable for anticipated service conditions and must be at least equal to the design strength of the pipe and other fittings in the pipeline to which it is attached. [49 CFR 192.157]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:224 (April 1983), amended LR 10:516 (July 1984), LR 30:

§1119. Flexibility [49 CFR 192.159]

A. Each pipeline must be designed with enough flexibility to prevent thermal expansion or contraction from causing excessive stresses in the pipe or components, excessive bending or unusual loads at joints, or undesirable forces or moments at points of connection to equipment, or at anchorage or guide points. [49 CFR 192.159]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:224 (April 1983), amended LR 10:516 (July 1984), LR 30:

§1121. Supports and Anchors [49 CFR 192.161]

A. Each pipeline and its associated equipment must have enough anchors or supports to: [49 CFR 192.161(a)]

1. prevent undue strain on connected equipment; [49 CFR 192.161(a)(1)]
2. resist longitudinal forces caused by a bend or offset in the pipe; and [49 CFR 192.161(a)(2)]
3. prevent or damp out excessive vibration. [49 CFR 192.161(a)(3)]

B. Each exposed pipeline must have enough supports or anchors to protect the exposed pipe joints from the maximum end force caused by internal pressure and any additional forces caused by temperature expansion or contraction or by the weight of the pipe and its contents. [49 CFR 192.161(b)]

C. Each support or anchor on an exposed pipeline must be made of durable, noncombustible material and must be designed and installed as follows: [49 CFR 192.161(c)]

1. free expansion and contraction of the pipeline between supports or anchors may not be restricted; [49 CFR 192.161(c)(1)]
2. provision must be made for the service conditions involved; [49 CFR 192.161(c)(2)]
3. movement of the pipeline may not cause disengagement of the support equipment. [49 CFR 192.161(c)(3)]

D. Each support on an exposed pipeline operated at a stress level of 50 percent or more of SMYS must comply with the following: [49 CFR 192.161(d)]

1. a structural support may not be welded directly to the pipe; [49 CFR 192.161(d)(1)]
2. the support must be provided by a member that completely encircles the pipe; [49 CFR 192.161(d)(2)]
3. if an encircling member is welded to a pipe, the weld must be continuous and cover the entire circumference. [49 CFR 192.161(d)(3)]

E. Each underground pipeline that is connected to a relatively unyielding line or other fixed object must have enough flexibility to provide for possible movement, or it must have an anchor that will limit the movement of the pipeline. [49 CFR 192.161(e)]

F. Except for offshore pipelines, each underground pipeline that is being connected to new branches must have a firm foundation for both the header and the branch to prevent detrimental lateral and vertical movement. [49 CFR 192.161(f)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:224 (April 1983), amended LR 10:516 (July 1984), LR 30:

§1123. Compressor Stations: Design and Construction [49 CFR 192.163]

A. Location of compressor building. Except for a compressor building on a platform located offshore or in inland navigable waters, each main compressor building of a compressor station must be located on property under the control of the operator. It must be far enough away from adjacent property, not under control of the operator, to

minimize the possibility of fire being communicated to the compressor building from structures on adjacent property. There must be enough open space around the main compressor building to allow the free movement of fire-fighting equipment. [49 CFR 192.163(a)]

B. Building construction. Each building on a compressor station site must be made of noncombustible materials if it contains either: [49 CFR 192.163(b)]

1. pipe more than 2 inches (51 millimeters) in diameter that is carrying gas under pressure; or [49 CFR 192.163(b)(1)]
2. gas handling equipment other than gas utilization equipment used for domestic purposes. [49 CFR 192.163(b)(2)]

C. Exits. Each operating floor of a main compressor building must have at least two separated and unobstructed exits located so as to provide a convenient possibility of escape and an unobstructed passage to a place of safety. Each door latch on an exit must be of a type which can be readily opened from the inside without a key. Each swinging door located in an exterior wall must be mounted to swing outward. [49 CFR 192.163(c)]

D. Fenced areas. Each fence around a compressor station must have at least two gates located so as to provide a convenient opportunity for escape to a place of safety, or have other facilities affording a similarly convenient exit from the area. Each gate located within 200 feet (61 meters) of any compressor plant building must open outward and, when occupied, must be openable from the inside without a key. [49 CFR 192.163(d)]

E. Electrical facilities. Electrical equipment and wiring installed in compressor stations must conform to the National Electrical Code, ANSI/NFPA 70, so far as that code is applicable. [49 CFR 192.163(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:224 (April 1983), amended LR 10:516 (July 1984), LR 20:445 (April 1994), LR 27:1539 (September 2001), LR 30:

§1125. Compressor Stations: Liquid Removal [49 CFR 192.165]

A. Where entrained vapors in gas may liquefy under the anticipated pressure and temperature conditions, the compressor must be protected against the introduction of those liquids in quantities that could cause damage. [49 CFR 192.165(a)]

B. Each liquid separator used to remove entrained liquids at a compressor station must: [49 CFR 192.165(b)]

1. have a manually operable means of removing these liquids; [49 CFR 192.165(b)(1)]
2. where slugs of liquid could be carried into the compressors, have either automatic liquid removal facilities, an automatic compressor shutdown device, or a high liquid level alarm; and [49 CFR 192.165(b)(2)]
3. be manufactured in accordance with Section VIII of the ASME Boiler and Pressure Vessel Code, except that liquid separators constructed of pipe and fittings without internal welding must be fabricated with a design factor of 0.4, or less. [49 CFR 192.165(b)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:224 (April 1983), amended LR 10:516 (July 1984), LR 30:

§1127. Compressor Stations: Emergency Shutdown
[49 CFR 192.167]

A. Except for unattended field compressor stations of 1,000 horsepower (746 kilowatts) or less, each compressor station must have an emergency shutdown system that meets the following: [49 CFR 192.167(a)]

1. it must be able to block gas out of the station and blow down the station piping; [49 CFR 192.167(a)(1)]

2. it must discharge gas from the blowdown piping at a location where the gas will not create a hazard; [49 CFR 192.167(a)(2)]

3. it must provide means for the shutdown of gas compressing equipment, gas fires, and electrical facilities in the vicinity of gas headers and in the compressor building, except, that: [49 CFR 192.167(a)(3)]

a. electrical circuits that supply emergency lighting required to assist station personnel in evacuating the compressor building and the area in the vicinity of the gas headers must remain energized; and [49 CFR 192.167(a)(3)(i)]

b. electrical circuits needed to protect equipment from damage may remain energized; [49 CFR 192.167(a)(3)(ii)]

4. it must be operable from at least two locations, each of which is: [49 CFR 192.167(a)(4)]

a. outside the gas area of the station; [49 CFR 192.167(a)(4)(i)]

b. near the exit gates, if the station is fenced, or near emergency exits, if not fenced; and [49 CFR 192.167(a)(4)(ii)]

c. not more than 500 feet (153 meters) from the limits of the station. [49 CFR 192.167(a)(4)(iii)]

B. If a compressor station supplies gas directly to a distribution system with no other adequate source of gas available, the emergency shut-down system must be designed so that it will not function at the wrong time and cause an unintended outage on the distribution system. [49 CFR 192.167(b)]

C. On a platform located offshore or in inland navigable waters, the emergency shutdown system must be designed and installed to actuate automatically by each of the following events: [49 CFR 192.167(c)]

1. in the case of an unattended compressor station: [49 CFR 192.167(c)(1)]

a. when the gas pressure equals the maximum allowable operating pressure plus 15 percent; or [49 CFR 192.167(c)(1)(i)]

b. when an uncontrolled fire occurs on the platform; and [49 CFR 192.167(c)(1)(ii)]

2. in the case of a compressor station in a building: [49 CFR 192.167(c)(2)]

a. when an uncontrolled fire occurs in the building; or [49 CFR 192.167(c)(2)(i)]

b. when the concentration of gas in air reaches 50 percent or more of the lower explosive limit in a building which has a source of ignition. [49 CFR 192.167(c)(2)(ii)]

D. For the purpose of Subparagraph C.2.b of this Section, an electrical facility which conforms to Class 1,

Group D of the National Electrical Code is not a source of ignition. [49 CFR 192.167(c)(2)(ii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:224 (April 1983), amended LR 10:517 (July 1984), LR 27:1540 (September 2001), LR 30:

§1129. Compressor Stations: Pressure Limiting Devices
[49 CFR 192.169]

A. Each compressor station must have pressure relief or other suitable protective devices of sufficient capacity and sensitivity to ensure that the maximum allowable operating pressure of the station piping and equipment is not exceeded by more than 10 percent. [49 CFR 192.169(a)]

B. Each vent line that exhausts gas from the pressure relief valves of a compressor station must extend to a location where the gas may be discharged without hazard. [49 CFR 192.169(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:225 (April 1983), amended LR 10:517 (July 1984), LR 30:

§1131. Compressor Stations: Additional Safety
Equipment [49 CFR 192.171]

A. Each compressor station must have adequate fire protection facilities. If fire pumps are a part of these facilities, their operation may not be affected by the emergency shutdown system. [49 CFR 192.171(a)]

B. Each compressor station prime mover, other than an electrical induction or synchronous motor, must have an automatic device to shut down the unit before the speed of either the prime mover or the driven unit exceeds a maximum safe speed. [49 CFR 192.171(b)]

C. Each compressor unit in a compressor station must have a shutdown or alarm device that operates in the event of inadequate cooling or lubrication of the unit. [49 CFR 192.171(c)]

D. Each compressor station gas engine that operates with pressure gas injection must be equipped so that stoppage of the engine automatically shuts off the fuel and vents the engine distribution manifold. [49 CFR 192.171(d)]

E. Each muffler for a gas engine in a compressor station must have vent slots or holes in the baffles of each compartment to prevent gas from being trapped in the muffler. [49 CFR 192.171(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:225 (April 1983), amended LR 10:517 (July 1984), LR 20:445 (April 1994), LR 30:

§1133. Compressor Stations: Ventilation
[49 CFR 192.173]

A. Each compressor station building must be ventilated to ensure that employees are not endangered by the accumulation of gas in rooms, sumps, attics, pits, or other enclosed places. [49 CFR 192.173]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:225 (April 1983), amended LR 10:517 (July 1984), LR 30:

§1135. Pipe-Type and Bottle-Type Holders
[49 CFR 192.175]

A. Each pipe-type and bottle-type holder must be designed so as to prevent the accumulation of liquids in the holder, in connecting pipe, or in auxiliary equipment, that might cause corrosion or interfere with the safe operation of the holder. [49 CFR 192.175(a)]

B. Each pipe-type or bottle-type holder must have minimum clearance from other holders in accordance with the following formula. [49 CFR 192.175(b)]

$$C = (D \times P \times F / 48.33) \quad (C = (3D \times P \times F / 1,000))$$

in which:

C = minimum clearance between pipe containers or bottles in inches (millimeters);

D = outside diameter of pipe containers or bottles in inches (millimeters);

P = maximum allowable operating pressure, psi(kPa) gage;

F = design factor as set forth in §911 of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:225 (April 1983), amended LR 10:517 (July 1984), LR 27:1540 (September 2001), LR 30:

§1137. Additional Provisions for Bottle-Type Holders
[49 CFR 192.177]

A. Each bottle-type holder must be: [49 CFR 192.177(a)]

1. located on a site entirely surrounded by fencing that prevents access by unauthorized persons and with minimum clearance from the fence as follows: [49 CFR 192.177(a)(1)]

Maximum Allowable Operating Pressure	Minimum Clearance Feet (meters)
Less than 1,000 psi (7 Mpa) gage	25 (7.6)
1,000 psi (7 Mpa) gage or more	100 (31)

2. designed using the design factors set forth in §911; and [49 CFR 192.177(a)(2)]

3. buried with a minimum cover in accordance with §1727. [49 CFR 192.177(a)(3)]

B. Each bottle-type holder manufactured from steel that is not weldable under field conditions must comply with the following: [49 CFR 192.177(b)]

1. a bottle-type holder made from alloy steel must meet the chemical and tensile requirements for the various grades of steel in ASTM A 372/A 372M; [49 CFR 192.177(b)(1)]

2. the actual yield-tensile ratio of the steel may not exceed 0.85; [49 CFR 192.177(b)(2)]

3. welding may not be performed on the holder after it has been heat treated or stress relieved, except that copper wires may be attached to the small diameter portion of the bottle end closure for cathodic protection if a localized thermit welding process is used; [49 CFR 192.177(b)(3)]

4. the holder must be given a mill hydrostatic test at a pressure that produces a hoop stress at least equal to 85 percent of the SMYS; [49 CFR 192.177(b)(4)]

5. the holder, connection pipe, and components must be leak tested after installation as required by Chapter 23 of this Subpart. [49 CFR 192.177(b)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:225 (April 1983), amended LR 10:517 (July 1984), LR 18:856 (August 1992), LR 20:445 (April 1994), LR 27:1540 (September 2001), LR 30:

§1139. Transmission Line Valves [49 CFR 192.179]

A. Each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows, unless in a particular case the commissioner/administrator finds that alternative spacing would provide an equivalent level of safety: [49 CFR 192.179(a)]

1. each point on the pipeline in a Class 4 location must be within 2 1/2 miles (4 kilometers) of a valve; [49 CFR 192.179(a)(1)]

2. each point on the pipeline in a Class 3 location must be within 4 miles (6.4 kilometers) of a valve; [49 CFR 192.179(a)(2)]

3. each point on the pipeline in a Class 2 location must be within 7 1/2 miles (12 kilometers) of a valve; [49 CFR 192.179(a)(3)]

4. each point on the pipeline in a Class 1 location must be within 10 miles (16 kilometers) of a valve. [49 CFR 192.179(a)(4)]

B. Each sectionalizing block valve on a transmission line, other than offshore segments, must comply with the following: [49 CFR 192.179(b)]

1. the valve and the operating device to open or close the valve must be readily accessible and protected from tampering and damage; [49 CFR 192.179(b)(1)]

2. the valve must be supported to prevent settling of the valve or movement of the pipe to which it is attached. [49 CFR 192.179(b)(2)]

C. Each section of a transmission line, other than offshore segments, between main line valves must have a blow-down valve with enough capacity to allow the transmission line to be blown down as rapidly as practicable. Each blow-down discharge must be located so the gas can be blown to the atmosphere without hazard and, if the transmission line is adjacent to an overhead electric line, so that the gas is directed away from the electrical conductors. [49 CFR 192.179(c)]

D. Offshore segments of transmission lines must be equipped with valves or other components to shut off the flow of gas to an offshore platform in an emergency. [49 CFR 192.179(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:225 (April 1983), amended LR 10:518 (July 1984), LR 24:1308 (July 1998), LR 27:1540 (September 2001), LR 30:

§1141. Distribution Line Valves [49 CFR 192.181]

A. Each high-pressure distribution system must have valves spaced so as to reduce the time to shut down a section of main in an emergency. The valve spacing is determined by the operating pressure, the size of the mains, and the local physical conditions. [49 CFR 192.181(a)]

B. Each regulator station controlling the flow or pressure of gas in a distribution system must have a valve installed on the inlet piping at a distance from the regulator station sufficient to permit the operation of the valve during an emergency that might preclude access to the station. [49 CFR 192.181(b)]

C. Each valve on a main installed for operating or emergency purposes must comply with the following: [49 CFR 192.181(c)]

1. the valve must be placed in a readily accessible location so as to facilitate its operation in an emergency; [49 CFR 192.181(c)(1)]

2. the operating stem or mechanism must be readily accessible; [49 CFR 192.181(c)(2)]

3. if the valve is installed in a buried box or enclosure, the box or enclosure must be installed so as to avoid transmitting external loads to the main. [49 CFR 192.181(c)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:225 (April 1983), amended LR 10:518 (July 1984), LR 30:

§1143. Vaults: Structural Design Requirements [49 CFR 192.183]

A. Each underground vault or pit for valves, pressure relieving, pressure limiting, or pressure regulating stations, must be able to meet the loads which may be imposed upon it, and to protect installed equipment. [49 CFR 192.183(a)]

B. There must be enough working space so that all of the equipment required in the vault or pit can be properly installed, operated, and maintained. [49 CFR 192.183(b)]

C. Each pipe entering, or within, a regulator vault or pit must be steel for sizes 10 inches (254 millimeters), and less, except that control and gage piping may be copper. Where pipe extends through the vault or pit structure, provision must be made to prevent the passage of gasses or liquids through the opening and to avert strains in the pipe. [49 CFR 192.183(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:226 (April 1983), amended LR 10:518 (July 1984), LR 27:1540 (September 2001), LR 30:

§1145. Vaults: Accessibility [49 CFR 192.185]

A. Each vault must be located in an accessible location and, so far as practical, away from: [49 CFR 192.185]

1. street intersections or points where traffic is heavy or dense; [49 CFR 192.185(a)]

2. points of minimum elevation, catch basins, or places where the access cover will be in the course of surface waters; and [49 CFR 192.185(b)]

3. water, electric, steam, or other facilities. [49 CFR 192.185(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:226 (April 1983), amended LR 10:518 (July 1984), LR 30:

§1147. Vaults: Sealing, Venting, and Ventilation [49 CFR 192.187]

A. Each underground vault or closed top pit containing either a pressure regulating or reducing station, or a pressure limiting or relieving station, must be sealed, vented or ventilated, as follows: [49 CFR 192.187]

1. when the internal volume exceeds 200 cubic feet (5.7 cubic meters): [49 CFR 192.187(a)]

a. the vault or pit must be ventilated with two ducts, each having at least the ventilating effect of a pipe 4 inches (102 millimeters) in diameter; [49 CFR 192.187(a)(1)]

b. the ventilation must be enough to minimize the formulation of combustible atmosphere in the vault or pit; and [49 CFR 192.187(a)(2)]

c. the ducts must be high enough above grade to disperse any gas-air mixtures that might be discharged; [49 CFR 192.187(a)(3)]

2. when the internal volume is more than 75 cubic feet (2.1 cubic meters) but less than 200 cubic feet (5.7 cubic meters): [49 CFR 192.187(b)]

a. if the vault or pit is sealed, each opening must have a tight fitting cover without open holes through which an explosive mixture might be ignited, and there must be a means for testing the internal atmosphere before removing the cover; [49 CFR 192.187(b)(1)]

b. if the vault or pit is vented, there must be a means of preventing external sources of ignition from reaching the vault atmosphere; or [49 CFR 192.187(b)(2)]

c. if the vault or pit is ventilated, Paragraphs 1 or 3 of this Subsection applies; [49 CFR 192.187(b)(3)]

3. if a vault or pit covered by Paragraph 2 of this Subsection is ventilated by openings in the covers or gratings and the ratio of the internal volume, in cubic feet, to the effective ventilating area of the cover or grating, in square feet, is less than 20 to 1, no additional ventilation is required. [49 CFR 192.187(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:226 (April 1983), amended LR 10:518 (July 1984), LR 27:1540 (September 2001), LR 30:

§1149. Vaults: Drainage and Waterproofing [49 CFR 192.189]

A. Each vault must be designated so as to minimize the entrance of water. [49 CFR 192.189(a)]

B. A vault containing gas piping may not be connected by means of a drain connection to any other underground structure. [49 CFR 192.189(b)]

C. Electrical equipment in vaults must conform to the applicable requirements of Class 1, Group D, of the National Electrical Code, ANSI/NFPA 70. [49 CFR 192.189(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:226 (April 1983), amended LR 10:518 (July 1984), LR 24:1309 (July 1998), LR 30:

§1151. Design Pressure of Plastic Fittings [49 CFR 192.191]

A. Thermosetting fittings for plastic pipe must conform to ASTM D 2517. [49 CFR 192.191(a)]

B. Thermoplastic fittings for plastic pipe must conform to ASTM D 2513. [49 CFR 192.191(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:226 (April 1983), amended LR 10:518 (July 1984), LR 30:

§1153. Valve Installation in Plastic Pipe [49 CFR 192.193]

A. Each valve installed in plastic pipe must be designed so as to protect the plastic material against excessive torsional or shearing loads when the valve or shutoff is operated, and from any other secondary stresses that might be exerted through the valve or its enclosure. [49 CFR 192.193]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:227 (April 1983), amended LR 10:519 (July 1984), LR 30:

§1155. Protection Against Accidental Overpressuring [49 CFR 192.195]

A. General requirements. Except as provided in §1157, each pipeline that is connected to a gas source so that the maximum allowable operating pressure could be exceeded as the result of pressure control failure or of some other type of failure, must have pressure relieving or pressure limiting devices that meet the requirements of §§1159 and 1161. [49 CFR 192.195(a)]

B. Additional requirements for distribution systems. Each distribution system that is supplied from a source of gas that is at a higher pressure than the maximum allowable operating pressure for the system must: [49 CFR 192.195(b)]

1. have pressure regulation devices capable of meeting the pressure, load, and other service conditions that will be experienced in normal operation of the system, and that could be activated in the event of failure of some portion of the system; and [49 CFR 192.195(b)(1)]

2. be designed so as to prevent accidental overpressuring. [49 CFR 192.195(b)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:227 (April 1983), amended LR 10:519 (July 1984), LR 30:

§1157. Control of the Pressure of Gas Delivered from High-Pressure Distribution Systems [49 CFR 192.197]

A. If the maximum actual operating pressure of the distribution system is 60 psi (414 kPa) gage, or less, and a service regulator having the following characteristics is used, no other pressure limiting device is required: [49 CFR 192.197(a)]

1. a regulator capable of reducing distribution line pressure to pressures recommended for household appliances; [49 CFR 192.197(a)(1)]

2. a single port valve with proper orifice for the maximum gas pressure at the regulator inlet; [49 CFR 192.197(a)(2)]

3. a valve seat made of resilient material designed to withstand abrasion of the gas, impurities in gas, cutting by the valve, and to resist permanent deformation when it is pressed against the valve port; [49 CFR 192.197(a)(3)]

4. pipe connections to the regulator not exceeding 2 inches (51 millimeters) in diameter; [49 CFR 192.197(a)(4)]

5. a regulator that, under normal operating conditions, is able to regulate the downstream pressure within the necessary limits of accuracy and to limit the buildup of pressure under no-flow conditions to prevent a pressure that

would cause the unsafe operation of any connected and properly adjusted gas utilization equipment; [49 CFR 192.197(a)(5)]

6. a self-contained service regulator with no external static or control lines. [49 CFR 192.197(a)(6)]

B. If the maximum actual operating pressure of the distribution system is 60 psi (414 kPa) gage or less, and a service regulator that does not have all of the characteristics listed in Subsection A of this Section is used, or if the gas contains materials that seriously interfere with the operation of service regulators, there must be suitable protective devices to prevent unsafe overpressuring of the customer's appliances if the service regulator fails. [49 CFR 192.197(b)]

C. If the maximum actual operating pressure of the distribution system exceeds 60 psi (414 kPa) gage, one of the following methods must be used to regulate and limit, to the maximum safe value, the pressure of gas delivered to the customer: [49 CFR 192.197(c)]

1. a service regulator having the characteristics listed in Subsection A of this Section, and another regulator located upstream from the service regulator. The upstream regulator may not be set to maintain a pressure higher than 60 psi (414 kPa) gage. A device must be installed between the upstream regulator and the service regulator to limit the pressure on the inlet of the service regulator to 60 psi (414 kPa) gage or less in case the upstream regulator fails to function properly. This device may be either a relief valve or an automatic shutoff that shuts, if the pressure on the inlet of the service regulator exceeds the set pressure [60 psi (414 kPa) gage or less], and remains closed until manually reset; [49 CFR 192.197(c)(1)]

2. a service regulator and a monitoring regulator set to limit, to a maximum safe value, the pressure of the gas delivered to the customer; [49 CFR 192.197(c)(2)]

3. a service regulator with a relief valve vented to the outside atmosphere, with the relief valve set to open so that the pressure of gas going to the customer does not exceed a maximum safe value. The relief valve may either be built into the service regulator or it may be a separate unit installed downstream from the service regulator. This combination may be used alone only in those cases where the inlet pressure on the service regulator does not exceed the manufacturer's safe working pressure rating of the service regulator, and may not be used where the inlet pressure on the service regulator exceeds 125 psi (862 kPa) gage. For higher inlet pressure, the methods in Paragraphs 1 or 2 of this Subsection must be used; [49 CFR 192.197(c)(3)]

4. a service regulator and an automatic shutoff device that closes upon a rise in pressure downstream from the regulator and remains closed until manually reset. [49 CFR 192.197(c)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:227 (April 1983), amended LR 10:519 (July 1984), LR 18:856 (August 1992), LR 27:1541 (September 2001), LR 30:

§1159. Requirements for Design of Pressure Relief and Limiting Devices [49 CFR 192.199]

A. Except for rupture discs, each pressure relief or pressure limiting device must: [49 CFR 192.199]

1. be constructed of materials such that the operation of a device will not be impaired by corrosion; [49 CFR 192.199(a)]

2. have valves and valve seats that are designed not to stick in a position that will make the device inoperative; [49 CFR 192.199(b)]

3. be designed and installed so that it can be readily operated to determine if the valve is free, can be tested to determine the pressure at which it will operate, and can be tested for leakage when in the closed position; [49 CFR 192.199(c)]

4. have support made of noncombustible material; [49 CFR 192.199(d)]

5. have discharge stacks, vents, or outlet ports designed to prevent accumulation of water, ice, or snow, located where gas can be discharged into the atmosphere without undue hazard; [49 CFR 192.199(e)]

6. be designed and installed so that the size of the openings, pipe, and fittings located between the system to be protected and the pressure relieving device, and the size of the vent line, are adequate to prevent hammering of the valve and to prevent impairment of relief capacity; [49 CFR 192.199(f)]

7. where installed at a district regulator station to protect a pipeline system from overpressuring, be designed and installed to prevent any single incident such as an explosion in a vault or damage by a vehicle from affecting the operation of both the overpressure protective device and the district regulator; and [49 CFR 192.199(g)]

8. except for a valve that will isolate the system under protection from its source of pressure, be designed to prevent unauthorized operation of any stop valve that will make the pressure relief valve or pressure limiting device inoperative. [49 CFR 192.199(h)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:227 (April 1983), amended LR 10:520 (July 1984), LR 30:

§1161. Required Capacity of Pressure Relieving and Limiting Stations [49 CFR 192.201]

A. Each pressure relief station or pressure limiting station or group of those stations installed to protect a pipeline must have enough capacity, and must be set to operate, to insure the following: [49 CFR 192.201(a)]

1. in a low pressure distribution system, the pressure may not cause the unsafe operation of any connected and properly adjusted gas utilization equipment; [49 CFR 192.201(a)(1)]

2. in pipelines other than a low pressure distribution system: [49 CFR 192.201(a)(2)]

a. if the maximum allowable operating pressure is 60 psi (414 kPa) gage or more, the pressure may not exceed the maximum allowable operating pressure plus 10 percent, or the pressure that produces a hoop stress of 75 percent of SMYS, whichever is lower; [49 CFR 192.201(a)(2)(i)]

b. if the maximum allowable operating pressure is 12 psi (83 kPa) gage or more, but less than 60 psi (414 kPa) gage, the pressure may not exceed the maximum allowable operating pressure plus 6 psi (41 kPa) gage; or [49 CFR 192.201(a)(2)(ii)]

c. if the maximum allowable operating pressure is less than 12 psi (83 kPa) gage, the pressure may not exceed the maximum allowable operating pressure plus 50 percent. [49 CFR 192.201(a)(2)(iii)]

B. When more than one pressure regulating or compressor station feeds into a pipeline, relief valves or other protective devices must be installed at each station to ensure that the complete failure of the largest capacity regulator or compressor, or any single run of lesser capacity regulators or compressors in that station, will not impose pressures on any part of the pipeline or distribution system in excess of those for which it was designed, or against which it was protected, whichever is lower. [49 CFR 192.201(b)]

C. Relief valves or other pressure limiting devices must be installed at or near each regulator station in a low-pressure distribution system, with a capacity to limit the maximum pressure in the main to a pressure that will not exceed the safe operating pressure for any connected and properly adjusted gas utilization equipment. [49 CFR 192.201(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:228 (April 1983), amended LR 10:520 (July 1984), LR 27:1541 (September 2001), LR 30:

§1163. Instrument, Control, and Sampling Pipe and Components [49 CFR 192.203]

A. Applicability. This Section applies to the design of instrument, control, and sampling pipe and components. It does not apply to permanently closed systems, such as fluid-filled temperature-responsive devices. [49 CFR 192.203(a)]

B. Materials and Design. All materials employed for pipe and components must be designed to meet the particular conditions of service and the following: [49 CFR 192.203(b)]

1. each takeoff connection and attaching boss, fitting, or adapter must be made of suitable material, be able to withstand the maximum service pressure and temperature of the pipe or equipment to which it is attached, and be designed to satisfactorily withstand all stresses without failure by fatigue; [49 CFR 192.203(b)(1)]

2. except for takeoff lines that can be isolated from sources of pressure by other valving, a shutoff valve must be installed in each takeoff line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary; [49 CFR 192.203(b)(2)]

3. brass or copper material may not be used for metal temperatures greater than 400°F (204°C); [49 CFR 192.203(b)(3)]

4. pipe or components that may contain liquids must be protected by heating or other means from damage due to freezing; [49 CFR 192.203(b)(4)]

5. pipe or components in which liquids may accumulate must have drains or drips; [49 CFR 192.203(b)(5)]

6. pipe or components subject to clogging from solids or deposits must have suitable connections for cleaning; [49 CFR 192.203(b)(6)]

7. the arrangement of pipe, components, and supports must provide safety under anticipated operating stresses; [49 CFR 192.203(b)(7)]

8. each joint between sections of pipe, and between pipe and valves or fittings, must be made in a manner suitable for the anticipated pressure and temperature condition. Slip type expansion joints may not be used. Expansion must be allowed for by providing flexibility within the system itself; [49 CFR 192.203(b)(8)]

9. each control line must be protected from anticipated causes of damage and must be designed and installed to prevent damage to any one control line from making both the regulator and the over-pressure protective device inoperative. [49 CFR 192.203(b)(9)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:228 (April 1983), amended LR 10:520 (July 1984), LR 20:445 (April 1994), LR 24:1309 (July 1998), LR 27:1541 (September 2001), LR 30:

Chapter 13. Welding of Steel in Pipelines [Subpart E]

§1301. Scope [49 CFR 192.221]

A. This Chapter prescribes minimum requirements for welding steel materials in pipelines. [49 CFR 192.221(a)]

B. This Chapter does not apply to welding that occurs during the manufacture of steel pipe or steel pipeline components. [49 CFR 192.221(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:228 (April 1983), amended LR 10:521 (July 1984), LR 30:

§1305. Welding: General [49 CFR 192.225]

A. Welding must be performed by a qualified welder in accordance with welding procedures qualified to produce welds meeting the requirements of this Chapter. The qualify of the test welds used to qualify the procedures shall be determined by destructive testing. [49 CFR 192.225(a)]

B. Each welding procedure must be recorded in detail, including the results of the qualifying tests. This record must be retained and followed whenever the procedure is used. [49 CFR 192.225(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:228 (April 1983), amended LR 10:521 (July 1984), LR 30:

§1307. Qualification of Welders [49 CFR 192.227]

A. Except as provided in Subsection B of this Section, each welder must be qualified in accordance with Section 3 of API Standard 1104 or Section IX of the ASME Boiler and Pressure Vessel Code. However, a welder qualified under an earlier edition than listed in Appendix A of this Subpart may weld but may not requalify under that earlier edition. [49 CFR 192.227(a)]

B. A welder may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in Section I of Appendix C of this Subpart. Each welder who is to make a welded service line connection to a main must first perform an acceptable test weld under Section II of Appendix C of this Subpart as a requirement of the qualifying test. [49 CFR 192.227(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:228 (April 1983), amended LR 10:521 (July 1984), LR 24:1309 (July 1998), LR 30:

§1309. Limitations on Welders [49 CFR 192.229]

A. No welder whose qualification is based on nondestructive testing may weld compressor station pipe and components. [49 CFR 192.229(a)]

B. No welder may weld with a particular welding process unless, within the preceding six calendar months, he has engaged in welding with that process. [49 CFR 192.229(b)]

C. A welder qualified under 1307.A: [49 CFR 192.229(c)]

1. may not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding six calendar months the welder has had one weld tested and found acceptable under Section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in Appendix A of this Subpart may weld but may not requalify under that earlier edition; and [49 CFR 192.229(c)(1)]

2. may not weld on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS unless the welder is tested in accordance with Paragraph C.1 of this Section or requalifies under Paragraph D.1 or D.2 of this Section. [49 CFR 192.229(c)(2)]

D. A welder qualified under §1307.B may not weld unless: [49 CFR 192.229(d)]

1. within the preceding 15 calendar months, but at least once each calendar year, the welder has requalified under §1307.B; or [49 CFR 192.229(d)(1)]

2. within the preceding 7 1/2 calendar months, but at least twice each calendar year, the welder has had: [49 CFR 192.229(d)(2)]

a. a production weld cut out, tested, and found acceptable in accordance with the qualifying test; or [49 CFR 192.229(d)(2)(i)]

b. for welders who work only on service lines 2 inches (51 millimeters) or smaller in diameter, two sample welds tested and found acceptable in accordance with the test in Section III of Appendix C of this Subpart. [49 CFR 192.229(d)(2)(ii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:229 (April 1983), amended LR 10:521 (July 1984), LR 24:1309 (July 1998), LR 27:1541 (September 2001), LR 30:

§1311. Protection from Weather [49 CFR 192.231]

A. The welding operation must be protected from weather conditions that would impair the quality of the completed weld. [49 CFR 192.231]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:229 (April 1983), amended LR 10:521 (July 1984), LR 30:

§1313. Miter Joints [49 CFR 192.233]

A. A miter joint on steel pipe to be operated at a pressure that produces a hoop stress of 30 percent or more of SYMS may not deflect the pipe more than 3°. [49 CFR 192.233(a)]

B. A miter joint on steel pipe to be operated at a pressure that produces a hoop stress of less than 30 percent, but more than 10 percent of SMYS may not deflect the pipe more than $12\ 1/2^\circ$ and must be a distance equal to one pipe diameter or more away from any other miter joint, as measured from the crotch of each joint. [49 CFR 192.233(b)]

C. A miter joint on steel pipe to be operated at a pressure that produces a hoop stress of 10 percent or less of SMYS may not deflect the pipe more than 90° . [49 CFR 192.233(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:229 (April 1983), amended LR 10:521 (July 1984), LR 30:

§1315. Preparation for Welding [49 CFR 192.235]

A. Before beginning any welding, the welding surfaces must be clean and free of any material that may be detrimental to the weld, and the pipe or component must be aligned to provide the most favorable condition for depositing the root bead. This alignment must be preserved while the root bead is being deposited. [49 CFR 192.235]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:229 (April 1983), amended LR 10:522 (July 1984), LR 30:

§1321. Inspection and Test of Welds [49 CFR 192.241]

A. Visual inspection of welding must be conducted to insure that: [49 CFR 192.241(a)]

1. the welding is performed in accordance with the welding procedure; and [49 CFR 192.241(a)(1)]

2. the weld is acceptable under Subsection C of this Section. [49 CFR 192.241(a)(2)]

B. The welds on a pipeline to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS must be nondestructively tested in accordance with §1323, except that welds that are visually inspected and approved by a qualified welding inspector need not be nondestructively tested if: [49 CFR 192.241(b)]

1. the pipe has a nominal diameter of less than 6 inches (152 millimeters); or [49 CFR 192.241(b)(1)]

2. the pipeline is to be operated at a pressure that produces a hoop stress of less than 40 percent of SMYS and the welds are so limited in number that nondestructive testing is impractical. [49 CFR 192.241(b)(2)]

C. The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in Section 6 of API Standard 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if the Appendix to API Standard 1104 applies to the weld, the acceptability of the weld may be further determined under that Appendix. [49 CFR 192.241(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:230 (April 1983), amended LR 10:522 (July 1984), LR 24:1309 (July 1998), LR 27:1541 (September 2001), LR 30:

§1323. Nondestructive Testing [49 CFR 192.243]

A. Nondestructive testing of welds must be performed by any process, other than trepanning, that will clearly indicate

defects that may affect the integrity of the weld. [49 CFR 192.243(a)]

B. Nondestructive testing of welds must be performed: [49 CFR 192.243(b)]

1. in accordance with written procedures; and [49 CFR 192.243(b)(1)]

2. by persons who have been trained and qualified in the established procedures and with the equipment employed in testing. [49 CFR 192.243(b)(2)]

C. Procedures must be established for the proper interpretation of each nondestructive test of a weld to ensure the acceptability of the weld under §1321.C. [49 CFR 192.243(c)]

D. When nondestructive testing is required under §1321.B, the following percentages of each day's field butt welds, selected at random by the operator, must be nondestructively tested over their entire circumference: [49 CFR 192.243(d)]

1. in Class 1 locations, except offshore, at least 10 percent; [49 CFR 192.243(d)(1)]

2. in Class 2 locations, at least 15 percent; [49 CFR 192.243(d)(2)]

3. in Class 3 and Class 4 locations, at crossings of major or navigable rivers, offshore, and within railroad or public highway rights-of-way, including tunnels, bridges, and overhead road crossings, 100 percent unless impracticable, in which case at least 90 percent. Nondestructive testing must be impracticable for each girth weld not tested; [49 CFR 192.243(d)(3)]

4. at pipeline tie-ins, including tie-ins of replacement sections, 100 percent. [49 CFR 192.243(d)(4)]

E. Except for a welder whose work is isolated from the principal welding activity, a sample of each welder's work for each day must be nondestructively tested, when nondestructive testing is required under §1321.B. [49 CFR 192.243(e)]

F. When nondestructive testing is required under §1321.B, each operator must retain, for the life of the pipeline, a record showing by milepost, engineering station, or by geographic feature, the number of girth welds made, the number nondestructively tested, the number rejected, and the disposition of the rejects. [49 CFR 192.243(f)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:230 (April 1983), amended LR 10:522 (July 1984), LR 24:1309 (July 1998), LR 30:

§1325. Repair or Removal of Defects [49 CFR 192.245]

A. Each weld that is unacceptable under §1321.C must be removed or repaired. Except for welds on an offshore pipeline being installed from a pipeline vessel, a weld must be removed if it has a crack that is more than eight percent of the weld length. [49 CFR 192.245(a)]

B. Each weld that is repaired must have the defect removed down to sound metal and the segment to be repaired must be preheated if conditions exist which would adversely affect the quality of the weld repair. After repair, the segment of the weld that was repaired must be inspected to ensure its acceptability. [49 CFR 192.245(b)]

C. Repair of a crack, or of any defect in a previously repaired area must be in accordance with written weld repair procedures that have been qualified under §1305. Repair

procedures must provide that the minimum mechanical properties specified for the welding procedure used to make the original weld are met upon completion of the final weld repair. [49 CFR 192.245(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:230 (April 1983), amended LR 10:522 (July 1984), LR 30:

Chapter 15. Joining of Materials Other Than By Welding [Subpart F]

§1501. Scope [49 CFR 192.271]

A. This Chapter prescribes minimum requirements for joining materials in pipelines, other than by welding. [49 CFR 192.271(a)]

B. This Chapter does not apply to joining during the manufacture of pipe or pipeline components. [49 CFR 192.271(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:230 (April 1983), amended LR 10:523 (July 1984), LR 30:

§1503. General [49 CFR 192.273]

A. The pipeline must be designed and installed so that each joint will sustain the longitudinal pullout or thrust forces caused by contraction or expansion of the piping or by anticipated external or internal loading. [49 CFR 192.273(a)]

B. Each joint must be made in accordance with written procedures that have been proved by test or experience to produce strong gastight joints. [49 CFR 192.273(b)]

C. Each joint must be inspected to insure compliance with this Chapter. [49 CFR 192.273(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:230 (April 1983), amended LR 10:523 (July 1984), LR 30:

§1505. Cast Iron Pipe [49 CFR 192.275]

A. Each caulked bell and spigot joint in cast iron pipe must be sealed with mechanical leak clamps. [49 CFR 192.275(a)]

B. Each mechanical joint in cast iron pipe must have a gasket made of a resilient material as the sealing medium. Each gasket must be suitably confined and retained under compression by a separate gland or follower ring. [49 CFR 192.275(b)]

C. Cast iron pipe may not be joined by threaded joints. [49 CFR 192.275(c)]

D. Cast iron may not be joined by brazing. [49 CFR 192.275(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:230 (April 1983), amended LR 10:523 (July 1984), LR 18:856 (August 1992), LR 20:445 (April 1994), LR 30:

§1507. Ductile Iron Pipe [49 CFR 192.277]

A. Ductile iron pipe may not be joined by threaded joints. [49 CFR 192.277(a)]

B. Ductile iron pipe may not be joined by brazing. [49 CFR 192.277(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:230 (April 1983), amended LR 10:523 (July 1984), LR 18:856 (August 1992), LR 30:

§1509. Copper Pipe [49 CFR 192.279]

A. Copper pipe may not be threaded except that copper pipe used for joining screw fittings or valves may be threaded if the wall thickness is equivalent to the comparable size of Schedule 40 or heavier wall pipe listed in Table C1 of ASME/ANSI B16.5. [49 CFR 192.279]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:231 (April 1983), amended LR 10:523 (July 1984), LR 18:856 (August 1992), LR 20:445 (April 1994), LR 30:

§1511. Plastic Pipe [49 CFR 192.281]

A. General. A plastic pipe joint that is joined by solvent cement, adhesive, or heat fusion may not be disturbed until it has properly set. Plastic pipe may not be joined by a threaded joint or miter joint. [49 CFR 192.281(a)]

B. Solvent cement joints. Each solvent cement joint on plastic pipe must comply with the following: [49 CFR 192.281(b)]

1. the mating surfaces of the joint must be clean, dry, and free of material which might be detrimental to the joint; [49 CFR 192.281(b)(1)]

2. the solvent cement must conform to ASTM Designation D 2513; [49 CFR 192.281(b)(2)]

3. the joint may not be heated to accelerate the setting of the cement. [49 CFR 192.281(b)(3)]

C. Heat-fusion joints. Each heat-fusion joint on plastic pipe must comply with the following: [49 CFR 192.281(c)]

1. a butt heat-fusion joint must be joined by a device that holds the heater element square to the ends of the piping, compresses the heated ends together, and holds the pipe in proper alignment while the plastic hardens; [49 CFR 192.281(c)(1)]

2. a socket heat-fusion joint must be joined by a device that heats the mating surfaces of the joint uniformly and simultaneously to essentially the same temperature; [49 CFR 192.281(c)(2)]

3. an electrofusion joint must be joined utilizing the equipment and techniques of the fittings' manufacturer or equipment and techniques shown, by testing joints to the requirements of §1513.A.1.c, to be at least equivalent to those of the fittings' manufacturer; [49 CFR 192.281(c)(3)]

4. heat may not be applied with a torch or other open flame. [49 CFR 192.281(c)(4)]

D. Adhesive joints. Each adhesive joint on plastic pipe must comply with the following: [49 CFR 192.281(d)]

1. the adhesive must conform to ASTM Designation D 2517; [49 CFR 192.281(d)(1)]

2. the materials and adhesive must be compatible with each other. [49 CFR 192.281(d)(2)]

E. Mechanical joints. Each compression type mechanical joint on plastic pipe must comply with the following: [49 CFR 192.281(e)]

1. the gasket material in the coupling must be compatible with the plastic; [49 CFR 192.281(e)(1)]

2. a rigid internal tubular stiffener, other than a split tubular stiffener, must be used in conjunction with the coupling. [49 CFR 192.281(e)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:231 (April 1983), amended LR 10:523 (July 1984), LR 20:445 (April 1994), LR 24:1309 (July 1998), LR 30:

§1513. Plastic Pipe; Qualifying Joining Procedures

[49 CFR 192.283]

A. Heat fusion, solvent cement, and adhesive joints. Before any written procedure established under §1503.B is used for making plastic pipe joints by a heat fusion, solvent cement, or adhesive method, the procedure must be qualified by subjecting specimen joints made according to the procedure to the following tests: [49 CFR 192.283(a)]

1. the burst test requirements of: [49 CFR 192.283(a)(1)]

a. in the case of thermoplastic pipe, Paragraph 6.6 (Sustained Pressure Test) or Paragraph 6.7 (Minimum Hydrostatic Burst Pressure (Quick Burst)) of ASTM D 2513; [49 CFR 192.283(a)(1)(i)]

b. in the case of thermosetting plastic pipe, Paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or Paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517; or [49 CFR 192.283(a)(1)(ii)]

c. in the case of electrofusion fittings for polyethylene pipe and tubing, Paragraph 9.1 (Minimum Hydraulic Burst Pressure Test), Paragraph 9.2 (Sustained Pressure Test), Paragraph 9.3 (Tensile Strength Test), or Paragraph 9.4 (Joint Integrity Tests) or ASTM Designation F1055; [49 CFR 192.283(a)(1)(iii)]

2. for procedures intended for lateral pipe connections, subject a specimen joint made from pipe sections joined at right angles according to the procedure to a force on the lateral pipe until failure occurs in the specimen. If failure initiates outside the joint area, the procedure qualifies for use; and [49 CFR 192.283(a)(2)]

3. for procedures intended for nonlateral pipe connections, follow the tensile test requirements of ASTM-D638, except that the test may be conducted at ambient temperature and humidity. If the specimen elongates no less than 25 percent or failure initiates outside the joint area, the procedure qualifies for use. [49 CFR 192.283(a)(3)]

B. Mechanical joints. Before any written procedure established under §1503.B is used for making mechanical plastic pipe joints that are designed to withstand tensile forces, the procedure must be qualified by subjecting five specimen joints made according to the procedure to the following tensile test: [49 CFR 192.283(b)]

1. use an apparatus for the test as specified in ASTM D 638 (except for conditioning); [49 CFR 192.283(b)(1)]

2. the specimen must be of such length that the distance between the grips of the apparatus and the end of the stiffener does not affect the joint strength; [49 CFR 192.283(b)(2)]

3. the speed of testing is 0.20 in. (5.0 mm) per minute, plus or minus 25 percent; [49 CFR 192.283(b)(3)]

4. pipe specimens less than 4 in. (102 mm.) in diameter are qualified if the pipe yields to an elongation of no less than 25 percent or failure initiates outside the joint area; [49 CFR 192.283(b)(4)]

5. pipe specimens 4 in. (102 mm) and larger in diameter shall be pulled until the pipe is subjected to a tensile stress equal to or greater than the maximum thermal stress that would be produced by a temperature change of 100F° (38C°) or until the pipe is pulled from the fitting. If the pipe pulls from the fitting, the lowest value of the five test results or the manufacturer's rating, whichever is lower must be used in the design calculations for stress; [49 CFR 192.283(b)(5)]

6. each specimen that fails at the grips must be retested using new pipe; [49 CFR 192.283(b)(6)]

7. results obtained pertain only to the specific outside diameter, and material of the pipe tested, except that testing of a heavier wall pipe may be used to qualify pipe of the same material but with a lesser wall thickness. [49 CFR 192.283(b)(7)]

C. A copy of each written procedure being used for joining plastic pipe must be available to the persons making and inspecting joints. [49 CFR 192.283(c)]

D. Pipe or fittings manufactured before July 1, 1980, may be used in accordance with procedures that the manufacturer certifies will produce a joint as strong as the pipe. [49 CFR 192.283(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:231 (April 1983), amended LR 10:523 (July 1984), LR 20:445 (April 1994), LR 24:1310 (July 1998), LR 27:1541 (September 2001), LR 30:

§1515. Plastic Pipe; Qualifying Persons to Make Joints

[49 CFR 192.285]

A. No person may make a plastic pipe joint unless that person has been qualified under the applicable joining procedure by: [49 CFR 192.285(a)]

1. appropriate training or experience in the use of the procedure; and [49 CFR 192.285(a)(1)]

2. making a specimen joint from pipe sections joined according to the procedure that passes the inspection and test set forth in Subsection B of this Section. [49 CFR 192.285(a)(2)]

B. The specimen joint must be: [49 CFR 192.285(b)]

1. visually examined during and after assembly or joining and found to have the same appearance as a joint or photographs of a joint that is acceptable under the procedure; and [49 CFR 192.285(b)(1)]

2. in the case of a heat fusion, solvent cement, or adhesive joint; [49 CFR 192.285(b)(2)]

a. tested under any one of the test methods listed under §1513.A applicable to the type of joint and material being tested; [49 CFR 192.285(b)(2)(i)]

b. examined by ultrasonic inspection and found not to contain flaws that would cause failure; or [49 CFR 192.285(b)(2)(ii)]

c. cut into at least three longitudinal straps, each of which is: [49 CFR 192.285(b)(2)(iii)]

i. visually examined and found not to contain voids or discontinuities on the cut surfaces of the joint area; and [49 CFR 192.285(b)(2)(iii)(A)]

ii. deformed by bending, torque, or impact, and if failure occurs, it must not initiate in the joint area; [49 CFR 192.285(b)(2)(iii)(B)]

3. a person must be requalified under an applicable procedure, if during any 12-month period that person: [49 CFR 192.285(c)]

1. does not make any joints under that procedure; or [49 CFR 192.285(c)(1)]

2. has three joints or three percent of the joints made, whichever, is greater, under that procedure that are found unacceptable by testing under §2313; [49 CFR 192.285(c)(2)]

D. Each operator shall establish a method to determine that each person making joints in plastic pipelines in the operator's system is qualified in accordance with this Section. [49 CFR 192.285(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:231 (April 1983), amended LR 10:523 (July 1984), LR 30:

§1517. Plastic Pipe; Inspection of Joints

[49 CFR 192.287]

A. No person may carry out the inspection of joints in plastic pipes required by §1503.C and §1515.B unless that person has been qualified by appropriate training or experience in evaluating the acceptability of plastic pipe joints made under the applicable joining procedure. [49 CFR 192.287]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:524 (July 1984), LR 30:

Chapter 17. General Construction Requirements for Transmission Lines and Mains

[Subpart G]

§1701. Scope [49 CFR 192.301]

A. This Chapter prescribes minimum requirements for constructing transmission lines and mains. [49 CFR 192.301]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:524 (July 1984), LR 30:

§1703. Compliance with Specifications or Standards [49 CFR 192.303]

A. Each transmission line or main must be constructed in accordance with comprehensive written specifications or standards that are consistent with this Subpart. [49 CFR 192.303]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:524 (July 1984), LR 20:446 (April 1994), LR 30:

§1705. Inspection: General [49 CFR 192.305]

A. Each transmission line or main must be inspected to ensure that it is constructed in accordance with this Subpart. [49 CFR 192.305]

B. Each operator shall notify the Pipeline Safety Section of the Office of Conservation, Louisiana Department of Natural Resources of any new proposed pipeline construction or replacement for a total length of one mile or more on transmission lines or mains at least 48 hours prior to commencement of said construction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:524 (July 1984), LR 20:446 (April 1994), LR 21:821 (August 1995), LR 30:

§1707. Inspection of Materials [49 CFR 192.307]

A. Each length of pipe and each other component must be visually inspected at the site of installation to ensure that it has not sustained any visually determinable damage that could impair its serviceability. [49 CFR 192.307]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:524 (July 1984), LR 30:

§1709. Repair of Steel Pipe [49 CFR 192.309]

A. Each imperfection or damage that impairs the serviceability of a length of steel pipe must be repaired or removed. If a repair is made by grinding, the remaining wall thickness must at least be equal to either: [49 CFR 192.309(a)]

1. the minimum thickness required by the tolerances in the specification to which the pipe was manufactured; or [49 CFR 192.309(a)(1)]

2. the nominal wall thickness required for the design pressure of the pipeline. [49 CFR 192.309(a)(2)]

B. Each of the following dents must be removed from steel pipe to be operated at a pressure that produces a hoop stress of 20 percent, or more, of SMYS unless the dent is repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe: [49 CFR 192.309(b)]

1. a dent that contains a stress concentrator such as a scratch, gouge, groove, or arc burn; [49 CFR 192.309(b)(1)]

2. a dent that affects the longitudinal weld or a circumferential weld; [49 CFR 192.309(b)(2)]

3. in a pipe to be operated at a pressure that produces a hoop stress of 40 percent or more of SMYS, a dent that has a depth of: [49 CFR 192.309(b)(3)]

a. more than one-quarter inch (6.4 millimeters) in pipe 12 3/4 inches (324 millimeters) or less in outer diameter; or [49 CFR 192.309(b)(3)(i)]

b. more than two percent of the nominal pipe diameter in pipe over 12 3/4 inches (324 millimeters) in outer diameter. [49 CFR 192.309(b)(3)(ii)]

C. For the purpose of this Section a "dent" is a depression that produces a gross disturbance in the curvature of the pipe wall without reducing the pipe-wall thickness. The depth of a dent is measured as the gap between the lowest point of the dent and a prolongation of the original contour of the pipe.

D. Each arc burn on steel pipe to be operated at a pressure that produces a hoop stress of 40 percent, or more, of SMYS must be repaired or removed. If a repair is made by grinding, the arc burn must be completely removed and the remaining wall thickness must be at least equal to either: [49 CFR 192.309(c)]

1. the minimum wall thickness required by the tolerances in the specification to which the pipe was manufactured; or [49 CFR 192.309(c)(1)]

2. the nominal wall thickness required for the design pressure of the pipeline. [49 CFR 192.309(c)(2)]

E. A gouge, groove, arc burn, or dent may not be repaired by insert patching or by pounding out. [49 CFR 192.309(d)]

F. Each gouge, groove, arc burn, or dent that is removed from a length of pipe must be removed by cutting out the damaged portion as a cylinder. [49 CFR 192.309(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:524 (July 1984), LR 18:857 (August 1992), LR 27:1542 (September 2001), LR 30:

§1711. Repair of Plastic Pipe [49 CFR 192.311]

A. Each imperfection or damage that would impair the serviceability of plastic pipe must be repaired or removed. [49 CFR 192.311]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:524 (July 1984), LR 30:

§1713. Bends and Elbows [49 CFR 192.313]

A. Each field bend in steel pipe, other than a wrinkle bend made in accordance with §1715, must comply with the following: [49 CFR 192.313(a)]

1. a bend must not impair the serviceability of the pipe; [49 CFR 192.313(a)(1)]

2. each bend must have a smooth contour and be free from buckling, cracks, or any other mechanical damage; [49 CFR 192.313(a)(2)]

3. on pipe containing a longitudinal weld, the longitudinal weld must be as near as practicable to the neutral axis of the bend unless: [49 CFR 192.313(a)(3)]

a. the bend is made with an internal bending mandrel; or [49 CFR 192.313(a)(3)(i)]

b. the pipe is 12 inches (305 millimeters) or less in outside diameter or has a diameter to wall thickness ratio less than 70. [49 CFR 192.313(a)(3)(ii)]

B. Each circumferential weld of steel pipe which is located where the stress during bending causes a permanent deformation in the pipe must be nondestructively tested either before or after the bending process. [49 CFR 192.313(b)]

C. Wrought-steel welding elbows and transverse segments of these elbows may not be used for changes in direction on steel pipe that is 2 inches (51 millimeters) or more in diameter unless the arc length, as measured along the crotch, is at least 1 inch (25 millimeters). [49 CFR 192.313(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:524 (July 1984), LR 27:1542 (September 2001), LR 30:

§1715. Wrinkle Bends in Steel Pipe [49 CFR 192.315]

A. A wrinkle bend may not be made on steel pipe to be operated at a pressure that produces a hoop stress of 30 percent, or more, of SMYS. [49 CFR 192.315(a)]

B. Each wrinkle bend on steel pipe must comply with the following: [49 CFR 192.315(b)]

1. the bend must not have any sharp kinks; [49 CFR 192.315(b)(1)]

2. when measured along the crotch of the bend, the wrinkles must be a distance of at least one pipe diameter; [49 CFR 192.315(b)(2)]

3. on pipe 16 inches (406 millimeters) or larger in diameter, the bend may not have a deflection of more than 1 1/2° for each wrinkle; [49 CFR 192.315(b)(3)]

4. on pipe containing a longitudinal weld the longitudinal seam must be as near as practicable to the neutral axis of the bend. [49 CFR 192.315(b)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:525 (July 1984), LR 27:1542 (September 2001), LR 30:

§1717. Protection from Hazards [49 CFR 192.317]

A. The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations. [49 CFR 192.317(a)]

B. Each aboveground transmission line or main, not located offshore or in inland navigable water areas, must be protected from accidental damage by vehicular traffic or other similar causes, either by being placed at a safe distance from the traffic or by installing barricades. [49 CFR 192.317(b)]

C. Pipelines, including pipe risers, on each platform located offshore or in inland navigable waters must be protected from accidental damage by vessels. [49 CFR 192.317(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:232 (April 1983), amended LR 10:525 (July 1984), LR 20:446 (April 1994), LR 24:1310 (July 1998), LR 30:

§1719. Installation of Pipe in a Ditch [49 CFR 192.319]

A. When installed in a ditch, each transmission line that is to be operated at a pressure producing a hoop stress of 20 percent or more of SMYS must be installed so that the pipe fits the ditch so as to minimize stresses and protect the pipe coating from damage. [49 CFR 192.319(a)]

B. When a ditch for a transmission line or main is backfilled, it must be backfilled in a manner that: [49 CFR 192.319(b)]

1. provides firm support under the pipe; and [49 CFR 192.319(b)(1)]

2. prevents damage to the pipe and pipe coating from equipment or from the backfill material. [49 CFR 192.319(b)(2)]

C. All offshore pipe in water at least 12 feet (3.7 meters) deep but not more than 200 feet (61 meters) deep, as measured from the mean low tide, except pipe in the Gulf of Mexico and its inlets under 15 feet (4.6 meters) of water, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. Pipe in the Gulf of Mexico and its inlets under 15 feet (4.6 meters) of water

must be installed so that the top of the pipe is 36 inches (914 millimeters) below the seabed for normal excavation or 18 inches (457 millimeters) for rock excavation. [49 CFR 192.319(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:233 (April 1983), amended LR 10:525 (July 1984), LR 20:446 (April 1994), LR 24:1310 (July 1998), LR 27:1542 (September 2001), LR 30:

§1721. Installation of Plastic Pipe [49 CFR 192.321]

A. Plastic pipe must be installed below ground level unless otherwise permitted by Subsection G of this Section. [49 CFR 192.321(a)]

B. Plastic pipe that is installed in a vault or any other below grade enclosure must be completely encased in gas-tight metal pipe and fittings that are adequately protected from corrosion. [49 CFR 192.321(b)]

C. Plastic pipe must be installed so as to minimize shear or tensile stresses. [49 CFR 192.321(c)]

D. Thermoplastic pipe that is not encased must have a minimum wall thickness of 0.090 inches (2.29 millimeters), except that pipe with an outside diameter of 0.875 inches (22.3 millimeters) or less may have a minimum wall thickness of 0.062 inches (1.58 millimeters). [49 CFR 192.321(d)]

E. Plastic pipe that is not encased must have an electrically conducting wire or other means of locating the pipe while it is underground. Tracer wire may not be wrapped around the pipe and contact with the pipe must be minimized but is not prohibited. Tracer wire or other metallic elements installed for pipe locating purposes must be resistant to corrosion damage, either by use of coated copper wire or by other means. [49 CFR 192.321(e)]

F. Plastic pipe that is being encased must be inserted into the casing pipe in a manner that will protect the plastic. The leading end of the plastic must be closed before insertion. [49 CFR 192.321(f)]

G. Uncased plastic pipe may be temporarily installed above ground level under the following conditions: [49 CFR 192.321(g)]

1. the operator must be able to demonstrate that the cumulative aboveground exposure of the pipe does not exceed the manufacturer's recommended maximum period of exposure or two years, whichever is less; [49 CFR 192.321(g)(1)]

2. the pipe either is located where damage by external forces is unlikely or is otherwise protected against such damage; [49 CFR 192.321(g)(2)]

3. the pipe adequately resists exposure to ultraviolet light and high and low temperatures. [49 CFR 192.321(g)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:233 (April 1983), amended LR 10:525 (July 1984), LR 24:1310 (July 1998), LR 27:1542 (September 2001), LR 30:

§1723. Casing [49 CFR 192.323]

A. Each casing used on a transmission line or main under a railroad or highway must comply with the following: [49 CFR 192.323]

1. the casing must be designed to withstand the superimposed loads; [49 CFR 192.323(a)]

2. if there is a possibility of water entering the casing, the ends must be sealed; [49 CFR 192.323(b)]

3. if the ends of an unvented casing are sealed and the sealing is strong enough to retain the maximum allowable operating pressure of the pipe, the casing must be designed to hold this pressure at a stress level of not more than 72 percent of SMYS; [49 CFR 192.323(c)]

4. if vents are installed on a casing, the vents must be protected from the weather to prevent water from entering the casing. [49 CFR 192.323(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:233 (April 1983), amended LR 10:525 (July 1984), LR 30:

§1725. Underground Clearance [49 CFR 192.325]

A. Each transmission line must be installed with at least 12 inches (305 millimeters) of clearance from any other underground structure not associated with the transmission line. If this clearance cannot be attained, the transmission line must be protected from damage that might result from the proximity of the other structure. [49 CFR 192.325(a)]

B. Each main must be installed with enough clearance from any other underground structure to allow proper maintenance and to protect against damage that might result from proximity to other structures. [49 CFR 192.325(b)]

C. In addition to meeting the requirements of Subsections A or B of this Section, each plastic transmission line or main must be installed with sufficient clearance, or must be insulated, from any source of heat so as to prevent the heat from impairing the serviceability of the pipe. [49 CFR 192.325(c)]

D. Each pipe-type or bottle type holder must be installed with a minimum clearance from any other holder as prescribed in §1135.B. [49 CFR 192.325(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:233 (April 1983), amended LR 10:325 (July 1984), LR 20:446 (April 1994), LR 27:1542 (September 2001), LR 30:

§1727. Cover [49 CFR 192.327]

A. Except as provided in Subsection C, E, F and G of this Section, each buried transmission line must be installed with a minimum cover as follows: [49 CFR 192.327(a)]

Location	Normal Soil	Consolidated Rock
	Inches (Millimeters)	Inches (Millimeters)
Class 1 Locations	30 (762)	18 (457)
Class 2, 3 and 4 Locations	36 (914)	24 (610)
Drainage Ditches of Public Roads and Railroad Crossings	36 (914)	24 (610)

B. Except as provided in Subsections C and D of this Section, each buried main must be installed with at least 24 inches (610 millimeters) of cover. [49 CFR 192.327(b)]

C. Where an underground structure prevents the installation of a transmission line or main with the minimum cover, the transmission line or main may be installed with

less cover if it is provided with additional protection to withstand anticipated external loads. [49 CFR 192.327(c)]

D. A main may be installed with less than 24 inches (610 millimeters) of cover if the law of the state or municipality: [49 CFR 192.327(d)]

1. establishes a minimum cover of less than 24 inches (610 millimeters); [49 CFR 192.327(d)(1)]

2. requires that mains be installed in a common trench with other utility lines; and [49 CFR 192.327(d)(2)]

3. provides adequately for prevention of damage to the pipe by external forces. [49 CFR 192.327(d)(3)]

E. Except as provided in Subsection C of this Section, all pipe installed in a navigable river, stream, or harbor must be installed with a minimum cover of 48 inches (1219 millimeters) in soil or 24 inches (610 millimeters) in consolidated rock between the top of the pipe and the natural bottom. [49 CFR 192.327(e)]

F. All pipe installed offshore, except in the Gulf of Mexico and its inlets, under water not more than 200 feet (60 meters) deep, as measured from the mean low tide, must be installed as follows: [49 CFR 192.327(f)]

1. except as provided in Subsection C of this Section, pipe under water less than 12 feet (3.66 meters) deep, must be installed with a minimum cover of 36 inches (914 millimeters) in soil or 18 inches (457 millimeters) in consolidated rock between the top of the pipe and the natural bottom; [49 CFR 192.324(f)(1)]

2. pipe under water at least 12 feet (3.66 meters) deep must be installed so that the top of the pipe is below the natural bottom, unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. [49 CFR 192.327(f)(2)]

G. All pipelines installed under water in the Gulf of Mexico and its inlets, as defined in §503, must be installed in accordance with §2712.B.3. [49 CFR 192.327(g)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:233 (April 1983), amended LR 10:525 (July 1984), LR 20:446 (April 1994), LR 24:1310 (July 1998), LR 27:1542 (September 2001), LR 30:

Chapter 19. Customer Meters, Service Regulators, and Service Lines [Subpart H]

§1901. Scope [49 CFR 192.351]

A. This Chapter prescribes minimum requirements for installing customer meters, service regulators, service lines, service line valves, and service line connections to mains. [49 CFR 192.351]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:223 (April 1983), amended LR 10:526 (July 1984), LR 30:

§1903. Customer Meters and Regulators: Location [49 CFR 192.353]

A. Each meter and service regulator whether inside or outside of a building, must be installed in a readily accessible location and be protected from corrosion and other damage, including, if installed outside a building, vehicular damage that may be anticipated. However, the upstream regulator in a series may be buried. [49 CFR 192.353(a)]

B. Each service regulator installed within a building must be located as near as practical to the point of service line entrance. [49 CFR 192.353(b)]

C. Each meter installed within a building must be located in a ventilated place and not less than 3 feet (914 millimeters) from any source of ignition or any source of heat which might damage the meter. [49 CFR 192.353(c)]

D. Where feasible, the upstream regulator in a series must be located outside the building, unless it is located in a separate metering or regulating building. [49 CFR 192.353(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:233 (April 1983), amended LR 10:526 (July 1984), LR 27:1543 (September 2001), LR 30:

§1905. Customer Meters and Regulators: Protection from Damage [49 CFR 192.355]

A. Protection from vacuum or back pressure. If the customer's equipment might create either a vacuum or a back pressure, a device must be installed to protect the system. [49 CFR 192.355(a)]

B. Service regulator vents and relief vents. Service regulator vents and relief vents must terminate outdoors, and the outdoor terminal must: [49 CFR 192.355(b)]

1. be rain and insect resistant; [49 CFR 192.355(b)(1)]

2. be located at a place where gas from the vent can escape freely into the atmosphere and away from any opening into the building; and [49 CFR 192.355(b)(2)]

3. be protected from damage caused by submergence in areas where flooding may occur. [49 CFR 192.355(b)(3)]

C. Pits and vaults. Each pit or vault that houses a customer meter or regulator at a place where vehicular traffic is anticipated, must be able to support that traffic. [49 CFR 192.355(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:233 (April 1983), amended LR 10:526 (July 1984), LR 30:

§1907. Customer Meters and Regulators: Installation [49 CFR 192.357]

A. Each meter and each regulator must be installed so as to minimize anticipated stresses upon the connecting piping and the meter. [49 CFR 192.357(a)]

B. When close all-thread nipples are used, the wall thickness remaining after the threads are cut must meet the minimum wall thickness requirements of this Subpart. [49 CFR 192.357(b)]

C. Connections made of lead or other easily damaged material may not be used in the installation of meters or regulators. [49 CFR 192.357(c)]

D. Each regulator that might release gas in its operation must be vented to the outside atmosphere. [49 CFR 192.357(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:526 (July 1984), LR 30:

§1909. Customer Meter Installations: Operating Pressure [49 CFR 192.359]

A. A meter may not be used at a pressure that is more than 67 percent of the manufacturer's shell test pressure. [49 CFR 192.359(a)]

B. Each newly installed meter manufactured after November 12, 1970, must have been tested to a minimum of 10 psi (69 kPa) gage. [49 CFR 192.359(b)]

C. A rebuilt or repaired tinned steel case meter may not be used at a pressure that is more than 50 percent of the pressure used to test the meter after rebuilding or repairing. [49 CFR 192.359(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:526 (July 1984), LR 27:1543 (September 2001), LR 30:

§1911. Service Lines: Installation [49 CFR 192.361]

A. Depth. Each buried service line must be installed with at least 12 inches (305 millimeters) of cover in private property and at least 18 inches (457 millimeters) of cover in streets and roads. However, where an underground structure prevents installation at those depths, the service line must be able to withstand any anticipated external load. [49 CFR 192.361(a)]

B. Support and backfill. Each service line must be properly supported on undisturbed or well-compacted soil, and material used for backfill must be free of materials that could damage the pipe or its coating. [49 CFR 192.361(b)]

C. Grading for drainage. Where condensate in the gas might cause interruption in the gas supply to the customer, the service line must be graded so as to drain into the main or into drips at the low points in the service line. [49 CFR 192.361(c)]

D. Protection against piping strain and external loading. Each service line must be installed so as to minimize anticipated piping strain and external loading. [49 CFR 192.361(d)]

E. Installation of service lines into buildings. Each underground service line installed below grade through the outer foundation wall of a building must: [49 CFR 192.361(e)]

1. in the case of a metal service line, be protected against corrosion; [49 CFR 192.361(e)(1)]

2. in the case of a plastic service line, be protected from shearing action and backfill settlement; and [49 CFR 192.361(e)(2)]

3. be sealed at the foundation wall to prevent leakage into the building. [49 CFR 192.361(e)(3)]

F. Installation of service lines under buildings. Where an underground service line is installed under a building: [49 CFR 192.361(f)]

1. it must be encased in a gas-tight conduit; [49 CFR 192.361(f)(1)]

2. the conduit and the service line must, if the service line supplies the building it underlies, extend into a normally usable and accessible part of the building; and [49 CFR 192.361(f)(2)]

3. the space between the conduit and the service line must be sealed to prevent gas leakage into the building and, if the conduit is sealed at both ends, a vent line from the annular space must extend to a point where gas would not be

a hazard, and extend above grade, terminating in a rain and insect resistant fitting. [49 CFR 192.361(f)(3)]

G. Locating underground service lines. Each underground nonmetallic service line that is not encased must have a means of locating the pipe that complies with §1721.E. [49 CFR 192.361(g)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:526 (July 1984), LR 27:1543 (September 2001), LR 30:

§1913. Service Lines: Valve Requirements [49 CFR 192.363]

A. Each service line must have a service-line valve that meets the applicable requirements of Chapter 7 and Chapter 11 of this Subpart. A valve incorporated in a meter bar, that allows the meter to be bypassed, may not be used as a service-line valve. [49 CFR 192.363(a)]

B. A soft seat service line valve may not be used if its ability to control the flow of gas could be adversely affected by exposure to anticipated heat. [49 CFR 192.363(b)]

C. Each service-line valve on a high-pressure service line, installed above ground or in an area where the blowing of gas would be hazardous, must be designed and constructed to minimize the possibility of the removal of the core of the valve with other than specialized tools. [49 CFR 192.363(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:526 (July 1984), LR 30:

§1915. Service Lines: Location of Valve [49 CFR 192.365]

A. Relation to regulator or meter. Each service-line valve must be installed upstream of the regulator or, if there is no regulator, upstream of the meter. [49 CFR 192.365(a)]

B. Outside valves. Each service line must have a shut-off valve in a readily accessible location that, if feasible, is outside of the building. [49 CFR 192.365(b)]

C. Underground valves. Each underground service-line valve must be located in a covered durable curb box or standpipe that allows ready operation of the valve and is supported independently of the service lines. [49 CFR 192.365(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:526 (July 1984), LR 30:

§1917. Service Lines: General Requirements for Connections to Main Piping [49 CFR 192.367]

A. Location. Each service-line connection to a main must be located at the top of the main or, if that is not practical, at the side of the main, unless a suitable protective device is installed to minimize the possibility of dust and moisture being carried from the main into the service line. [49 CFR 192.367(a)]

B. Compression-type connection to main. Each compression-type service line to main connection must: [49 CFR 192.367(b)]

1. be designed and installed to effectively sustain the longitudinal pullout or thrust forces caused by contraction or

expansion of the piping, or by anticipated external or internal loading; and [49 CFR 192.367(b)(1)]

2. if gaskets are used in connecting the service line to the main connection fitting, have gaskets that are compatible with the kind of gas in the system. [49 CFR 192.367(b)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:526 (July 1984), LR 30:

§1919. Service Lines: Connections to Cast Iron or Ductile Iron Mains [49 CFR 192.369]

A. Each service line connected to a cast iron or ductile iron main must be connected by a mechanical clamp, by drilling and tapping the main, or by another method meeting the requirements of §1503. [49 CFR 192.369(a)]

B. If a threaded tap is being inserted, the requirements of §1111.B and C must also be met. [49 CFR 192.369(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:527 (July 1984), LR 30:

§1921. Service Lines: Steel [49 CFR 192.371]

A. Each steel service line to be operated at less than 100 psi (689 kPa) gage must be constructed of pipe designed for a minimum of 100 psi (689 kPa) gage. [49 CFR 192.371]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:527 (July 1984), LR 27:1543 (September 2001), LR 30:

§1923. Service Lines: Cast Iron and Ductile Iron [49 CFR 192.373]

A. Cast or ductile iron pipe less than 6 inches (152 millimeters) in diameter may not be installed for service lines. [49 CFR 192.373(a)]

B. If cast iron pipe or ductile iron pipe is installed for use as a service line, the part of the service line which extends through the building wall must be of steel pipe. [49 CFR 192.373(b)]

C. A cast iron or ductile iron service line may not be installed in unstable soil or under a building. [49 CFR 192.373(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:527 (July 1984), LR 27:1543 (September 2001), LR 30:

§1925. Service Lines: Plastic [49 CFR 192.375]

A. Each plastic service line outside a building must be installed below ground level, except that: [49 CFR 192.375(a)]

1. it may be installed in accordance with §1721.G; and [49 CFR 192.375(a)(1)]

2. it may terminate above ground level and outside the building, if: [49 CFR 192.375(a)(2)]

a. the above ground level part of the plastic service line is protected against deterioration and external damage; and [49 CFR 192.375(a)(2)(i)]

b. the plastic service line is not used to support external loads. [49 CFR 192.375(a)(2)(ii)]

B. Each plastic service line inside a building must be protected against external damage. [49 CFR 192.375(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:234 (April 1983), amended LR 10:527 (July 1984), amended LR 24:1310 (July 1998), LR 30:

§1927. Service Lines: Copper [49 CFR 192.377]

A. Each copper service line installed within a building must be protected against external damage. [49 CFR 192.377]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:235 (April 1983), amended LR 10:527 (July 1984), LR 30:

§1929. New Service Lines Not in Use [49 CFR 192.379]

A. Each service line that is not placed in service upon completion of installation must comply with one of the following until the customer is supplied with gas: [49 CFR 192.379]

1. the valve that is closed to prevent the flow of gas to the customer must be provided with a locking device or other means designed to prevent the opening of the valve by persons other than those authorized by the operator; [49 CFR 192.379(a)]

2. a mechanical device or fitting that will prevent the flow of gas must be installed in the service line or in the meter assembly; [49 CFR 192.379(b)]

3. the customer's piping must be physically disconnected from the gas supply and the open pipe ends sealed. [49 CFR 192.379(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:235 (April 1983), amended LR 10:527 (July 1984), LR 30:

§1931. Service Lines: Excess Flow Valve Performance Standards [49 CFR 192.381]

A. Excess flow valves to be used on single residence service lines that operate continuously throughout the year at a pressure not less than 10 psi (69 kPa) gage must be manufactured and tested by the manufacturer according to an industry specification, or the manufacturer's written specification, to ensure that each valve will: [49 CFR 192.381(a)]

1. function properly up to the maximum operating pressure at which the valve is rated; [49 CFR 192.381(a)(1)]

2. function properly at all temperatures reasonably expected in the operating environment of the service line; [49 CFR 192.381(a)(2)]

3. at 10 psi (69 kPa) gage; [49 CFR 192.381(a)(3)]
a. close at, or not more than 50 percent above, the rated closure flow rate specified by the manufacturer; and [49 CFR 192.381(a)(3)(i)]

b. upon closure, reduce gas flow: [49 CFR 192.381(a)(3)(ii)]

i. for an excess flow valve designed to allow pressure to equalize across the valve, to no more than 5 percent of the manufacturer's specified closure flow rate, up to a maximum of 20 cubic feet per hour (0.57 cubic meters per hour); or [49 CFR 192.381(a)(3)(ii)(A)]

ii. for an excess flow valve designed to prevent equalization of pressure across the valve, to no more than 0.4 cubic feet per hour (0.01 cubic meters per hour); and [49 CFR 192.381(a)(3)(ii)(B)]

4. not close when the pressure is less than the manufacturer's minimum specified operating pressure and the flow rate is below the manufacturer's minimum specified closure flow rate. [49 CFR 192.381(a)(4)]

B. An excess flow valve must meet the applicable requirements of Chapters 7 and 11 of this Subpart. [49 CFR 192.381(b)]

C. An operator must mark or otherwise identify the presence of an excess flow valve on the service line. [49 CFR 192.381(c)]

D. An operator shall locate an excess flow valve as near as practical to the fitting connecting the service line to its source of gas supply. [49 CFR 192.381(d)]

E. An operator should not install an excess flow valve on a service line where the operator has prior experience with contaminants in the gas stream, where these contaminants could be expected to cause the excess flow valve to malfunction or where the excess flow valve would interfere with necessary operation and maintenance activities on the service, such as blowing liquids from the line. [49 CFR 192.381(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 24:1311 (July 1998), amended LR 27:1543 (September 2001), LR 30:

§1933. Excess Flow Valve Customer Notification **[49 CFR 192.383]**

A. Definitions. As used in this Section: [49 CFR 192.383(a)]

Costs Associated with Installation? the costs directly connected with installing an excess flow valve; for example, costs of parts, labor, inventory, and procurement. It does not include maintenance and replacement costs until such costs are incurred.

Replaced Service Line? a natural gas service line where the fitting that connects the service line to the main is replaced or the piping connected to this fitting is replaced.

Service Line Customer? the person who pays the gas bill, or where service has not yet been established, the person requesting the service.

B. Which Customers Must Receive Notification. Notification is required on each newly installed service line or replaced service line that operates continuously throughout the year at a pressure not less than 10 psig (68.9 m) and that serves a single residence. On these lines an operator of a natural gas distribution system must notify the service line customer once in writing. [49 CFR 192.383(b)]

C. What to Put in the Written Notice [49 CFR 192.383(c)]

1. An explanation for the customer that an excess flow valve meeting the performance standards prescribed under §1931 is available for the operator to install if the customer bears the costs associated with installation. [49 CFR 192.383(c)(1)]

2. An explanation for the customer of the potential safety benefits that may be derived from installing an excess flow valve. The explanation must include that an excess flow valve is designed to shut off the flow of natural gas

automatically if the service line breaks. [49 CFR 192.383(c)(2)]

3. A description of installation, maintenance, and replacement costs. The notice must explain that if the customer requests the operator to install an EFV, the customer bears all costs associated with installation, and what those costs are. The notice must alert the customer that the costs for maintaining and replacing an EFV may later be incurred, and what those costs will be, to the extent known. [49 CFR 192.383(c)(3)]

D. When Notification and Installation Must be Made [49 CFR 192.383(d)]

1. After February 3, 1999 an operator must notify each service line customer set forth in Subsection B of this Section: [49 CFR 192.383(d)(1)]

a. on new service lines when the customer applies for service; [49 CFR 192.383(d)(1)(i)]

b. on replaced service lines when the operator determines the service line will be replaced. [49 CFR 192.383(d)(1)(ii)]

2. If a service line customer requests installation an operator must install the EFV at a mutually agreeable date. [49 CFR 192.383(d)(2)]

E. What Records are Required [49 CFR 192.383(e)]

1. An operator must make the following records available for inspection by the administrator or a state agency participating under 49 U.S.C. 60105 or 60106; [49 CFR 192.383(e)(1)]

a. a copy of the notice currently in use; and [49 CFR 192.383(e)(1)(i)]

b. evidence that notice has been sent to the service line customers set forth in Subsection B of this Section, within the previous three years. [49 CFR 192.383(1)(ii)]

F. When Notification Is Not Required. The notification requirements do not apply if the operator can demonstrate: [49 CFR 192.383(f)]

1. that the operator will voluntarily install an excess flow valve or that the state or local jurisdiction requires installation; [49 CFR 192.383(f)(1)]

2. that excess flow valves meeting the performance standards in §1931 are not available to the operator; [49 CFR 192.383(f)(2)]

3. that the operator has prior experience with contaminants in the gas stream that could interfere with the operation of an excess flow valve, cause loss of service to a residence, or interfere with necessary operation or maintenance activities, such as blowing liquids from the line; [49 CFR 192.383(f)(3)]

4. that an emergency or short time notice replacement situation made it impractical for the operator to notify a service line customer before replacing a service line. Examples of these situations would be where an operator has to replace a service line quickly because of: [49 CFR 192.383(f)(4)]

a. third party excavation damage; [49 CFR 192.383(f)(4)(i)]

b. grade 1 leaks as defined in the Appendix G -192-11 of the Gas Piping Technology Committee guide for gas transmission and distribution systems; [49 CFR 192.383(f)(4)(ii)]

c. a short notice service line relocation request. [49 CFR 192.383(f)(4)(iii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1544 (September 2001), amended LR 30:

Chapter 21. Requirements for Corrosion Control [Subpart I]

§2101. Scope [49 CFR 192.451]

A. This Chapter prescribes minimum requirements for the protection of metallic pipelines from external, internal, and atmosphere corrosion. [49 CFR 192.451(a)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:235 (April 1983), amended LR 10:527 (July 1984), LR 30:

§2103. Applicability to Converted Pipelines [49 CFR 192.452]

A. Notwithstanding the date the pipeline was installed or any earlier deadlines for compliance, each pipeline which qualified for use under this Subpart in accordance with §514 must meet the requirements of this Chapter specifically applicable to pipelines installed before August 1, 1971, and all other applicable requirements within one year after the pipeline is readied for service. However, the requirements of this Chapter specifically applicable to pipelines installed after July 31, 1971, apply if the pipeline substantially meets those requirements before it is readied for service or it is a segment which is replaced, relocated, or substantially altered. [49 CFR 192.452]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:235 (April 1983), amended LR 10:527 (July 1984), LR 30:

§2105. General [49 CFR 192.453]

A. The corrosion control procedures required by §2705.B.2, including those for the design, installation, operation, and maintenance of cathodic protection systems, must be carried out by, or under the direction of, a person qualified in pipeline corrosion control methods. [49 CFR 192.453]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:235 (April 1983), amended LR 10:527 (July 1984), LR 21:821 (August 1995), LR 30:

§2107. External Corrosion Control: Buried or Submerged Pipelines Installed After July 31, 1971 [49 CFR 192.455]

A. Except as provided in Subsections B, C, and F of this Section, each buried or submerged pipeline installed after July 31, 1971, must be protected against external corrosion, including the following: [49 CFR 192.455(a)]

1. it must have an external protective coating meeting the requirements of §2113; [49 CFR 192.455(a)(1)]

2. it must have a cathodic protection system designed to protect the pipeline in its entirety in accordance with this Chapter, installed and placed in operation within one year after completion of construction. [49 CFR 192.455(a)(2)]

B. An operator need not comply with Subsection A of this Section, if the operator can demonstrate by tests, investigation, or experience in the area of application, including as a minimum, soil resistivity measurements and

tests for corrosion accelerating bacteria, that a corrosive environment does not exist. However, within six months after an installation made pursuant to the preceding sentence, the operator shall conduct tests, including pipe-to-soil potential measurements with respect to either a continuous reference electrode or an electrode using close spacing, not to exceed 20 feet (6 meters), and soil resistivity measurements at a potential profile peak locations, to adequately evaluate the potential profile along the entire pipeline. If the test made indicate that a corrosive condition exists, the pipeline must be cathodically protected in accordance with Paragraph A.2 of this Section. [49 CFR 192.455(b)]

C. An operator need not comply with Subsection A of this Section, if the operator can demonstrate by tests, investigation, or experience that: [49 CFR 192.455(c)]

1. for a copper pipeline, a corrosive environment does not exist; or [49 CFR 192.455(c)(1)]

2. for a temporary pipeline with an operating period of service not to exceed five years beyond installation, corrosion during the five-year period of service of the pipeline will not be detrimental to public safety. [49 CFR 192.455(c)(2)]

D. Notwithstanding the provisions of Subsection B or C of this Section, if a pipeline is externally coated, it must be cathodically protected in accordance with Paragraph A.2 of this Section. [49 CFR 192.455(d)]

E. Aluminum may not be installed in a buried or submerged pipeline if that aluminum is exposed to an environment with a natural pH in excess of eight, unless tests or experience indicate its suitability in the particular environment involved. [49 CFR 192.455(e)]

F. This Section does not apply to electrically isolated, metal alloy fittings in plastic pipelines, if: [49 CFR 192.455(f)]

1. for the size fitting to be used, an operator can show by test, investigation, or experience in the area of application that adequate corrosion control is provided by the alloy composition; and [49 CFR 192.455(f)(1)]

2. the fitting is designed to prevent leakage caused by localized corrosion pitting. [49 CFR 192.455(f)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:235 (April 1983), amended LR 10:527 (July 1984), LR 24:1311 (July 1998), LR 27:1544 (September 2001), LR 30:

§2109. External Corrosion Control: Buried or Submerged Pipelines Installed before August 1, 1971 [49 CFR 192.457]

A. Except for buried piping at compressor, regulator, and measuring stations, each buried or submerged transmission line installed before August 1, 1971, that has an effective external coating must be cathodically protected along the entire area that is effectively coated, in accordance with this Chapter. For the purposes of this Chapter, a pipeline does not have an effective external coating if its cathodic protection current requirements are substantially the same as if it were bare. The operator shall make tests to determine the cathodic protection current requirements. [49 CFR 192.457(a)]

B. Except for cast iron or ductile iron, each of the following buried or submerged pipelines installed before August 1, 1971, must be cathodically protected in

accordance with this Chapter in areas in which active corrosion is found: [49 CFR 192.457(b)]

1. bare or ineffectively coated transmission lines; [49 CFR 192.457(b)(1)]

2. bare or coated pipes at compressor, regulator, and measuring stations; [49 CFR 192.457(b)(2)]

3. bare or coated distribution lines. [49 CFR 192.457(b)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:235 (April 1983), amended LR 10:527 (July 1984), LR 30:

§2111. External Corrosion Control: Examination of Buried Pipeline When Exposed [49 CFR 192.459]

A. Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion if the pipe is bare, or if the coating is deteriorated. If external corrosion requiring remedial action under §§2135 through 2141 is found, the operator shall investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion. [49 CFR 192.459]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:235 (April 1983), amended LR 10:528 (July 1984), LR 27:1544 (September 2001), LR 30:

§2113. External Corrosion Control: Protective Coating [49 CFR 192.461]

A. Each external protective coating, whether conductive or insulating, applied for the purpose of external corrosion control must: [49 CFR 192.461(a)]

1. be applied on a properly prepared surface; [49 CFR 192.461(a)(1)]

2. have sufficient adhesion to the metal surface to effectively resist underfilm migration of moisture; [49 CFR 192.461(a)(2)]

3. be sufficiently ductile to resist cracking; [49 CFR 192.461(a)(3)]

4. have sufficient strength to resist damage due to handling and soil stress; and [49 CFR 192.461(a)(4)]

5. have properties compatible with any supplemental cathodic protection. [49 CFR 192.461(a)(5)]

B. Each external protective coating which is an electrically insulating type must also have low moisture absorption and high electrical resistance. [49 CFR 192.461(b)]

C. Each external protective coating must be inspected just prior to lowering the pipe into the ditch and backfilling, and any damage detrimental to effective corrosion control must be repaired. [49 CFR 192.461(c)]

D. Each external protective coating must be protected from damage resulting from adverse ditch conditions or damage from supporting blocks. [49 CFR 192.461(d)]

E. If coated pipe is installed by boring, driving, or other similar method, precautions must be taken to minimize damage to the coating during installation. [49 CFR 192.461(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:236 (April 1983), amended LR 10:528 (July 1984), LR 30:

§2115. External Corrosion Control: Cathodic Protection [49 CFR 192.463]

A. Each cathodic protection system required by this Chapter must provide a level of cathodic protection that complies with one or more of the applicable criteria contained in Appendix D of this Subpart. If none of these criteria is applicable, the cathodic protection system must provide a level of cathodic protection at least equal to that provided by compliance with one or more of these criteria. [49 CFR 192.463(a)]

B. If amphoteric metals are included in a buried or submerged pipeline containing a metal or different anodic potential: [49 CFR 192.463(b)]

1. the amphoteric metals must be electrically isolated from the remainder of the pipeline and cathodically protected; or [49 CFR 192.463(b)(1)]

2. the entire buried or submerged pipeline must be cathodically protected at a cathodic potential that meet the requirements of Appendix D of this Subpart for amphoteric metals. [49 CFR 192.463(b)(2)]

C. The amount of cathodic protection must be controlled so as not to damage the protective coating or the pipe. [49 CFR 192.463(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:236 (April 1983), amended LR 10:528 (July 1984), LR 30:

§2117. External Corrosion Control: Monitoring [49 CFR 192.465]

A. Each pipeline that is under cathodic protection must be tested at least once each calendar year, but with intervals not exceeding 15 months, to determine whether the cathodic protection meets the requirements of §2115. However, if tests at those intervals are impractical for separately protected short sections of mains or transmission lines, not in excess of 100 feet (30 meters), or separately protected service lines, these pipeline may be surveyed on a sampling basis. At least ten percent of these protected structures, distributed over the entire system must be surveyed each calendar year, with a different ten percent checked each subsequent year, so that the entire system is tested in each ten-year period. [49 CFR 192.465(a)]

B. Each cathodic protection rectifier or other impressed current power source must be inspected six times each calendar year, but with intervals not exceeding two and one-half months, to insure that it is operating. [49 CFR 192.465(b)]

C. Each reverse current switch, each diode, and each interference bond whose failure would jeopardize structure protection must be electrically checked for proper performance six times each calendar year, but with intervals not exceeding two and one-half months. Each other interference bond must be checked at least once each calendar year, but with intervals not exceeding 15 months. [49 CFR 192.465(c)]

D. Each operator shall take prompt remedial action to correct any deficiencies indicated by the monitoring.

Remedial action must be completed within a time period determined by the operator based on an evaluation of the degree of hazard created by the nature of the deficiency but in no case longer than 90 days from the date the deficiency was discovered, or within a time period as may be approved by the commissioner. [49 CFR 192.465(d)]

E. After the initial evaluation required by of §2107.B and C and §2109.B, each operator must, not less than every three years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this Chapter in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey. However, on distribution lines and where an electrical survey is impractical on transmission lines, areas of active corrosion may be determined by other means that include review and analysis of leak repair and inspection records, exposed pipe inspection records, and the pipeline environment. In this Section: [49 CFR 192.465(e)]

1. active corrosion means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety; [49 CFR 192.465(e)(1)]

2. electrical survey means a series of closely spaced pipe -to-soil readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline; [49 CFR 192.465(e)(2)]

3. pipeline environment includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion. [49 CFR 192.465(e)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:236 (April 1983), amended LR 10:528 (July 1984), LR 27:1545 (September 2001), LR 30:

§2119. External Corrosion Control: Electrical Isolation **[49 CFR 192.467]**

A. Each buried or submerged pipeline must be electrically isolated from other underground metallic structures, unless the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit. [49 CFR 192.467(a)]

B. One or more insulating devices must be installed where electrical isolation of a portion of a pipeline is necessary to facilitate the application of corrosion control. [49 CFR 192.467(b)]

C. Except for unprotected copper inserted in a ferrous pipe, each pipeline must be electrically isolated from metallic casing that are a part of the underground system. However, if isolation is not achieved because it is impractical, other measures must be taken to minimize corrosion of the pipeline inside the casing. [49 CFR 192.467(c)]

D. Inspection and electrical tests must be made to assure that electrical isolation is adequate. [49 CFR 192.467(d)]

E. An insulating device may not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing. [49 CFR 192.467(e)]

F. Where a pipeline is located in close proximity to electrical transmission tower footings, ground cables or

counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it must be provided with protection against damage due to fault currents or lightning, and protective measures must also be taken at insulating devices. [49 CFR 192.467(f)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:236 (April 1983), amended LR 10:528 (July 1984), LR 30:

§2121. External Corrosion Control: Test Stations **[49 CFR 192.469]**

A. Each pipeline under cathodic protection required by this Chapter must have sufficient test stations or other contact points for electrical measurement to determine the adequacy of cathodic protection. [49 CFR 192.469]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:236 (April 1983), amended LR 10:529 (July 1984), LR 30:

§2123. External Corrosion Control: Test Leads **[49 CFR 192.471]**

A. Each test lead wire must be connected to the pipeline so as to remain mechanically secure and electrically conductive. [49 CFR 192.471(a)]

B. Each test lead wire must be attached to the pipeline so as to minimize stress concentration on the pipe. [49 CFR 192.471(b)]

C. Each bared test lead wire and bared metallic area at point of connection to the pipeline must be coated with an electrical insulating material compatible with the pipe coating and the insulation on the wire. [49 CFR 192.471(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:236 (April 1983), amended LR 10:529 (July 1984), LR 30:

§2125. External Corrosion Control: Interference **Currents [49 CFR 192.473]**

A. Each operator whose pipeline system is subjected to stray currents shall have in effect a continuing program to minimize the detrimental effects of such currents. [49 CFR 192.473(a)]

B. Each impressed current type cathodic protection system or galvanic anode system must be designed and installed so as to minimize any adverse effects on existing adjacent underground metallic structures. [49 CFR 192.473(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:236 (April 1983), amended LR 10:529 (July 1984), LR 30:

§2127. Internal Corrosion Control: General **[49 CFR 192.475]**

A. Corrosive gas may not be transported by pipeline, unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion. [49 CFR 192.475(a)]

B. Whenever any pipe is removed from a pipeline for any reason, the internal surface must be inspected for evidence of corrosion. If internal corrosion is found: [49 CFR 192.475(b)]

1. the adjacent pipe must be investigated to determine the extent of internal corrosion; [49 CFR 192.475(b)(1)]

2. replacement must be made to the extent required by the applicable Subsections of §§2137, 2139, or 2141; and [49 CFR 192.475(b)(2)]

3. steps must be taken to minimize the internal corrosion. [49 CFR 192.475(b)(3)]

C. Gas containing more than 0.25 grain of hydrogen sulfide per 100 cubic feet (5.8 milligrams/m³) at standard conditions (4 parts per million) may not be stored in pipe-type or bottle-type holders. [49 CFR 192.475(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended IR 10:529 (July 1984), LR 20:446 (April 1994), LR 24:1311 (July 1998), LR 27:1545 (September 2001), LR 30:

§2129. Internal Corrosion Control: Monitoring
[49 CFR 192.477]

A. If corrosive gas is being transported, coupons or other suitable means must be used to determine the effectiveness of the steps taken to minimize internal corrosion. Each coupon or other means of monitoring internal corrosion must be checked two times each calendar year, but with intervals not exceeding seven and one-half months. [49 CFR 192.477]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:529 (July 1984), LR 30:

§2131. Atmospheric Corrosion Control: General
[49 CFR 192.479]

A. Each operator must clean and coat each pipeline or portion of pipeline that is exposed to the atmosphere, except pipelines under Subsection C of this Section. [49 CFR 192.479(a)]

B. Coating material must be suitable for the prevention of atmospheric corrosion. [49 CFR 192.479(b)]

C. Except portions of pipelines in offshore splash zones or soil-to-air interfaces, the operator need not protect from atmospheric corrosion any pipeline for which the operator demonstrates by test, investigation, or experience appropriate to the environment of the pipeline that corrosion will: [49 CFR 192.479(c)]

1. only be a light surface oxide; or [49 CFR 192.479(c)(1)]

2. not affect the safe operation of the pipeline before the next scheduled inspection. [49 CFR 192.479(c)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:529 (July 1984), LR 30:

§2133. Atmospheric Corrosion Control: Monitoring
[49 CFR 192.481]

A. Each operator must inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion, as follows: [49 CFR 192.481(a)]

If the pipeline is located:	Then the frequency of inspection is:
Onshore	At least once every 3 calendar years, but with intervals not exceeding 39 months.
Offshore	At least once each calendar year, but with intervals not exceeding 15 months.

B. During inspections the operator must give particular attention to pipe at soil-to-air interfaces, under thermal insulation, under disbanded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water. [49 CFR 192.481(b)]

C. If atmospheric corrosion is found during an inspection, the operator must provide protection against the corrosion as required by §2131. [49 CFR 192.481(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:529 (July 1984), LR 30:

§2135. Remedial Measures: General [49 CFR 192.483]

A. Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion must have a properly prepared surface and must be provided with an external protective coating that meets the requirements of §2113. [49 CFR 192.483(a)]

B. Each segment of metallic pipe that replaces pipe removed from a buried or submerged pipeline because of external corrosion must be cathodically protected in accordance with this Chapter. [49 CFR 192.483(b)]

C. Except for cast iron or ductile iron pipe, each segment of buried or submerged pipe that is required to be repaired because of external corrosion must be cathodically protected in accordance with this Chapter. [49 CFR 192.483(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:529 (July 1984), LR 30:

§2137. Remedial Measures: Transmission Lines
[49 CFR 192.485]

A. General corrosion. Each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for the MAOP of the pipeline must be replaced or the operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, corroded pipe may be repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. Corrosion pitting so closely grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this Subsection. [49 CFR 192.485(a)]

B. Localized corrosion pitting. Each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe, based on the actual remaining wall thickness in the pits. [49 CFR 192.485(b)]

C. Under Subsections A and B of this Section, the strength of pipe based on actual remaining wall thickness may be determined by the procedure in ASME/ANSI B31G or the procedure in AGA Pipeline Research Committee Project PR 3-805 (with RSTRENG disk). Both procedures apply to corroded regions that do not penetrate the pipe wall, subject to the limitations prescribed in the procedures. [49 CFR 192.485(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983),

amended LR 10:529 (July 1984), LR 24:1311 (July 1998), LR 27:1545 (September 2001), LR 30:

§2139. Remedial Measures: Distribution Lines Other Than Cast Iron or Ductile Iron Lines [49 CFR 192.487]

A. General corrosion. Except for cast iron or ductile iron pipe, each segment of generally corroded distribution line pipe with a remaining wall thickness less than that required for the MAOP of the pipeline, or a remaining wall thickness less than 30 percent of the nominal wall thickness, must be replaced. However, corroded pipe may be repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. Corrosion pitting so closely grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this Subsection. [49 CFR 192.487(a)]

B. Localized corrosion pitting. Except for cast iron or ductile iron pipe, each segment of distribution line pipe with localized corrosion pitting to a degree where leakage might result must be replaced or repaired. [49 CFR 192.487(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:529 (July 1984), LR 27:1545 (September 2001), LR 30:

§2141. Remedial Measures: Cast Iron and Ductile Iron Pipelines [49 CFR 192.489]

A. General graphitization. Each segment of cast iron or ductile iron pipe on which general graphitization is found to a degree where a fracture or any leakage might result, must be replaced. [49 CFR 192.489(a)]

B. Localized graphitization. Each segment of cast iron or ductile iron pipe on which localized graphitization is found to a degree where any leakage might result, must be replaced or repaired, or sealed by internal sealing methods adequate to prevent or arrest any leakage. [49 CFR 192.489(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:529 (July 1984), LR 30:

§2143. Corrosion Control Records [49 CFR 192.491]

A. Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode. [49 CFR 192.491(a)]

B. Each record or map required by Subsection A of this Section must be retained for as long as the pipeline remains in service. [49 CFR 192.491(b)]

C. Each operator shall maintain a record of each test, survey, or inspection required by this Chapter in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. These records must be retained for at least five years, except that records related to §2117.A and E and §2127.B must be retained for as long as the pipeline remains in service. [49 CFR 192.491(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:530 (July 1984), LR 24:1311 (July 1998), LR 30:

Chapter 23. Test Requirements [Subpart J]

§2301. Scope [49 CFR 192.501]

A. This Chapter prescribes minimum leak-test and strength-test requirements for pipelines. [49 CFR 192.501]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:530 (July 1984), LR 30:

§2303. General Requirements [49 CFR 192.503]

A. No person may operate a new segment of pipeline, or return to service a segment of pipeline that has been relocated or replaced, until: [49 CFR 192.503(a)]

1. it has been tested in accordance with this Chapter and §2719 to substantiate the maximum allowable operating pressure; and [49 CFR 192.503(a)(1)]

2. each potentially hazardous leak has been located and eliminated. [49 CFR 192.503(a)(2)]

B. The test medium must be liquid, air, natural gas, or inert gas that is: [49 CFR 192.503(b)]

1. compatible with the material of which the pipeline is constructed; [49 CFR 192.503(b)(1)]

2. relatively free of sedimentary materials; and [49 CFR 192.503(b)(2)]

3. except for natural gas, nonflammable. [49 CFR 192.503(b)(3)]

C. Except as provided in §2305.A, if air, natural gas, or inert gas is used as the test medium, the following maximum hoop stress limitations apply: [49 CFR 192.503(c)]

Class Location	Maximum Hoop Stress Allowed as Percentage of SMYS	
	Natural Gas	Air or Inert Gas
1	80	80
2	30	75
3	30	50
4	30	40

D. Each joint used to tie in a test segment of pipeline is excepted from the specific test requirements of this Chapter, but each non-welded joint must be leak tested at not less than its operating pressure. [49 CFR 192.503(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:237 (April 1983), amended LR 10:530 (July 1984), LR 30:

§2305. Strength Test Requirements for Steel Pipeline to Operate at a Hoop Stress of 30 Percent or More of SMYS [49 CFR 192.505]

A. Except for service line, each segment of a steel pipeline that is to operate at a hoop stress of 30 percent or more of SMYS must be strength tested in accordance with this Section to substantiate the proposed maximum allowable operating pressure. In addition, in a Class 1 or Class 2 location, if there is a building intended for human occupancy within 300 feet (91 meters) of a pipeline, a hydrostatic test must be conducted to a test pressure of at least 125 percent of maximum operating pressure on that segment of the pipeline within 300 feet (91 meters) of such a building, but in no event may the test section be less than 600 feet (183 meters) unless the length of the newly installed

or relocated pipe is less than 600 feet (183 meters). However, if the buildings are evacuated while the hoop stress exceeds 50 percent of SMYS, air or inert gas may be used as the test medium. [49 CFR 192.505(a)]

B. In a Class 1 or Class 2 location, each compressor station, regulator station, and measuring station, must be tested to at least Class 3 location test requirements. [49 CFR 192.505(b)]

C. Except as provided in Subsection E of this Section, the strength test must be conducted by maintaining the pressure at or above the test pressure for at least eight hours. [49 CFR 192.505(c)]

D. If a component other than pipe is the only item being replaced or added to a pipeline, a strength test after installation is not required, if the manufacturer of the component certifies that: [49 CFR 192.505(d)]

1. the component was tested to at least the pressure required for the pipeline to which it is being added; or [49 CFR 192.505(d)(1)]

2. the component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added. [49 CFR 192.505(d)(2)]

E. For fabricated units and short sections of pipe, for which a post installation test is impractical, a preinstallation strength test must be conducted by maintaining the pressure at or above the test pressure for at least four hours. [49 CFR 192.505(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:238 (April 1983), amended LR 10:530 (July 1984), LR 27:1545 (September 2001), LR 30:

§2307. Test Requirements for Pipelines to Operate at a Hoop Stress Less Than 30 Percent of SMYS and at or Above 100 psi (689 kPa) Gauge
[49 CFR 192.507]

A. Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated at a hoop stress less than 30 percent of SMYS and at or above 100 psi (689 kPa) gage must be tested in accordance with the following: [49 CFR 192.507]

1. the pipeline operator must use a test procedure that will ensure discovery of all potentially hazardous leaks in the segment being tested; [49 CFR 192.507(a)]

2. if, during the test, the segment is to be stressed to 20 percent or more of SMYS and natural gas, inert gas, or air is the test medium: [49 CFR 192.507(b)]

a. a leak test must be made at a pressure between 100 psi (689 kPa) gage and the pressure required to produce a hoop stress of 20 percent of SMYS; or [49 CFR 192.507(b)(1)]

b. the line must be walked to check for leaks while the hoop stress is held at approximately 20 percent of SMYS; [49 CFR 192.507(b)(2)]

3. the pressure must be maintained at or above the test pressure for at least one hour. [49 CFR 192.507(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:238 (April 1983),

amended LR 10:530 (July 1984), LR 27:1545 (September 2001), LR 30:

§2309. Test Requirements for Pipelines to Operate Below 100 psi (689 kPa) Gauge
[49 CFR 192.509]

A. Except for service lines and plastic pipelines, each segment of a pipeline that is to be operated below 100 psi (689 kPa) gage must be leak tested in accordance with the following: [49 CFR 192.509]

1. the test procedure used must ensure discovery of all potentially hazardous leaks in the segment being tested; [49 CFR 192.509(a)]

2. each main that is to be operated at less than one psi (6.9 kPa) gage must be tested to at least 10 psi (69 kPa) gage and each main to be operated at or above one psi (6.9 kPa) gage must be tested to at least 90 psi (621 kPa) gage. [49 CFR 192.509(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:238 (April 1983), amended LR 10:530 (July 1984), LR 27:1546 (September 2001), LR 30:

§2311. Test Requirements for Service Lines
[49 CFR 192.511]

A. Each segment of a service line (other than plastic) must be leak tested in accordance with this Section before being placed in service. If feasible, the service-line connection to the main must be included in the test; if not feasible, it must be given a leakage test at the operating pressure when placed in service. [49 CFR 192.511(a)]

B. Each segment of a service line (other than plastic) intended to be operated at a pressure of at least one psi (6.9 kPa) gage but not more than 40 psi (276 kPa) gage must be given a leak test at a pressure of not less than 50 psi (345 kPa) gage. [49 CFR 192.511(b)]

C. Each segment of a service line (other than plastic) intended to be operated at pressures of more than 40 psi (276 kPa) gage must be tested to at least 90 psi (621 kPa) gage, except that each segment of the steel service line stressed to 20 percent or more of SMYS must be tested in accordance with §2307 of this Chapter. [49 CFR 192.511(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:238 (April 1983), amended LR 10:530 (July 1984), LR 27:1546 (September 2001), LR 30:

§2313. Test Requirements for Plastic Pipelines
[49 CFR 192.513]

A. Each segment of a plastic pipeline must be tested in accordance with this Section. [49 CFR 192.513(a)]

B. The test procedure must insure discovery of all potentially hazardous leaks in the segment being tested. [49 CFR 192.513(b)]

C. The test pressure must be at least 150 percent of the maximum operating pressure or 50 psi (345 kPa) gage, whichever is greater. However, the maximum test pressure may not be more than three times the pressure determined under §921, at a temperature not less than the pipe temperature during the test. [49 CFR 192.513(c)]

D. During the test, the temperature of thermoplastic material may not be more than 100°F (38°C), or the

temperature at which the material's long-term hydrostatic strength has been determined under the listed specification, whichever is greater. [49 CFR 192.513(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:238 (April 1983), amended LR 10:530 (July 1984), LR 24:1312 (July 1998), LR 27:1546 (September 2001), LR 30:

§2315. Environmental Protection and Safety Requirements [49 CFR 192.515]

A. In conducting tests under this Chapter, each operator shall insure that every reasonable precaution is taken to protect its employees and the general public during the testing. Whenever the hoop stress of the segment of the pipeline being tested will exceed 50 percent of SMYS, the operator shall take all practicable steps to keep persons not working on the testing operation outside of the testing area until the pressure is reduced to or below the proposed maximum allowable operating pressure. [49 CFR 192.515(a)]

B. The operator shall insure that the test medium is disposed of in a manner that will minimize damage to the environment. [49 CFR 192.515(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:238 (April 1983), amended LR 10:531 (July 1984), LR 30:

§2317. Records [49 CFR 192.517]

A. Each operator shall make, and retain for the useful life of the pipeline, a record of each test performed under §§2305 and 2307. The record must contain at least the following information: [49 CFR 192.517(a)]

1. the operator's name, the name of the operator's employee responsible for making the test, and the name of any test company used; [49 CFR 192.517(a)(1)]

2. test medium used; [49 CFR 192.517(a)(2)]

3. test pressure; [49 CFR 192.517(a)(3)]

4. test duration; [49 CFR 192.517(a)(4)]

5. pressure recording charts, or other record of pressure readings; [49 CFR 192.517(a)(5)]

6. elevation variations, whenever significant for the particular test; [49 CFR 192.517(a)(6)]

7. leaks and failures noted and their disposition. [49 CFR 192.517(a)(7)]

B. Each operator must maintain a record of each test required by §§2309, 2311, and 2313 for at least five years. [49 CFR 192.517(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:238 (April 1983), amended LR 10:531 (July 1984), LR 30:

Chapter 25. Upgrading [Subpart K]

§2501. Scope [49 CFR 192.551]

A. This Chapter prescribes minimum requirements for increasing maximum allowable operating pressures (uprating) for pipelines. [49 CFR 192.551]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:239 (April 1983), amended LR 10:531 (July 1984), LR 30:

§2503. General Requirements [49 CFR 192.553]

A. Pressure increases. Whenever the requirements of this Chapter require that an increase in operating pressure be made in increments, the pressure must be increased gradually, at a rate that can be controlled, and in accordance with the following: [49 CFR 192.553(a)]

1. at the end of each incremental increase, the pressure must be held constant while the entire segment of the pipeline that is affected is checked for leaks; [49 CFR 192.553(a)(1)]

2. each leak detected must be repaired before a further pressure increase is made, except that a leak determined not to be potentially hazardous need not be repaired, if it is monitored during the pressure increase and it does not become potentially hazardous. [49 CFR 192.553(a)(2)]

B. Records. Each operator who uprates a segment of pipeline shall retain for the life of the segment a record of each investigation required by this Chapter, of all work performed, and of each pressure test conducted, in connection with the uprating. [49 CFR 192.553(b)]

C. Written plan. Each operator who uprates a segment of pipeline shall establish a written procedure that will ensure that each applicable requirement of this Chapter is complied with. [49 CFR 192.553(c)]

D. Limitation on increase in maximum allowable operating pressure. Except as provided in §2505.C, a new maximum allowable operating pressure established under this Chapter may not exceed the maximum that would be allowed under §§2719 and 2721 for a new segment of pipeline constructed of the same materials in the same location. However, when uprating a steel pipeline, if any variable necessary to determine the design pressure under the design formula (§905) is unknown, the MAOP may be increased as provided in §2719.A.1. [49 CFR 192.553(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:239 (April 1983), amended LR 10:531 (July 1984), LR 24:1312 (July 1998), LR 30:

§2505. Upgrading to a Pressure that will Produce a Hoop Stress of 30 Percent or More of SMYS in Steel Pipelines [49 CFR 192.555]

A. Unless the requirements of this Section have been met, no person may subject any segment of a steel pipeline to an operating pressure that will produce a hoop stress of 30 percent or more of SMYS and that is above the established maximum allowable operating pressure. [49 CFR 192.555(a)]

B. Before increasing operating pressure above the previously established maximum allowable operating pressure the operator shall: [49 CFR 192.555(b)]

1. review the design, operating, and maintenance history and previous testing of the segment of pipeline and determine whether the proposed increase is safe and consistent with the requirements of this Subpart; and [49 CFR 192.555(b)(1)]

2. make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure. [49 CFR 192.555(b)(2)]

C. After complying with Subsection B of this Section, an operator may increase the maximum allowable operating pressure of a segment of pipeline constructed before September 12, 1970, to the highest pressure that is permitted

under §2719, using as test pressure the highest pressure to which the segment of pipeline was previously subjected (either in a strength test or in actual operation). [49 CFR 192.555(c)]

D. After complying with Subsection B of this Section, an operator that does not qualify under Subsection C of this Section may increase the previously established maximum allowable operating pressure if at least one of the following requirements is met: [49 CFR 192.555(d)]

1. the segment of pipeline is successfully tested in accordance with the requirements of this Subpart for a new line of the same material in the same location. [49 CFR 192.555(d)(1)]

2. an increased maximum allowable operating pressure may be established for a segment of pipeline in a Class 1 location if the line has not previously been tested, and if: [49 CFR 192.555(d)(2)]

a. it is impractical to test it in accordance with the requirements of this Subpart; [49 CFR 192.555(d)(2)(i)]

b. the new maximum operating pressure does not exceed 80 percent of that allowed for a new line of the same design in the same location; and [49 CFR 192.555(d)(2)(ii)]

c. the operator determines that the new maximum allowable operating pressure is consistent with the condition of the segment of pipeline and the design requirements of this Subpart. [49 CFR 192.555(d)(2)(iii)]

E. Where a segment of pipeline is uprated in accordance with Subsection C or Paragraph D.2 of this Section, the increase in pressure must be made in increments that are equal to: [49 CFR 192.555(e)]

1. ten percent of the pressure before the uprating; or twenty-five percent of the total pressure increase, whichever produces the fewer number of increments. [49 CFR 192.555(e)(1)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:239 (April 1983), amended LR 10:531 (July 1984), LR 20:446 (April 1994), LR 30:

§2507. Uprating: Steel Pipelines to a Pressure that will Produce a Hoop Stress Less Than 30 Percent of SMYS: Plastic, Cast Iron, and Ductile Iron Pipelines [49 CFR 192.557]

A. Unless the requirements of this Section have been met, no person may subject: [49 CFR 192.557(a)]

1. a segment of steel pipeline to an operating pressure that will produce a hoop stress less than 30 percent of SMYS and that is above the previously established maximum allowable operating pressure; or [49 CFR 192.557(a)(1)]

2. a plastic, cast iron, or ductile iron pipeline segment to an operating pressure that is above the previously established maximum allowable operating pressure. [49 CFR 192.557(a)(2)]

B. Before increasing operating pressure above the previously established maximum allowable operating pressure, the operator shall: [49 CFR 192.557(b)]

1. review the design, operating, and maintenance history of the segment of pipeline; [49 CFR 192.557(b)(1)]

2. make a leakage survey (if it has been more than one year since the last survey) and repair any leaks that are found, except that a leak determined not to be potentially hazardous need not be repaired, if it is monitored during the

pressure increase and it does not become potentially hazardous; [49 CFR 192.557(b)(2)]

3. make any repairs, replacements, or alterations in the segment of pipeline that are necessary for safe operation at the increased pressure; [49 CFR 192.557(b)(3)]

4. reinforce or anchor offsets, bends and dead ends in pipe joined by compression couplings or bell spigot joints to prevent failure of the pipe joint, if the offset, bend, or dead end is exposed in an excavation; [49 CFR 192.557(b)(4)]

5. isolate the segment of pipeline in which the pressure is to be increased from any adjacent segment that will continue to be operated at a lower pressure; and [49 CFR 192.557(b)(5)]

6. if the pressure in mains or service lines, or both, is to be higher than the pressure delivered to the customer, install a service regulator on each service line and test each regulator to determine that it is functioning. Pressure may be increased as necessary to test each regulator, after a regulator has been installed on each pipeline subject to the increased pressure. [49 CFR 192.557(b)(6)]

C. After complying with Subsection B of this Section, the increase in maximum allowable operating pressure must be made in increments that are equal to 10 psi (69 kPa) gage or 25 percent of the total pressure increase, whichever produces the fewer number of increments. Whenever the requirements of Paragraph B.6 of this Section apply, there must be at least two approximately equal incremental increases. [49 CFR 192.557(c)]

D. If records for cast iron or ductile iron pipeline facilities are not complete enough to determine stresses produced by internal pressure, trench loading, rolling loads, beam stresses, and other bending loads, in evaluating the level of safety of the pipeline when operating at the proposed increased pressure, the following procedures must be followed. [49 CFR 192.557(d)]

1. In estimating the stresses, if the original laying conditions cannot be ascertained, the operator shall assume that cast iron pipe was supported on blocks with tamped backfill and that ductile iron pipe was laid without blocks with tamped backfill. [49 CFR 192.557(d)(1)]

2. Unless the actual maximum cover depth is known, the operator shall measure the actual cover in at least three places where the cover is most likely to be greatest and shall use the greatest cover measured. [49 CFR 192.557(d)(2)]

3. Unless the actual nominal wall thickness is known, the operator shall determine the wall thickness by cutting and measuring coupons from at least three separate pipe lengths. The coupons must be cut from pipe lengths in areas where the cover depth is most likely to be the greatest. The average of all measurements taken must be increased by the allowance indicated in the following table. [49 CFR 192.557(d)(3)]

Allowance (inches)(millimeters)			
Pipe Size (inches) (millimeters)	Cast Iron Pipe		
	Pit Cast Pipe	Centrifugally Cast Pipe	Ductile Iron Pipe
3 to 8 (76 to 203)	0.075 (1.91)	0.065 (1.65)	0.065 (1.65)
10 to 12 (254 to 305)	0.08 (2.03)	0.07 (1.78)	0.07 (1.78)
14 to 24 (356 to 610)	0.08 (2.03)	0.08 (2.03)	0.075 (1.91)

Allowance (inches)(millimeters)			
Cast Iron Pipe			
Pipe Size (inches) (millimeters)	Pit Cast Pipe	Centrifugally Cast Pipe	Ductile Iron Pipe
30 to 42 (762 to 1067)	0.09 (2.29)	0.09 (2.29)	0.075 (1.91)
48 (1219)	0.09 (2.29)	0.09 (2.29)	0.08 (2.03)
54 to 60 (1372 to 1524)	0.09 (2.29)		

4. For cast iron pipe, unless the pipe manufacturing process is known, the operator shall assume that the pipe is pit cast pipe with a bursting tensile strength of 11,000 psi (76 Mpa) gage and a modulus of rupture of 31,000 psi (214 Mpa) gage. [49 CFR 192.557(d)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:239 (April 1983), amended LR 10:531 (July 1984), LR 27:1546 (September 2001), LR 30:

Chapter 27. Operations [Subpart L-Operations]

§2701. Scope [49 CFR 192.601]

A. This Chapter prescribes minimum requirements for the operation of pipeline facilities. [49 CFR 192.601]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:240 (April 1983), amended LR 10:532 (July 1984), LR 30:

§2703. General Provisions [49 CFR 192.603]

A. No person may operate a segment of pipeline unless it is operated in accordance with this Subpart. [49 CFR 192.603(a)]

B. Each operator shall keep records necessary to administer the procedures established under §2705. [49 CFR 192.603(b)]

C. The administrator or the state agency that has submitted a current certification under the pipeline safety laws, (49 U.S.C. 60101 et seq.) with respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant state procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety. [49 CFR 192.603(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:240 (April 1983), amended LR 10:532 (July 1984), LR 18:857 (August 1992), LR 21:821 (August 1995), LR 24:1312 (July 1998), LR 30:

§2705. Procedural Manual for Operations, Maintenance, and Emergencies [49 CFR 192.605]

A. General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where

operations and maintenance activities are conducted. [49 CFR 192.605(a)]

B. Maintenance and Normal Operations. The manual required by Subsection A of this Section must include procedures for the following, if applicable, to provide safety during maintenance and operations: [49 CFR 192.605(b)]

1. operating, maintaining, and repairing the pipeline in accordance with each of the requirements of this Chapter and Chapter 29 of this Subpart; [49 CFR 192.605(b)(1)]

2. controlling corrosion in accordance with the operations and maintenance requirements of Chapter 21 of this Subpart; [49 CFR 192.605(b)(2)]

3. making construction records, maps, and operating history available to appropriate operating personnel; [49 CFR 192.605(b)(3)]

4. gathering of data needed for reporting incidents under Chapter 3 of Subpart 2 of this Part in a timely and effective manner; [49 CFR 192.605(b)(4)]

5. starting up and shutting down any part of the pipeline in a manner designed to assure operation within the MAOP limits prescribed by this Subpart, plus the build-up allowed for operation of pressure-limiting and control devices; [49 CFR 192.605(b)(5)]

6. maintaining compressor stations, including provisions for isolating units or sections of pipe and for purging before returning to service; [49 CFR 192.605(b)(6)]

7. starting, operating and shutting down gas compressor units; [49 CFR 192.605(b)(7)]

8. periodically reviewing the work done by operator personnel to determine the effectiveness, and adequacy of the procedures used in normal operation and maintenance and modifying the procedures when deficiencies are found; [49 CFR 192.605(b)(8)]

9. taking adequate precautions in excavated trenches to protect personnel from the hazards of unsafe accumulations of vapor or gas, and making available when needed at the excavation, emergency rescue equipment, including a breathing apparatus and, a rescue harness and line; [49 CFR 192.605(b)(9)]

10. systematic and routine testing and inspection of pipe-type or bottle-type holders including: [49 CFR 192.605(b)(10)]

a. provision for detecting external corrosion before the strength of the container has been impaired; [49 CFR 192.605(b)(10)(i)]

b. periodic sampling and testing of gas in storage to determine the dew point of vapors contained in the stored gas which, if condensed, might cause internal corrosion or interfere with the safe operation of the storage plant; and [49 CFR 192.605(b)(10)(ii)]

c. periodic inspection and testing of pressure limiting equipment to determine that it is in safe operating condition and has adequate capacity. [49 CFR 192.605(b)(10)(iii)]

11. Responding promptly to a report of a gas odor inside or near a building, unless the operator's emergency procedures under §2715.A.3 specifically apply to these reports. [49 CFR 192.605(b)(11)]

C. Abnormal Operation. For transmission lines, the manual required by Subsection A of this Section must include procedures for the following to provide safety when

operating design limits have been exceeded: [49 CFR 192.605(c)]

1. responding to, investigating, and correcting the cause of: [49 CFR 192.605(c)(1)]

a. unintended closure of valves or shutdowns; [49 CFR 192.605(c)(1)(i)]

b. increase or decrease in pressure or flow rate outside normal operating limits; [49 CFR 192.605(c)(1)(ii)]

c. loss of communications; [49 CFR 192.605(c)(1)(iii)]

d. operation of any safety device; and [49 CFR 192.605(c)(1)(iv)]

e. any other foreseeable malfunction of a component, deviation from normal operation, or personnel error which may result in a hazard to persons or property. [49 CFR 192.605(c)(1)(v)]

2. checking variations from normal operation after abnormal operation has ended at sufficient critical locations in the system to determine continued integrity and safe operation; [49 CFR 192.605(c)(2)]

3. notifying responsible operator personnel when notice of an abnormal operation is received; [49 CFR 192.605(c)(3)]

4. periodically reviewing the response of operator personnel to determine the effectiveness of the procedures controlling abnormal operation and taking corrective action where deficiencies are found; [49 CFR 192.605(c)(4)]

5. the requirements of this Paragraph (c) do not apply to natural gas distribution operators that are operating transmission lines in connection with their distribution system; [49 CFR 192.605(c)(5)]

D. Safety-Related Condition Reports. The manual required by Subsection A of this Section must include instructions enabling personnel who perform operation and maintenance activities to recognize conditions that potentially may be safety-related conditions that are subject to the reporting requirements of §323 of this Part. [49 CFR 192.605(d)]

E. Surveillance, Emergency Response, and Accident Investigation. The procedures required by §§2713.A, 2715, and 2717 must be included in the manual required by Subsection A of this Section. [49 CFR 192.605(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:240 (April 1983), amended LR 10:532 (July 1984), LR 21:822 (August 1995), LR 30:

§2709. Change in Class Location: Required Study
[49 CFR 192.609]

A. Whenever an increase in population density indicates a change in class location for a segment of an existing steel pipeline operating at a hoop stress that is more than 40 percent of SMYS, or indicates that the hoop stress corresponding to the established maximum allowable operating pressure for a segment of existing pipeline is not commensurate with the present class location, the operator shall immediately make a study to determine: [49 CFR 192.609]

1. the present class location for the segment involved; [49 CFR 192.609(a)]

2. the design, construction, and testing procedures followed in the original construction, and a comparison of these procedures with those required for the present class

location by the applicable provisions of this Subpart; [49 CFR 192.609(b)]

3. the physical condition of the segment to the extent it can be ascertained from available records; [49 CFR 192.609(c)]

4. the operating and maintenance history of the segment; [49 CFR 192.609(d)]

5. the maximum actual operating pressure and the corresponding operating hoop stress, taking pressure gradient into account, for the segment of pipeline involved; and [49 CFR 192.609(e)]

6. the actual area affected by the population density increase, and physical barriers or other factors which may limit further expansion of the more densely populated area. [49 CFR 192.609(f)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:240 (April 1983), amended LR 10:532 (July 1984), LR 30:

§2711. Change in Class Location: Confirmation or Revision of Maximum Allowable Operating Pressure [49 CFR 192.611]

A. If the hoop stress corresponding to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with the present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline must be confirmed or revised according to one of the following requirements: [49 CFR 192.611(a)]

1. if the segment involved has been previously tested in place for a period of not less than eight hours, the maximum allowable operating pressure is 0.8 times the test pressure in Class 2 locations, 0.667 times the test pressure in Class 3 locations, or 0.555 times the test pressure in Class 4 locations. The corresponding hoop stress may not exceed 72 percent of the SMYS of the pipe in Class 2 locations, 60 percent of SMYS in Class 3 locations, or ~~30~~ percent of SMYS in Class 4 locations; [49 CFR 192.611(a)(1)]

2. the maximum allowable operating pressure of the segment involved must be reduced so that the corresponding hoop stress is not more than that allowed by this Subpart for new segments of pipelines in the existing class location; [49 CFR 192.611(a)(2)]

3. the segment involved must be tested in accordance with the applicable requirements of Chapter 23 of this Subpart, and its maximum allowable operating pressure must then be established according to the following criteria: [49 CFR 192.611(a)(3)]

a. the maximum allowable operating pressure after the requalification test is 0.8 times the test pressure for Class 2 locations, 0.667 times the test pressure for Class 3 locations, and 0.555 times the test pressure for Class 4 locations; [49 CFR 192.611(a)(3)(i)]

b. the corresponding hoop stress may not exceed 72 percent of the SMYS of the pipe in Class 2 locations, 60 percent of SMYS in Class 3 locations, or 50 percent of SMYS in Class 4 locations. [49 CFR 192.611(a)(3)(ii)]

B. The maximum allowable operating pressure confirmed or revised in accordance with this Section, may not exceed the maximum allowable operating pressure established before the confirmation or revision. [49 CFR 192.611(b)]

C. Confirmation or revision of the maximum allowable operating pressure of a segment of pipeline in accordance with this Section does not preclude the application of §§2503 and 2505. [49 CFR 192.611(c)]

D. Confirmation or revision of the maximum allowable operating pressure that is required as a result of a study under §2709 must be completed within 18 months of the change in class location. Pressure reduction under Paragraph A.1 or A.2 of this Section within the 18-month period does not preclude establishing a maximum allowable operating pressure under Paragraph A.3 of this Section at a later date. [49 CFR 192.611(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:241 (April 1983), amended LR 10:533 (July 1984), LR 18:858 (August 1992), LR 30:

§2712. Underwater Inspection and Reburial of Pipelines in the Gulf of Mexico and its Inlets
[49 CFR 192.612]

A. Each operator shall, in accordance with this Section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992. [49 CFR 192.612(a)]

B. If, as a result of an inspection under Subsection A of this Section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall: [49 CFR 192.612(b)]

1. promptly, but not later than 24 hours after discovery, notify the National Response Center, telephone: 1-800-424-8802, as well as Louisiana Pipeline Safety (225) 342-5505 (day or night), of the location, and, if available, the geographic coordinates of that pipeline; [49 CFR 192.612(b)(1)]

2. promptly, but not later than seven days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards (457 meters) long, except that a pipeline segment less than 200 yards (183 meters) long need only be marked at the center; and [49 CFR 192.612(b)(2)]

3. within six months after discovery, or not later than November 1 of the following year if the six month period is later than November 1 of the year the discovery is made, place the pipeline so that the top of the pipe is 36 inches (914 millimeters) below the seabed for normal excavation or 18 inches (457 millimeters) for rock excavation. [49 CFR 192.612(b)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 18:858 (August 1992), LR 27:1546 (September 2001), LR 30:

§2713. Continuing Surveillance [49 CFR 192.613]

A. Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions. [49 CFR 192.613(a)]

B. If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with §2719.A and B. [49 CFR 192.613(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:241 (April 1983), amended LR 10:533 (July 1984), LR 30:

§2714. Damage Prevention Program [49 CFR 192.614]

A. Except as provided in Subsection D and E of this Section, each operator of a buried pipeline shall carry out, in accordance with this Section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this Section, the term "excavation activities" include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations. [49 CFR 192.614(a)]

B. An operator may comply with any of the requirements of Subsection C of this Section through participation in a public service program, such as a one-call system, but such participation does not relieve the operator of responsibility for compliance with this Section. However, an operator must perform the duties of Paragraph C.3 of this Section through participation in a one-call system, if that one-call system is a qualified one-call system. In areas that are covered by more than one qualified one-call system, an operator need only join one of the qualified one-call systems if there is a central telephone number for excavators to call for excavation activities, or if the one-call systems in those areas communicate with one another. An operator's pipeline system must be covered by a qualified one-call system where there is one in place. For the purpose of this Section, a one-call system is considered a "qualified one-call system" if it meets the requirements of Paragraph B.1 or B.2 of this Section: [49 CFR 192.614(b)]

1. the state has adopted a one-call damage prevention program under §198.37 of CFR 49; or [49 CFR 192.614(b)(1)]

2. the one-call system: [49 CFR 192.614(b)(2)]

a. is operated in accordance with §198.39 of CFR 49; [49 CFR 192.614(b)(2)(i)]

b. provides a pipeline operator an opportunity similar to a voluntary participant to have a part in management responsibilities; and [49 CFR 192.614(b)(2)(ii)]

c. assesses a participating pipeline operator a fee that is proportionate to the costs of the one-call system's coverage of the operator's pipeline. [49 CFR 192.614(b)(2)(iii)]

C. The damage prevention program required by Subsection A of this Section must, at a minimum: [49 CFR 192.614(c)]

1. include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located; [49 CFR 192.614(c)(1)]

2. provides for notification of the public in the vicinity of the pipeline and actual notification of the persons

identified in Paragraph.C.1 of this Section of the following as often as needed to make them aware of the damage prevention program: [49 CFR 192.614(c)(2)]

a. the program's existence and purpose; and [49 CFR 192.614(c)(2)(i)]

b. how to learn the location of underground pipelines before excavation activities are begun; [49 CFR 192.614(c)(2)(ii)]

3. provide a means of receiving and recording notification of planned excavation activities; [49 CFR 192.614(c)(3)]

4. if the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings; [49 CFR 192.614(c)(4)]

5. provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins; [49 CFR 192.614(c)(5)]

6. provide as follows for inspection of pipeline that an operator has reason to believe could be damaged by excavation activities: [49 CFR 192.614(c)(6)]

a. the inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and [49 CFR 192.614(c)(6)(i)]

b. in the case of blasting, any inspection must include leakage surveys. [49 CFR 192.614(c)(6)(ii)]

D. A damage prevention program under this Section is not required for the following pipelines: [49 CFR 192.614(d)]

1. pipelines located offshore; [49 CFR 192.614(d)(1)]

2. pipelines, other than those located offshore, in Class 1 or 2 locations until September 20, 1995; [49 CFR 192.614(d)(2)]

3. pipelines to which access is physically controlled by the operator. [49 CFR 192.614(d)(3)]

E. Pipelines operated by persons other than municipalities (including operators of master meters) whose primary activity does not include the transportation of gas need not comply with the following: [49 CFR 192.614(e)]

1. the requirements of Subsection A of this Section that the damage prevention program be written; and [49 CFR 192.614(e)(1)]

2. the requirements of Paragraph C.1 and C.2 of this Section. [49 CFR 192.614(e)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:241 (April 1983), amended LR 10:533 (July 1984), LR 24:1312 (July 1998), LR 27:1547 (September 2001), LR 30:

§2715. Emergency Plans [49 CFR 192.615]

A. Each operator shall establish written procedures to minimize the hazard resulting from a gas pipeline emergency. At a minimum, the procedures must provide for the following: [49 CFR 192.615(a)]

1. receiving, identifying, and classifying notices of events which require immediate response by the operator; [49 CFR 192.615(a)(1)]

2. establishing and maintaining adequate means of communication with appropriate fire, police, and other public officials; [49 CFR 192.615(a)(2)]

3. prompt and effective response to a notice of each type of emergency, including the following: [49 CFR 192.615(a)(3)]

a. gas detected inside or near a building; [49 CFR 192.615(a)(3)(i)]

b. fire located near or directly involving a pipeline facility; [49 CFR 192.615(a)(3)(ii)]

c. explosion occurring near or directly involving a pipeline facility; [49 CFR 192.615(a)(3)(iii)]

d. natural disaster. [49 CFR 192.615(a)(3)(iv)]

4. the availability of personnel, equipment, tools, and materials, as needed at the scene of an emergency; [49 CFR 192.615(a)(4)]

5. actions directed toward protecting people first and then property; [49 CFR 192.615(a)(5)]

6. emergency shutdown and pressure reduction in any section of the operator's pipeline system necessary to minimize hazards to life or property; [49 CFR 192.615(a)(6)]

7. making safe any actual or potential hazard to life or property; [49 CFR 192.615(a)(7)]

8. notifying appropriate fire, police, and other public officials of gas pipeline emergencies and coordinating with them both planned responses and actual responses during an emergency; [49 CFR 192.615(a)(8)]

9. safely restoring any service outage; [49 CFR 192.615(a)(9)]

10. beginning action under §2717, if applicable, as soon after the end of the emergency as possible. [49 CFR 192.615(a)(10)]

B. Each operator shall: [49 CFR 192.615(b)]

1. furnish its supervisors who are responsible for emergency action a copy of that portion of the latest edition of the emergency procedures established under Subsection A of this Section as necessary for compliance with those procedures; [49 CFR 192.615(b)(1)]

2. train the appropriate operating personnel to assure that they are knowledgeable of the emergency procedures and verify that the training is effective; [49 CFR 192.615(b)(2)]

3. review employee activities to determine whether the procedures were effectively followed in each emergency. [49 CFR 192.615(b)(3)]

C. Each operator shall establish and maintain liaison with appropriate fire, police, and other public officials to: [49 CFR 192.615(c)]

1. learn the responsibility and resources of each government organization that may respond to a gas pipeline emergency; [49 CFR 192.615(c)(1)]

2. acquaint the officials with the operator's ability in responding to a gas pipeline emergency; [49 CFR 192.615(c)(2)]

3. identify the types of gas pipeline emergencies of which the operator notifies the officials; and [49 CFR 192.615(c)(3)]

4. plan how the operator and officials can engage in mutual assistance to minimize hazards to life or property. [49 CFR 192.615(c)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:241 (April 1983), amended LR 10:534 (July 1984), LR 21:822 (August 1995), LR 30:

§2716. Public Education [49 CFR 192.616]

A. Each operator shall establish a continuing educational program to enable customers, the public, appropriate government organizations, and persons engaged in excavation related activities to recognize a gas pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The program and the media used must be as comprehensive as necessary to reach all areas in which the operator transports gas. The program must be conducted in English and in other languages commonly understood by a significant number and concentration of the non-English speaking population in the operator's area. [49 CFR 192.616]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 21:823 (August 1995), LR 30:

§2717. Investigation of Failures [49 CFR 192.617]

A. Each operator shall establish procedures for analyzing accidents and failures, including the selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of a recurrence. [49 CFR 192.617]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:242 (April 1983), amended LR 10:534 (July 1984).

§2719. Maximum Allowable Operating Pressure: Steel or Plastic Pipelines [49 CFR 192.619]

A. Except as provided in Subsection C of this Section, no person may operate a segment of steel or plastic pipeline at a pressure that exceeds the lowest of the following: [49 CFR 192.619(a)]

1. the design pressure of the weakest element in the segment, determined in accordance with Chapter 9 and 11 of this Subpart. However, for steel pipe in pipelines being converted under §514 or uprated under Chapter 25 of this Subpart, if any variable necessary to determine the design pressure under the design formula (§905) is unknown, one of the following pressures is to be used as design pressure: [49 CFR 192.619(a)(1)]

a. eighty percent of the first test pressure that produces yield under Section N5.0 of Appendix N of ASME B31.8, reduced by the appropriate factor in Subparagraph A.2.b of this Section; or [49 CFR 192.619(a)(1)(i)]

b. if the pipe is 12 3/4 in. (324 mm) or less in outside diameter and is not tested to yield under this Subsection, 200 psi (1379 kPa) gage. [49 CFR 192.619(a)(1)(ii)]

2. the pressure obtained by dividing the pressure to which the segment was tested after construction as follows: [49 CFR 192.619(a)(2)]

a. for plastic pipe in all locations, the test pressure is divided by a factor of 1.5; [49 CFR 192.619(a)(2)(i)]

b. for steel pipe operated at 100 psi (689 kPa) gage or more, the test pressure is divided by a factor determined in accordance with the following table: [49 CFR 192.619(a)(2)(ii)]

Factors ¹ , Segment			
Class Location	Installed before (Nov. 12, 1970)	Installed after (Nov. 11, 1970)	Converted under CFR §192.14
1	1.1	1.1	1.25
2	1.25	1.25	1.25
3	1.4	1.5	1.5
4	1.4	1.5	1.5

¹For offshore segments installed, uprated or converted after July 31, 1977, that are not located on an offshore platform, the factor is 1.25. For segments installed, uprated or converted after July 31, 1977, that are located on an offshore platform or on a platform in inland navigable waters, including a pipe riser, the factor is 1.5.

3. the highest actual operating pressure to which the segment was subjected during the five years preceding July 1, 1970 (or in the case of offshore gathering lines, July 1, 1976), unless the segment was tested in accordance with Paragraph A.2 of this Section after July 1, 1965 (or in the case of offshore gathering lines, July 1, 1971), or the segment was uprated in accordance with Chapter 25 of this Subpart; [49 CFR 192.619(a)(3)]

4. the pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and the actual operating pressure. [49 CFR 192.619(a)(4)]

B. No person may operate a segment to which Paragraph A.4 of this Section is applicable, unless over-pressure protective devices are installed on the segment in a manner that will prevent the maximum allowable operating pressure from being exceeded, in accordance with §1155. [49 CFR 192.619(b)]

C. Notwithstanding the other requirements of this Section, an operator may operate a segment of pipeline found to be in satisfactory condition, considering its operating and maintenance history, at the highest actual operating pressure to which the segment was subjected during the five years preceding July 1, 1970, or in the case of offshore gathering lines, July 1, 1976, subject to the requirements of §2711. [49 CFR 192.619(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:242 (April 1983), amended LR 10:534 (July 1984), LR 24:1312 (July 1998), LR 27:1547 (September 2001), LR 30:

§2721. Maximum Allowable Operating Pressure: High-Pressure Distribution Systems [49 CFR 192.621]

A. No person may operate a segment of a high pressure distribution system at a pressure that exceeds the lowest of the following pressures, as applicable: [49 CFR 192.621(a)]

1. the design pressure of the weakest element in the segment, determined in accordance with Chapter 9 and 11 of this Subpart; [49 CFR 192.621(a)(1)]

2. 60 psi (414 kPa) gage, for a segment of a distribution system otherwise designated to operate at over 60 psi (414 kPa) gage, unless the service lines in the segment are equipped with service regulators or other pressure limiting devices in series that meet the requirements of §1157.C; [49 CFR 192.621(a)(2)]

3. 25 psi (172 kPa) gage in segments of cast iron pipe in which there are unreinforced bell and spigot joints; [49 CFR 192.621(a)(3)]

4. the pressure limits to which a joint could be subjected without the possibility of its parting; [49 CFR 192.621(a)(4)]

5. the pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and the actual operating pressures. [49 CFR 192.621(a)(5)]

B. No person may operate a segment of pipeline to which Paragraph A.5 of this Section applies, unless overpressure protective devices are installed on the segment in a manner that will prevent the maximum allowable operating pressure from being exceeded, in accordance with §1155. [49 CFR 192.621(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:242 (April 1983), amended LR 10:535 (July 1984), LR 30:

§2723. Maximum and Minimum Allowable Operating Pressure: Low-Pressure Distribution Systems [49 CFR 192.623]

A. No person may operate a low-pressure distribution system at a pressure high enough to make unsafe the operation of any connected and properly adjusted low-pressure gas burning equipment. [49 CFR 192.623(a)]

B. No person may operate a low-pressure distribution system at a pressure lower than the minimum pressure at which the safe and continuing operation of any connected and properly adjusted low-pressure gas burning equipment can be assured. [49 CFR 192.623(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:243 (April 1983), amended LR 10:535 (July 1984), LR 30:

§2725. Odorization of Gas [49 CFR 192.625]

A. No person engaged in the business of handling, storing, selling, or distributing natural and other toxic or combustible odorless gases, except liquefied petroleum gases, shall operate a gathering, distribution or transmission pipeline, unless the gas is malodorized in accordance with this regulation.

B. Natural gas or any toxic or combustible odorless gas, in a distribution line must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell at any point in the line where odorization is required. [49 CFR 192.625(a)]

C. Natural gas, or any toxic or combustible odorless gas, in a gathering or transmission line in a Class 3 or Class 4 location must contain a natural odorant or be odorized so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell at any point in the line where odorization is required, unless: [49 CFR 192.625(b)]

1. at least 50 percent of the length of the line downstream from that location is in a Class 1 or Class 2 location; [49 CFR 192.625(b)(1)]

2. the line transports gas to any of the following facilities: [49 CFR 192.625(b)(2)]

a. an underground storage field; [49 CFR 192.625(b)(2)(i)]

b. a gas processing plant; [49 CFR 192.625(b)(2)(ii)]

c. a gas dehydration plant; or [49 CFR 192.625(b)(2)(iii)]

d. an industrial plant using gas in a process where the presence of an odorant: [49 CFR 192.625(b)(2)(iv)]

i. makes the end product unfit for the purpose for which it is intended; [49 CFR 192.625(b)(2)(iv)(A)]

ii. reduces the activity of a catalyst; or [49 CFR 192.625(b)(2)(iv)(B)]

iii. reduces the percentage completion of a chemical reaction; [49 CFR 192.625(b)(2)(iv)(C)]

3. in the case of a lateral line which transports gas to a distribution center or industrial complex, at least 50 percent of the length of that line is in a Class 1 or Class 2 location; or [49 CFR 192.625(b)(3)]

4. the combustible gas is hydrogen intended for use as a feedstock in a manufacturing process. [49 CFR 192.625(b)(4)]

D. In the case of a farm tap location on a gathering, transmission or distribution system, it shall be the responsibility of the person(s) selling natural gas to the end user through such farm tap to odorize the natural gas in accordance with this regulation.

E. If gas is delivered into facilities which would be exempt by Subsection C, and this exempt gas is also being used in one of the facilities for space heating, refrigeration, water heating, cooking and other domestic uses, or if such gas is used for furnishing heat, or air conditioning for office or living quarters, the end user of such gas shall malodorize it in accordance with these regulations.

F. In the concentrations in which it is used, the malodorant in combustible gases must comply with the following: [49 CFR 192.625(c)]

1. the malodorant may not be deleterious to persons, materials, or pipe; [49 CFR 192.625(c)(1)]

2. the products of combustion from the malodorant may not be toxic when breathed nor may they be corrosive or harmful to those materials to which the products of combustion will be exposed; [49 CFR 192.625(c)(2)]

G. the malodorant may not be soluble in water to an extent greater than 2.5 parts to 100 parts by weight. [49 CFR 192.625(d)]

H. Equipment for malodorization must introduce the malodorant without wide variations in the level of malodorant. The method of using malodorant and the containers and equipment used are subject to the approval of the commissioner of conservation and must meet the following requirements: [49 CFR 192.625(e)]

1. malodorant must be detectable as specified in Subsection B at the most remote locations in the system;

2. odorizing equipment may be of the wick type for systems handling 10,000 MCF/year or less. For systems handling over 10,000 MCF/year, absorption by-pass or liquid injection type must be used;

3. by-pass type odorizers must be equipped with a differential valve or orifice to create a differential sufficient to cause a flow of gas across the odorizer at minimum flow;

4. the flow through the odorizer is to be controlled by means of a flow control or metering valve located on the

inlet side of the odorizer. The size of the valve shall be large enough to deliver sufficient by-passed gas across the odorizer during maximum flow periods to assure adequate odorization;

5. at the request of any gas company or affected person or upon the request of the commissioner of conservation, the Office of Conservation shall determine, after examination of any gas having a natural malodorant, the necessary rate of injection of additional malodorant, if any, which shall be necessary to meet the requirements of Subsection B;

6. the person subject to these rules must provide sufficient test points within each distribution system for use by the commissioner's staff to check the adequacy of odorization within the system. The test points must be of 1/4 inch threaded tap with pressure not to exceed five psi and located at remote locations approved by the commissioner.

I. Quarterly Reports

1. To assure the proper concentration of odorant in accordance with this Section, each operator must conduct quarterly sampling of combustible gases using an instrument capable of determining the percentage of gas in air at which the odor becomes readily detectable. Operators of master meter systems may comply with this requirement by: [49 CFR 192.625(f)]

a. receiving written verification from their gas source that the gas has the proper concentration of odorant; and [49 CFR 192.625(f)(1)]

b. conducting periodic "sniff" tests at the extremities of the system to confirm that the gas contains odorant. [49 CFR 192.625(f)(2)]

2. Each person subject to these rules (excluding "master meter systems") shall record and retain on file for review by the Office of Conservation the following information:

a. the kind or kinds of malodorant agents introduced into such gas during the calendar quarter;

b. the quantity of each kind of malodorant agent used during each quarter. Reports on usage of odorant shall be made annually for farm taps; and

c. the quantity of gas odorized by each malodorant agent used during each quarter. Farm taps are exempt from this requirement.

3. In the event a person subject to these regulations shall fail to record and retain on file an odorization report or an odorization report which on its face shows non-compliance, the person may be put on remedial status after written notice of such status and be required to report odorization monthly within 30 days after the close of each month or for such other interval and for such period of time as shall be necessary to remedy the deficiencies in his odorization report or reports.

J. Persons who fail to comply with the provisions of this Part after January 1, 1983, shall be subject to the penalty provision contained in Act 754 in Louisiana Revised Statutes, Title 33:4525 or Louisiana Revised Statutes, Title 40:1896. The penalty specified in the cited provisions is \$1,000 for each day of non-compliance therewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:243 (April 1983), amended LR 10:535 (July 1984), LR 20:447 (April 1994), LR

21:823 (August 1995), LR 24:1312 (July 1998), LR 27:1548 (September 2001), LR 30:

§2727. Tapping Pipelines Under Pressure [49 CFR 192.627]

A. Each tap made on a pipeline under pressure must be performed by a crew qualified to make hot taps. [49 CFR 192.627]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:244 (April 1983), amended LR 10:536 (July 1984), LR 30:

§2729. Purging of Pipelines [49 CFR 192.629]

A. When a pipeline is being purged of air by use of gas, the gas must be released into one end of the line in a moderately rapid and continuous flow. If gas cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas must be released into the line before the gas. [49 CFR 192.629(a)]

B. When a pipeline is being purged of gas by use of air, the air must be released into one end of the line in a moderately rapid and continuous flow. If air cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas must be released into the line before the air. [49 CFR 192.629(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, LR 9:244 (April 1983), amended LR 10:536 (July 1984), LR 30:

Chapter 29. Maintenance [Subpart M Maintenance]

§2901. Scope [49 CFR 192.701]

A. This Chapter prescribes minimum requirements for maintenance of pipeline facilities. [49 CFR 192.701]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:244 (April 1983), amended LR 10:536 (July 1984), LR 30:

§2903. General [49 CFR 192.703]

A. No person may operate a segment of pipeline, unless it is maintained in accordance with this Chapter. [49 CFR 192.703(a)]

B. Each segment of pipeline that becomes unsafe must be replaced, repaired, or removed from service. [49 CFR 192.703(b)]

C. Hazardous leaks must be repaired promptly. [49 CFR 192.703(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:244 (April 1983), amended LR 10:536 (July 1984), LR 30:

§2905. Transmission Lines: Patrolling [49 CFR 192.705]

A. Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity, and other factors affecting safety and operation. [49 CFR 192.705(a)]

B. The frequency of patrols is determined by the size of the line, the operating pressures, the class location, terrain, weather, and other relevant factors, but intervals between patrols may not be longer than prescribed in the following table. [49 CFR 192.705(b)]

Maximum Interval Between Patrols		
Class Location of Line	At Highway and Railroad Crossings	At All Other Locations
1, 2	7-1/2 months; but at least twice each calendar year.	15 months; but at least once each calendar year.
3	4-1/2 months; but at least four times each calendar year.	7-1/2 months; but at least twice each calendar year.
4	4-1/2 months; but at least four times each calendar year.	4-1/2 months; but at least four times each calendar year.

C. Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way. [49 CFR 192.705(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:244 (April 1983), amended LR 10:536 (July 1984), LR 20:447 (April 1994), LR 24:1313 (July 1998), LR 27:1548 (September 2001), LR 30:

§2906. Transmission Lines: Leakage Surveys

[49 CFR 192.706]

A. Leakage surveys of a transmission line must be conducted at intervals not exceeding 15 months, but at least once each calendar year. However, in the case of a transmission line which transports gas in conformity with §2725 without an odor or odorant, leakage surveys using leak detector equipment must be conducted: [49 CFR 192.706]

1. in Class 3 locations, at intervals not exceeding seven and one-half months, but at least twice each calendar year; and [49 CFR 192.706(a)]

2. in Class 4 locations, at intervals not exceeding four and one-half months, but at least four times each calendar year. [49 CFR 192.706(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:244 (April 1983), amended LR 10:536 (July 1984), LR:21:823 (August 1995), LR 30:

§2907. Line Markers for Mains and Transmission Lines

[49 CFR 192.707]

A. Buried pipelines. Except as provided in Subsection B of this Section, a line marker must be placed and maintained as close as practical over each buried main and transmission line: [49 CFR 192.707(a)]

1. at each crossing of a public road and railroad; and [49 CFR 192.707(a)(1)]

2. wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference. [49 CFR 192.707(a)(2)]

B. Exceptions for buried pipelines. Line markers are not required for the following pipelines: [49 CFR 192.707(b)]

1. mains and transmission lines located offshore, or at crossings of or under waterways and other bodies of water; [49 CFR 192.707(b)(1)]

2. mains in Class 3 or Class 4 locations where a damage prevention program is in effect under §2714; [49 CFR 192.707(b)(2)]

3. transmission lines in Class 3 or 4 locations until March 20, 1996; or [49 CFR 192.707(b)(3)]

4. transmission lines in Class 3 or 4 locations where placement of a line marker is impractical. [49 CFR 192.707(b)(4)]

C. Pipelines aboveground. Line markers must be placed and maintained along each section of a main and transmission line that is located above-ground in an area accessible to the public. [49 CFR 192.707(c)]

D. Marker warning. The following must be written legibly on a background of sharply contrasting color on each line marker: [49 CFR 192.707(d)]

1. the word "Warning," "Caution," or "Danger" followed by the words "Gas (or name of gas transported) Pipeline" all of which, except for markers in heavily developed urban areas, must be in letters at least one inch (25 millimeters) high with one-quarter inch (6.4 millimeters) stroke; [49 CFR 192.707(d)(1)]

2. the name of the operator and telephone number (including area code) where the operator can be reached at all times. [49 CFR 192.707(d)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:244 (April 1983), amended LR 10:536 (July 1984), LR 24:1313 (July 1998), LR 27:1548 (September 2001), LR 30:

§2909. Transmission Lines: Record Keeping

[49 CFR 192.709]

A. Each operator shall maintain the following records for transmission lines for the periods specified: [49 CFR 192.709]

1. the date, location, and description of each repair made to pipe (including pipe-to-pipe connections) must be retained for as long as the pipe remains in service; [49 CFR 192.709(a)]

2. the date, location, and description of each repair made to parts of the pipeline system other than pipe must be retained for at least five years. However, repairs generated by patrols, surveys, inspections, or tests required by Chapters 27 and 29 of this Subpart must be retained in accordance with Paragraph A.3 of this Section; [49 CFR 192.709(b)]

3. a record of each patrol, survey, inspection, and test required by Chapters 27 and 29 of this Subpart must be retained for at least five years or until the next patrol, survey, inspection, or test is completed, whichever is longer. [49 CFR 192.709(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 24:1313 (July 1998), LR 30:

§2911. Transmission Lines: General Requirements for Repair Procedures [49 CFR 192.711]

A. Each operator shall take immediate temporary measures to protect the public whenever: [49 CFR 192.711(a)]

1. a leak, imperfection, or damage that impairs its serviceability is found in a segment of steel transmission line operating at or above 40 percent of the SMYS; and [49 CFR 192.711(a)(1)]

2. it is not feasible to make a permanent repair at the time of discovery. As soon as feasible the operator shall make permanent repairs. [49 CFR 192.711(a)(2)]

B. Except as provided in §2917.A.3, no operator may use a welded patch as a means of repair. [49 CFR 192.711(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 27:1548 (September 2001), LR 30:

§2913. Transmission Lines: Permanent Field Repair of Imperfections and Damages [49 CFR 192.713]

A. Each imperfection or damage that impairs the serviceability of pipe in a steel transmission line operating at or above 40 percent of SMYS must be: [49 CFR 192.713(a)]

1. removed by cutting out and replacing a cylindrical piece of pipe; or [49 CFR 192.713(a)(1)]
2. repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. [49 CFR 192.713(a)(2)]

B. Operating pressure must be at a safe level during repair operations. [49 CFR 192.713(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 27:1548 (September 2001), LR 30:

§2915. Transmission Lines: Permanent Field Repair of Welds [49 CFR 192.715]

A. Each weld that is unacceptable under §1321(c) must be repaired as follows. [49 CFR 192.715]

1. If it is feasible to take the segment of transmission line out of service, the weld must be repaired in accordance with the applicable requirements of §1325. [49 CFR 192.715(a)]
2. A weld may be repaired in accordance with §1325 while the segment of transmission line is in service if: [49 CFR 192.715(b)]
 - a. the weld is not leaking; [49 CFR 192.715(b)(1)]
 - b. the pressure in the segment is reduced so that it does not produce a stress that is more than 20 percent of the SMYS of the pipe; and [49 CFR 192.715(b)(2)]
 - c. grinding of the defective area can be limited so that at least 1/8 inch (3.2 millimeters) thickness in the pipe weld remains. [49 CFR 192.715(b)(3)]
3. A defective weld which cannot be repaired in accordance with Paragraph 1 or 2 of this Section must be repaired by installing a full encirclement welded split sleeve of appropriate design. [49 CFR 192.715(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 27:1548 (September 2001), LR 30:

§2917. Transmission Lines: Permanent Field Repair of Leaks [49 CFR 192.717]

A. Each permanent field repair of a leak on a transmission line must be made by: [49 CFR 192.717]

1. removing the leak by cutting out and replacing a cylindrical piece of pipe; or [49 CFR 192.717(a)]
2. repairing the leak by one of the following methods: [49 CFR 192.717(b)]
 - a. install a full encirclement welded split sleeve of appropriate design, unless the transmission line is joined by mechanical couplings and operates at less than 40 percent of SMYS; [49 CFR 192.717(b)(1)]

b. if the leak is due to a corrosion pit, install a properly designed bolt-on-leak clamp; [49 CFR 192.717(b)(2)]

c. if the leak is due to a corrosion pit and on pipe of not more than 40,000 psi (276 Mpa) SMYS, fillet weld over the pitted area a steel plate patch with rounded corners, of the same or greater thickness than the pipe, and not more than one-half of the diameter of the pipe in size; [49 CFR 192.717(b)(3)]

d. if the leak is on a submerged offshore pipeline or submerged pipeline in inland navigable water, mechanically apply a full encirclement split sleeve of appropriate design; [49 CFR 192.717(b)(4)]

e. apply a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe. [49 CFR 192.717(b)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 27:1549 (September 2001), LR 30:

§2919. Transmission Lines: Testing of Repairs [49 CFR 192.719]

A. Testing of replacement pipe. If a segment of transmission line is repaired by cutting out the damaged portion of the pipe as a cylinder, the replacement pipe must be tested to the pressure required for a new line installed in the same location. This test may be made on the pipe before it is installed. [49 CFR 192.719(a)]

B. Testing of repairs made by welding. Each repair made by welding in accordance with §§2913, 2915, and 2917 must be examined in accordance with §1321. [49 CFR 192.719(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 30:

§2921. Distribution Systems: Patrolling

A. The frequency of patrolling mains must be determined by the severity of the conditions which could cause failure or leakage, and the consequent hazards to public safety. [49 CFR 192.721(a)]

B. Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled: [49 CFR 192.721(b)]

1. in business districts, at intervals not exceeding 4 1/2 months, but at least four times each calendar year; and [49 CFR 192.721(b)(1)]

2. outside business districts, at intervals not exceeding 7 1/2 months, but at least twice each calendar year. [49 CFR 192.721(b)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 24:1313 (July 1998), LR 30:

§2923. Distribution Systems: Leakage Surveys [49 CFR 192.723]

A. Each operator of a distribution system shall conduct periodic leakage surveys in accordance with this Section. [49 CFR 192.723(a)]

B. The type and scope of the leakage control program must be determined by the nature of the operations and the local conditions, but it must meet the following minimum requirements: [49 CFR 192.723(b)]

1. a leakage survey with leak detector equipment must be conducted in business districts, including tests of the atmosphere in gas, electric, telephone, sewer, and water system manholes, at cracks in pavement and sidewalks, and at other locations providing an opportunity for finding gas leaks, at intervals not exceeding 15 months, but at least once each calendar year; [49 CFR 192.723(b)(1)]

2. a leakage survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at intervals not exceeding five years. However, for cathodically unprotected distribution lines subject to §2117.E on which electrical surveys for corrosion are impractical, survey intervals may not exceed three years. [49 CFR 192.723(b)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:537 (July 1984), LR 21:823 (August 1995), LR 24:1313 (July 1998), LR 30:

§2925. Test Requirements for Reinstating Service Lines [49 CFR 192.725]

A. Except as provided in Subsection B of this Section, each disconnected service line must be tested in the same manner as a new service line, before being reinstated. [49 CFR 192.725(a)]

B. Each service line temporarily disconnected from the main must be tested from the point of disconnection to the service line valve in the same manner as a new service line, before reconnecting. However, if provisions are made to maintain continuous service, such as by installation of a bypass, any part of the original service line used to maintain continuous service need not be tested. [49 CFR 192.725(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:538 (July 1984), LR 30:

§2927. Abandonment or Deactivation of Facilities [49 CFR 192.727]

A. Each operator shall conduct abandonment or deactivation of pipelines in accordance with the requirements of this Section. [49 CFR 192.727(a)]

B. Each pipeline abandoned in place must be disconnected from all sources and supplies of gas; purged of gas; in the case of offshore pipelines, filled with water or inert materials; and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is no potential hazard. [49 CFR 192.727(b)]

C. Except for service lines, each inactive pipeline that is not being maintained under this Subpart must be disconnected from all sources and supplies of gas; purged of gas; in the case of offshore pipelines, filled with water or inert materials; and sealed at the ends. However, the pipeline need not be purged when the volume of gas is so small that there is no potential hazard. [49 CFR 192.727(c)]

D. Whenever service to a customer is discontinued, one of the following must be complied with: [49 CFR 192.727(d)]

1. the valve that is closed to prevent the flow of gas to the customer must be provided with a locking device or other means designed to prevent the opening of the valve by persons other than those authorized by the operator; [49 CFR 192.727(d)(1)]

2. a mechanical device or fitting that will prevent the flow of gas must be installed in the service line or in the meter assembly; [49 CFR 192.727(d)(2)]

3. the customer's piping must be physically disconnected from the gas supply and the open pipe ends sealed. [49 CFR 192.727(d)(3)]

E. If air is used for purging, the operator shall insure that a combustible mixture is not present after purging. [49 CFR 192.727(e)]

F. Each abandoned vault must be filled with a suitable compacted material. [49 CFR 192.727(f)]

G. For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through a commercially navigable waterway, the last operator of that facility must file a report upon abandonment of that facility. [49 CFR 192.727(g)]

1. The preferred method to submit data on pipeline facilities abandoned after October 10, 2000 is to the National Pipeline Mapping System (NPMS) in accordance with the NPMS "Standards for Pipeline and Liquefied Natural Gas Operator Submissions." To obtain a copy of the NPMS Standards, please refer to the NPMS homepage at www.npms.rspa.dot.gov or contact the NPMS National Repository at 703-317-3073. A digital data format is preferred, but hard copy submissions are acceptable if they comply with the NPMS standards. In addition to the NPMS-required attributes, operators must submit the date of abandonment, diameter, method of abandonment, and certification that, to the best of the operator's knowledge, all of the reasonably available information requested was provided and, to the best of the operator's knowledge, the abandonment was completed in accordance with applicable laws. Refer to the NPMS Standards for details in preparing your data for submission. The NPMS Standards also include details of how to submit data. Alternatively, operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366-4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that the facility has been abandoned in accordance with all applicable laws. [49 CFR 192.727(g)(1)]

2. Data on pipeline facilities abandoned before October 10, 2000 must be filed by before April 10, 2001. Operators may submit reports by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366-4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a

certification that the facility has been abandoned in accordance with all applicable laws. [49 CFR 192.727(g)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:245 (April 1983), amended LR 10:538 (July 1984), LR 21:824 (August 1995), LR 27:1549 (September 2001), LR 30:

§2931. Compressor Stations: Inspection and Testing of Relief Devices [49 CFR 192.731]

A. Except for rupture discs, each pressure relieving device in a compressor station must be inspected and tested in accordance with §§2939 and 2943, and must be operated periodically to determine that it opens at the correct set pressure. [49 CFR 192.731(a)]

B. Any defective or inadequate equipment found must be promptly repaired or replaced. [49 CFR 192.731(b)]

C. Each remote control shutdown device must be inspected and tested at intervals not exceeding 15 months, but at least once each calendar year, to determine that it functions properly. [49 CFR 192.731(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:246 (April 1983), amended LR 10:538 (July 1984), LR 30:

§2935. Compressor Stations: Storage of Combustible Materials [49 CFR 192.735]

A. Flammable or combustible materials in quantities beyond those required for everyday use, or other than those normally used in compressor buildings, must be stored a safe distance from the compressor building. [49 CFR 192.735(a)]

B. Aboveground oil or gasoline storage tanks must be protected in accordance with National Fire Protection Association Standard No. 30. [49 CFR 192.735(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:246 (April 1983), amended LR 10:538 (July 1984), LR 30:

§2936. Compressor Stations: Gas Detection [49 CFR 192.736]

A. Not later than September 16, 1996, each compressor building in a compressor station must have a fixed gas detection and alarm system, unless the building is: [49 CFR 192.736(a)]

1. constructed so that at least 50 percent of its upright side area is permanently open; or [49 CFR 192.736(a)(1)]

2. located in an unattended field compressor station of 1,000 horsepower (746 kW) or less. [49 CFR 192.736(a)(2)]

B. Except when shutdown of the system is necessary for maintenance under Subsection C of this Section, each gas detection and alarm system required by this Section must: [49 CFR 192.736(b)]

1. continuously monitor the compressor building for a concentration of gas in air of not more than 25 percent of the lower explosive limit; and [49 CFR 192.736(b)(1)]

2. if that concentration of gas is detected, warn persons about to enter the building and persons inside the building of the danger. [49 CFR 192.736(b)(2)]

C. Each gas detection and alarm system required by this Section must be maintained to function properly. The maintenance must include performance tests. [49 CFR 192.736(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 21:824 (August 1995), amended LR 27:1549 (September 2001), LR 30:

§2939. Pressure Limiting and Regulating Stations: Inspection and Testing [49 CFR 192.739]

A. Each pressure limiting station, relief device (except rupture discs), and pressure regulating station and its equipment must be subjected at intervals not exceeding 15 months, but at least once each calendar year, to inspections and tests to determine that it is: [49 CFR 192.739]

1. in good mechanical condition; [49 CFR 192.739(a)]

2. adequate from the standpoint of capacity and reliability of operation for the service in which it is employed; [49 CFR 192.739(b)]

3. set to control or relieve at the correct pressure consistent with the pressure limits of §1161.A; and [49 CFR 192.739(c)]

4. properly installed and protected from dirt, liquids, or other conditions that might prevent proper operation. [49 CFR 192.739(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:246 (April 1983), amended LR 10:538 (July 1984), LR 30:

§2941. Pressure Limiting and Regulating Stations: Telemetry or Recording Gages [49 CFR 192.741]

A. Each distribution system supplied by more than one district pressure regulating station must be equipped with telemetry or recording pressure gages to indicate the gas pressure in the district. [49 CFR 192.741(a)]

B. On distribution systems supplied by a single district pressure regulating station, the operator shall determine the necessity of installing telemetry or recording gages in the district, taking into consideration the number of customers supplied, the operating pressures, the capacity of the installation, and other operating conditions. [49 CFR 192.741(b)]

C. If there are indications of abnormally high- or low-pressure, the regulator and the auxiliary equipment must be inspected and the necessary measures employed to correct any unsatisfactory operating conditions. [49 CFR 192.741(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:246 (April 1983), amended LR 10:538 (July 1984), LR 30:

§2943. Pressure Limiting and Regulating Stations: Testing of Relief Devices [49 CFR 192.743]

A. Pressure relief devices at pressure limiting stations and pressure regulating stations must have sufficient capacity to protect the facilities to which they are connected consistent with the pressure limits of §1161.A. This capacity must be determined at intervals not exceeding 15 months, but at least once each calendar year, by testing the devices in place or by review and calculations. [49 CFR 192.743(a)]

B. If review and calculations are used to determine if a device has sufficient capacity, the calculated capacity must be compared with the rated or experimentally determined relieving capacity of the device for the conditions under

which it operates. After the initial calculations, subsequent calculations need not be made if the annual review documents that parameters have not changed to cause the rated or experimentally determined relieving capacity to be insufficient. [49 CFR 192.743(b)]

C. If a relief device is of insufficient capacity, a new or additional device must be installed to provide the capacity required by Subsection A of this Section. [49 CFR 192.743(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:246 (April 1983), amended LR 10:538 (July 1984), LR 30:

§2945. Valve Maintenance: Transmission Lines
[49 CFR 192.745]

A. Each transmission line valve that might be required during any emergency must be inspected and partially operated at intervals not exceeding 15 months, but at least once each calendar year. [49 CFR 192.745(a)]

B. Each operator must take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternative valve. [49 CFR 192.745(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:246 (April 1983), amended LR 10:539 (July 1984), LR 30:

§2947. Valve Maintenance: Distribution Systems
[49 CFR 192.747]

A. Each valve, the use of which may be necessary for the safe operation of a distribution system, must be checked and serviced at intervals not exceeding 15 months, but at least once each calendar year. [49 CFR 192.747(a)]

B. Each operator must take prompt remedial action to correct any valve found inoperable, unless the operator designates an alternative valve. [49 CFR 192.747(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:246 (April 1983), amended LR 10:539 (July 1984), LR 30:

§2949. Vault Maintenance [49 CFR 192.749]

A. Each vault housing pressure regulating and pressure limiting equipment, and having a volumetric internal content of 200 cubic feet (5.66 cubic meters) or more, must be inspected at intervals not exceeding 15 months, but at least once each calendar year, to determine that it is in good physical condition and adequately ventilated. [49 CFR 192.749(a)]

B. If gas is found in the vault, the equipment in the vault must be inspected for leaks, and any leaks found must be repaired. [49 CFR 192.749(b)]

C. The ventilating equipment must also be inspected to determine that it is functioning properly. [49 CFR 192.749(c)]

D. Each vault cover must be inspected to assure that it does not present a hazard to public safety. [49 CFR 192.749(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:246 (April 1983),

amended LR 10:539 (July 1984), LR 27:1549 (September 2001), LR 30:

§2951. Prevention of Accidental Ignition
[49 CFR 192.751]

A. Each operator shall take steps to minimize the danger of accidental ignition of gas in any structure or area where the presence of gas constitutes a hazard of fire or explosion, including the following: [49 CFR 192.751]

1. when a hazardous amount of gas is being vented into open air, each potential source of ignition must be removed from the area and a fire extinguisher must be provided; [49 CFR 192.751(a)]

2. gas or electric welding or cutting may not be performed on pipe or on pipe components that contain a combustible mixture of gas and air in the area of work; [49 CFR 192.751(b)]

3. post warning signs, where appropriate. [49 CFR 192.751(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:247 (April 1983), amended LR 10:539 (July 1984), LR 30:

§2953. Caulked Bell and Spigot Joints
[49 CFR 192.753]

A. Each cast-iron caulked bell and spigot joint that is subject to pressures of more than 25 psi (172 kPa) gage must be sealed with: [49 CFR 192.753(a)]

1. a mechanical leak clamp; or [49 CFR 192.753(a)(1)]

2. a material or device which: [49 CFR 192.753(a)(2)]

a. does not reduce the flexibility of the joint; [49 CFR 192.753(a)(2)(i)]

b. permanently bonds, either chemically or mechanically, or both, with the bell and spigot metal surfaces or adjacent pipe metal surfaces; and [49 CFR 192.753(a)(2)(ii)]

c. seals and bonds in a manner that meets the strength, environmental, and chemical compatibility requirements of §703.A.1 and A.2 and §1103. [49 CFR 192.753(a)(2)(iii)]

B. Each cast iron caulked bell and spigot joint that is subject to pressures of 25 psi (172 kPa) gage or less and is exposed for any reason, must be sealed by a means other than caulking. [49 CFR 192.753(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:247 (April 1983), amended LR 10:539 (July 1984), LR 27:1549 (September 2001), LR 30:

§2955. Protecting Cast-Iron Pipelines [49 CFR 192.755]

A. When an operator has knowledge that the support for a segment of a buried cast-iron pipeline is disturbed: [49 CFR 192.755]

1. that segment of the pipeline must be protected, as necessary, against damage during the disturbance by: [49 CFR 192.755(a)]

a. vibrations from heavy construction equipment, trains, trucks, buses, or blasting; [49 CFR 192.755(a)(1)]

b. impact forces by vehicles; [49 CFR 192.755(a)(2)]

c. earth movement; [49 CFR 192.755(a)(3)]

d. apparent future excavations near the pipeline; or [49 CFR 192.755(a)(4)]

e. other foreseeable outside forces which may subject that segment of the pipeline to bending stress; [49 CFR 192.755(a)(5)]

2. as soon as feasible, appropriate steps must be taken to provide permanent protection for the disturbed segment from damage that might result from external loads, including compliance with applicable requirements of §§1717.A, 1719, and 1911.B through D. [49 CFR 192.755(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 9:247 (April 1983), amended LR 10:539 (July 1984), LR 30:

Chapter 31. Operator Qualification [Subpart N]

§3101. Scope [49 CFR 192.801]

A. This Chapter prescribes the minimum requirements for operator qualification of individuals performing covered tasks on a pipeline facility. [49 CFR 192.801(a)]

B. For the purpose of this Chapter, a covered task is an activity, identified by the operator, that: [49 CFR 192.801(b)]

1. is performed on a pipeline facility; [49 CFR 192.801(b)(1)]

2. is an operations or maintenance task; [49 CFR 192.801(b)(2)]

3. is performed as a requirement of this Part; and [49 CFR 192.801(b)(3)]

4. affects the operation or integrity of the pipeline. [49 CFR 192.801(b)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1550 (September 2001), amended LR 30:

§3103. Definitions [49 CFR 192.803]

Abnormal Operating Condition? a condition identified by the operator that may indicate a malfunction of a component or deviation from normal operations that may:

1. indicate a condition exceeding design limits; or

2. result in a hazard(s) to persons, property, or the environment.

Evaluation? a process, established and documented by the operator, to determine an individual's ability to perform a covered task by any of the following:

1. written examination;

2. oral examination;

3. work performance history review;

4. observation during;

a. performance on the job;

b. on the job training; or

c. simulations; or

5. other forms of assessment.

Qualified? that an individual has been evaluated and can:

1. perform assigned covered tasks; and

2. recognize and react to abnormal operating conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1550 (September 2001), amended LR 30:

§3105. Qualification Program [49 CFR 192.805]

A. Each operator shall have and follow a written qualification program. The program shall include provisions to: [49 CFR 192.805]

1. identify covered tasks; [49 CFR 192.805(a)]

2. ensure through evaluation that individuals performing covered tasks are qualified; [49 CFR 192.805(b)]

3. allow individuals that are not qualified pursuant to this Subpart to perform a covered task if directed and observed by an individual that is qualified; [49 CFR 192.805(c)]

4. evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an incident as defined in Chapter 3 of this Part; [49 CFR 192.805(c)]

5. evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task; [49 CFR 192.805(e)]

6. communicate changes that affect covered tasks to individuals performing those covered tasks; and [49 CFR 192.805(f)]

7. identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed. [49 CFR 192.805(g)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1550 (September 2001), amended LR 30:

§3107. Recordkeeping [49 CFR 192.807]

A. Each operator shall maintain records that demonstrate compliance with this Subpart. [49 CFR 192.807]

1. Qualification records shall include: [49 CFR 192.807(a)]

a. identification of qualified individual(s); [49 CFR 192.807(a)(1)]

b. identification of the covered tasks the individual is qualified to perform; [49 CFR 192.807(a)(2)]

c. date(s) of current qualification; and [49 CFR 192.807(a)(3)]

d. qualification method(s). [49 CFR 192.807(a)(4)]

2. Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years. [49 CFR 192.807(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1550 (September 2001), amended LR 30:

§3109. General [49 CFR 192.809]

A. Operators must have a written qualification program by April 27, 2001. [49 CFR 192.809(a)]

B. Operators must complete the qualification of individuals performing covered tasks by October 28, 2002. [49 CFR 192.809(b)]

C. Work performance history review may be used as a sole evaluation method for individuals who were performing a covered task prior to October 26, 1999. [49 CFR 192.809(c)]

D. After October 28, 2002, work performance history may not be used as a sole evaluation method. [49 CFR 192.809(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1550 (September 2001), amended LR 30:

Chapter 33. Pipeline Integrity Management **[Subpart O]**

§3301. What do the Regulations in this Chapter Cover? **[49 CFR 192.901]**

A. This Chapter prescribes minimum requirements for an integrity management program on any gas transmission pipeline covered under this Part. For gas transmission pipelines constructed of plastic, only the requirements in §§3317, 3321, 3335 and 3337 apply. [49 CFR 192.901]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3303. What Definitions Apply to this Chapter? **[49 CFR 192.903]**

A. The following definitions apply to this Chapter.

Assessment? the use of nondestructive testing techniques as allowed in this Chapter to ascertain the condition of a covered pipeline segment.

Confirmatory Direct Assessment? an assessment method using more focused application of the principles and techniques of direct assessment to identify internal and external corrosion in a covered transmission pipeline segment.

Covered Segment or Covered Pipeline Segment? a segment of gas transmission pipeline located in a high consequence area. The terms gas and transmission line are defined in §503.

Direct Assessment? an integrity assessment method that utilizes a process to evaluate certain threats (i.e., external corrosion, internal corrosion and stress corrosion cracking) to a covered pipeline segment's integrity. The process includes the gathering and integration of risk factor data, indirect examination or analysis to identify areas of suspected corrosion, direct examination of the pipeline in these areas, and post assessment evaluation.

High Consequence Area? an area established by one of the methods described in (a) or (b) below.

- a. An area defined as:
 - i. a Class 3 location under §505; or
 - ii. a Class 4 location under §505; or
 - iii. any area outside a Class 3 or Class 4 location where the potential impact radius is greater than 660 feet (200 meters), and the area within a potential impact circle contains 20 or more buildings intended for human occupancy; or
 - iv. the area within a potential impact circle containing an identified site.
- b. The area within a potential impact circle containing:
 - i. 20 or more buildings intended for human occupancy, unless the exception in Subparagraph d applies; or
 - ii. an identified site.

c. Where a potential impact circle is calculated under either method (a) or (b) to establish a high consequence area, the length of the high consequence area extends axially along the length of the pipeline from the outermost edge of the first potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy to the outermost edge of the last contiguous potential impact circle that contains either an identified site or 20 or more buildings intended for human occupancy. (See Figure E.I.A. in Appendix E.)

d. If in identifying a high consequence area under Clause a.iii or Clause b.i, the radius of the potential impact circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy within a distance 660 feet (200 meters) from the centerline of the pipeline until December 17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the potential impact circle (i.e., the prorated number of buildings intended for human occupancy is equal to $\{[20 \times (660 \text{ feet (or 200 meters)}/\text{potential impact radius in feet (or meters)}^2)]\}$).

Identified Site? each of the following areas:

a. an outside area or open structure that is occupied by 20 or more persons on at least 50 days in any 12 month period. (The days need not be consecutive.) Examples include but are not limited to, beaches, playgrounds, recreational facilities, camping grounds, outdoor theaters, stadiums, recreational areas near a body of water, or areas outside a rural building such as a religious facility); or

b. a building that is occupied by 20 or more persons on at least five days a week for 10 weeks in any 12 month period. (The days and weeks need not be consecutive). Examples include, but are not limited to, religious facilities, office buildings, community centers, general stores, 4-H facilities, or roller skating rinks); or

c. a facility occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate. Examples include but are not limited to hospitals, prisons, schools, day-care facilities, retirement facilities or assisted-living facilities.

Potential Impact Circle? a circle of radius equal to the potential impact radius (PIR).

Potential Impact Radius (PIR)? the radius of a circle within which the potential failure of a pipeline could have significant impact on people or property. PIR is determined by the formula $r = 0.69 * [\text{square root of } (p * d^2)]$, where 'r' is the radius of a circular area in feet surrounding the point of failure, 'p' is the maximum allowable operating pressure (MAOP) in the pipeline segment in pounds per square inch and 'd' is the nominal diameter of the pipeline in inches.

Note: 0.69 is the factor for natural gas. This number will vary for other gases depending upon their heat of combustion. An operator transporting gas other than natural gas must use Section 3.2 of ASME/ANSI B31.8S-2001 (Supplement to ASME B31.8; ibr, see §507) to calculate the impact radius formula.

Remediation? a repair or mitigation activity an operator takes on a covered segment to limit or reduce the probability of an undesired event occurring or the expected consequences from the event.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3305. How Does an Operator Identify a High Consequence Area? [49 CFR 192.905]

A. General. To determine which segments of an operator's transmission pipeline system are covered by this Chapter, an operator must identify the high consequence areas. An operator must use method (a) or (b) from the definition in §3303 to identify a high consequence area. An operator may apply one method to its entire pipeline system, or an operator may apply one method to individual portions of the pipeline system. An operator must describe in its integrity management program which method it is applying to each portion of the operator's pipeline system. The description must include the potential impact radius when utilized to establish a high consequence area. (See Appendix E.I. for guidance on identifying high consequence areas.) [49 CFR 192.905(a)]

B. Identified Sites. An operator must identify an identified site, for purposes of this Chapter, from information the operator has obtained from routine operation and maintenance activities and from public officials with safety or emergency response or planning responsibilities who indicate to the operator that they know of locations that meet the identified site criteria. These public officials could include officials on a local emergency planning commission or relevant Native American tribal officials. If a public official with safety or emergency response or planning responsibilities informs an operator that it does not have the information to identify an identified site, the operator must use one of the following sources, as appropriate, to identify these sites: [49 CFR 192.905 (b)]

1. visible marking (e.g., a sign); or [49 CFR 192.905 (b)(1)]
2. the site is licensed or registered by a federal, state, or local government agency; or [49 CFR 192.905(b)(2)]
3. the site is on a list (including a list on an internet web site) or map maintained by or available from a federal, state, or local government agency and available to the general public. [49 CFR 192.905(b)(3)]

C. Newly-Identified Areas. When an operator has information that the area around a pipeline segment not previously identified as a high consequence area could satisfy any of the definitions in §3303, the operator must complete the evaluation using method (a) or (b). If the segment is determined to meet the definition as a high consequence area, it must be incorporated into the operator's baseline assessment plan as a high consequence area within one year from the date the area is identified. [49 CFR 192.905 (c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3307. What Must an Operator do to Implement this Chapter? [49 CFR 192.907]

A. General. No later than December 17, 2004, an operator of a covered pipeline segment must develop and follow a written integrity management program that contains

all the elements described in §3311 and that addresses the risks on each covered transmission pipeline segment. The initial integrity management program must consist, at a minimum, of a framework that describes the process for implementing each program element, how relevant decisions will be made and by whom, a time line for completing the work to implement the program element, and how information gained from experience will be continuously incorporated into the program. The framework will evolve into a more detailed and comprehensive program. An operator must make continual improvements to the program. [49 CFR 192.907 (a)]

B. Implementation Standards. In carrying out this Chapter, an operator must follow the requirements of this Chapter and of ASME/ANSI B31.8S (ibr, see §507) and its appendices, where specified. An operator may follow an equivalent standard or practice only when the operator demonstrates the alternative standard or practice provides an equivalent level of safety to the public and property. In the event of a conflict between this Chapter and ASME/ANSI B31.8S, the requirements in this Chapter control. [49 CFR 192.907 (b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3309. How Can an Operator Change its Integrity Management Program? [49 CFR 192.909]

A. General. An operator must document any change to its program and the reasons for the change before implementing the change. [49 CFR 192.909 (a)]

B. Notification. An operator must notify OPS, in accordance with Section §3349, of any change to the program that may substantially affect the program's implementation or may significantly modify the program or schedule for carrying out the program elements. An operator must also notify a state or local pipeline safety authority when a covered segment is located in a state where OPS has an interstate agent agreement, and a state or local pipeline safety authority that regulates a covered pipeline segment within that state. An operator must provide the notification within 30 days after adopting this type of change into its program. [49 CFR 192.909 (b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3311. What are the Elements of an Integrity Management Program? [49 CFR 192.911]

A. An operator's initial integrity management program begins with a framework (see §3307) and evolves into a more detailed and comprehensive integrity management program, as information is gained and incorporated into the program. An operator must make continual improvements to its program. The initial program framework and subsequent program must, at minimum, contain the following elements: [(When indicated, refer to ASME/ANSI B31.8S (ibr, see §507) for more detailed information on the listed element.)] [49 CFR 192.911]

1. an identification of all high consequence areas, in accordance with §3305; [49 CFR 192.911 (a)]

2. a baseline assessment plan meeting the requirements of §§3319 and 3321; [49 CFR 192.911 (b)]

3. an identification of threats to each covered pipeline segment, which must include data integration and a risk assessment. An operator must use the threat identification and risk assessment to prioritize covered segments for assessment (§3317) and to evaluate the merits of additional preventive and mitigative measures (§3335) for each covered segment; [49 CFR 192.911 (c)]

4. a direct assessment plan, if applicable, meeting the requirements of §3323, and depending on the threat assessed, of §§3325, 3327, or 3329; [49 CFR 192.911 (d)]

5. provisions meeting the requirements of §3333 for remediating conditions found during an integrity assessment; [49 CFR 192.911 (e)]

6. a process for continual evaluation and assessment meeting the requirements of §3337; [49 CFR 192.911 (f)]

7. if applicable, a plan for confirmatory direct assessment meeting the requirements of §3331; [49 CFR 192.911 (g)].

8. provisions meeting the requirements of §3335 for adding preventive and mitigative measures to protect the high consequence area; [49 CFR 192.911 (h)]

9. a performance plan as outlined in ASME/ANSI B31.8S, Section 9 that includes performance measures meeting the requirements of §3343; [49 CFR 192.911 (i)]

10. record keeping provisions meeting the requirements of §3347; [49 CFR 192.911 (j)]

11. a management of change process as outlined in ASME/ANSI B31.8S, Section 11; [49 CFR 192.911 (k)]

12. a quality assurance process as outlined in ASME/ANSI B31.8S, Section 12; [49 CFR 192.911 (l)]

13. a communication plan that includes the elements of ASME/ANSI B31.8S, Section 10, and that includes procedures for addressing safety concerns raised by: [49 CFR 192.911 (m)]

a. OPS; and [49 CFR 192.911 (m) (1)]

b. a state or local pipeline safety authority when a covered segment is located in a state where OPS has an interstate agent agreement; [49 CFR 192.911 (m) (2)]

14. procedures for providing (when requested), by electronic or other means, a copy of the operator's risk analysis or integrity management program to: [49 CFR 192.911 (n)]

a. OPS; and [49 CFR 192.911 (n) (1)]

b. a state or local pipeline safety authority when a covered segment is located in a state where OPS has an interstate agent agreement; [49 CFR 192.911 (n) (2)]

15. procedures for ensuring that each integrity assessment is being conducted in a manner that minimizes environmental and safety risks; [49 CFR 192.911 (o)]

16. a process for identification and assessment of newly-identified high consequence areas. (See §§3305 and 3321) [49 CFR 192.911 (p)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3313. When May an Operator Deviate its Program from Certain Requirements of this Chapter? [49 CFR 192.913]

A. General. ASME/ANSI B31.8S (ibr, see §507) provides the essential features of a performance-based or a prescriptive integrity management program. An operator that uses a performance-based approach that satisfies the requirements for exceptional performance in Subsection B of this Section may deviate from certain requirements in this Chapter, as provided in Subsection C of this Section. [49 CFR 192.913 (a)]

B. Exceptional performance. An operator must be able to demonstrate the exceptional performance of its integrity management program through the following actions. [49 CFR 192.913 (b)]

1. To deviate from any of the requirements set forth in Subsection C of this Section, an operator must have a performance-based integrity management program that meets or exceed the performance-based requirements of ASME/ANSI B31.8S and includes, at a minimum, the following elements: [49 CFR 192.913 (b) (1)]

a. a comprehensive process for risk analysis; [49 CFR 192.913 (b) (1) (i)]

b. all risk factor data used to support the program; [49 CFR 192.913 (b) (1) (ii)]

c. a comprehensive data integration process; [49 CFR 192.913 (b) (1) (iii)]

d. a procedure for applying lessons learned from assessment of covered pipeline segments to pipeline segments not covered by this Chapter; [49 CFR 192.913 (b) (1) (iv)]

e. a procedure for evaluating every incident, including its cause, within the operator's sector of the pipeline industry for implications both to the operator's pipeline system and to the operator's integrity management program; [49 CFR 192.913 (b) (1) (v)]

f. a performance matrix that demonstrates the program has been effective in ensuring the integrity of the covered segments by controlling the identified threats to the covered segments; [49 CFR 192.913 (b) (1) (vi)]

g. semi-annual performance measures beyond those required in §3343 that are part of the operator's performance plan [see §3311(9)]. An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with §3351; and [49 CFR 192.913 (b) (1) (vii)]

h. an analysis that supports the desired integrity reassessment interval and the remediation methods to be used for all covered segments. [49 CFR 192.913 (b) (1) (viii)]

2. In addition to the requirements for the performance-based plan, an operator must:

a. have completed at least two integrity assessments of all covered pipeline segments, and be able to demonstrate that each assessment effectively addressed the identified threats on the covered segments; [49 CFR 192.913 (b) (2) (i)]

b. remediate all anomalies identified in the more recent assessment according to the requirements in §3333, and incorporate the results and lessons learned from the more recent assessment into the operator's data integration and risk assessment. [49 CFR 192.913 (b) (2) (ii)]

C. Deviation. Once an operator has demonstrated that it has satisfied the requirements of Subsection B of this Section, the operator may deviate from the prescriptive requirements of ASME/ANSI B31.8S and of this Chapter only in the following instances. [49 CFR 192.913 (c)]

1. The time frame for reassessment as provided in §3339 except that reassessment by some method allowed under this Chapter (e.g., confirmatory direct assessment) must be carried out at intervals no longer than seven years. [49 CFR 192.913 (c) (1)]

2. The time frame for remediation as provided in §3333 if the operator demonstrates the time frame will not jeopardize the safety of the covered segment. [49 CFR 192.913 (c)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3315. What Knowledge and Training Must Personnel have to Carry Out an Integrity Management Program? [49 CFR 192.915]

A. Supervisory Personnel. The integrity management program must provide that each supervisor whose responsibilities relate to the integrity management program possesses and maintains a thorough knowledge of the integrity management program and of the elements for which the supervisor is responsible. The program must provide that any person who qualifies as a supervisor for the integrity management program has appropriate training or experience in the area for which the person is responsible. [49 CFR 192.915 (a)]

B. Persons Who Carry Out Assessments and Evaluate Assessment Results. The integrity management program must provide criteria for the qualification of any person: [49 CFR 192.915 (b)]

1. who conducts an integrity assessment allowed under this Chapter; or [49 CFR 192.915 (b)(1)]

2. who reviews and analyzes the results from an integrity assessment and evaluation; or [49 CFR 192.915 (b)(2)]

3. who makes decisions on actions to be taken based on these assessments. [49 CFR 192.915 (b)(3)]

C. Persons Responsible for Preventive and Mitigative Measures. The integrity management program must provide criteria for the qualification of any person: [49 CFR 192.915 (c)]

1. who implements preventive and mitigative measures to carry out this Chapter, including the marking and locating of buried structures; or [49 CFR 192.915 (c)(1)]

2. who directly supervises excavation work carried out in conjunction with an integrity assessment. [49 CFR 192.915 (c)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3317. How does an Operator Identify Potential Threats to Pipeline Integrity and Use the Threat Identification in its Integrity Program? [49 CFR 192.917]

A. Threat Identification. An operator must identify and evaluate all potential threats to each covered pipeline segment. Potential threats that an operator must consider include, but are not limited to, the threats listed in ASME/ANSI B31.8S (ibr, see §3507), Section 2 and the following: [49 CFR 192.917(a)]

1. time dependent threats such as internal corrosion, external corrosion, and stress corrosion cracking; [49 CFR 192.917 (a)(1)]

2. static or resident threats, such as fabrication or construction defects; [49 CFR 192.917 (a)(2)]

3. time independent threats such as third party damage and outside force damage; and [49 CFR 192.917 (a)(3)]

4. human error. [49 CFR 192.917 (a)(4)]

B. Data Gathering and Integration. To identify and evaluate the potential threats to a covered pipeline segment, an operator must gather and integrate data and information on the entire pipeline that could be relevant to the covered segment. In performing this data gathering and integration, an operator must follow the requirements in ASME/ANSI B31.8S, Section 4. At a minimum, an operator must gather and evaluate the set of data specified in Appendix A to ASME/ANSI B31.8S, and consider both on the covered segment and similar non-covered segments, past incident history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, internal inspection records and all other conditions specific to each pipeline. [49 CFR 192.917 (b)]

C. Risk Assessment. An operator must conduct a risk assessment that follows ASME/ANSI B31.8S, Section 5, and considers the identified threats for each covered segment. An operator must use the risk assessment to prioritize the covered segments for the baseline and continual reassessments (§§3319, 3321, 3337), and to determine what additional preventive and mitigative measures are needed (§3335) for the covered segment. [49 CFR 192.917 (c)]

D. Plastic Transmission Pipeline. An operator of a plastic transmission pipeline must assess the threats to each covered segment using the information in Sections 4 and 5 of ASME B31.8S, and consider any threats unique to the integrity of plastic pipe. [49 CFR 192.917 (d)]

E. Actions to Address Particular Threats. If an operator identifies any of the following threats, the operator must take the following actions to address the threat. [49 CFR 192.917 (e)]

1. Third Party Damage. An operator must utilize the data integration required in Subsection B of this Section and ASME/ANSI B31.8S, Appendix A7 to determine the susceptibility of each covered segment to the threat of third party damage. If an operator identifies the threat of third party damage, the operator must implement comprehensive additional preventive measures in accordance with §3335 and monitor the effectiveness of the preventive measures. If, in conducting a baseline assessment under §3321, or a reassessment under §3337, an operator uses an internal inspection tool, such as a caliper, geometry or magnetic flux leakage tool, to address other identified threats on the

covered segment, the operator must integrate data from these tool runs with data related to any encroachment or foreign line crossing on the covered segment, to define where potential indications of third party damage may exist in the covered segment. An operator must also have procedures in its integrity management program addressing actions it will take to respond to findings from this data integration. [49 CFR 192.917 (e)(1)]

2. Cyclic Fatigue. An operator must evaluate whether cyclic fatigue or other loading condition (including ground movement, suspension bridge condition) could lead to a failure of a deformation, including a dent or gouge, or other defect in the covered segment. An evaluation must assume the presence of threats in the covered segment that could be exacerbated by cyclic fatigue. An operator must use the results from the evaluation together with the criteria used to evaluate the significance of this threat to the covered segment to prioritize the integrity baseline assessment or reassessment. [49 CFR 192.917 (e)(2)]

3. Manufacturing and Construction Defects. If an operator identifies the threat of manufacturing and construction defects (including seam defects) in the covered segment, an operator must analyze the covered segment to determine the risk of failure from these defects. An operator may consider manufacturing and construction related defects to be stable defects if the operating conditions on the covered segment have not significantly changed since December 17, 1998. If any of the following changes occur in the covered segment, an operator must prioritize the covered segment as a high risk segment for the baseline assessment or a subsequent reassessment: [49 CFR 192.917 (e)(3)]

a. operating pressure increases above the historic operating pressure (i.e. the highest pressure recorded since December 17, 1998); [49 CFR 192.917 (e)(3)(i)]

b. MAOP increases; or [49 CFR 192.917 (e)(3)(ii)]

c. the stresses leading to cyclic fatigue increase. [49 CFR 192.917 (e)(3)(iii)]

4. ERW Pipe. If a covered pipeline segment contains low frequency electric resistance welded pipe (ERW) or lap welded pipe that satisfies the conditions specified in ASME/ANSI B31.8 S, Appendix A4.3 and A4.4, an operator must select an assessment technology or technologies with a proven application capable of assessing seam integrity and of detecting seam corrosion anomalies. The operator must prioritize the covered segment as a high risk segment for the baseline assessment or a subsequent reassessment. [49 CFR 192.917 (e)(4)]

5. Corrosion. If an operator identifies corrosion on a covered pipeline segment that could adversely affect the integrity of the line (conditions specified in §3331), the operator must evaluate and remediate, as necessary, all pipeline segments (both covered and non-covered) with similar material coating and environmental characteristics. An operator must establish a schedule for evaluating and remediating, as necessary, the similar segments that is consistent with the operator's established operating and maintenance procedures under Subpart 3 for testing and repair. [49 CFR 192.917 (e)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3319. What Must Be in the Baseline Assessment Plan? [49 CFR 192.919]

A. An operator must include each of the following elements in its written baseline assessment plan: [49 CFR 192.919]

1. identification of the potential threats to each covered pipeline segment and the information supporting the threat identification (see §3317); [49 CFR 192.919 (a)]

2. the methods selected to assess the integrity of the line pipe, including an explanation of why the assessment method was selected to address the identified threats to each covered segment. The integrity assessment method an operator uses must be based on the threats identified to the covered segment (see §3317). More than one method may be required to address all the threats to the covered pipeline segment; [49 CFR 192.919 (b)]

3. a schedule for completing the integrity assessment of all covered segments, including, risk factors considered in establishing the assessment schedule; [49 CFR 192.919 (c)]

4. if applicable, a direct assessment plan that meets the requirements of §3323, and depending on the threat to be addressed, of §§3325, 3327, or 3329; and [49 CFR 192.919 (d)]

5. a procedure to ensure that the baseline assessment is being conducted in a manner that minimizes environmental and safety risks. [49 CFR 192.919 (e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3321. How is the Baseline Assessment to be Conducted? [49 CFR 192.921]

A. Assessment Methods. An operator must assess the integrity of the line pipe in each covered segment by applying one or more of the following methods depending on the threats to which the covered segment is susceptible. An operator must select the method or methods best suited to address the threats identified to the covered segment (see §3317): [49 CFR 192.921 (a)]

1. internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow ASME/ANSI B31.8S (ibr, see §507), Section 6.2 in selecting the appropriate internal inspection tools for the covered segment; [49 CFR 192.921 (a)(1)]

2. pressure test conducted in accordance with Chapter 23 of this Part; [49 CFR 192.921 (a)(2)]

3. direct assessment to address threats of external corrosion, internal corrosion, and stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in §3323 and with, as applicable, the requirements specified in §§3325, 3327 or 3329; [49 CFR 192.921 (a)(3)]

4. other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with §3349. [49 CFR 192.921 (a)(4)]

B. Prioritizing Segments. An operator must prioritize the covered pipeline segments for the baseline assessment

according to a risk analysis that considers the potential threats to each covered segment. The risk analysis must comply with the requirements in §3317. [49 CFR 192.921 (b)]

C. Assessment for Particular Threats. In choosing an assessment method for the baseline assessment of each covered segment, an operator must take the actions required in §3317.D to address particular threats that it has identified. [49 CFR 192.921 (c)]

D. Time Period. An operator must prioritize all the covered segments for assessment in accordance with §3317.C and Subsection B of this Section. An operator must assess at least 50 percent of the covered segments beginning with the highest risk segments, by December 17, 2007. An operator must complete the baseline assessment of all covered segments by December 17, 2012. [49 CFR 192.921 (d)]

E. Prior Assessment. An operator may use a prior integrity assessment conducted before December 17, 2002 as a baseline assessment for the covered segment, if the integrity assessment meets the baseline requirements in this Chapter and subsequent remedial actions to address the conditions listed in §3333 have been carried out. In addition, if an operator uses this prior assessment as its baseline assessment, the operator must reassess the line pipe in the covered segment according to the requirements of §3337 and §3339. [49 CFR 192.921 (e)]

F. Newly-Identified Areas. When an operator identifies a new high consequence area (see §3305), an operator must complete the baseline assessment of the line pipe in the newly-identified high consequence area within ten years from the date the area is identified. [49 CFR 192.921 (f)]

G. Newly-Installed Pipe. An operator must complete the baseline assessment of a newly- installed segment of pipe covered by this Chapter within 10 years from the date the pipe is installed. An operator may conduct a post-installation pressure test, in accordance with Chapter 23 of this Part, to satisfy the requirement for a baseline assessment. [49 CFR 192.921 (g)]

H. Plastic Transmission Pipeline. If the threat analysis required in §3317.D on a plastic transmission pipeline indicates that a covered segment is susceptible to failure from causes other than third-party damage, an operator must conduct a baseline assessment of the segment in accordance with the requirements of this Section and of §3317. The operator must justify the use of an alternative assessment method that will address the identified threats to the covered segment. [49 CFR 192.921 (h)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3323. How is Direct Assessment Used and for What Threats? [49 CFR 192.923]

A. General. An operator may use direct assessment either as a primary assessment method or as a supplement to the other assessment methods allowed under this Chapter. An operator may only use direct assessment as the primary assessment method to address the identified threats of external corrosion (ECDA), internal corrosion (ICDA), and stress corrosion cracking (SCCDA). [49 CFR 192.923 (a)]

B. Primary Method. An operator using direct assessment as a primary assessment method must have a plan that complies with the requirements in: [49 CFR 192.923 (b)]

1. ASME/ANSI B31.8S (ibr, see §507), Section 6.4; NACE RP0502-2002 (ibr, see §507); and §3325 if addressing external corrosion (ECDA); [49 CFR 192.923 (b)(1)]

2. ASME/ANSI B31.8S, Section 6.4 and Appendix B2, and §3327 if addressing internal corrosion (ICDA); [49 CFR 192.923 (b)(2)]

3. ASME/ANSI B31.8S Appendix A3, and §3329 if addressing stress corrosion cracking (SCCDA). [49 CFR 192.923 (b)(3)]

C. Supplemental Method. An operator using direct assessment as a supplemental assessment method for any applicable threat must have a plan that follows the requirements for confirmatory direct assessment in §3331. [49 CFR 192.923 (c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3325. What are the Requirements for Using External Corrosion Direct Assessment (ECDA)? [49 CFR 192.925]

A. Definition. ECDA is a four-step process that combines preassessment, indirect inspection, direct examination, and post assessment to evaluate the threat of external corrosion to the integrity of a pipeline. [49 CFR 192.925 (a)]

B. General Requirements. An operator that uses direct assessment to assess the threat of external corrosion must follow the requirements in this Section, in ASME/ANSI B31.8S (ibr, see §507), Section 6.4, and NACE RP 0502-2002 (ibr, see §507). An operator must develop and implement a direct assessment plan that has procedures addressing preassessment, indirect inspections, direct examination, and post-assessment. [49 CFR 192.925 (b)]

1. Preassessment. In addition to the requirements in ASME/ANSI B31.8S Section 6.4 and NACE RP 0502-2002, Section 3, the plan's procedures for preassessment must include: [49 CFR 192.925 (b)(1)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; and [49 CFR 192.925 (b)(1)(i)]

b. the basis on which an operator selects at least two different, but complementary indirect assessment tools to assess each ECDA Region. If an operator utilizes an indirect inspection method that is not discussed in Appendix A of NACE RP0502-2002, the operator must demonstrate the applicability, validation basis, equipment used, application procedure, and utilization of data for the inspection method. [49 CFR 192.925 (b)(1)(ii)]

2. Indirect Examination. In addition to the requirements in ASME/ANSI B31.8S Section 6.4 and NACE RP 0502-2002, Section 4, the plan's procedures for indirect examination of the ECDA regions must include: [49 CFR 192.925 (b)(2)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; [49 CFR 192.925 (b)(2)(i)]

b. criteria for identifying and documenting those indications that must be considered for excavation and direct examination. Minimum identification criteria include the known sensitivities of assessment tools, the procedures for using each tool, and the approach to be used for decreasing the physical spacing of indirect assessment tool readings when the presence of a defect is suspected; [49 CFR 192.925 (b)(2)(ii)]

c. criteria for defining the urgency of excavation and direct examination of each indication identified during the indirect examination. These criteria must specify how an operator will define the urgency of excavating the indication as immediate, scheduled or monitored; and [49 CFR 192.925 (b)(2)(iii)]

d. criteria for scheduling excavation of indications for each urgency level. [49 CFR 192.925 (b)(2)(iv)]

3. Direct Examination. In addition to the requirements in ASME/ANSI B31.8S Section 6.4 and NACE RP 0502-2002, Section 5, the plan's procedures for direct examination of indications from the indirect examination must include: [49 CFR 192.925 (b)(3)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a covered segment; [49 CFR 192.925 (b)(3)(i)]

b. criteria for deciding what action should be taken if either (a) corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE RP0502-2002), or (b) root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE RP0502-2002); [49 CFR 192.925 (b)(3)(ii)]

c. criteria and notification procedures for any changes in the ECDA Plan, including changes that affect the severity classification, the priority of direct examination, and the time frame for direct examination of indications; and [49 CFR 192.925 (b)(3)(iii)]

d. criteria that describe how and on what basis an operator will reclassify and reprioritize any of the provisions that are specified in Section 5.9 of NACE RP0502-2002. [49 CFR 192.925 (b)(3)(iv)]

4. Post Assessment and Continuing Evaluation. In addition to the requirements in ASME/ANSI B31.8S Section 6.4 and NACE RP 0502-2002, Section 6, the plan's procedures for post assessment of the effectiveness of the ECDA process must include: [49 CFR 192.925 (b)(4)]

a. measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in covered segments; and [49 CFR 192.925 (b)(4)(i)]

b. criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the covered segment at an interval less than that specified in §3339. (See Appendix D of NACE RP0502-2002.) [49 CFR 192.925 (b)(4)(ii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3327. What are the Requirements for Using Internal Corrosion Direct Assessment (ICDA)? **[49 CFR 192.927]**

A. Definition. Internal Corrosion Direct Assessment (ICDA) is a process an operator uses to identify areas along

the pipeline where fluid or other electrolyte introduced during normal operation or by an upset condition may reside, and then focuses direct examination on the locations in covered segments where internal corrosion is most likely to exist. The process identifies the potential for internal corrosion caused by microorganisms, or fluid with CO₂, O₂, hydrogen sulfide or other contaminants present in the gas. [49 CFR 192.927 (a)]

B. General Requirements. An operator using direct assessment as an assessment method to address internal corrosion in a covered pipeline segment must follow the requirements in this Section and in ASME/ANSI B31.8S (ibr, see §507), Section 6.4 and Appendix B2. The ICDA process described in this Section applies only for a segment of pipe transporting nominally dry natural gas, and not for a segment with electrolyte nominally present in the gas stream. If an operator uses ICDA to assess a covered segment operating with electrolyte present in the gas stream, the operator must develop a plan that demonstrates how it will conduct ICDA in the segment to effectively address internal corrosion. [49 CFR 192.927 (b)]

C. The ICDA Plan. An operator must develop and follow an ICDA plan that provides for preassessment, identification of ICDA regions and excavation locations, detailed examination of pipe at excavation locations, and post-assessment evaluation and monitoring. [49 CFR 192.927 (c)]

1. Preassessment. In the preassessment stage, an operator must gather and integrate data and information needed to evaluate the feasibility of ICDA for the covered segment, and to support use of a model to identify the locations along the pipe segment where electrolyte may accumulate, to identify ICDA regions, and to identify areas within the covered segment where liquids may potentially be entrained. This data and information includes, but is not limited to: [49 CFR 192.927 (c)(1)]

a. all data elements listed in Appendix A2 of ASME/ANSI B31.8S; [49 CFR 192.927 (a)(1)(i)]

b. information needed to support use of a model that an operator must use to identify areas along the pipeline where internal corrosion is most likely to occur (see Subsection A of this Section). This information, includes, but is not limited to, location of all gas input and withdrawal points on the line; location of all low points on covered segments such as sags, drips, inclines, valves, manifolds, dead-legs, and traps; the elevation profile of the pipeline in sufficient detail that angles of inclination can be calculated for all pipe segments; and the diameter of the pipeline, and the range of expected gas velocities in the pipeline; [49 CFR 192.927 (c)(1)(ii)]

c. operating experience data that would indicate historic upsets in gas conditions, locations where these upsets have occurred, and potential damage resulting from these upset conditions; and [49 CFR 192.927 (c)(1)(iii)]

d. information on covered segments where cleaning pigs may not have been used or where cleaning pigs may deposit electrolytes. [49 CFR 192.927 (c)(1)(iv)]

2. ICDA Region Identification. An operator's plan must identify where all ICDA Regions are located in the transmission system, in which covered segments are located. An ICDA Region extends from the location where liquid may first enter the pipeline and encompasses the entire area along the pipeline where internal corrosion may occur and

where further evaluation is needed. An ICDA Region may encompass one or more covered segments. In the identification process, an operator must use the model in GRI 02-0057, "Internal Corrosion Direct Assessment of Gas Transmission Pipelines - Methodology," (ibr, see §507). An operator may use another model if the operator demonstrates it is equivalent to the one shown in GRI 02-0057. A model must consider changes in pipe diameter, locations where gas enters a line (potential to introduce liquid) and locations down stream of gas draw-offs (where gas velocity is reduced) to define the critical pipe angle of inclination above which water film cannot be transported by the gas. [49 CFR 192.927 (c)(2)]

3. Identification of Locations for Excavation and Direct Examination. An operator's plan must identify the locations where internal corrosion is most likely in each ICDA region. In the location identification process, an operator must identify a minimum of two locations for excavation within each ICDA Region within a covered segment and must perform a direct examination for internal corrosion at each location, using ultrasonic thickness measurements, radiography, or other generally accepted measurement technique. One location must be the low point (e.g., sags, drips, valves, manifolds, dead-legs, traps) within the covered segment nearest to the beginning of the ICDA Region. The second location must be at the upstream end of the pipe containing a covered segment, having a slope not exceeding the critical angle of inclination nearest the end of the ICDA Region. If corrosion exists at either location, the operator must: [49 CFR 192.927 (c)(3)]

a. evaluate the severity of the defect (remaining strength) and remediate the defect in accordance with §3333; [49 CFR 192.927 (c)(3)(i)]

b. as part of the operator's current integrity assessment either perform additional excavations in each covered segment within the ICDA region, or use an alternative assessment method allowed by this Subpart to assess the line pipe in each covered segment within the ICDA region for internal corrosion; and [49 CFR 192.927 (c)(3)(ii)]

c. evaluate the potential for internal corrosion in all pipeline segments (both covered and non-covered) in the operator's pipeline system with similar characteristics to the ICDA region containing the covered segment in which the corrosion was found, and as appropriate, remediate the conditions the operator finds in accordance with §3333. [49 CFR 192.927 (c)(3)(iii)]

4. Post-Assessment Evaluation and Monitoring. An operator's plan must provide for evaluating the effectiveness of the ICDA process and continued monitoring of covered segments where internal corrosion has been identified. The evaluation and monitoring process includes: [49 CFR 192.927 (c)(4)]

a. evaluating the effectiveness of ICDA as an assessment method for addressing internal corrosion and determining whether a covered segment should be reassessed at more frequent intervals than those specified in §3339. This evaluation must be carried out in the same year in which ICDA is used; and [49 CFR 192.927 (c)(4)(i)]

b. continually monitoring each covered segment where internal corrosion has been identified using techniques such as coupons, UT sensors or electronic probes,

periodically drawing off liquids at low points and chemically analyzing the liquids for the presence of corrosion products. An operator must base the frequency of the monitoring and liquid analysis on results from all integrity assessments that have been conducted in accordance with the requirements of this Chapter, and risk factors specific to the covered segment. If an operator finds any evidence of corrosion products in the covered segment, the operator must take prompt action in accordance with one of the two following required actions and remediate the conditions the operator finds in accordance with §3333; [49 CFR 192.927 (c)(4)(ii)]

i. conduct excavations of covered segments at locations downstream from where the electrolyte might have entered the pipe; or [49 CFR 192.927 (c)(4)(ii)(A)]

ii. assess the covered segment using another integrity assessment method allowed by this Chapter. [49 CFR 192.927 (c)(4)(ii)(B)]

5. Other Requirements. The ICDA plan must also include: [49 CFR 192.927 (c)(5)]

a. criteria an operator will apply in making key decisions (e.g., ICDA feasibility, definition of ICDA Regions, conditions requiring excavation) in implementing each stage of the ICDA process; [49 CFR 192.927 (c)(5)(i)]

b. provisions for applying more restrictive criteria when conducting ICDA for the first time on a covered segment and that become less stringent as the operator gains experience; and [49 CFR 192.927 (c)(5)(ii)]

c. provisions that analysis be carried out on the entire pipeline in which covered segments are present, except that application of the remediation criteria of §3333 may be limited to covered segments. [49 CFR 192.927 (c)(5)(iii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3329. What are the Requirements for Using Direct Assessment for Stress Corrosion Cracking (SCCDA)? [49 CFR 192.929]

A. Definition. Stress Corrosion Direct Assessment (SCCDA) is a process to assess a covered pipe segment for the presence of SCC primarily by systematically gathering and analyzing excavation data for pipe having similar operational characteristics and residing in a similar physical environment. [49 CFR 192.929 (a)]

B. General Requirements. An operator using direct assessment as an integrity assessment method to address stress corrosion cracking in a covered pipeline segment must have a plan that provides, at minimum, for: [49 CFR 192.929 (b)]

1. Data Gathering and Integration. An operator's plan must provide for a systematic process to collect and evaluate data for all covered segments to identify whether the conditions for SCC are present and to prioritize the covered segments for assessment. This process must include gathering and evaluating data related to SCC at all sites an operator excavates during the conduct of its pipeline operations where the criteria in ASME/ANSI B31.8S (ibr, see §507), Appendix A3.3 indicate the potential for SCC. This data includes at minimum, the data specified in ASME/ANSI B31.8S, Appendix A3; [49 CFR 192.929 (b)(1)]

2. Assessment Method. The plan must provide that if conditions for SCC are identified in a covered segment, an operator must assess the covered segment using an integrity assessment method specified in ASME/ANSI B31.8S, Appendix A3, and remediate the threat in accordance with ASME/ANSI B31.8S, Appendix A3, Section A3.4. [49 CFR 192.929 (b)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3331. How May Confirmatory Direct Assessment (CDA) be Used? [49 CFR 192.931]

A. An operator using the confirmatory direct assessment (CDA) method as allowed in §3337 must have a plan that meets the requirements of this Section and of §3325 (ECDA) and §3327 (ICDA). [49 CFR 192.931]

1. Threats. An operator may only use CDA on a covered segment to identify damage resulting from external corrosion or internal corrosion. [49 CFR 192.931 (a)]

2. External Corrosion Plan. An operator's CDA plan for identifying external corrosion must comply with §3325 with the following exceptions. [49 CFR 192.931 (b)]

a. The procedures for indirect examination may allow use of only one indirect examination tool suitable for the application. [49 CFR 192.931 (b)(1)]

b. The procedures for direct examination and remediation must provide that: [49 CFR 192.931 (b)(2)]

(i) all immediate action indications must be excavated for each ECDA region; and [49 CFR 192.931 (b)(2)(i)]

(ii) at least one high risk indication that meets the criteria of scheduled action must be excavated in each ECDA region. [49 CFR 192.931 (b)(2)(ii)]

3. Internal Corrosion Plan. An operator's CDA plan for identifying internal corrosion must comply with §3327 except that the plan's procedures for identifying locations for excavation may require excavation of only one high risk location in each ICDA region. [49 CFR 192.931 (c)]

4. Defects Requiring Near-Term Remediation. If an assessment carried out under Paragraph 2 or 3 of this Section reveals any defect requiring remediation prior to the next scheduled assessment, the operator must schedule the next assessment in accordance with NACE RP 0502-2002 (ibr, see §507), Section 6.2 and 6.3. If the defect requires immediate remediation, then the operator must reduce pressure consistent with §3333 until the operator has completed reassessment using one of the assessment techniques allowed in §3337. [49 CFR 192.931 (d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3333. What Actions Must Be Taken to Address Integrity Issues? [49 CFR 192.933]

A. General Requirements. An operator must take prompt action to address all anomalous conditions that the operator discovers through the integrity assessment. In addressing all conditions, an operator must evaluate all anomalous conditions and remediate those that could reduce a pipeline's integrity. An operator must be able to demonstrate that the

remediation of the condition will ensure that the condition is unlikely to pose a threat to the integrity of the pipeline until the next reassessment of the covered segment. If an operator is unable to respond within the time limits for certain conditions specified in this Section, the operator must temporarily reduce the operating pressure of the pipeline or take other action that ensures the safety of the covered segment. If pressure is reduced, an operator must determine the temporary reduction in operating pressure using ASME/ANSI B31G (ibr, see §507) or AGA Pipeline Research Committee Project PR-3-805 [(RSTRENG); ibr, see §507] or reduce the operating pressure to a level not exceeding 80 percent of the level at the time the condition was discovered. (See Appendix A to this Part for information on availability of incorporation by reference information). A reduction in operating pressure cannot exceed 365 days without an operator providing a technical justification that the continued pressure restriction will not jeopardize the integrity of the pipeline. [49 CFR 192.933 (a)]

B. Discovery of Condition. Discovery of a condition occurs when an operator has adequate information about the condition to determine that the condition presents a potential threat to the integrity of the pipeline. An operator must promptly, but no later than 180 days after conducting an integrity assessment, obtain sufficient information about a condition to make that determination, unless the operator demonstrates that the 180-day period is impracticable. [49 CFR 192.933 (b)]

C. Schedule for Evaluation and Remediation. An operator must complete remediation of a condition according to a schedule that prioritizes the conditions for evaluation and remediation. Unless a special requirement for remediating certain conditions applies, as provided in Subsection D of this Section, an operator must follow the schedule in ASME/ANSI B31.8S (ibr, see §507), Section 7, Figure 4. If an operator cannot meet the schedule for any condition, the operator must justify the reasons why it cannot meet the schedule and that the changed schedule will not jeopardize public safety. An operator must notify OPS in accordance with §3349 if it cannot meet the schedule and cannot provide safety through a temporary reduction in operating pressure or other action. An operator must also notify a state or local pipeline safety authority when a covered segment is located in a state where OPS has an interstate agent agreement, and a state or local pipeline safety authority that regulates a covered pipeline segment within that state. [49 CFR 192.933 (c)]

D. Special requirements for scheduling remediation. [49 CFR 192.933 (d)]

1. Immediate Repair Conditions. An operator's evaluation and remediation schedule must follow ASME/ANSI B31.8S, Section 7 in providing for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure in accordance with Subsection A of this Section or shut down the pipeline until the operator completes the repair of these conditions. An operator must treat the following conditions as immediate repair conditions: [49 CFR 192.933 (d)(1)]

a. a calculation of the remaining strength of the pipe shows a predicted failure pressure less than or equal to 1.1 times the maximum allowable operating pressure at the location of the anomaly. Suitable remaining strength

calculation methods include, ASME/ANSI B31G; RSTRENG; or an alternative equivalent method of remaining strength calculation. These documents are incorporated by reference and available at the addresses listed in Appendix A to this Part; [49 CFR 192.933 (d)(1)(i)]

b. a dent that has any indication of metal loss, cracking or a stress riser; [49 CFR 192.933 (d)(1)(ii)]

c. an anomaly that in the judgment of the person designated by the operator to evaluate the assessment results requires immediate action. [49 CFR 192.933 (d)(1)(iii)]

2. One-Year Conditions. Except for conditions listed in Paragraphs D.1 and D.3 of this Section, an operator must remediate any of the following within one year of discovery of the condition: [49 CFR 192.933 (d)(2)]

a. a smooth dent located between the 8 o'clock and 4 o'clock positions (upper 2/3 of the pipe) with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12); [49 CFR 192.933 (d)(2)(i)]

b. a dent with a depth greater than 2 percent of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or at a longitudinal seam weld. [49 CFR 192.933 (d)(2)(ii)]

3. Monitored Conditions. An operator does not have to schedule the following conditions for remediation, but must record and monitor the conditions during subsequent risk assessments and integrity assessments for any change that may require remediation: [49 CFR 192.933 (d)(3)]

a. a dent with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than NPS 12) located between the 4 o'clock position and the 8 o'clock position (bottom 1/3 of the pipe); [49 CFR 192.933 (d)(3)(i)]

b. a dent located between the 8 o'clock and 4 o'clock positions (upper 2/3 of the pipe) with a depth greater than 6 percent of the pipeline diameter (greater than 0.50 inches in depth for a pipeline diameter less than Nominal Pipe Size (NPS) 12), and engineering analyses of the dent demonstrate critical strain levels are not exceeded; [49 CFR 192.933 (d)(3)(ii)]

c. a dent with a depth greater than 2 percent of the pipeline's diameter (0.250 inches in depth for a pipeline diameter less than NPS 12) that affects pipe curvature at a girth weld or a longitudinal seam weld, and engineering analyses of the dent and girth or seam weld demonstrate critical strain levels are not exceeded. These analyses must consider weld properties. [49 CFR 192.933 (d)(3)(iii)]

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HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3335. What Additional Preventive and Mitigative Measures Must an Operator Take to Protect the High Consequence Area? [49 CFR 192.935]

A. General Requirements. An operator must take additional measures beyond those already required by this Subpart 192 to prevent a pipeline failure and to mitigate the consequences of a pipeline failure in a high consequence area. An operator must base the additional measures on the threats the operator has identified to each pipeline segment (see §3317). An operator must conduct, in accordance with

one of the risk assessment approaches in ASME/ANSI B31.8S (ibr, see §507), Section 5, a risk analysis of its pipeline to identify additional measures to protect the high consequence area and enhance public safety. Such additional measures include, but are not limited to, installing automatic shut-off valves or remote control valves, installing computerized monitoring and leak detection systems, replacing pipe segments with pipe of heavier wall thickness, providing additional training to personnel on response procedures, conducting drills with local emergency responders and implementing additional inspection and maintenance programs. [49 CFR 192.935 (a)]

B. Third Party Damage and Outside Force Damage [49 CFR 192.935 (b)]

1. Third Party Damage. An operator must enhance its damage prevention program, as required under §2714 of this Subpart, with respect to a covered segment to prevent and minimize the consequences of a release due to third party or outside force damage. Enhanced measures to an existing damage prevention program include, at a minimum: [49 CFR 192.935 (b)(1)]

a. using qualified personnel (see §3315) for work an operator is conducting that could adversely affect the integrity of a covered segment, such as marking, locating, and direct supervision of known excavation work; [49 CFR 192.935 (b)(1)(i)]

b. collecting in a central database information that is location specific on excavation damage that occurs in on covered and non covered segments in the transmission system and the root cause analysis to support identification of targeted additional preventative and mitigative measures in the high consequence areas. This information must include recognized damage that is not required to be reported as an incident under Subpart 2 of this Part; [49 CFR 192.935 (b)(1)(ii)]

c. participating in one-call systems in locations where covered segments are present; [49 CFR 192.935 (b)(1)(iii)]

d. monitoring of excavations conducted on covered pipeline segments by pipeline personnel. When there is physical evidence of encroachment involving excavation near a covered segment, an operator must either excavate the area near the encroachment or conduct an above ground survey using methods defined in NACE RP-0502-2002 (ibr, see §507). An operator must excavate, and remediate, in accordance with ANSI/ASME B318.S and §3333 any indication of coating holidays or discontinuity warranting direct examination. [49 CFR 192.935 (b)(1)(iv)]

2. Outside Force Damage. If an operator determines that outside force (e.g., earth movement, floods, unstable suspension bridge) is a threat to the integrity of a covered segment, the operator must take measures to minimize the consequences to the covered segment from outside force damage. These measures include, but are not limited to, increasing the frequency of aerial, foot or other methods of patrols, adding external protection, reducing external stress, and relocating the line. [49 CFR 192.935 (b)(2)]

C. Automatic Shut-Off Valves (ASV) or Remote Control Valves (RCV). If an operator determines, based on a risk analysis, that an ASV or RCV would be an efficient means of adding protection to a high consequence area in the event of a gas release, an operator must install the ASV or RCV. In

making that determination, an operator must, at least, consider the following factors: swiftness of leak detection and pipe shutdown capabilities, the type of gas being transported, operating pressure, the rate of potential release, pipeline profile, the potential for ignition, and location of nearest response personnel. [49 CFR 192.935 (c)]

D. Pipelines Operating Below 30 Percent SMYS. With respect to a transmission pipeline operating below 30 percent SMYS located in a Class 3 or 4 area but not in a high consequence area, an operator must: [49 CFR 192.935 (d)]

1. apply the requirements in Subparagraphs B.1.a and B.1.c of this Section to the pipeline; and [49 CFR 192.935 (d)(1)]

2. either monitor excavations near the pipeline, or conduct patrols as required by §2905 of the pipeline at bi-monthly intervals. If an operator finds any indication of unreported construction activity, the operator must conduct a follow up investigation to determine if mechanical damage has occurred. [49 CFR 192.935 (d)(2)]

E. Plastic Transmission Pipeline. An operator of a plastic transmission pipeline must apply the requirements in Subparagraphs B.1.a, B.1.c and B.1.d of this Section to the covered segments of the pipeline. [49 CFR 192.935 (e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3337. What is a Continual Process of Evaluation and Assessment to Maintain a Pipeline's Integrity? **[49 CFR 192.937]**

A. General. After completing the baseline integrity assessment of a covered segment, an operator must continue to assess the line pipe of that segment at the intervals specified in §3339 and periodically evaluate the integrity of each covered pipeline segment as provided in Subsection B of this Section. An operator must reassess a covered segment on which a prior assessment is credited as a baseline under §3321.E by no later than December 17, 2009. An operator must reassess a covered segment on which a baseline assessment is conducted during the baseline period specified in §3321.D by no later than seven years after the baseline assessment of that covered segment unless the evaluation under Subsection B of this Section indicates earlier reassessment. [49 CFR 192.937 (a)]

B. Evaluation. An operator must conduct a periodic evaluation as frequently as needed to assure the integrity of each covered segment. The periodic evaluation must be based on a data integration and risk assessment of the entire pipeline as specified in §3317. For plastic transmission pipelines, the periodic evaluation is based on the threat analysis specified in §3317.D. For all other transmission pipelines, the evaluation must consider the past and present integrity assessment results, data integration and risk assessment information (§3317), and decisions about remediation (§3333) and additional preventive and mitigative actions (§3335). An operator must use the results from this evaluation to identify the threats specific to each covered segment and the risk represented by these threats. [49 CFR 192.935 (b)]

C. Assessment methods. In conducting the integrity reassessment, an operator must assess the integrity of the

line pipe in the covered segment by any of the following methods as appropriate for the threats to which the covered segment is susceptible (see §3317), or by confirmatory direct assessment under the conditions specified in §3331: [49 CFR 192.935 (c)]

1. internal inspection tool or tools capable of detecting corrosion, and any other threats to which the covered segment is susceptible. An operator must follow ASME/ANSI B31.8S (ibr, see §507), Section 6.2 in selecting the appropriate internal inspection tools for the covered segment; [49 CFR 192.935 (c)(1)]

2. pressure test conducted in accordance with Chapter 23 of this Subpart; [49 CFR 192.935 (c)(2)]

3. direct assessment to address threats of external corrosion, internal corrosion, or stress corrosion cracking. An operator must conduct the direct assessment in accordance with the requirements listed in §3323 and with as applicable, the requirements specified in §§3325, 3327 or 3329; [49 CFR 192.935 (c)(3)]

4. other technology that an operator demonstrates can provide an equivalent understanding of the condition of the line pipe. An operator choosing this option must notify the Office of Pipeline Safety (OPS) 180 days before conducting the assessment, in accordance with §3349; [49 CFR 192.935 (c)(4)]

5. confirmatory direct assessment when used on a covered segment that is scheduled for reassessment at a period longer than seven years. An operator using this reassessment method must comply with §3331. [49 CFR 192.935 (c)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3339. What are the Required Reassessment Intervals? **[49 CFR 192.939]**

A. An operator must comply with the following requirements in establishing the reassessment interval for the operator's covered pipeline segments. [49 CFR 192.939]

1. Pipelines Operating at or Above 30 Percent SMYS. An operator must establish a reassessment interval for each covered segment operating at or above 30 percent SMYS in accordance with the requirements of this Section. The minimum reassessment interval by an allowable reassessment method is seven years. If an operator establishes a reassessment interval that is greater than seven years, the operator must, within the seven-year period, conduct a confirmatory direct assessment on the covered segment, and then conduct the follow-up reassessment at the interval the operator has established. A reassessment carried out using confirmatory direct assessment must be done in accordance with §3331. (For ease of reference, the table that follows this Section sets forth the required reassessment intervals.) [49 CFR 192.939 (a)]

a. Pressure Test or Internal Inspection or Other Equivalent Technology. An operator that uses pressure testing or internal inspection as an assessment method must establish the reassessment interval for a covered pipeline segment by: [49 CFR 192.939 (a)(1)]

i. basing the interval on the identified threats for the segment as listed in §3317 of this Section and in ASME/ANSI B31.8S (ibr, see §507), Section 9, Tables 6 and

7, and on the analysis of the results from the last integrity assessment and from the data integration and risk assessment required by §3311; or [49 CFR 192.939 (a)(1)(i)]

ii. using the intervals specified for different stress levels of pipeline (operating at or above 30 percent SMYS) listed in ASME/ANSI B31.8S, Section 5, Table 3. [49 CFR 192.939 (a)(1)(ii)]

b. External Corrosion Direct Assessment. An operator that uses ECDA that meets the requirements of this Chapter must determine the reassessment interval according to the requirements in Paragraphs 6.2 and 6.3 of NACE RP0502-2002 (ibr, see §507). [49 CFR 192.939 (a)(2)]

c. Internal Corrosion or SCC Direct Assessment. An operator that uses ICDA or SCCDA in accordance with the requirements of this Chapter must determine the reassessment interval according to the following calculation. However, the reassessment interval cannot exceed those specified for direct assessment in ASME/ANSI B31.8S, Section 5, Table 3: [49 CFR 192.939 (a)(3)]

i. determine the largest defect most likely to remain in the covered segment and the corrosion rate appropriate for the pipe, soil and protection conditions;

[49 CFR 192.939 (a)(3)(i)]

ii. use the largest remaining defect as the size of the largest defect discovered in the SCC or ICDA segment; and [49 CFR 192.939 (a)(3)(ii)]

iii. estimate the reassessment interval as half the time required for the largest defect to grow to a critical size. [49 CFR 192.939 (a)(3)(iii)]

2. Pipelines Operating Below 30 Percent SMYS. An operator must establish a reassessment interval for each covered segment operating below 30 percent SMYS in accordance with the requirements of this Section. The minimum reassessment interval by an allowable reassessment method is seven years. An operator must establish reassessment by at least one of the following: [49 CFR 192.939 (b)]

a. reassessment by pressure test, internal inspection or other equivalent technology following the requirements in Subparagraph 1.a of this Section except that the stress level referenced in Clause 1.a.ii would be adjusted to reflect the lower operating stress level. If an established interval is more than seven years, the operator must conduct by the seventh year of the interval either a confirmatory direct assessment in accordance with §3331, or a low stress reassessment in accordance with §3341; [49 CFR 192.939 (b)(1)]

b. reassessment by ECDA following the requirements in Subparagraph 1.b of this Section; [49 CFR 192.939 (b)(2)]

c. reassessment by ICDA or SCCDA following the requirements in Subparagraph 1.c of this Section; [49 CFR 192.939 (b)(3)]

d. reassessment by confirmatory direct assessment at 7-year intervals in accordance with §3331, with reassessment by one of the methods listed in A.2.a-c of this Section by year 20 of the interval; [49 CFR 192.939 (b)(4)]

e. reassessment by the low stress assessment method at 7-year intervals in accordance with §3341 with reassessment by one of the methods listed in 2.a-c of this Section by year 20 of the interval. [49 CFR 192.939 (b)(5)]

B. For ease of reference, the following table sets forth the required reassessment intervals. Also refer to Appendix E.II for guidance on Assessment Methods and Assessment schedule for Transmission Pipelines Operating Below 30 percent SMYS. In case of conflict between the rule and the guidance in the Appendix, the requirements of the rule control. An operator must comply with the following requirements in establishing a reassessment interval for a covered segment maximum reassessment interval.

Maximum Reassessment Interval			
Assessment Method	Pipeline operating at or above 50% SMYS	Pipeline operating at or above 30% SMYS, up to 50% SMYS	Pipeline operating below 30% SMYS
Internal Inspection Tool, Pressure Test or Direct Assessment	10 years (*)	15 years (*)	20 years (**)
Confirmatory Direct Assessment	7 years	7 years	7 years
Low stress reassessment	not applicable	not applicable	7 years + ongoing actions specified in §192.941

(*) A confirmatory direct assessment as described in §192.931 must be conducted by year 7 in a 10-year interval and years 7 and 14 of a 15-year interval.

(**) A low stress reassessment or confirmatory direct assessment must be conducted by years 7 and 14 of the interval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3341. What is a Low Stress Reassessment?

[49 CFR 192.941]

A. General. An operator of a transmission line that operates below 30 percent SMYS may use the following method to reassess a covered segment in accordance with §3339. This method of reassessment addresses the threats of external and internal corrosion. The operator must have conducted a baseline assessment of the covered segment in accordance with the requirements of §§3319 and 3321. [49 CFR 192.941 (a)]

B. External Corrosion. An operator must take one of the following actions to address external corrosion on the low stress covered segment. [49 CFR 192.941 (b)]

1. Cathodically Protected Pipe. To address the threat of external corrosion on cathodically protected pipe in a covered segment, an operator must perform an electrical survey (i.e. indirect examination tool/method) at least every 7 years on the covered segment. An operator must use the results of each survey as part of an overall evaluation of the cathodic protection and corrosion threat for the covered segment. This evaluation must consider, at minimum, the leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. [49 CFR 192.941 (b)(1)]

2. Unprotected Pipe or Cathodically Protected Pipe Where Electrical Surveys are Impractical. If an electrical survey is impractical on the covered segment an operator must: [49 CFR 192.941 (b)(2)]

a. conduct leakage surveys as required by §2906 at 4-month intervals; and [49 CFR 192.941 (b)(2)(i)]

b. every 1-1/2 years, identify and remediate areas of active corrosion by evaluating leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. [49 CFR 192.941 (b)(2)(ii)]

C. Internal Corrosion. To address the threat of internal corrosion on a covered segment, an operator must: [49 CFR 192.941 (c)]

1. conduct a gas analysis for corrosive agents at least once each calendar year; [49 CFR 192.941 (c)(1)]

2. conduct periodic testing of fluids removed from the segment. At least once each calendar year test the fluids removed from each storage field that may affect a covered segment; and [49 CFR 192.941 (c)(2)]

3. at least every seven years, integrate data from the analysis and testing required by Paragraphs C.1. and 2 with applicable internal corrosion leak records, incident reports, safety-related condition reports, repair records, patrol records, exposed pipe reports, and test records, and define and implement appropriate remediation actions. [49 CFR 192.941 (c)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3343. When Can an Operator Deviate from These Reassessment Intervals? [49 CFR 192.943]

A. Waiver from reassessment interval in limited situations. In the following limited instances, OPS may allow a waiver from a reassessment interval required by §3339 if OPS finds a waiver would not be inconsistent with pipeline safety. [49 CFR 192.943 (a)]

1. Lack of internal inspection tools. An operator who uses internal inspection as an assessment method may be able to justify a longer assessment period for a covered segment if internal inspection tools are not available to assess the line pipe. To justify this, the operator must demonstrate that it cannot obtain the internal inspection tools within the required assessment period and that the actions the operator is taking in the interim ensure the integrity of the covered segment. [49 CFR 192.943 (a)(1)]

2. Maintain product supply. An operator may be able to justify a longer reassessment period for a covered segment if the operator demonstrates that it cannot maintain local product supply if it conducts the reassessment within the required interval. [49 CFR 192.943 (a)(2)]

B. How to apply. If one of the conditions specified in Paragraph A.1 or 2 of this Section applies, an operator may seek a waiver of the required reassessment interval. An operator must apply for a waiver in accordance with 49 U.S.C. 60118(c), at least 180 days before the end of the required reassessment interval, unless local product supply issues make the period impractical. If local product supply issues make the period impractical, an operator must apply for the waiver as soon as the need for the waiver becomes known. [49 CFR 192.943 (b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3345. What Methods Must an Operator Use to Measure Program Effectiveness? [49 CFR 192.945]

A. General. An operator must include in its integrity management program methods to measure, on a semi-annual basis, whether the program is effective in assessing and evaluating the integrity of each covered pipeline segment and in protecting the high consequence areas. These measures must include the four overall performance measures specified in ASME/ANSI B31.8S (ibr, see §507), Section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, Appendix A. An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with §3351. [49 CFR 192.945 (a)]

B. External Corrosion Direct Assessment. In addition to the general requirements for performance measures in Subsection A of this Section, an operator using direct assessment to assess the external corrosion threat must define and monitor measures to determine the effectiveness of the ECDA process. These measures must meet the requirements of §3325. An operator must submit these measures, by electronic or other means, on a semi-annual frequency to OPS in accordance with §3351. [49 CFR 192.945 (b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3347. What Records Must an Operator Keep? [49 CFR 192.947]

A. An operator must maintain, for the useful life of the pipeline, records that demonstrate compliance with the requirements of this Chapter. At minimum, an operator must maintain the following records for review during an inspection: [49 CFR 192.947]

1. a written integrity management program in accordance with §3307; [49 CFR 192.947 (a)]

2. documents supporting the threat identification and risk assessment in accordance with §3317; [49 CFR 192.947 (b)]

3. a written baseline assessment plan in accordance with §3319; [49 CFR 192.947 (c)]

4. documents to support any decision, analysis and process developed and used to implement and evaluate each element of the baseline assessment plan and integrity management program. Documents include those developed and used in support of any identification, calculation, amendment, modification, justification, deviation and determination made, and any action taken to implement and evaluate any of the program elements; [49 CFR 192.947 (d)]

5. documents that demonstrate personnel have the required training, including a description of the training program, in accordance with §3315; [49 CFR 192.947 (e)]

6. schedule required by §3333 that prioritizes the conditions found during an assessment for evaluation and remediation, including technical justifications for the schedule; [49 CFR 192.947 (f)]

7. documents to carry out the requirements in §3323 through §3329 for a direct assessment plan; [49 CFR 192.947 (g)]

8. documents to carry out the requirements in §3331 for confirmatory direct assessment; [49 CFR 192.947 (h)]

9. verification that an operator has provided any documentation or notification required by this Chapter to be provided to OPS, and when applicable, a state authority with which OPS has an interstate agent agreement, and a state or local pipeline safety authority that regulates a covered pipeline segment within that state. [49 CFR 192.947 (i)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3349. How Does an Operator Notify OPS and the Louisiana Commissioner of Conservation? [49 CFR 192.949]

A. An operator must provide any notification required by this Chapter to OPS by: [49 CFR 192.949]

1. sending the notification to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW, Washington DC 20590; [49 CFR 192.949 (a)(1)]

2. sending the notification to the Information Resources Manager by facsimile to (202) 366-7128; or [49 CFR 192.949 (a)(2)]

3. entering the information directly on the Integrity Management Database (IMDB) web site at <http://primis.rspa.dot.gov/gasimp/>. [49 CFR 192.949 (a)(3)]

B. Any notification required by §3349.A must be sent concurrently to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94279 Baton Rouge, LA 70804-9275.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

§3351. Where Does an Operator File a Report? [49 CFR 192.951]

A. An operator must send any performance report required by this Chapter to the Information Resources Manager: [49 CFR 192.951]

1. by mail to the Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street SW, Washington, DC 20590; [49 CFR 192.951 (1)]

2. via facsimile to (202)366-7128; or [49 CFR 192.951 (2)]

3. through the online reporting system provided by OPS for electronic reporting available at the OPS Home Page at <http://ops.dot.gov>. [49 CFR 192.951 (3)]

B. Any report required by §3351.A must be sent concurrently to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94279 Baton Rouge, LA 70804-9275.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

Chapter 51. Appendices

§5101. Appendix A? Incorporated by Reference

I. List of Organizations and Addresses

A. American Gas Association (AGA), 1515 Wilson Boulevard, Arlington, VA 22209.

B. American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036.

C. American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

D. The American Society of Mechanical Engineers (ASME), United Engineering Center, 345 East 47th Street, New York, NY 10017.

E. The American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

F. Manufactures Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NW., Vienna, VA 22180.

G. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy MA 02269-9101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1550 (September 2001), amended LR 30:

II. Documents incorporated by reference. (Numbers in parentheses indicate applicable editions.)

A. American Gas Association (AGA)

1. AGA Pipeline Research Committee, Project PR-3-805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 22, 1989).

B. American Petroleum Institute (API)

1. API Specification 5L "Specification for Line Pipe" (41st edition, 1995).

2. API Recommended Practice 5L1 "Recommended Practice for Railroad Transportation of Line Pipe" (4th edition, 1990).

3. API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball and Check Valves)" (21st edition, 1994).

4. API Standard 1104 "Welding of Pipelines and Related Facilities" (18th edition, 1994).

C. American Society for Testing and Materials (ASTM)

1. ASTM Designation: A 53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped Zinc-Coated, Welded and Seamless" (A's53-96)

2. ASTM Designation: A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106-95).

3. ASTM Designation: A333/A333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (A333/A333M-94).

4. ASTM Designation: A372/A372M "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A372/A372M-95).

5. ASTM Designation: A381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (A381-93).

6. ASTM Designation: A671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A671-94).

7. ASTM Designation: A672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A672-94).

8. ASTM Designation: A691 "Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A691-93).

9. ASTM Designation: D638 "Standard Test Method for Tensile Properties of Plastics" (D638-96).

10. ASTM Designation: D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing and Fittings" (D2513-87 edition for 713.A.1, otherwise D2513-96a).

11. ASTM Designation: D2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D2517-94)

12. ASTM Designation: F1055 "Standard Specification for Electro Fusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing" (F1055-95)

D. The American Society of Mechanical Engineers (ASME)

1. ASME/ANSI B16.1 "Cast Iron Pipe Flanges and Flanged Fittings" (1989).

2. ASME/ANSI B16.5 "Pipe Flanges and Flanged Fittings" (1988 with October 1988 Errata and ASME/ANSI B16.5a-1992 Addenda).

3. ASME/ANSI B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

4. ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1995).

5. ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1995 edition with 1995 Addenda).

6. ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1995 edition with 1995 Addenda).

7. ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 "Pressure Vessels: Alternative Rules" (1995 edition with 1995 Addenda).

8. ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualification" (1995 edition with 1995 Addenda).

9. ASME/ANSI B31.8S-2001 (Supplement to B31.8), "Managing Systems Integrity of Gas Pipelines," July 19, 2002.

E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):

1. MSS SP-44-96 "Steel Pipe Line Flanges" (includes 1996 errata)(1996).

2. [Reserved].

F. National Fire Protection Association (NFPA):

1. NFPA 30 "Flammable and Combustible Liquids Code" (1996).

2. ANSI/NFPA 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases"(1995).

3. ANSI/NFPA 59 "Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1995).

4. ANSI/NFPA 70 "National Electrical Code" (1996).

G. NACE International

1. NACE RP-0502-2002 "Pipeline External Corrosion Direct Assessment Methodology." 2002.

H. Gas Research Institute

1. GRI 02-0057, "Internal Corrosion Direct Assessment of Gas Transmission Pipeline-Methodology," April 1, 2002.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1551 (September 2001), amended LR 30:

§5103. Appendix B? Qualification of Pipe

I. Listed Pipe Specifications. (Numbers in Parentheses

Indicate Applicable Editions.)

API 5L? Steel pipe (1995)

ASTMA53? Steel pipe (1995a)

ASTMA106? Steel pipe (1994a)

ASTMA333/A33.3M? Steel pipe (1994)

ASTMA381? Steel pipe (1993)

ASTMA671? Steel pipe (1994)

ASTMA672? Steel pipe (1994)

ASTMA691? Steel pipe (1993).

ASTM D2513? Thermoplastic pipe and tubing (1995(c)).

ASTM D2517? Thermosetting plastic pipe and tubing (1994).

II. Steel Pipe of Unknown or Unlisted Specification

A. Bending properties. For pipe 2 inches (51 millimeters) or less in diameter, a length of pipe must be cold bent through

at least 90 degrees around a cylindrical mandrel that has a diameter 12 times the diameter of the pipe, without developing cracks at any portion and without opening the longitudinal weld.

For pipe more than 2 inches (51 millimeters) in diameter, the pipe must meet the requirements of the flattening tests set forth in ASTM A53, except that the number of tests

Must be at least equal to the minimum required in Paragraph D of this appendix to determine yield strength.

B. Weldability. A girth weld must be made in the pipe by a welder who is qualified under Chapter 13 of this part. The weld must be made under the most severe conditions under which welding will be allowed in the field and by means of the same procedure that will be used in the field. On pipe more than 4 inches (102 millimeters) in diameter at least one test weld must be made for each 100 lengths of pipe. On pipe 4 inches (102 millimeters) or less in diameter, at least one test weld must be made for each 400 lengths of pipe. The weld must be tested in accordance with API Standard 1104. If the requirements of API Standard 1104 cannot be met, weldability may be established by making chemical tests for carbon and manganese, and proceeding in accordance with Section IX of the ASME Boiler and Pressure Vessels Code. The same number of chemical tests must be made as are required for testing a girth weld.

C. Inspection. The pipe must be cleaned enough to permit adequate inspection. It must be visually inspected to ensure that it is reasonably round and straight and there are no defects which might impair the strength or tightness of the pipe.

D. Tensile Properties. If the tensile properties of the pipe are not known, the minimum yield strength may be taken as 24,000 psi (165 MPA) or less, or the tensile properties may be established by performing tensile tests as set forth in API Specification 5L. All test specimens shall be selected at random and the following numbers of tests must be performed:

Number of Tensile Tests-All Sizes	
10 lengths or less	1 set of tests for each length.
11 to 100 lengths	1 set of tests for each 5 lengths, but not less than 10 tests.
Over 100 lengths	1 set of tests for each 10 lengths, but not less than 20 tests.

If the yield-tensile ratio, based on the properties determined by those tests, exceeds 0.85, the pipe may be used only as provided in §705.C5(c):

III. Steel Pipe Manufactured before November 12, 1970, to Earlier Editions of Listed Specifications

Steel pipe manufactured before November 12, 1970, in accordance with a specification of which a later edition is listed in Section I of this Appendix, is qualified for use under this part if the following requirements are met.

A. Inspection. The pipe must be clean enough to permit adequate inspection. It must be visually inspected to ensure that it is reasonably round and straight and that there are no defects which might impair the strength or tightness of the pipe.

B. Similarity of specification requirements. The edition of the listed specification under which the pipe was manufactured must have substantially the same requirements with respect to the following properties as a later edition of that specification listed in Section I of this appendix:

1. physical (mechanical) properties of pipe, including yield and tensile strength, elongation, and yield to tensile ratio, and testing requirements to verify those properties;

2. chemical properties of pipe and testing requirements to verify those properties.

C. Inspection or test of welded pipe. On pipe with welded seams, one of the following requirements must be met.

1. The edition of the listed specification to which the pipe was manufactured must have substantially the same

requirements with respect to nondestructive inspection of welded seams and the standards of acceptance or rejection and repair as a later edition of the specification listed in Section I of this appendix.

2. The pipe must be tested in accordance with Chapter 23 of this part to at least 1.25 times the maximum allowable operating pressure if it is to be installed in a class I location and to at least 1.5 times the maximum allowable operating pressure if it is to be installed in a class 2, 3, or 4 location. Notwithstanding any shorter time period permitted under Chapter 23 of this part, the test pressure must be maintained for at least 8 hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1551 (September 2001), amended LR 30:

§5105. Appendix C? Qualification of Welders for Low Stress Level Pipe

I. Basic Test. The test is made on pipe 12 inches (305 millimeters) or less in diameter. The test weld must be made with the pipe in a horizontal fixed position so that the test weld includes at least one section of overhead position welding. The beveling, root opening, and other details must conform to the specifications of the procedure under which the welder is being qualified. Upon completion, the test weld is cut into four coupons and subjected to a root bend test. If, as a result of this test, two or more of the four coupons develop a crack in the weld material, or between the weld material and base metal, that is more than 1/8 -inch (3.2 millimeters) long in any direction, the weld is unacceptable. Cracks that occur on the corner of the specimen during testing are not considered.

II. Additional Tests for Welders of Service Line Connections to Mains. A service line connection fitting is welded to a pipe section with the same diameter as a typical main. The weld is made in the same position as it is made in the field. The weld is unacceptable if it shows a serious undercutting or if it has rolled edges. The weld is tested by attempting to break the fitting off the run pipe. The weld is unacceptable if it breaks and shows incomplete fusion, overlap, or poor penetration at the junction of the fitting and run pipe.

III. Periodic Tests for Welders of Small Service Lines. Two samples of the welder's work, each about 8 inches (203 millimeters) long with the weld located approximately in the center, are cut from steel service line and tested as follows.

1. One sample is centered in a guided bend testing machine and bent to the contour of the die for a distance of 2 inches (51 millimeters) on each side of the weld. If the sample shows any breaks or cracks after removal from the bending machine, it is unacceptable.

2. The ends of the second sample are flattened and the entire joint subjected to a tensile strength test. If failure occurs adjacent to or in the weld metal, the weld is unacceptable. If a tensile strength testing machine is not available, this sample must also pass the bending test prescribed in Subparagraph 1, of this Paragraph.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1552 (September 2001), amended LR 30:

§5107. Appendix D? Criteria for Cathodic Protection and Determination of Measurements

I. Criteria for Cathodic Protection

A. Steel, Cast Iron, and Ductile Iron Structures

1. A negative (cathodic) voltage of at least 0.85 volt, with reference to a saturated copper-coppersulfate half cell. Determination of this voltage must be made with the protective current applied, and in accordance with Paragraphs II and IV of this Appendix.

2. A negative (cathodic) voltage shift of at least 300 millivolts. Determination of this voltage shift must be made with the protective current applied, and in accordance with Sections II and IV of this appendix. This criterion of voltage shift applies to structures not in contact with metals of different anodic potentials.

3. A minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift must be determined in accordance with Sections III and IV of this Appendix.

4. A voltage at least as negative (cathodic) as that originally established at the beginning of the Tafel segment of the E-log-I curve. This voltage must be measured in accordance with Section IV of this Appendix.

5. A net protective current from the electrolyte into the structure surface as measured by the earth current technique applied at predetermined current discharge (anodic) points of the structure.

B. Aluminum Structures

1. Except as provided in subparagraphs 3 and 4. of this paragraph, a minimum negative (cathodic) voltage shift of 150 millivolts, produced by the application of protective current. This voltage shift must be determined in accordance with Sections II and IV of this Appendix.

2. Except as provided in Paragraphs 3 and 4. of this Paragraph, a minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift must be determined in accordance with Sections III and IV of this Appendix.

3. Notwithstanding the alternative minimum criteria in Paragraphs 1. and 2. of this Paragraph, aluminum, if cathodically protected at voltages in excess of 1.20 volts as measured with reference to a copper-copper sulfate half cell, in accordance with Section IV of this Appendix, and compensated for the voltage (IR) drops other than those across the structure-electrolyte boundary may suffer corrosion resulting from the build-up of alkali on the metal surface. A voltage in excess of 1.20 volts may not be used unless previous test results indicate no appreciable corrosion will occur in the particular environment.

4. Since aluminum may suffer from corrosion under high pH conditions, and since application of cathodic protection tends to increase the pH at the metal surface, careful investigation or testing must be made before applying cathodic protection to stop pitting attack on aluminum structures in environments with a natural pH in excess of 8.

C. Copper Structures. A minimum negative (cathodic) polarization voltage shift of 100 millivolts. This polarization voltage shift must be determined in accordance with Sections III and IV. of this Appendix.

D. Metals of Different Anodic Potentials. A negative (cathodic) voltage, measured in accordance with section IV. of this appendix, equal to that required for the most anodic metal in the system must be maintained. If amphoteric structures are involved that could be damaged by high alkalinity covered by Paragraphs 3. and 4. of Paragraph B. of this Section, they must be electrically isolated with insulating flanges, or the equivalent.

II. Interpretation of Voltage Measurement. Voltage (IR) drops other than those across the structure electrolyte boundary must be considered for valid interpretation of the voltage measurement in Subparagraphs A.1. and 2 and Paragraph B.1. of this Section I of the Appendix.

III. Determination of Polarization Voltage Shift. The polarization voltage shift must be determined by interrupting the protective current and measuring the polarization decay. When the current is initially interrupted, an immediate voltage shift occurs. The voltage reading after the immediate shift must be used as the base reading from which to measure polarization decay in Paragraphs A.3 and B.2.. and C. of Section I of this Appendix.

IV. Reference Half Cells

A. Except as provided in Paragraphs B and C of this Section, negative (cathodic) voltage must be measured between the structure surface and a saturated copper-copper sulfate half cell contacting the electrolyte.

B. Other standard reference half cells may be substituted for the saturated copper-copper sulfate half cell. Two commonly used reference half cells are listed below along with their voltage equivalent to -0.85 volt as referred to a saturated copper-copper sulfate half cell:

1. Saturated KC1 calomel half cell: -0.78 volt.
2. Silver-silver chloride half cell used in sea water: -0.80 volt.

C. In addition to the standard reference half cells, an alternate metallic material or structure may be used in place of the saturated copper-copper sulfate half cell if its potential stability is assured and if its voltage equivalent referred to a saturated copper-copper sulfate half cell is established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 27:1553 (September 2001), amended LR 30:

§5109. Appendix E? Guidance on Determining High Consequence Areas and on Carrying Out Requirements in the Integrity Management Rule

I. Guidance on Determining a High Consequence Area

To determine which segments of an operator's transmission pipeline system are covered for purposes of the integrity management program requirements, an operator must identify the high consequence areas. An operator must use method (a) or (b) from the definition in §3303 to identify a high consequence area. An operator may apply one method to its entire pipeline system, or an operator may apply one method to individual portions of the pipeline system (refer to figure E.I.A for a diagram of a high consequence area).

(a) If an operator selects method (a), then:

(1) all pipeline in Class 3 and Class 4 locations is considered to be in a high consequence area;

(2) the operator is to calculate potential impact circles, as defined in §3303, centered on the centerline of the pipeline for:

(i) any areas of its pipeline system that are not in Class 3 or Class 4 locations which could include an identified site as defined in §3303; and

(ii) any pipeline in Class 3 and Class 4 locations for which the potential impact radius would be greater than 660 feet (200 meters) and for which an identified site may exist in the area more than 660 feet (200 meters) but less than the potential impact radius from the pipeline;

(3) the operator is to evaluate the potential impact circles to determine if they contain identified sites, as defined in §3303, in accordance with Paragraph (c) of the same Section;

(4) the operator is to complete identification of high consequence areas by December 17, 2004.

(b) If an operator selects method (b) then:

(1) the operator is to calculate potential impact circles, as defined in §3303, centered on the centerline of the pipeline for all areas of its pipeline where the circles could contain 20 buildings intended for human occupancy or an identified site;

(2) the operator is to evaluate the potential impact circles to determine if they contain 20 buildings intended for human occupancy. Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy:

(i) if the radius of the potential impact circle is greater than 660 feet (200 meters), the operator may identify a high consequence area based on a prorated number of buildings intended for human occupancy until December 17, 2006. If an operator chooses this approach, the operator must prorate the number of buildings intended for human occupancy based on the ratio of an area with a radius of 660 feet (200 meters) to the area of the potential impact circle (i.e., the prorated number of buildings intended for human occupancy is equal to $\{20 \times [660 \text{ feet (or 200 meters)/potential impact radius in feet (or meters)}^2]\}$);

(3) the operator is to evaluate the potential impact circles to determine if they contain identified sites, as defined in §3303, in accordance with Paragraph (c) of this Section;

(4) the operator is to complete identification of high consequence areas by December 17, 2004.

(c) Operators are to identify sites meeting the criteria of identified sites, as defined in §3303. The process for identification is in §3305. Further guidance was provided in (68 FR 42456; July 17, 2003) titled *issuance of advisory bulletin*. Operators must document, and retain for review during inspections, their rationale for selecting the source(s) used, including why it/they are appropriate for use.

(d) Requirements for incorporating newly-identified high consequence areas into an integrity management program are in §3305. (Insert figure E.I.A Determining High Consequence Area here.)

II. Guidance on Assessment Methods for Transmission Pipelines Operating Below 30 percent SMYS

C. Table E.II.1 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30 percent SMYS not in HCAs (i.e., outside of potential impact circle) but located within Class 3 and 4 Locations.

D. Table E.II.2 gives guidance to help an operator implement requirements on assessment methods for addressing time dependent and independent threats, for transmission pipelines operating below 30 percent SMYS in HCAs.

E. Table E.II.3 gives guidance on preventative and mitigative measures addressing time dependent and independent threats for transmission pipelines that operate below 30 percent SMYS, in HCAs.

Table E.II.1: Assessment Methods for Transmission Pipelines Operating Below 30 percent SMYS not in HCAs but in Class 3 and 4 Locations.			
(Column 1) Threat	Existing Subpart 3 Requirements		(Column 4) Additional (to Subpart 3 requirements) Assessments
	(Column 2) Primary	(Column 3) Secondary	
External Corrosion	2107-(Gen. Post 1971), 2109-(Gen. Pre-1971) 2111-(Examination), 2113-(Ext. coating) 2115-(CP), 2117-(Monitoring) 2119-(Elect isolation), 2121-Test stations) 2123-(Test leads), 2125-(Interference) 2131-(Atmospheric), 2133-(Atmospheric) 2137-(Remedial), 2905-(Patrol) 2906-(Leak survey), 2911 (Repair - gen.) 2917-(Repair - perm.)	2703-(Gen Operation) 2713-(Surveillance)	For Cathodically Protected Transmission Pipeline: ? Perform semi-annual leak surveys. For Unprotected Transmission Pipelines or for Cathodically Protected Pipe where Electrical Surveys are Impractical: ? Perform quarterly leak surveys
Internal Corrosion	2127-(Gen IC), 2129-(IC monitoring) 2137-(Remedial), 2905-(Patrol) 2906-(Leak survey), 2911 (Repair - gen.) 2917-(Repair - perm.)	703(A)(1)-(Materials) 2703-(Gen Operation) 2713-(Surveillance)	? Perform semi-annual leak surveys.
3 rd Party Damage	903-(Gen. Design), 911-(Design factor) 1717-(Hazard prot), 1727-(Cover) 2714-(Dam. Prevent), 2716-(Public education) 2905-(Patrol), 2907-(Line markers) 2911 (Repair - gen.), 2917-(Repair - perm.)	2715-(Emergency Plan)	Participation in state one-call system, ? Use of qualified operator employees and contractors to perform marking and locating of buried structures and in direct supervision of excavation work, AND ? Either monitoring of excavations near operator's transmission pipelines, or bi-monthly patrol of transmission pipelines in Class 3 and 4 locations. Any indications of unreported construction activity would require a follow up investigation to determine if mechanical damage occurred.

Table E.II.2 Assessment Requirements for Transmission Pipelines in HCAs (Re-assessment intervals are maximum allowed)								
	Re-Assessment Requirements (see Note 3)							
	At or above 50 percent SMYS		At or above 30 percent SMYS up to 50 percent SMYS		Below 30 percent SMYS			
Baseline Assessment Method (see Note 3)	Max Re-Assessment Interval	Assessment Method	Max Re-Assessment Interval	Assessment Method	Max Re-Assessment Interval	Assessment Method		
Pressure Testing	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)		
	10	Pressure Test or ILI or DA	15 (see Note 1)	Pressure Test or ILI or DA (see Note 1)				
		Repeat inspection cycle every 10 years		Repeat inspection cycle every 15 years			20	Pressure Test or ILI or DA
								Repeat inspection cycle every 20 years
In-Line Inspection	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)		
	10	ILI or DA or Pressure Test	15 (see Note 1)	ILI or DA or Pressure Test (see Note 1)				
		Repeat inspection cycle every 10 years		Repeat inspection cycle every 15 years			20	ILI or DA or Pressure Test
								Repeat inspection cycle every 20 years
Direct Assessment	7	CDA	7	CDA	Ongoing	Preventative & Mitigative (P&M) Measures (see Table E.II.3), (see Note 2)		
	10	DA or ILI or Pressure Test	15 (see Note 1)	DA or ILI or Pressure Test (see Note 1)				
		Repeat inspection cycle every 10 years		Repeat inspection cycle every 15 years			20	DA or ILI or Pressure Test
								Repeat inspection cycle every 20 years
Note 1:	Operator may choose to utilize CDA at year 14, then utilize ILI, Pressure Test, or DA at year 15 as allowed under ASME B31.8S							
Note 2:	Operator may choose to utilize CDA at year 7 and 14 in lieu of P&M							
Note 3:	Operator may utilize "other technology that an operator demonstrates can provide an equivalent understanding of the condition of line pipe"							

Table E.II.3 Preventative & Mitigative Measures addressing Time Dependent and Independent Threats for Transmission Pipelines that Operate Below 30 percent SMYS, in HCAs			
Threat	Existing Subpart 3 Requirements		Additional (to Subpart 3 requirements) Preventive & Mitigative Measures
	Primary	Secondary	
External Corrosion	2107-(Gen. Post 1971) 2109-(Gen. Pre-1971) 2111-(Examination) 2113-(Ext. coating) 2115-(CP) 2117-(Monitoring) 2119-(Elect isolation) 2121-Test stations) 2123-(Test leads) 2125-(Interference) 2131-(Atmospheric) 2133-(Atmospheric) 2137-(Remedial) 2905-(Patrol) 2906-(Leak survey) 2911 (Repair - gen.) 2917-(Repair - perm.)	2703-(Gen Oper) 2713-(Surveil)	For Cathodically Protected Trmn. Pipelines ? Perform an electrical survey (i.e. indirect examination tool/method) at least every 7 years. Results are to be utilized as part of an overall evaluation of the CP system and corrosion threat for the covered segment. Evaluation shall include consideration of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. For Unprotected Trmn. Pipelines or for Cathodically Protected Pipe where Electrical Surveys are Impracticable ? Conduct quarterly leak surveys AND ? Every 1-1/2 years, determine areas of active corrosion by evaluation of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment.
Internal Corrosion	2127-(Gen IC) 2129-(IC monitoring) 2137-(Remedial) 2905-(Patrol) 2906-(Leak survey) 2911 (Repair - gen.) 2917-(Repair - perm.)	703(A)(1)-(Materials) 2703-(Gen Oper) 2713-(Surveil)	? Obtain and review gas analysis data each calendar year for corrosive agents from transmission pipelines in HCAs, ? Periodic testing of fluid removed from pipelines. Specifically, once each calendar year from each storage field that may affect transmission pipelines in HCAs, AND ? At least every 7 years, integrate data obtained with applicable internal corrosion leak records, incident reports, safety related condition reports, repair records, patrol records, exposed pipe reports, and test records.
3 rd Party Damage	903-(Gen. Design) 911-(Design factor) 1717-(Hazard prot) 1727-(Cover) 2714-(Dam. Prevent) 2716-(Public educat) 2905-(Patrol) 2907-(Line markers) 2911 (Repair - gen.) 2917-(Repair - perm.)	2715 - (Emerg Plan)	? ? Participation in state one-call system, ? Use of qualified operator employees and contractors to perform marking and locating of buried structures and in direct supervision of excavation work, AND ? Either monitoring of excavations near operator's transmission pipelines, or bi-monthly patrol of transmission pipelines in HCAs or Class 3 and 4 locations. Any indications of unreported construction activity would require a follow up investigation to determine if mechanical damage occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 30:

Subpart 4. Drug and Alcohol Testing

Chapter 61. General [Part 199? Subpart A]

§6101. Scope [49 CFR 199.1]

A. This Subpart requires operators of pipeline facilities subject to LAC 43:XIII or LAC 33:V.Subpart 3 (49 CFR Part 192 and 195) to test covered employees for the presence of prohibited drugs and alcohol. [49 CFR 199.1]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:532 (June 1990), amended LR 18:852 (August 1992), LR 21:826 (August 1995), LR 27:1554 (September 2001), LR 30:

§8102. Applicability [49 CFR 199.2]

A. This Subpart applies to pipeline operators only with respect to employees located within the territory of the United States, including those employees located within the limits of the "Outer Continental Shelf" as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331). [49 CFR 199.2(a)]

B. This Subpart does not apply to any person for whom compliance with LAC 43:XIII or LAC 33:V.Subpart 3 (49

CFR Part 192 and 195) domestic laws or policies of another country. [49 CFR 199.2(b)]

C. This Subpart does not apply to covered functions performed on:

1. master meter systems, as defined in §303 of this Part; or [49 CFR 199.2(c)(1)]
2. pipeline systems that transport only petroleum gas or petroleum gas/air mixtures. [49 CFR 199.2(c)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:532 (June 1990), amended LR 18:852 (August 1992), LR 27:1554 (September 2001), LR 30:

§6103. Definitions [49 CFR 199.3]

A. As used in this Chapter:

Accident? an incident reportable under 49 CFR Part 191 involving gas pipeline facilities or LNG facilities, or an accident reportable under CFR Part 195 involving hazardous liquid pipeline facilities.

Administrator? the Administrator, Research and Special Programs Administration or his or her delegate.

Covered Employee, Employee, or Individual to be Tested? a person who performs a covered function, including persons employed by operators, contractors engaged by operators, and persons employed by such contractors.

Covered Function? an operations, maintenance, or emergency-response function regulated by 49 CFR Part 192, 193, or 195 that is performed on a pipeline or on an LNG facility.

DOT Procedures? the "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" published by the Office of the Secretary of Transportation in CFR Part 40.

Fail a Drug Test? the confirmation test result shows positive evidence of the presence under DOT procedures of a prohibited drug in an employee's system.

Operator? a person who owns or operates pipeline facilities subject to CFR Part 192, 193, or 195.

Pass a Drug Test? initial testing or confirmation testing under DOT procedures does not show evidence of the presence of a prohibited drug in a person's system.

Performs a Covered Function? includes actually performing, ready to perform, or immediately available to perform a covered function.

Positive Rate for Random Drug Testing? the number of verified positive results for random drug tests conducted under this Subpart plus the number of refusals of random drug tests required by this Subpart, divided by the total number of random drug tests results (i.e., positives, negatives, and refusals) under this Subpart.

Prohibited Drug? any of the following substances specified in Schedule I or Schedule II of the Controlled Substances Act, (21 U.S.C. §812) marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).

Refuse to Submit, Refuse, or Refuse to Take? behavior consistent with DOT procedures concerning refusal to take a drug test of refusal to take an alcohol test.

State Agency? an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws. (49 U.S.C. 60101 et seq.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:533 (June 1990), amended LR 18:852 (August 1992), LR 21:826 (August 1995), LR 24:1306 (July 1998), LR 27:1554 (September 2001), LR 30:

§6105. DOT Procedures [49 CFR 199.5]

A. The anti-drug and alcohol programs required by this Subpart must be conducted according to the requirements of this Subpart and the DOT procedures. Terms and concepts used in this Subpart have the same meaning as in the DOT procedures. Violations of DOT procedures with respect to anti-drug and alcohol programs required by this Subpart are violations of this Subpart. [49 CFR 199.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 16:134 (February 1990), repromulgated LR 16:533 (June 1990), LR 30:

§6107. Stand-Down Waivers [49 CFR 199.7]

A. Each operator who seeks a waiver under 49 CFR §40.21 from the stand-down restriction must submit an application for waiver in duplicate to the Associate

Administrator for Pipeline Safety, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590. [49 CFR 199.7(a)]

B. Each applicant must: [49 CFR 199.7(b)]

1. identify 49 CFR §40.21 as the rule from which the waiver is sought; [49 CFR 199.7(b)(1)]

2. explain why the waiver is requested and describe the employees to be covered by the waiver; [49 CFR 199.7(b)(2)]

3. contain the information required by 49 CFR §40.21 and any other information or arguments to support the waiver requested; and [49 CFR 199.7(b)(3)]

4. unless good cause is shown in the application, be submitted at least 60 days before the proposed effective date of the waiver. [49 CFR 199.7(b)(4)]

C. No public hearing or other proceeding is held directly on an application before its disposition under this Section. If the associate administrator determines that the application contains adequate justification, he or she grants the waiver. If the associate administrator determines that the application does not justify granting the waiver, he or she denies the application. The associate administrator notifies each applicant of the decision to grant or deny an application. [49 CFR 199.7(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 30:

§6109. Preemption of State and Local Laws [49 CFR 199.9]

A. Except as provided in Subsection B of this Section, this Subpart preempts any state or local law, rule, regulation, or order to the extent that: [49 CFR 199.9(a)]

1. compliance with both the state or local requirement and this Subpart is not possible; [49 CFR 199.9(a)(1)]

2. compliance with the state or local requirement is an obstacle to the accomplishment and execution of any requirement in this Subpart; or [49 CFR 199.9(a)(2)]

3. the state or local requirement is a pipeline safety standard applicable to interstate pipeline facilities. [49 CFR 199.9(a)(3)]

B. This Chapter shall not be construed to preempt provisions of state criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public. [49 CFR 199.9(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:829 (August 1995), amended LR 30:

Chapter 63. Drug Testing (Subpart B)

§6300. Purpose [49 CFR 199.101]

A. The purpose of this Chapter is to establish programs designed to help prevent accidents and injuries resulting from the use of prohibited drugs by employees who perform covered functions for operators of certain pipeline facilities subject to 49 CFR Part 192, 193, or 195. [49 CFR 199.100]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 18:852 (August 1992), amended LR 21:826 (August 1995), LR 24:1306 (July 1998), LR 30:

§6301. Anti-Drug Plan [49 CFR 199.101]

A. Each operator shall maintain and follow a written anti-drug plan that conforms to the requirements of this Chapter and the DOT procedures. The plan must contain: [49 CFR 199.101(a)]

1. methods and procedures for compliance with all the requirements of this Chapter, including the employee assistance program; [49 CFR 199.101(a)(1)]

2. the name and address of each laboratory that analyzes the specimens collected for drug testing; and [49 CFR 199.101(a)(2)]

3. the name and address of the operator's medical review officer and, substance abuse professional; and [49 CFR 199.101(a)(3)]

4. procedures for notifying employees of the coverage and provisions of the plan. [49 CFR 199.101(a)(4)]

B. The administrator or the state agency that has submitted a current certification under the pipeline safety laws (49 U.S.C. 60101 et seq.) With respect to the pipeline facility governed by an operator's plans and procedures may, after notice and opportunity for hearing as provided in 49 CFR 190.237 or the relevant state procedures, require the operator to amend its plans and procedures as necessary to provide a reasonable level of safety. [49 CFR 199.101(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:134 (February 1990), repromulgated LR 16:533 (June 1990), amended LR 18:852 (August 1992), LR 21:826 (August 1995), LR 24:1306 (July 1998), LR 27:1554 (September 2001), LR 30:

§6303. Use of Persons Who Fail or Refuse a Drug Test [49 CFR 199.103]

A. An operator may not knowingly use as an employee any person who: [49 CFR 199.103(a)]

1. fails a drug test required by this Chapter and the medical review officer makes a determination under DOT procedures; or [49 CFR 199.103(a)(1)]

2. refuses to take a drug test required by this Chapter. [49 CFR 199.103(a)(2)]

B. Paragraph A.1 of this Section does not apply to a person who has: [49 CFR 199.103(b)]

1. passed a drug test under DOT procedures; [49 CFR 199.103(b)(1)]

2. been considered by the medical review officer in accordance with DOT procedures and been determined by a substance abuse professional to have successfully completed required education or treatment; and [49 CFR 199.103(b)(2)]

3. not failed a drug test required by this Chapter after returning to duty. [49 CFR 199.103(b)(3)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:135 (February 1990), repromulgated LR 16:533 (June 1990), amended LR 30:

§6305. Drug Tests Required [49 CFR 199.105]

A. Each operator shall conduct the following drug tests for the presence of a prohibited drug. [49 CFR 199.105]

1. Pre-employment Testing. No operator may hire or contract for the use of any person as an employee unless that person passes a drug test or is covered by an anti-drug program that conforms to the requirements of this Chapter. [49 CFR 199.105(a)]

2. Post-Accident Testing. As soon as possible but no later than 32 hours after an accident, an operator shall drug test each employee whose performance either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. An operator may decide not to test under this Paragraph but such a decision must be based on the best information available immediately after the accident that the employee's performance could not have contributed to the accident or that, because of the time between that performance and the accident, it is not likely that a drug test would reveal whether the performance was affected by drug use. [49 CFR 199.105(b)].

3. Random Testing [49 CFR 199.105(c)].

a. Except as provided in Subparagraph 3.b. through d of this Subsection, the minimum annual percentage rate for random drug testing shall be 50 percent of covered employees. [49 CFR 199.105(c)(1)]

b. The administrator's decision to increase or decrease the minimum annual percentage rate for random drug testing is based on the reported positive rate for the entire industry. All information used for this determination is drawn from the drug MIS reports required by this Chapter. In order to ensure reliability of the data, the administrator considers the quality and completeness of the reported data, may obtain additional information or reports from operators, and may make appropriate modifications in calculating the industry positive rate. Each year, the administrator will publish in the *Federal Register* the minimum annual percentage rate for random drug testing of covered employees. The new minimum annual percentage rate for random drug testing will be applicable starting January 1 of the calendar year following publication. [49 CFR 199.105(c)(2)]

c. When the minimum annual percentage rate for random drug testing is 50 percent, the administrator may lower this rate to 25 percent of all covered employees if the administrator determines that the data received under the reporting requirements of §6319 for two consecutive calendar years indicate that the reported positive rate is less than 1 percent. [49 CFR 199.105(c)(3)]

d. When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the reporting requirements of §6319 for any calendar year indicate that the reported positive rate is equal to or greater than 1 percent, the administrator will increase the minimum annual percentage rate for random drug testing to 50 percent of all covered employees. [49 CFR 199.105(c)(4)]

e. The selection of employees for random drug testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' social security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made. [49 CFR 199.105(c)(5)]

f. The operator shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random drug testing determined by the administrator. If the operator conducts random drug testing through a consortium, the number of employees to be tested may be calculated for each individual operator or may be based on the total number of covered employees covered by the consortium who are subject to random drug testing at the same minimum annual percentage rate under this Chapter or any DOT drug testing rule. [49 CFR 199.105(c)(6)]

g. Each operator shall ensure that random drug tests conducted under this Chapter are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year. [49 CFR 199.105(c)(7)]

h. If a given covered employee is subject to random drug testing under the drug testing rules of more than one DOT agency for the same operator, the employee shall be subject to random drug testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's function. [49 CFR 199.105(c)(8)]

i. If an operator is required to conduct random drug testing under the drug testing rules of more than one DOT agency, the operator may: [49 CFR 199.105(c)(9)]

i. establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or [49 CFR 199.105(c)(9)(i)]

ii. randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the operator is subject. [49 CFR 199.105(c)(9)(ii)]

4. **Testing Based on Reasonable Cause.** Each operator shall drug test each employee when there is reasonable cause to believe the employee is using a prohibited drug. The decision to test must be based on a reasonable and articulable belief that the employee is using a prohibited drug on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug use. At least two of the employee's supervisors, one of whom is trained in detection of the possible symptoms of drug use, shall substantiate and concur in the decision to test an employee. The concurrence between the two supervisors may be by telephone. However, in the case of operators with 50 or fewer employees subject to testing under this Chapter, only one supervisor of the employee trained in detecting possible drug use symptoms shall substantiate the decision to test. [49 CFR 199.105(d)]

5. **Return-to-Duty.** A covered employee who refuses to take or has a positive drug test may not return to duty in the covered function until the covered employee has complied with applicable provisions of DOT procedures concerning substance abuse professionals and the return-to-duty process. [49 CFR 199.105(e)]

6. **Follow-Up Testing.** A covered employee refuses to take or has a positive drug test shall be subject to unannounced follow-up drug tests administered by the operator following the covered employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall

consist of at least six tests in the first 12 months following the covered employee's return to duty. In addition, follow-up testing may include testing for alcohol as directed by the substance abuse professional, to be performed in accordance with 49 CFR Part 40. Follow-up testing shall not exceed 60 months from the date of the covered employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary. [49 CFR 199.105(f)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:135 (February 1990), repromulgated LR 16:533 (June 1990), amended LR 21:826 (August 1995), repromulgated LR 21:955 (September 1995), LR 27:1555 (September 2001), amended LR 30:

§6307. Drug Testing Laboratory [49 CFR 199.107]

A. Each operator shall use for the drug testing required by this Chapter only drug testing laboratories certified by the Department of Health and Human Services under the DOT procedures. [49 CFR 199.107(a)]

B. The drug testing laboratory must permit: [49 CFR 199.107(b)]

1. inspections by the operator before the laboratory is awarded a testing contract; and [49 CFR 199.107(b)(1)]

2. unannounced inspections, including examination of records, at any time, by the operator, the administrator, and if the operator is subject to state agency jurisdiction, a representative of that state agency. [49 CFR 199.107(b)(2)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:135 (February 1990), repromulgated LR 16:534 (June 1990), amended LR 30:

§6309. Review of Drug Testing Results

[49 CFR 199.109]

A. **MRO Appointment.** Each operator shall designate or appoint a medical review officer (MRO). If an operator does not have a qualified individual on staff to serve as MRO, the operator may contract for the provision of MRO services as part of its anti-drug program. [49 CFR 199.109(a)]

B. **MRO Qualifications.** Each MRO must be a licensed physician who has the qualifications required by DOT procedures. [49 CFR 199.109(b)]

C. **MRO Duties.** The MRO must perform functions for the operator as required by DOT procedures. [49 CFR 199.109(c)]

D. **MRO Reports.** The MRO must report all drug test results to the operator in accordance with DOT procedure. [49 CFR 199.109(d)]

E. Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment or costs shall be made in accordance with the operator/employee agreements and operator/employee policies. [49 CFR 199.109(e)]

F. The operator shall ensure that a substance abuse professional, who determines that a covered employee requires assistance in resolving problems with drug abuse, does not refer the covered employee to the substance abuse

professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This Subsection does not prohibit a substance abuse professional from referring a covered employee for assistance provided through: [49 CFR 199.109(f)]

1. a public agency, such as state, parish, or municipality; [49 CFR 199.109(f)(1)]

2. the operator or a person under contract to provide treatment for drug problems on behalf of the operator; [49 CFR 199.109(f)(2)]

3. the sole source or therapeutically appropriate treatment under the employee's health insurance program; or [49 CFR 199.109(f)(3)]

4. the sole source of therapeutically appropriate treatment reasonably accessible to the employee. [49 CFR 199.109(f)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:135 (February 1990), repromulgated LR 16:534 (June 1990), amended LR 30:

§6311. Retention of Samples and Additional Testing [49 CFR 199.111]

A. Samples that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term, frozen storage for at least 365 days as required by the DOT procedures. Within this 365-day period, the employee or his representative, the operator, the administrator, or, if the operator is subject to the jurisdiction of a state agency, the state agency may request that the laboratory retain the sample for an additional period. If, within the 365-day period, the laboratory has not received a proper written request to retain the sample for a further reasonable period specified in the request, the sample may be discarded following the end of the 365-day period. [49 CFR 199.111(a)]

B. If the medical review officer (MRO) determines there is no legitimate medical explanation for a confirmed positive test result other than the unauthorized use of a prohibited drug, and if timely additional testing is requested by the employee according to DOT procedures, the split specimen must be tested. The employee may specify testing by the original laboratory that is certified by the Department of Health and Hospitals. The operator may require the employee to pay in advance the cost of shipment (if any) and reanalysis of the sample, but the employee must be reimbursed for such expense if the additional test is negative. [49 CFR 199.111(b)]

C. If the employee specifies testing by a second laboratory, the original laboratory must follow approved chain-of-custody procedures in transferring a portion of the sample. [49 CFR 199.111(c)]

D. Since some analytes may deteriorate during storage, detected levels of the drug below the detection limits established in the DOT procedures, but equal to or greater than the established sensitivity of the assay, must, as technically appropriate, be reported and considered corroborative of the original positive results. [49 CFR 199.111(d)]

AUTHORITY NOTE: Promulgated in accordance with R. S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:136 (February 1990), repromulgated LR 16:535 (June 1990), amended LR 21:827 (August 1995), LR 27:1551 (September 2001), LR 30:

§6313. Employee Assistance Program [49 CFR 199.113]

A. Each operator shall provide an employee assistance program (EAP) for its employees and supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause. The operator may establish the EAP as a part of its internal personnel services or the operator may contract with an entity that provides EAP services. Each EAP must include education and training on drug use. At the discretion of the operator, the EAP may include an opportunity for employee rehabilitation. [49 CFR 199.113(a)]

B. Education under each EAP must include at least the following elements: display and distribution of informational material; display and distribution of a community service hot-line telephone number for employee assistance; and display and distribution of the employer's policy regarding the use of prohibited drugs. [49 CFR 199.113(b)]

C. Training under each EAP for supervisory personnel who will determine whether an employee must be drug tested based on reasonable cause must include one 60-minute period of training on the specific, contemporaneous physical, behavioral, and performance indicators of probable drug use. [49 CFR 199.113(c)]

AUTHORITY NOTE: Promulgated in accordance with R. S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:136 (February 1990), repromulgated LR 16:535 (June 1990), amended LR 30:

§6315. Contractor Employees [49 CFR 199.115]

A. With respect to those employees who are contractors or employed by a contractor, an operator may provide by contract that the drug testing, education, and training required by this Chapter be carried out by the contractor provided: [49 CFR 199.115]

1. the operator remains responsible for ensuring that the requirements of this Chapter are complied with; and [49 CFR 199.115(a)]

2. the contractor allows access to property and records by the operator, the administrator, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purpose of monitoring the operator's compliance with the requirements of this Chapter. [49 CFR 199.115(b)]

AUTHORITY NOTE: Promulgated in accordance with R. S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:136 (February 1990), repromulgated LR 16:535 (June 1990), amended LR 30:

§6317. Recordkeeping [49 CFR 199.117]

A. Each operator shall keep the following records for the periods specified and permit access to the records as provided by Subsection B of this Section. [49 CFR 199.117(a)]

1. Records that demonstrate the collection process conforms to this Chapter must be kept for at least three years. [49 CFR 199.117(a)(1)]

2. Records of employee drug test that indicate a verified positive result, records that demonstrate compliance with the recommendations of a substance abuse professional,

and MIS annual report data shall be maintained for a minimum of five years: [49 CFR 199.117(a)(2)]

a. the function performed by each employee who had a positive drug test; [49 CFR 199.117(a)(2)(i)]

b. the prohibited drugs which were used by an employee who had a positive drug test; [49 CFR 199.117(a)(2)(ii)]

c. the disposition of each employee who had a positive drug test or refused a drug test (e.g., termination, rehabilitation, removed from covered function, other). [49 CFR 199.117(a)(2)(iii)]

3. Records of employee drug test results that show employees passed a drug test must be kept for at least one year. [49 CFR 199.117(a)(3)]

4. Records confirming that supervisors and employees have been trained as required by this Chapter must be kept for at least three years. [49 CFR 199.117(a)(4)]

B. Information regarding an individual's drug testing results or rehabilitation must be released upon written consent of the individual and as provided by DOT procedures. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the administrator or the representative of a state agency upon request. [49 CFR 199.117(b)]

AUTHORITY NOTE: Promulgated in accordance with R. S. 30:751-757.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 16:136 (February 1990), repromulgated LR 16:535 (June 1990), amended LR 21:827 (August 1995), LR 30:

§6319. Reporting of Anti-Drug Testing Results [49 CFR 199.25]

A. Each large operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its anti-drug testing using the Management Information System (MIS) form and instructions as required by 49 CFR Part 40 (at 40.25 and appendix H to Part 40), not later than March 15 of each year for the prior calendar year (January 1 - December 31). The administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA. [49 CFR 199.119(a)]

B. Each report, required under this Section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, Room 2103, 400 Seventh Street, SW, Washington, DC 20590. The operator may submit a paper report or data electronically using the version of the MIS form provided by DOT. This electronic version of the form can be accessed via the Internet at the following Office of Pipeline Safety web address: <http://ops.dot.gov/drug.htm>. [49 CFR 199.119(b)]

C. To calculate the total number of covered employees eligible for random testing throughout the year, as an operator, you must add the total number of covered employees eligible for testing during each random testing period for the year and divide that total by the number of random testing periods. Covered employees, and only covered employees, are to be in an employer's random testing pool, and all covered employees must be in the random pool. If you are an employer conducting random

testing more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. [49 CFR 199.119(c)]

D. As an employer, you may use a service agent (e.g., C/TPA) to perform random selections for you; and your covered employees may be part of a larger random testing pool of covered employees. However, you must ensure that the service agent you use is testing at the appropriate percentage established for your industry and that only covered employees are in the random testing pool. [49 CFR 199.119(d)]

E. Each operator that has a covered employee who performs multi-DOT agency functions (e.g., an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is randomly tested. Normally, this will be the DOT agency under which the employee performs more than 50 percent of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit. [49 CFR 199.119(e)]

F. A service agent (e.g., Consortia/Third Party Administrator as defined in 49 CFR Part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness. [49 CFR 199.119(f)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:828 (August 1995), amended LR 30:

Chapter 65. Alcohol Misuse Prevention Program [Subpart C]

§6501. Purpose [49 CFR 199.200]

A. The purpose of this Chapter is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to LAC 43:XIII, and LAC 33:V Subpart 3 [Parts 192, 193, or 195]. [49 CFR 199.200]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:828 (August 1995), amended LR 30:

§6502. Alcohol Misuse Plan [49 CFR 199.202]

A. Each operator must maintain and follow a written alcohol misuse plan that conforms to the requirements of this part and DOT procedures concerning alcohol testing programs. The plan shall contain methods and procedures for compliance with all the requirements of this Chapter, including required testing, recordkeeping, reporting, education and training elements. [49 CFR 199.202]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:828 (August 1995), amended LR 30:

§6509. Other Requirements Imposed by Operators
[49 CFR 199.209]

A. Except as expressly provided in this Chapter, nothing in this Chapter shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation. [49 CFR 199.209 (a)]

B. Operators may, but are not required to, conduct pre-employment alcohol testing under this Subpart. Each operator that conducts pre-employment alcohol testing must: [49 CFR 199.209 (b)]

1. conduct a pre-employment alcohol test before the first performance of covered functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of covered functions); [49 CFR 199.209 (b)(1)]

2. treat all covered employees the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others); [49 CFR 199.209 (b)(2)]

3. conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test; [49 CFR 199.209 (b)(3)]

4. conduct all pre-employment alcohol tests using the alcohol testing procedures in DOT procedures; and [49 CFR 199.209 (b)(4)]

5. not allow any covered employee to begin performing covered functions unless the results of the employee's test indicates an alcohol concentration of less than 0.04. [49 CFR 199.209 (b)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:829 (August 1995), amended LR 30:

§6511. Requirement for Notice [49 CFR 199.211]

A. Before performing an alcohol test under this Chapter, each operator shall notify a covered employee that the alcohol test is required by this Chapter. No operator shall falsely represent that a test is administered under this Chapter. [49 CFR 199.211]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:

§6515. Alcohol Concentration [49 CFR 199.215]

A. Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions. [49 CFR 199.215]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:

§6517. On-Duty Use [49 CFR 199.217]

A. Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions. [49 CFR 199.217]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:

§6519. Pre-Duty Use [49 CFR 199.219]

A. Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions. [49 CFR 199.219]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:

§6521. Use Following An Accident [49 CFR 199.221]

A. Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under §6525.A, or the operator has determined that the employee's performance could not have contributed to the accident. [49 CFR 199.221]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:

§6523. Refusal to Submit to a Required Alcohol Test [49 CFR 199.223]

A. Each operator shall require a covered employee to submit to a post-accident alcohol test required under §6525.A.1, a reasonable suspicion alcohol test required under §6525.A.2, or a follow-up alcohol test required under §6525.A.4. No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions. [49 CFR 199.223]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:

§6525. Alcohol Tests Required [49 CFR 199.225]

A. Each operator shall conduct the following types of alcohol tests for the presence of alcohol.

1. Post-Accident [49 CFR 199.225(a)]

a. As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this Section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident. [49 CFR 199.225(a)(1)]

b. If a test required by this Section is not administered within two hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by Paragraph A.1 is not administered within eight hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. [49 CFR 199.225(a)(2)(i)]

c. A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this Section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care. [49 CFR 199.225(a)(3)]

2. Reasonable Suspicion Testing [49 CFR 199.225(b)]

a. Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this Chapter. [49 CFR 199.225(b)(1)]

b. The operator's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee. [49 CFR 199.225(b)(2)]

c. Alcohol testing is authorized by this Section only if the observations required by Subparagraph 2.b of this Section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this Chapter. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform

covered functions; or just after the employee has ceased performing covered functions. [49 CFR 199.225(b)(3)]

d.i. If a test required by this Section is not administered within two hours following the determination under Subparagraph 2.b of this Section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered.

ii. If a test required by this Section is not administered within eight hours following the determination under Subparagraph 2.b of this Section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to RSPA upon request of the administrator. [49 CFR 199.225(b)(4)(i)]

iii. Notwithstanding the absence of a reasonable suspicion alcohol test under this Section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until: [49 CFR 199.225(b)(4)(iii)]

(a) an alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or [49 CFR 199.225(b)(4)(iii)(A)]

(b) the start of the employee's next regularly scheduled duty period, but not less than eight hours following the determination under Subparagraph 2.b of this Section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this Chapter. [49 CFR 199.225(b)(4)(iii)(B)]

iv. Except as provided in Clause 2.d.ii, no operator shall take any action under this Chapter against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this Chapter from taking any action otherwise consistent with law. [49 CFR 199.225(b)(4)(iv)]

3. Return-to-Duty Testing. Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§6515-6523, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. [49 CFR 199.225(c)]

4. Follow-Up Testing [49 CFR 199.225(d)]

a. Following a determination under §6543 that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of §6543.C.2.b [49 CFR 199.243(c)(2)(i)]. [49 CFR 199.225(d)(1)]

b. Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions. [49 CFR 199.225(d)(2)]

5. Retesting of Covered Employees With an Alcohol Concentration of 0.02 or Greater but Less Than 0.04. Each operator shall retest a covered employee to ensure

compliance with the provisions of §6537, if an operator chooses to permit the employee to perform a covered function within eight hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04. [49 CFR 199.225(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:830 (August 1995), amended LR 30:

§6527. Retention of Records [49 CFR 199.227]

A. General Requirement. Each operator shall maintain records of its alcohol misuse prevention program as provided in this Section. The records shall be maintained in a secure location with controlled access. [49 CFR 199.227(a)]

B. Period of Retention. Each operator shall maintain the records in accordance with the following schedule. [49 CFR 199.227(b)]

1. Five Years. Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of five years. [49 CFR 199.227(b)(1)]

2. Two Years. Records related to the collection process (except calibration of evidential breath testing devices), and training shall be maintained for a minimum of two years. [49 CFR 199.227(b)(2)]

3. One Year. Records of all test results below 0.02 (as defined in 49 CFR Part 40) shall be maintained for a minimum of one year. [49 CFR 199.227(b)(3)]

C. Types of Records. The following specific records shall be maintained: [49 CFR 199.227(c)]

1. records related to the collection process: [49 CFR 199.227(c)(1)]

a. collection log books, if used; [49 CFR 199.227(c)(1)(i)]

b. calibration documentation for evidential breath testing devices; [49 CFR 199.227(c)(1)(ii)]

c. documentation of breath alcohol technician training; [49 CFR 199.227(c)(1)(iii)]

d. documents generated in connection with decisions to administer reasonable suspicion alcohol tests; [49 CFR 199.227(c)(1)(iv)]

e. documents generated in connection with decisions on post-accident tests; [49 CFR 199.227(c)(1)(v)]

f. documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing. [49 CFR 199.227(c)(1)(vi)]

2. Records related to test results: [49 CFR 199.227(c)(2)]

a. the operator's copy of the alcohol test form, including the results of the test; [49 CFR 199.227(c)(2)(i)]

b. documents related to the refusal of any covered employee to submit to an alcohol test required by this Chapter; [49 CFR 199.227(c)(2)(ii)]

c. documents presented by a covered employee to dispute the result of an alcohol test administered under this Chapter. [49 CFR 199.227(c)(2)(iii)]

3. Records related to other violations of this Chapter. [49 CFR 199.227(c)(3)]

4. Records related to evaluations: [49 CFR 199.227(c)(4)]

a. records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance; [49 CFR 199.227(c)(4)(i)]

b. records concerning a covered employee's compliance with the recommendations of the substance abuse professional. [49 CFR 199.227(c)(4)(ii)]

5. Records related to the operator's MIS annual testing data. [49 CFR 199.227(c)(5)]

6. Records related to education and training: [49 CFR 199.227(c)(6)]

a. materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse; [49 CFR 199.227(c)(6)(i)]

b. documentation of compliance with the requirements of §3335; [49 CFR 199.227(c)(6)(ii)]

c. documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion; [49 CFR 199.227(c)(6)(iii)]

d. certification that any training conducted under this Chapter complies with the requirements for such training. [49 CFR 199.227(c)(6)(iv)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:832 (August 1995), amended LR 30:

§6529. Reporting of Alcohol Testing Results [49 CFR 199.229]

A. Each large operator (having more than 50 covered employees) shall submit an annual (MIS) report to RSPA of its alcohol testing results using the Management Information System (MIS) form and instructions as required by 49 CFR Part 40 (at §40.25 and Appendix H to Part 40), not later than March 15 of each year for the previous calendar year (January 1 - December 31). The administrator may require by written notice that small operators (50 or fewer covered employees), not otherwise required to submit annual MIS reports, submit such a report to RSPA. [49 CFR 199.229(a)]

B. Each operator that has a covered employee who performs multi-DOT agency functions (e.g., an employee performs pipeline maintenance duties and drives a commercial motor vehicle), count the employee only on the MIS report for the DOT agency under which he or she is tested. Normally, this will be the DOT agency under which the employee performs more than 50 percent of his or her duties. Operators may have to explain the testing data for these employees in the event of a DOT agency inspection or audit. [49 CFR 199.229(b)]

C. Each report, required under this Section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, Room 2335, 400 Seventh Street, SW, Washington, DC 20590. The operator may report data electronically using the version of the MIS form provided by DOT. This form can be accessed via the Internet

at the following Office of Pipeline Safety web address: <http://ops.dot.gov/drug.htm>. [49 CFR 199.229(c)]

D. A service agent (e.g., Consortia/Third Party Administrator as defined in Part 40) may prepare the MIS report on behalf of an operator. However, each report shall be certified by the operator's anti-drug manager or designated representative for accuracy and completeness. [49 CFR 199.229(d)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:832 (August 1995), amended LR 30:

§6531. Access to Facilities and Records

[49 CFR 199.231]

A. Except as required by law or expressly authorized or required in this Chapter, no employer shall release covered employee information that is contained in records required to be maintained in §6527. [49 CFR 199.231(a)]

B. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to a employee's records shall not be contingent upon payment for records other than those specifically requested. [49 CFR 199.231(b)]

C. Each operator shall permit access to all facilities utilized in complying with the requirements of this Chapter to the secretary of transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator. [49 CFR 199.231(c)]

D. Each operator shall make available copies of all results for employer alcohol testing conducted under this Chapter and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the secretary of transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports. [49 CFR 199.231(d)]

E. When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation. [49 CFR 199.231(e)]

F. An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request. [49 CFR 199.231(f)]

G. An operator may disclose information without employee consent as provided by DOT procedures concerning certain legal proceedings. [49 CFR 199.231(g)]

H. An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent. [49 CFR 199.231(h)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:833 (August 1995), amended LR 30:

§6533. Removal from Covered Function

[49 CFR 199.233]

A. Except as provided in §§6539-6543, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§6515 through 6523 or an alcohol misuse rule of another DOT agency. [49 CFR 199.233]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:834 (August 1995), amended LR 30:

§6535. Required Evaluation and Testing

[49 CFR 199.235]

A. No operator shall permit a covered employee who has engaged in conduct prohibited by §§6515-6523 to perform covered functions unless the employee has met the requirements of §6543. [49 CFR 199.235]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:834 (August 1995), amended LR 30:

§6537. Other Alcohol-Related Conduct

[49 CFR 199.237]

A. No operator shall permit a covered employee tested under the provisions of §6525, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until: [49 CFR 199.237(a)]

1. the employee's alcohol concentration measures less than 0.02 in accordance with a test administered under §6525.A.5; or [49 CFR 199.237(a)(1)]

2. the start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test. [49 CFR 199.237(a)(2)]

B. Except as provided in Subsection A of this Section, no operator shall take any action under this Chapter against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this Chapter from taking any action otherwise consistent with law. [49 CFR 199.237(b)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:834 (August 1995), amended LR 30:

§6539. Operator Obligation to Promulgate a Policy on the Misuse of Alcohol [49 CFR 199.239]

A. General Requirements. Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements. [49 CFR 199.239(a)]

1. The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this Chapter, and to each person subsequently hired for or transferred to a covered position. [49 CFR 199.239(a)(1)]

2. Each operator shall provide written notice to representatives of employee organizations of the availability of this information. [49 CFR 199.239(a)(2)]

B. Required Content. The materials to be made available to covered employees shall include detailed discussion of at least the following: [49 CFR 199.239(b)]

1. the identity of the person designated by the operator to answer covered employee questions about the materials; [49 CFR 199.239(b)(1)]

2. the categories of employees who are subject to the provisions of this Chapter; [49 CFR 199.239(b)(2)]

3. sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this Chapter; [49 CFR 199.239(b)(3)]

4. specific information concerning covered employee conduct that is prohibited by this Chapter; [49 CFR 199.239(b)(4)]

5. the circumstances under which a covered employee will be tested for alcohol under this Chapter; [49 CFR 199.239(b)(5)]

6. the procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee; [49 CFR 199.239(b)(6)]

7. the requirement that a covered employee submit to alcohol tests administered in accordance with this Chapter; [49 CFR 199.239(b)(7)]

8. an explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences; [49 CFR 199.239(b)(8)]

9. the consequences for covered employees found to have violated the prohibitions under this Chapter, including the requirement that the employee be removed immediately from covered functions, and the procedures under §6543; [49 CFR 199.239(b)(9)]

10. the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04; [49 CFR 199.239(b)(10)]

11. information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management. [49 CFR 199.239(b)(11)]

C. Optional Provisions. The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this Chapter. Any such additional policies or consequences shall be clearly described as being based on independent authority. [49 CFR 199.239(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:834 (August 1995), amended LR 30:

§6541. Training for Supervisors [49 CFR 199.241]

A. Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under §6525.A.2 receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse. [49 CFR 199.241]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:834 (August 1995), amended LR 30:

§6543. Referral, Evaluation, and Treatment [49 CFR 199.243]

A. Each covered employee who has engaged in conduct prohibited by §§6515-6523 of this Chapter shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. [49 CFR 199.243(a)]

B. Each covered employee who engages in conduct prohibited under §§6515-6523 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse. [49 CFR 199.243(b)]

C. 1. Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§6515-6523 of this Chapter, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02. [49 CFR 199.243(c)(1)]

2. In addition, each covered employee identified as needing assistance in resolving problems associated with alcohol misuse: [49 CFR 199.243(c)(2)]

a. shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under Subsection B of this Section, and [49 CFR 199.243(c)(2)(i)]

b. shall be subject to unannounced follow-up alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR Part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary. [49 CFR 199.243(c)(2)(ii)]

D. Evaluation and rehabilitation may be provided by the operator, by a substance abuse professional under contract

with the operator, or by a substance abuse professional not affiliated with the operator. The choice of substance abuse professional and assignment of costs shall be made in accordance with the operator/employee agreements and operator/employee policies. [49 CFR 199.243(d)]

E. The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This Subsection does not prohibit a substance abuse professional from referring an employee for assistance provided through: [49 CFR 199.243(e)]

1. a public agency, such as a state, county, or municipality; [49 CFR 199.243(e)(1)]

2. the operator or a person under contract to provide treatment for alcohol problems on behalf of the operator; [49 CFR 199.243(e)(2)]

3. the sole source of therapeutically appropriate treatment under the employee's health insurance program; or [49 CFR 199.243(e)(3)]

4. the sole source of therapeutically appropriate treatment reasonably accessible to the employee. [49 CFR 199.243(e)(4)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:835 (August 1995), amended LR 30:

§6545. Contractor Employees [49 CFR 199.245]

A. With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this Chapter be carried out by the contractor provided: [49 CFR 199.245(a)]

1. the operator remains responsible for ensuring that the requirements of this Chapter and 49 CFR Part 40 are complied with; and [49 CFR 199.245(b)]

2. the contractor allows access to property and records by the operator, the administrator, any DOT agency with regulatory authority over the operator or covered employee, and, if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this Chapter and 49 CFR Part 40. [49 CFR 199.245(c)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:751-757, redesignated as R.S. 30:701-707 and R.S. 30:501 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 21:835 (August 1995), amended LR 30:

Family Impact Statement

1. The Effect of These Rules on the Stability of the Family. These Rules 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. These Rules will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effects of These Rules on the Functioning of the Family. These rules will have no effect on the functioning of the family.

4. The Effect of These Rules on Family Earnings and Family Budget. These Rules will have no effect on family earnings and family budget.

5. 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.

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. 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.

A public hearing will be held on this matter on April 26, 2004. Interested persons may submit written comments to Mariano G. Hinojosa, Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. Written comments will be accepted through April 23, 2004.

James H. Welsh
Commissioner

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

RULE TITLE: Natural Gas Pipeline Safety

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

There will be no implementation costs or savings to state or local governmental units since Louisiana already has natural gas pipeline safety rules in effect. The proposed amendments will keep Louisiana's Pipeline Safety Program in conformance with federal regulations. This action amends and adopts recent federal natural gas pipeline safety regulations.

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

Louisiana presently receives approximately \$441,000 in federal funds and \$660,000 in pipeline fees to administer the natural gas pipeline safety program. Failure to amend the Louisiana rules to make them consistent with federal regulations would cause the state to lose federal funding for this program.

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

There will be negligible costs to directly affected persons or natural gas pipeline operators. Benefits will be realized by persons near natural gas pipelines through safer construction and operation standards imposed by the amendments.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendment will bring the Louisiana natural gas Pipeline Safety Program into conformance with federal regulations and will have no effect on competition and employment.

James H. Welsh
Commissioner
0403#002

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Board of Private Investigator Examiners

Committees (LAC 46:LVII.109)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 37:3505.B.(1), the Louisiana Department of Public Safety and Corrections, Louisiana State Board of Private Investigator Examiners, hereby gives notice of its intent to amend Part LVII of Title 46, amending Chapter 1, §109 by repealing §109.A.3, deleting the Ethics Committee as a standing committee of the Louisiana State Board of Private Investigator Examiners.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LVII. Private Investigator Examiners

Chapter 1. Organizational and General Provisions

§109. Committees

A. Standing committees of the board are:

1. General Committee, whose duties include special projects authorized by the chair; and
2. Finance Committee, whose duties include periodic review of the budget, recommendations regarding the establishment of fees charged by the board, and recommendations to the board regarding all expenditures in excess of \$500.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3505(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Private Investigator Examiners, LR 19:1332 (October 1993), amended LR 30:

Family Impact Statement

RE: proposed amendment to Louisiana Administrative Code, Part LVII of Title 46, Amending Chapter 1, §109 by repealing §109.A.3 which required the Ethics Committee to be a standing committee of the Louisiana Board of Private Investigator Examiners

1. The Effect on the Stability of the Family. None
2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of Their Children. None
3. The Effect on the Function of the Family. None.
4. The Effect on Family Earnings and Family Budget. None.
5. The Effect on the Behavior and Personal Responsibility of Children. None.
6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. Not applicable.

Comments should be forwarded to A. Edward Hardin, Chairman, State Board of Private Investigator Examiners, 2051 Silverside Drive, Suite 109, Baton Rouge, LA 70808. Written comments will be accepted through the close of business on April 9, 2004.

A copy of these Rules may be obtained from the Louisiana State Board of Private Investigator Examiners, 2051

Silverside Drive, Suite 190, Baton Rouge, LA 70808, telephone number (225) 763-3556.

A. Edward Hardin
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Committees

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

There will be no implementation costs for the rule change. The change lessens the board's standing committees by one committee. The board members are not paid for services. The board members get no per diem. Investigations of board members are now being conducted by the Office of State Police and/or the Attorney General's office. Neither office is charging the board for the investigations so conducted, apparently absorbing any costs associated therewith in their own respective budgets.

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 unit by this Rule change. The standing committee that is being omitted did not produce revenue.

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

There should be no significant costs or economic benefits to any person or groups. Complaints against board members will still be handled but not by board members.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no significant effect on competition or employment.

Celia L. Cangelosi
Attorney
0403#024

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Disciplinary Rules (LAC 22:I.365)

In accordance with the Administrative Procedures Act, R.S. 49:953(B), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend the Disciplinary Rules for adult offenders and in particular the Rule regarding engaging in non-professional relationships whether inside or outside of the institution.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult and Juvenile Services

§365. Disciplinary Rules

A. - Y.3. ...

4. engaging in non-professional relationships with any employee, visitor, or guest or other person the inmate may come in contact with inside or outside of the institution.

Y.5. - Y.23. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:823, *Wolff v. McDonnell*, 94 S.Ct. 2963 (1974), and *Ralph v. Dees*, C.A. 71-94, USDC (Md. La.).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Adult Services, LR 7:6 (January 1981), repromulgated by the Department of Public Safety and Corrections, Corrections Services, Office of Adult Services, LR 17:605 (June 1991), amended LR 19:654 (May 1993), LR 30:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

The amendment of LAC 22:I.365, Disciplinary Rules for Adult Offenders, by the Department of Public Safety and Corrections, Corrections Services, 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.

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m. on April 20, 2004.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Disciplinary Rules**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The department is only making minor editorial changes to the existing Rule for clarification purposes and therefore no implementation costs are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated effect on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs and/or economic benefits to directly affected persons.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment.

Robert B. Barbor
Deputy General Counsel
0403#050

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Gaming Control Board**

Quarterly Submissions (LAC 42:III.110)

The Louisiana Gaming Control Board hereby gives notice that it intends to amend LAC 42: III.110, 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 III. Gaming Control Board

Chapter 1. General Provisions

§110. Quarterly Submissions

A. ...

B. The licensee will certify quarterly under oath that a good faith effort to meet the voluntary procurement and employment conditions is being made, and shall quarterly demonstrate to the board that an effort was made to meet the conditions. The quarterly statement shall be forwarded to the board no later than 20 days after the end of each quarter.

C. Each licensee authorized to conduct slot machine gaming at an eligible facility pursuant to the provisions of Chapter 7 of the Louisiana Gaming Control Law shall submit to the board on a quarterly basis a statement of compliance with the provisions of R.S. 27:363(C) and shall certify under oath that a good faith effort to comply with the provisions of R.S. 27:363(C) is being made. The quarterly statement shall be forwarded to the board no later than 20 days after the end of each quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:304 (March 1997), amended LR 30:

All interested persons may contact Tom Warner, Attorney General's Gaming Division, telephone (225) 326-6500, and may submit comments relative to these proposed rules, through April 10, 2004, to 1885 North Third Street, Suite 500, Baton Rouge, LA 70802.

Hillary J. Crain
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Quarterly Submissions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
No implementation costs are anticipated.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No effect on revenue collections is anticipated.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Preparation of a quarterly statement of compliance and certification may result in some minimal costs to licensees

conducting slot machine gaming at race tracks, however the amount of such costs cannot be estimated with any degree of certainty.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is estimated.

Hillary J. Crain
Chairman
0403#007

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Cleaning Services (LAC 61:I.4301)

Under the authority of R.S. 47:301 and R.S. 47:1511 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4301 relative to the definition of cleaning services for sales tax purposes.

Revised Statute 47:301(14)(e) defines *sales of services* to include "The furnishing of laundry, cleaning, pressing and dyeing services, including by way of extension and not of limitation, the cleaning and renovation of clothing, furs, furniture, carpets and rugs, and the furnishing of storage space for clothing, furs and rugs." In *Intracoastal Pipe Service Co., Inc. v. Assumption Parish Sales and Use Tax Department, et al.*, 558 So.2d 1296 (La. 1990), the Louisiana Supreme Court ruled that the furnishing of taxable cleaning services under the statute is limited to items like fabric or fur and that cleaning services for pipes, tanks, barges, vehicles, and similar items are not subject to sales tax. These proposed amendments provide guidance concerning the types of transactions that are subject to sales tax under existing legal interpretations.

Title 61

REVENUE AND TAXATION

**Part I. Taxes Collected and Administered by the
Secretary of Revenue**

Chapter 43. Sales and Use Tax

§4301. Definitions

A. - C. ...

Sales of Services?

a. - f. ...

g. Revised Statute 47:301(14)(e) defines laundry, cleaning, pressing, and dyeing services; including the cleaning and renovation of clothing, furs, furniture, carpets, and rugs; as taxable services.

i. *Sales of services* under R.S. 47:301(14)(e) includes cleaning, pressing, and dyeing objects made primarily of materials like fabric, fur, leather, or cloth by cleaners, laundries, washaterias, and other cleaning establishments. Examples of taxable services include cleaning the following items:

- (a). clothing;
- (b). furniture;
- (c). carpets;
- (d). linens;

- (e). pillows; and
- (f). draperies.

ii. Cleaning objects made primarily of metal, wood, plastic, glass, or other nonfabric material are not subject to tax under R.S. 47:301(14)(e). Examples of services that are not taxable include cleaning the following items:

- (a). automobiles;
- (b). barges;
- (c). pipes;
- (d). tanks; and
- (e). jewelry.

iii. Cleaning services performed to restore tangible personal property to a proper working condition, as when cleaning the inner workings of a watch or the fuel injectors in an engine, are considered repairs under R.S. 47:301(14)(g) and subject to tax.

iv. Taxable cleaning services under R.S. 47:301(14)(e) do not include transactions when customers personally operate cleaning equipment for a fee. An example of this would be patrons' use of commercial coin-operated washing machines at a laundromat. However, taxable leases or rentals exist when customers acquire possession or use of the cleaning equipment in accordance with R.S. 47:301(7). An example of this would be the rental of a carpet shampooer for use at home.

v. Revised Statute 47:301(14)(e) also defines the furnishing of storage space for clothing, furs, and rugs as *sales of services*. All charges pertaining to the furnishing of storage space for these items are included in the taxable amount regardless of whether the operator is engaged solely in furnishing storage space or the activity is incidental to another business.

h. - i.ii. ...

AUTHORITY NOTE: Promulgated in Accordance with R.S. 47:301 and R.S. 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987), amended by the Department of Revenue and Taxation, Sales Tax Division, LR 21:957 (September 1995), LR 22:855 (September 1996), amended by the Department of Revenue, Policy Services Division, LR 27:1703 (October 2001), LR 28:348 (February 2002), LR 28:1488 (June 2002), LR 28:2554 (December 2002), LR 28:2556 (December 2002), LR 29:186 (February 2003), LR 30:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of these proposed amendments will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of these proposed amendments will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of these proposed amendments will have no effect on the functioning of the family.

NOTICE OF INTENT

Department of Transportation and Development Office of Highways/Engineering

Debarment Hearings for Contractors, Subcontractors,
Consultants and Subconsultants (LAC 70:I.Chapter 9)

4. The effect on family earnings and family budget. Implementation of these proposed amendments will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of these proposed amendments will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of these proposed amendments will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Monday, April 26, 2004. A public hearing will be held on Wednesday, April 28, 2004, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Cleaning Services**

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

Implementation of these proposed amendments, which clarify the taxable cleaning services under R.S. 47:301(14)(e), will have no impact on the costs of state or local agencies.

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 these proposed amendments. The statute is already being administered in accordance with the Louisiana Supreme Court's ruling in *Intracoastal Pipe Service Co., Inc. v. Assumption Parish Sales and Use Tax Department, et al.*, 558 So.2d 1296 (La. 1990).

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

These proposed amendments should have no effect on the costs or economic benefits to vendors or purchasers of cleaning services in Louisiana. The statute is already being administered in accordance with the Louisiana Supreme Court's ruling in *Intracoastal Pipe Service Co., Inc. v. Assumption Parish Sales and Use Tax Department, et al.*, 558 So.2d 1296 (La. 1990).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed amendments should have no effect on competition or employment.

Cynthia Bridges
Secretary
0403#027

H. Gordon Monk
Staff Director
Legislative Fiscal Office

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to enact Chapter 9 of Part I of Title 70 entitled "Debarment Hearings for Contractors, Subcontractors, Consultants and Subconsultants", in accordance with the provisions of R.S. 48:295 et seq., and House Concurrent Resolution No. 60 of 2003.

Title 70

TRANSPORTATION

Part I. Highway Construction

Chapter 9. Debarment Hearings for Contractors, Subcontractors, Consultants and Subconsultants

§901. Debarment Committee

A. The Debarment Committee, as defined in R.S. 48:295.1, consists of the chief engineer of the department, or his designee, the deputy secretary of the department or his designee, and the general counsel of the department or his designee.

B. The following persons shall act as designees.

1. The chief of Project Development Division shall be the designee of the deputy secretary for any consideration of debarment or suspension of a consultant under R.S. 48:285.

2. The chief of Construction Division shall be designee of the deputy secretary for any consideration of debarment or suspension of a contractor under R.S. 48:251 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:295 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 30:

§903. Causes for Debarment of Contractors

A. The causes for debarment are enumerated in R.S. 48:295.2(C).

B. In addition to the statutory causes for debarment, the department shall follow the following guidelines.

1. A history of failure to perform or history of unsatisfactory performance may include, but is not limited to the following:

a. during one calendar year, two or more formal demands by the department to the contractor that the surety for the contractor complete a job, or

b. determination of disqualification five or more times in a calendar year, or three times during each of two consecutive calendar years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:295 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR. 30:

§905. Causes for Debarment of Consultants

A. The causes for debarment are enumerated in R.S. 48:295.2(C).

B. In addition to the statutory causes for debarment, the department shall follow the following guidelines.

1. A history of failure to perform or history of unsatisfactory performance may include, but is not limited to the following:

- a. an unsatisfactory rating two or more times in a calendar year, or
- b. formal termination for cause two or more times in a calendar year, or three times during each of two consecutive year, or
- c. failure to satisfy final judgments rendered against the entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:295 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR. 30:

§907. Imputed Conduct

A. The fraudulent, criminal or other seriously improper conduct of any officer, director, shareholder, partner, employee or other individual associated with a contractor/consultant may be imputed to the contractor/consultant when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor/consultant, or with the contractor/consultant's knowledge, approval or acquiescence. The contractor/consultant's acceptance of the benefits derived from the conduct shall be evidence of the contractor/consultant's knowledge, approval or acquiescence.

B. The fraudulent, criminal or other seriously improper conduct of a contractor/consultant may be imputed to any officer, director, shareholder, partner, employee or other individual associated with the contractor/consultant who participated in, knew of or had reason to know of the contractor/consultant's conduct.

C. The fraudulent, criminal or other seriously improper conduct of one contractor/consultant participating in a joint venture or similar arrangement may be imputed to other participating contractors/consultants if the conduct occurred for or on behalf of the joint venture or similar arrangement or with the knowledge, approval or acquiescence of those contractors/consultants. Acceptance of the benefits derived from the conduct shall be evidence of the contractor/consultant's knowledge, approval or acquiescence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:295 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 30:

§909. Provisions for the Hearing and Decision

A. Provisions for the hearing and decision are set forth in R.S. 48:295.2(D), (E) and (F).

B. In addition to those provisions:

1. the department debarment hearing shall be as informal as practicable, consistent with fundamental due

process of law principles. The debarment committee shall permit contractor/consultants to submit information and arguments in opposition to the proposed debarment. The department may require that a contractor/consultant's opposition be submitted in writing or may permit an oral presentation in person or through a representative;

2. if debarment is imposed, the department shall, within 14 days, notify the contractor/consultant and any affiliates involved by certified mail return receipt requested. The notice shall contain the following:

- a. reference to the notice of proposed debarment that initiated the action;
- b. reasons for debarment; and
- c. period of debarment, specifying the effective date;

3. if debarment is not imposed, the department shall give notice within 14 days from the date of the hearing of that fact to the contractor/consultant involved by certified mail return receipt requested.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:295 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 30:

§911. Period of Debarment

A. Debarments shall be for a period commensurate with the seriousness of the cause or causes for debarment. Generally, debarment shall not exceed three years. If suspension precedes debarment, the suspension period shall be considered in determining the debarment period.

B. The department may extend the debarment for an additional period if the department determines that an extension is necessary to protect the public interest. However, an extension may not be based solely on the facts and circumstances upon which the initial debarment was based.

C. The department may terminate a debarment or may reduce the period or extent of a debarment, upon the contractor/consultant's request, for reasons considered appropriate by the department such as:

- 1. newly discovered relevant evidence;
- 2. reversal of the conviction or judgment upon which the debarment was based;
- 3. a bona fide change in ownership or management of the contractor/consultant; or
- 4. elimination of the cause or causes for which debarment was imposed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:295 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 30:

§913. Appeals

A. Appeals shall be made in accordance with the provisions of R.S. 48:295.3 and shall be submitted to the department in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:295 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 30:

§915. Application by the Contractor or Consultant for Requalification

A. Applications for requalification following debarment shall be submitted in writing to the chief engineer of the department.

B. The Debarment Committee shall conduct a hearing and consider the arguments of the applicant for requalification. The applicant may appear in person.

C. The Debarment Committee may terminate a debarment or may reduce the period or extent of a debarment upon application of the contractor/consultant for reasons considered appropriate by the committee, such as:

1. newly discovered relevant evidence;
2. reversal of the conviction or judgment upon which debarment was based;
3. a bona fide change in ownership or management of the contractor/consultant; or
4. elimination of the cause or causes for which debarment was imposed.

D. The Debarment Committee shall render a decision concerning requalification within 14 days of the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:295 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 30:

Family Impact Statement

The proposed adoption of this Rule 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:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.
2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.
3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.
4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.
5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.
6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, Senior Attorney, P.O. Box 94245, Baton Rouge, LA 70804, telephone (225) 237-1359.

John P. Basilica, Jr.
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Debarment Hearings For Contractors, Subcontractors, Consultants And Subconsultants

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

The Debarment Committee will be composed of departmental employees who will utilize existing staff and resources. The department, according to R.S. 48:295.2(D), must bear the cost of electronic transcription of the debarment hearing proceedings. The department estimates that a maximum of three hearings per year will be conducted at an approximate cost of \$200 per hearing, for a total cost of transcription of \$600 per year.

The department should also experience savings on its highway projects if contractors and consultants who exhibit substandard qualifications, conduct or performance are debarred because there should be fewer plan changes, fewer delays, fewer claims and less litigation against the department. More highway construction projects should also finish on schedule.

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.

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

The majority of contractors and consultants who do state highway construction work perform acceptable work and should not be affected by the implementation of these Rules. Responsible contractors should see an economic benefit from this process, i.e., the cost of their bonds and their insurance should decrease. Surety companies that provide bonds on highway construction projects should also benefit because they will theoretically have to secure completion of fewer unfinished projects. The contractors and consultants who perform substandard work will lose state contracts under this process., however any other work they perform in the private sector will be unaffected.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The contractors and consultants who compete for departmental work should, as a group, experience a positive effect on competition and employment. All members of the industry will be required to follow uniform guidelines and the contractors and consultants who exhibit poor performance will be excluded from competition for a period of time, determined by the debarment committee, commensurate with their substandard behavior.

John P. Basilica, Jr.
Undersecretary
0403#085

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Transportation and Development
Office of Weights, Measures and Standards**

Escort Requirements for Oversize and/or Overweight
Vehicles or Loads (LAC 73:I.1901)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is

hereby given that the Department of Transportation and Development intends to amend Chapter 19 of Part I of Title 73 entitled "Escort Requirements for Oversize and/or Overweight Vehicles or Loads," in accordance with R.S. 32:2 and 32:387.

Title 73

WEIGHTS, STANDARDS AND MEASURES

Part I. Weights and Standards

Chapter 19. Escort Requirements for Oversize and Overweight Vehicles or Loads

§1901. Provision Enforcement

A. - B.16. ...

17. In the event a state police escort is required, the permittee shall pay the escort fee, or any portion thereof, in addition to the pay of the off-duty trooper.

B.18. - E.1.n. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 5:26 (February 1979), amended by Weights, Measures and Standards, LR 22:120 (February 1996), LR 30:

Family Impact Statement

The proposed adoption of this Rule 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:

1. The implementation of this proposed Rule will have no known or foreseeable effect on the stability of the family.

2. The implementation of this proposed Rule will have no known or foreseeable effect on the authority and rights of parents regarding the education and supervision of their children.

3. The implementation of this proposed Rule will have no known or foreseeable effect on the functioning of the family.

4. The implementation of this proposed Rule will have no known or foreseeable effect on family earnings and family budget.

5. The implementation of this proposed Rule will have no known or foreseeable effect on the behavior and personal responsibility of children.

6. The implementation of this proposed Rule will have no known or foreseeable effect on the ability of the family or a local government to perform this function.

All interested persons so desiring shall submit oral or written data, views, comments or arguments no later than 30 days from the date of publication of this Notice of Intent. Such comments should be submitted to Sherryl J. Tucker, Senior Attorney, P. O. Box 94245, Baton Rouge, LA 70804, Telephone (225) 237-1359.

John P. Basilica, Jr.
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Escort Requirements for Oversize and/or Overweight Vehicles or Loads

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

There should be no implementation costs or savings to DOTD or local governmental units. This Rule is being

implemented at the suggestion of Louisiana State Police in order to conform to their current policy on pay for off-duty officers. The current policy of State Police has been in place for many years and does not pay the off-duty troopers according to the traditional definition of "overtime." Rather the officers are paid according to a formula that takes into consideration rank, number of years in service, etc. Additionally, the Office of State Police recently received an opinion from the U.S. Department of Labor advising them that their method of administering payment to off-duty officers who escort oversize and overweight loads is proper.

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 if this Rule change is implemented.

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

The Department of Transportation and Development requires the owners of vehicles of certain dimensions that are beyond legal restrictions to buy permits. Many of these vehicles, depending on their dimensions, are also required to procure the services of a State Police escort for their trip. The cost of utilizing the services of the off-duty State Police officer as an escort is paid by the owner of the permitted load. This cost will not change as a result of this rulemaking.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There should be no effect on competition and employment.

John P. Basilica
Undersecretary
0403#086

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Treasury
Board of Trustees of the State
Employees' Retirement System**

Self-Directed Plan (LAC 58:I.Chapter 41)

The Department of the Treasury, Board of Trustees of the Louisiana State Employee's Retirement System ("LASERS") proposes to adopt LAC 58:I.4104 through 4133. This enactment is made necessary by the passage into law of Act 818 of the Regular Session of the Louisiana Legislature. That Act established the Self-Directed Plan ("SDP"), a new form of the Deferred Retirement Option Plan ("DROP") already administered by LASERS. Act 818 became effective January 01, 2004. These rules are necessary to complete the implementation of the SDP.

Title 58

RETIREMENT

Part I. State Employees' Retirement

Chapter 41. The Self-Directed Plan

§4101. SDP Provider

A. System shall procure a single provider, selected by a competitive process, for participants in the Self-Directed Plan ("SDP") to utilize in providing investment options for the deposits made during the accumulation period in the Deferred Retirement Option Plan ("DROP") or funds acquired through the Initial Benefit Option ("IBO"). The investment options shall not be available to the participants until the DROP funds are transferred to the SDP provider at

the end of the accumulation period, or until after the IBO funds are so transferred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4103. Persons Vesting for DROP Prior to

January 01, 2004

A. Persons who became eligible for regular retirement prior to January 01, 2004 are eligible for participation in the SDP. Those persons may make an irrevocable election to transfer their DROP funds into the SDP. The DROP or IBO participants electing to transfer their funds into the SDP must transfer their entire DROP or IBO balance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4105. Eligibility for Transfer of Funds into SDP

A. The only funds which may be transferred into the SDP are LASERS DROP or IBO funds. Transfers or rollovers from other sources shall not be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4107. Rollovers Out of SDP to Other Providers

A. At all times after becoming eligible to withdraw funds from the SDP, DROP participants may elect to rollover funds to eligible providers. Such rollovers shall be subject to applicable Federal laws and the terms of the SDP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4109. Right to Recover Overpayments

A. In the event of overpayment of funds are made by LASERS, then LASERS retains the ability at all times to recall funds from member at provider or to reduce future benefits pursuant to R.S. 11:192 to recover any such overpayment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4111. Time to Transfer Funds

A. LASERS shall forward the entire deposit balance of a participant to the third party administrator within five working days from the end of the DROP accumulation period. LASERS may supplement or otherwise correct balances forwarded in those instances where there are errors, missing documents or incomplete reports submitted by agencies reporting earnings for the participant.

B. For participants in the Initial Benefit Option ("IBO") or for those DROP participants whose accumulation period is less than six months, LASERS shall transfer 80 percent of the DROP/IBO balance within 45 days from the date of initial transfer into the SDP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4113. Spousal Consent

A. LASERS may halt the processing of a participant's request to enter the SDP until any spousal consent form required by law or proof of divorce has been presented to the system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4115. Completion of Notification Form

A. All DROP participants shall complete and submit a form (#9-2 or #9-2a) to inform LASERS that they are ending the accumulation period. This form shall be submitted at least 30 days prior to that date. Failure to submit this form could result in delaying access to DROP funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4117. Distributions

A. Distributions shall be in accordance with the provisions of Title 58, Part I, Chapter 27 of the Louisiana Administrative Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4119. No In-Service Distribution

A. Distributions prior to the date of termination from employment with the state of Louisiana are strictly prohibited in accordance with applicable Internal Revenue Code Provisions. The selected provider shall not make a distribution without a verification of termination from LASERS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4121. Civil Service Reinstatement

A. DROP participants who have been removed from state employment, then reinstated pursuant to a ruling by the Civil Service board, shall immediately notify LASERS in writing of their reinstatement, along with a projected date of retirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4123. Beneficiary

A. Each participant shall initially designate a beneficiary or beneficiaries to receive any amounts which may be distributed in the event of the death of the participant prior to the complete distribution of benefits. A participant may change the designation of beneficiaries at any time by filing a written notice on a form approved by LASERS. If no such designation is in effect at the time of participant's death, or if the designated beneficiary does not survive the participant

by 30 days, his beneficiary shall be his surviving spouse, if any, and then his estate

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4125. Investment Options

A. LASERS shall in its sole discretion select certain investment options to be used to determine income to be accrued on deferrals. These investment options may include specified life insurance policies, annuity contracts, or investment media issued by an insurance company. In any event, it shall be the sole responsibility of LASERS to ensure that all investment options offered under the plan are appropriate and in compliance with any and all state laws pertaining to such investments.

B. In the absence of a written directive from the participant, the provider shall automatically invest the participant's DROP funds in its discretion in an appropriate interim investment until specific investment directions are received. Such instructions regarding the delegation of investment responsibility shall remain in force until revoked or amended in writing by the participant. LASERS shall not be responsible for the propriety of any directed investment.

C. LASERS may, from time to time, change the investment options under the plan. If LASERS eliminates a certain investment option, all participants who had chosen that investment shall select another option. If no new option is selected by the participant, money remaining in the eliminated investment option shall be moved at the direction of LASERS. The participants shall have no right to require LASERS to select or retain any investment option. To the extent permitted by and subject to any rules or procedures adopted by the administrator, a participant may, from time to time, change his choice of investment option. Any change with respect to investment options made by LASERS or a participant, however, shall be subject to the terms and conditions (including any rules or procedural requirements) of the affected investment options and may affect only income to be accrued after that change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4127. Participant Investment Direction

A. Participants shall have the option to direct the investment of their personal contributions and their share of any employer contributions among alternative investment options established as part of the overall SDP, unless otherwise specified by LASERS. A participant's right to direct the investment of any contribution shall apply only to making selections among the options made available under the SDP.

B. Each participant shall designate on the proper form or via website or telephone direction the investment that shall be used to determine the income to be accrued on amounts deposited. If the investment chosen by the participant experiences a gain, the participant's benefits under the SDP likewise shall reflect income for that period. If the investment chosen by a participant experiences a loss, or if charges are made under such investment, the participant's

benefits under the SDP likewise shall reflect such loss or charge for that period.

C. Neither the state of Louisiana, LASERS, the administrator, nor any other person shall be liable for any losses incurred by virtue of following the participant's directions or with any reasonable administrative delay in implementing such directions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4129. Distributions from the Plan

A. The payment of benefits in accordance with the terms of the plan may be made by the trustee, or by any custodian or other person so authorized by LASERS to make such distribution. Neither LASERS, the trustee nor any other person shall be liable with respect to any distribution from the plan made at the direction of the employer or a person authorized by the employer to give disbursement direction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4131. Domestic Relations Orders

A. In all instances wherein a person beginning participation in the SDP is a party to a Domestic Relations Order ("DRO"), properly worded and approved by LASERS, and such DRO is to divide DROP funds with the participant's former spouse, LASERS shall establish a means whereby the former spouse may choose the investment options for his or her portion of the SDP.

B. The selection of investment options shall be in accordance with §4125 of this Chapter.

C. Withdrawals from the SDP by either the member spouse (under whom all service credit accumulated) or the former spouse are prohibited until such time as the member spouse terminates state employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

§4133. Disclaimer

A. LASERS makes no endorsement, guarantee or any other representation and shall not be liable to the plan or to any participant, beneficiary, or any other person with respect to:

1. the financial soundness, investment performance, fitness, or suitability (for meeting a participant's objectives, future obligations under the plan, or any other purpose) of any investment option in which amounts deferred under the plan are actually invested; or

2. the tax consequences of the plan to any participant, beneficiary or any other person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:511 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 30:

Family Impact Statement

The proposed adoption of LAC 58:I.4104 through 4133 regards the enactment of the Self-Directed Plan of DROP.

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

General and Wildlife Management Area (WMA) Hunting
(LAC 76:XIX.111)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules and regulations governing the hunting of resident game birds and game quadrupeds.

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§111. General and Wildlife Management Area Hunting Rules and Regulations

A. Hunting Seasons and Wildlife Management Area Regulations

1. The rules and regulations contained within this digest have been officially approved and adopted by the Wildlife and Fisheries Commission under authority vested by Sections 115 and 116 of Title 56 of the Louisiana Revised Statutes of 1950 and are in full force and effect in conjunction with all applicable statutory laws. The Secretary of the Department of Wildlife and Fisheries has the authority to close or alter seasons in emergency situations in order to protect fish and wildlife resources.

2. Pursuant to Section 40.1 of Title 56 of the Louisiana Revised Statutes of 1950, the Wildlife and Fisheries Commission has adopted monetary values which are assigned to all illegally taken, possessed, injured or destroyed fish, wild birds, wild quadrupeds and other wildlife and aquatic life. Anyone taking, possessing, injuring or destroying fish, wild birds, wild quadrupeds and other wildlife and aquatic life shall be required to reimburse the Department of Wildlife and Fisheries a sum of money equal to the value of the wildlife illegally taken, possessed, injured or destroyed. This monetary reimbursement shall be in addition to any and all criminal penalties imposed for the illegal act.

B. Resident Game Birds and Animals

1. Shooting hours: one-half hour before sunrise to one-half hour after sunset.

C. Other Season Dates

1. Turkey. Please refer to separate pamphlet.

2. Raccoon and Opossum. No closed season. Raccoon and opossum can be taken at night by one or more licensed hunters with one or more dogs and one .22 rimfire firearm. A licensed hunter may take raccoon or opossum with .22 rimfire rifle, .36 caliber or smaller muzzleloader rifle or shotgun during daylight hours during the open rabbit season. Hunting from boats or motor vehicles is prohibited. No bag limit for nighttime or daytime raccoon or opossum hunting during the open trapping season except on certain WMAs as listed. The remainder of the year, the raccoon and opossum bag limit for daytime or nighttime is one per person per day or night. No one who hunts raccoons or opossums as prescribed above shall pelt during the closed trapping season nor sell skins or carcasses of raccoons and opossums taken

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:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

This Rule, in substantially identical form was adopted under the emergency provisions of the Administrative Procedure Act and became effective January 1, 2004. This Rule complies with and is enabled by R.S. 11:515. No preamble for this Rule is necessary.

Interested persons may submit written comments on the proposed changes until 4:30 p.m., April 5, 2004, to Steve Stark, Board of Trustees for the Louisiana State Employees' Retirement, P.O. Box 44213, Baton Rouge, LA 70804.

Robert L. Borden
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Self-Directed Plan**

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

No implementation costs to state or local governmental units are anticipated to result from the implementation of these rules. The enactment of these rules will enable the implementation of the LASERTS Self-Directed Plan, which in turn will free the State of Louisiana from sheltering DROP balances from losses due to market conditions. Those losses vary from year-to-year, but since the end of FY 2001-2003 have totaled approximately \$20 million.

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

No effect on revenue collections to state or local governmental units is expected to result from the implementation of these rules.

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

DROP participants currently have no input on investing their DROP funds and due to market conditions, have earned no interest on the funds for the past two years. Under the Self-Directed Plan they shall be allowed to select from a number of investment options with varying risk and return.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Outside of the selection of a single third-party provider for the Self-Directed Plan, no effect on competition and employment is expected to result from the implementation of these rules.

Robert L. Borden
Executive Director
0403#021

H. Gordon Monk
Staff Director
Legislative Fiscal Office

during the open trapping season unless he is the holder of a valid trapping license which shall be required in addition to his basic hunting license. Pelting or selling carcasses is illegal during closed trapping season.

3. Nutria. On WMAs and private property nutria may be taken recreationally from September 1 through February 28 during legal shooting hours by any legal hunting method with no limit except if taken with a shotgun, steel shot must be used. On WMAs during waterfowl seasons, nutria may be taken only with the use of shotguns with shot no larger than F steel, and during gun deer seasons, anyone taking nutria must display 400 square inches of "hunter orange" and wear a "hunter orange" cap or hat. Pelting or selling of carcasses is illegal except when taken by a licensed trapper during the trapping season. Trespassing upon private property without consent for the purpose of taking nutria is punishable by fines and possible jail time (R.S. 56:265).

4. Blackbirds and Crows. The season for crows shall be September 1 through January 2 with no limit; however crows, blackbirds, cowbirds and grackles may be taken year round during legal shooting hours if they are depredating or about to depredate upon ornamentals or shade trees, agricultural crops, livestock, wildlife, or when concentrated in such numbers as to cause a health hazard. Louisiana has determined that the birds listed above are crop depredators and that crows have been implicated in the spread of the West Nile virus in humans.

5. Pheasant. Closed.

6. Falconry. Special permit required. Resident and migratory game species except turkeys may be taken. Seasons and bag limits are the same as for statewide and WMA regulations except squirrels may be taken by licensed falconers until the last day of February. Refer to LAC 76:V.301 for specific Falconry Rules.

7. Licensed Hunting Preserve. October 1 - April 30. Pen-raised birds only. No limit entire season. Refer to LAC 76:V.305 for specific Hunting Preserve Rules.

8. Deer Management Assistance Program (DMAP). Land enrolled in the voluntary program will be assessed a \$25 registration fee and 5¢/acre fee. Deer management assistance tags must be in the possession of the hunter and attached and locked to antlerless deer (including those taken on either-sex days and those taken with bow or muzzleloader) through the hock in a manner that it cannot be removed before the deer is transported. Failure to do so is a violation of R.S. 56:115. Failing to follow DMAP rules and regulations may result in suspension and cancellation of the program on those lands involved. Refer to LAC 76:V.111 for specific DMAP Rules.

9. Farm Raised White-tailed Deer and Exotics on Licensed Supplemented Shooting Preserves

a. Definitions

Exotics? for purposes of this Rule means any animal of the family Bovidae (except the Tribe Bovini [cattle]) or Cervidae which is not indigenous to Louisiana and which is confined on a Supplemented Hunting Preserve. Exotics shall include, but are not limited to, fallow deer, red deer, elk, sika deer, axis deer, and black buck antelope.

Hunting? in its different tenses and for purposes of this rule means to take or attempt to take, in accordance with R.S. 56:8.

Same as Outside? for purposes of this Rule means hunting on a Supplemented Hunting Preserve must conform to applicable statutes and rules governing hunting and deer hunting, as provided for in Title 56 of the Louisiana Revised Statutes and as established annually by the Wildlife and Fisheries Commission (LWFC).

Supplemented Hunting Preserve? for purposes of this Rule means any enclosure for which a current Farm-Raising License has been issued by the Department of Agriculture and Forestry (LDAF) with concurrence of the Department of Wildlife and Fisheries (LDWF) and is authorized in writing by the LDAF and LDWF to permit hunting.

White-tailed Deer? for purposes of this Rule means any animal of the species *Odocoileus virginianus* which is confined on a Supplemented Hunting Preserve.

b. Seasons

i. Farm-Raised White-tailed Deer: Consult the regulations pamphlet.

ii. Exotics: year round.

c. Methods of Take

i. White-tailed Deer: Same as outside.

ii. Exotics: Exotics may be taken with longbow (including compound bow) and arrow; shotguns not larger than 10 gauge, loaded with buckshot or rifled slug; handguns and rifles no smaller than .22 caliber centerfire; or muzzleloading rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder, using black powder or an approved substitute only, and using ball or bullet projectile, including sabot bullets only.

d. Shooting Hours

i. White-tailed Deer: Same as outside.

ii. Exotics: one-half hour before sunrise to one-half hour after sunset.

e. Bag Limit

i. Farm-Raised White-tailed Deer: Same as outside.

ii. Exotics: No limit.

f. Hunting Licenses

i. White-tailed Deer: Same as outside.

ii. Exotics: No person shall hunt any exotic without possessing a valid basic and big game hunting license.

g. Tagging. White-tailed Deer and Exotics: Each animal shall be tagged in the left ear or left antler immediately upon being killed and before being moved from the site of the kill with a tag provided by the LDAF. The tag shall remain with the carcass at all times.

10. Bobcat. The hunting of bobcats will be legal only during the open deer season in all deer hunting areas. The legal shooting hours and the legal methods for the taking of bobcats shall be the same as defined for the taking of deer. License requirements shall also be the same for deer. The season limit shall be one.

D. Hunting-General Provisions

1. A basic resident or non-resident hunting license is required of all persons to hunt, take, possess or cause to be transported by any other person any wild bird or quadruped. See information below for exceptions.

2. All persons born on or after September 1, 1969 must show proof of satisfactorily completing a Hunter Safety course approved by LDWF to purchase a Basic Hunting License, except any active or veteran member of the United States armed services or any POST-certified law enforcement officer. Application for the exemption shall be filed in person at the Department of Wildlife and Fisheries main office building in the city of Baton Rouge. A person younger than 16 years of age may hunt without such certificate if he is accompanied by, and is under the direct supervision of a person 18 years of age or older, except during a statewide youth deer hunt, the youth must have satisfactorily completed a Hunter Safety course approved by LDWF to participate.

3. A big game license is required in addition to the basic hunting license to hunt, take, possess or cause to be transported any deer or turkey. A separate wild turkey stamp is required in addition to the basic hunting license and the big game license to hunt, take, possess or cause to be transported any turkey.

4. Taking game quadrupeds or birds from aircraft or participating in the taking of deer with the aid of aircraft or from automobiles or other moving land vehicles is prohibited.

5. Methods of Taking Resident Game Birds and Quadrupeds

a. It is illegal to intentionally feed, deposit, place, distribute, expose, scatter, or cause to be fed, deposited, placed, distributed, exposed, or scattered raw sweet potatoes to wild game quadrupeds.

b. Use of a longbow (including compound bow) and arrow or a shotgun not larger than a 10 gauge fired from the shoulder without a rest shall be legal for taking all resident game birds and quadrupeds. Also, the use of a handgun, rifle and falconry (special permit required) shall be legal for taking all game species except turkey. It shall be illegal to hunt or take squirrels or rabbits at any time with a breech-loaded rifle or handgun larger than a .22 caliber rimfire or a muzzleloader rifle larger than .36 caliber. During closed deer gun season, it shall be illegal to possess shotgun shells loaded with slugs or shot larger than BB lead or F steel shot while small game hunting.

c. Still hunting is defined as stalking or stationary stand hunting without the use of dog(s). Pursuing, driving or hunting deer with dogs is prohibited when or where a still hunting season or area is designated, and will be strictly enforced. Shotguns larger than 10 gauge or capable of holding more than three shells shall be prohibited. Plugs used in shotguns must be incapable of being removed without disassembly. Refer to game schedules contained within these regulations for specific restrictions on the use of firearms and other devices.

6. Nuisance animals. Landowners or their designees may remove beaver and nutria causing damage to their property without a special permit. Water set traps and firearms may be used to remove beaver; nutria may be removed by any means except that nutria cannot be taken by the use of headlight and gun between the hours of sunset and sunrise. With a special permit issued by the department, beavers may be taken between one-half hour after official sunset to one-half hour before official sunrise for a period of

three consecutive calendar evenings from the effective date of the permit. For specific details contact a regional office near you. Any nuisance beaver or nutria trapped or shot outside open trapping season cannot be pelted or sold. A trapping license is required to sell or pelt nuisance beavers or nutria taken during open trapping season. Squirrels found destroying commercial crops of pecans may be taken year-round by permit issued by the department. This permit shall be valid for 30 days from the date of issuance. Contact the local regional office for details.

7. Threatened and endangered species? Louisiana black bear, Louisiana pearl shell (mussel), sea turtles, gopher tortoise, ringed sawback turtle, brown pelican, bald eagle, peregrine falcon, whooping crane, Eskimo curlew, piping plover, interior least tern, ivory-billed woodpecker, red-cockaded woodpecker, Bachman's warbler, West Indian manatee, Florida panther, pallid sturgeon, Gulf sturgeon, Attwater's greater prairie chicken, whales and red wolf. Taking or harassment of any of these species is a violation of state and federal laws.

8. Unregulated quadrupeds. Holders of a legal hunting license may take coyotes, unmarked hogs where legal, and armadillos year round during legal daylight shooting hours. The running of coyotes with dogs is prohibited in all turkey hunting areas during the open turkey season. Coyote hunting is restricted to "chase only" during still hunting segments of the firearm and archery only season for deer. Foxes are protected quadrupeds and may be taken only with traps by licensed trappers during the trapping season. Remainder of the year "chase only" allowed by licensed hunters.

9. Hunting and/or discharging firearms on public roads. Hunting, standing, loitering or shooting game quadrupeds or game birds with a gun during open season while on a public highway or public road right-of-way is prohibited. Hunting or the discharge of firearms on roads or highways located on public levees or within 100 feet from the centerline of such levee roads or highways is prohibited. Spot lighting or shining from public roads is prohibited by state law. Hunting from all public roads and rights-of-way is prohibited and these provisions will be strictly enforced.

10. Tags. Any part of the deer or wild turkey divided shall have affixed thereto the name, date, address and big game license number of the person killing the deer or wild turkey and the sex of that animal. This information shall be legibly written in pen or pencil, on any piece of paper or cardboard or any material, which is attached or secured to or enclosing the part or parts. On lands enrolled in DMAP, deer management assistance tags must be attached and locked through the hock of antlerless deer, (including those taken with bow, muzzleloader and those antlerless deer taken on either-sex days) in a manner that it cannot be removed, before the deer is moved from the site of the kill.

11. Sex identification. Positive evidence of sex identification, including the head, shall remain on any deer taken or killed within the state of Louisiana, or on all turkeys taken or killed during any special gobbler season when killing of turkey hens is prohibited, so long as such deer or turkey is kept in camp or field, or is in route to the domicile of its possessor, or until such deer or turkey has been stored at the domicile of its possessor or divided at a cold storage facility and has become identifiable as food rather than as wild game.

E. General Deer Hunting Regulations

1. One antlered and one antlerless (when legal on private lands) deer per day except on Wildlife Management Areas, Federal Refuges and National Forest Lands where the daily limit shall be one deer per day. Season limit is six, two of which may be antlered, (all segments included) by all methods of take.

2. A legal buck is a deer with visible antler of hardened bony material, broken naturally through the skin. Killing bucks without at least one visible antler as described above and killing does is prohibited except where specifically allowed and except in West Baton Rouge and Pointe Coupee Parishes and that portion of Iberville Parish west of the Mississippi River (excluding the Sherburne Wildlife Management Complex and those private lands which are totally surrounded by the Sherburne Complex) where a legal buck shall be defined as a deer with at least 6 points or a deer with both spikes three inches long or less. To be counted as a point, a projection must be at least one inch long and its length must exceed the length of its base. The beam tip is counted as a point but not measured as a point.

3. Deer hunting restricted to legal bucks only, except where otherwise allowed.

4. Either-sex deer is defined as male or female deer. Taking or possessing spotted fawns is prohibited.

5. It is illegal to hunt or shoot deer with firearms smaller than .22 caliber centerfire or a shotgun loaded with anything other than buckshot or rifled slug. Handguns may be used for hunting.

6. Taking game quadrupeds or birds from aircraft, participating in the taking of deer with the aid of aircraft or from automobiles or other moving land vehicles is prohibited.

7. Still hunting is defined as stalking or stationary stand hunting without the use of dog(s). Pursuing, driving or hunting deer with dogs or moving vehicles, including ATVs, when or where a still hunting season or area is designated, is prohibited and will be strictly enforced. The training of deer dogs is prohibited in all still hunting areas during the gun still hunting and archery only season. Deer hunting with dogs is allowed in all other areas having open deer seasons that are not specifically designated as still hunting only. Except in wildlife management areas, a leashed dog may be used to trail and retrieve wounded or unrecovered deer during legal hunting hours. Any dog used to trail or retrieve wounded or unrecovered deer shall have on a collar with owner's name, address, and phone number. In addition, a dog may be used to trail and retrieve unrecovered deer after legal hunting hours; however, no person accompanying a dog after legal hunting hours may carry a firearm of any sort.

8. Areas not specifically designated as open are closed.

9. Muzzleloader Segment: (Special license and muzzleloader firearms specifications apply only to the special state, WMA, National Forest and Preserves, and Federal Refuge seasons.) Still hunt only. Specific WMAs will also be open, check WMA schedule for specific details. Muzzleloader license required for resident hunters between the ages of 16 and 59 inclusive and non-residents 16 years of age and older. Either-sex deer may be taken in all deer hunting areas except as specified on Public Areas. It is unlawful to carry a gun, other than a muzzleloader, including

those powered by air or other means, while hunting during the special muzzleloader segment. Except, it is lawful to carry a .22 caliber rimfire pistol loaded with #12 shot (ratshot) only.

a. Legal Muzzleloader Firearms for Special Season: Rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder, use black powder or approved substitute only, take ball or bullet projectile only, including sabot bullets and may be fitted with magnified scopes. This includes muzzleloaders known as "inline" muzzleloaders.

10. Archery Segment: Consult regulations pamphlet. WMA seasons are the same as outside except as noted below. Archery license required for resident bow hunters between the ages of 16 and 59 inclusive and non-residents 16 years of age and older. Residents 60 years of age and older may use a crossbow without a special permit or license. Either-sex deer may be taken in all areas open for deer hunting except when a bucks only season is in progress for gun hunting, archer's must conform to the bucks only regulations. Either-sex deer may be taken on WMAs at anytime during archery season except when bucks only seasons are in progress on the respective WMA. Also, archery season restricted on Atchafalaya Delta, Salvador, Lake Boeuf, and Pointe-aux-Chenes WMAs (see schedule).

a. Bow and arrow regulations: Hunting arrows for deer must have well-sharpened metal broadhead blades not less than 7/8 inch in width. Bow and arrow fishermen must have a sport fishing license and not carry any arrows with broadhead points unless a big game season is in progress.

i. It is unlawful:

(a). to carry a gun, including those powered by air or other means, while hunting with bow and arrow during the special bow and arrow deer season except it is lawful to carry a .22 caliber rimfire pistol loaded with #12 shot (ratshot) only.

(b). to have in possession or use any poisoned or drugged arrow, arrows with explosive tips, or any bow drawn, held or released by mechanical means except that hand held releases are lawful.

(c). to hunt deer with a bow having a pull less than 30 pounds.

(d). to hunt with a bow or crossbow fitted with an infrared or laser sight.

11. Hunter orange. Any person hunting deer shall display on his head, chest and/or back a total of not less than 400 square inches of "hunter orange" during the open deer gun season including muzzleloader season. Persons hunting on privately owned, legally posted land may wear a hunter orange cap or hat in lieu of the 400 square inches. These provisions shall not apply to persons hunting deer from elevated stands on property that is privately owned and legally posted or to archery deer hunters hunting on legally posted lands where firearm hunting is not allowed by agreement of the landowner or lessee. However, anyone hunting deer on such lands where hunting with firearms is allowed shall be required to display the 400 square inches or a hunter orange cap or hat while walking to and from elevated stands. While a person is hunting from an elevated stand, the 400 square inches or cap or hat may be concealed. Warning: deer hunters are cautioned to watch for persons

hunting other game or engaged in activities not requiring "hunter orange."

12. Special Handicapped Either-sex Deer Season on Private Land. See regulations pamphlet for dates. Restricted to individuals with Physically Challenged Hunter Permit.

13. Special Youth Deer Hunt on Private Lands (Either-Sex). See regulations pamphlet for dates. Youth must be under the age of 16, must have proof of successfully completing a department approved hunter safety course, and must be accompanied by an adult licensed to hunt big game. In West Baton Rouge and Pointe Coupee Parishes and that portion of Iberville Parish west of the Mississippi River antler restrictions for bucks shall be waived.

F. Description of Areas

1. Area 1

a. All of the following parishes are open: Concordia, East Baton Rouge, East Feliciana, Franklin, Madison, St. Helena, Tensas, Washington.

b. Portions of the following parishes are also open:

i. Catahoula? All except that portion lying west of Boeuf River from Caldwell parish line to Ouachita River, north and east of Ouachita River to La. 559 at Duty Ferry, west of La. 559 to La. 124 North and west of La. 124 westward to LaSalle parish line.

ii. Grant? East of U.S. 165 and south of La. 8.

iii. LaSalle? Portion south of La. 8 from Little River eastward to La. 127 in Jena, east of La. 127 from Jena northward to U.S. 165, east of U.S. 165 from La. 127 northward to La. 124. South of La. 124 eastward to Catahoula Parish line.

iv. Livingston? North of I-12.

v. Rapides? East of U.S. 165 and north of Red River.

vi. St. Tammany? All except that portion south of I-12, west of Hwy. 1077 to La. 22, south of La. 22 to Tchefuncte River, west of Tchefuncte River southward to Lake Pontchartrain.

vii. Tangipahoa? North of I-12.

viii. West Feliciana? All except that portion known as Raccourci and Turnbull Island.

c. Still hunting only in all or portions of the following parishes:

i. Catahoula? South of Deer Creek to Boeuf River, east of Boeuf and Ouachita Rivers to La. 8 at Harrisonburg, west of La. 8 to La. 913, west of La. 913 and La. 15 to Deer Creek.

ii. East Feliciana and East Baton Rouge? East of Thompson Creek from the Mississippi state line to La. 10. North of La. 10 from Thompson Creek to La. 67 at Clinton, west of La. 67 from Clinton to Mississippi state line. South of Mississippi state line from La. 67 to Thompson Creek. Also that portion of East Baton Rouge Parish east of La. 67 from La. 64 north to Parish Line, south of Parish Line from La. 64 eastward to Amite River. West of Amite River southward to La. 64, north of La. 64 to La. 37 at Magnolia, east of La. 37 northward to La. 64 at Indian Mound, north of La. 64 from Indian Mound to La. 67. Also, that portion of East Feliciana Parish east of La. 67 from parish line north to La. 959, south of La. 959 east to La. 63, west of La. 63 to Amite River, west of Amite River, southward to parish line, north of parish line westward to La. 67.

iii. Franklin? All

iv. St. Helena? North of La. 16 from Tickfaw River at Montpelier westward to La. 449, east and south of La. 449 from La. 16 at Pine Grove northward to La. 1045, south of La. 1045 from its junction with La. 449 eastward to the Tickfaw River, west of the Tickfaw River from La. 1045 southward to La. 16 at Montpelier.

v. Tangipahoa? That portion of Tangipahoa Parish north of La. 10 from the Tchefuncte River to La. 1061 at Wilmer, east of La. 1061 to La. 440 at Bolivar, south of La. 440 to the Tchefuncte River, west of the Tchefuncte River from La. 440 southward to La. 10.

vi. Washington and St. Tammany? East of La. 21 from the Mississippi state line southward to the Bogue Chitto River, north of the Bogue Chitto River from La. 21 eastward to the Pearl River Navigation Canal, east of the Pearl River Navigation Canal southward to the West Pearl River, north of the West Pearl River from the Pearl River Navigation Canal to Holmes Bayou, west of Holmes Bayou from the West Pearl River northward to the Pearl River, west of the Pearl River from Holmes Bayou northward to the Mississippi state line, south of the Mississippi state line from the Pearl River westward to La. 21. Also, that portion of Washington Parish west of La. 25 from the Mississippi state line southward to the Bogue Chitto River, then west of the Bogue Chitto River to its junction with the St. Tammany Parish line, north of the St. Tammany parish line to the Tangipahoa parish line, east of the Tangipahoa parish line to the Mississippi state line, south of the Mississippi state line to its junction with La. 25.

vii. West Feliciana? West of Thompson Creek to Illinois Central Railroad, north of Illinois Central Railroad to Parish Road #7, east of Parish Road #7 to the junction of U.S. 61 and La. 966, east of La. 966 from U.S. 61 to Chaney Creek, south of Chaney Creek to Thompson Creek.

2. Area 2

a. All of the following parishes are open:

i. Bienville, Bossier, Caddo, Caldwell, Claiborne, DeSoto, Jackson, Lincoln, Natchitoches, Red River, Sabine, Union, Webster, Winn;

ii. except: Kisatchie National Forest which has special regulations. Caney, Corney, Middlefork tracts of Kisatchie have the same regulations as Area 2, except still hunting only for deer and except National Forest Land within the Evangeline Unit, Calcasieu Ranger District described in Area 2 description shall be still hunting only.

b. Portions of the following parishes are also open:

i. Allen? North of U.S. 190 from the parish line westward to Kinder, east of U.S. 165 from Kinder northward to La. 10 at Oakdale, north of La. 10 from Oakdale, westward to the parish line;

ii. Avoyelles? That portion west of I-49.

iii. Catahoula? That portion lying west of Boeuf River from Caldwell parish line to Ouachita River, north and east of Ouachita River to La. 559 at Duty Ferry. West of La. 559 to La. 124. North and west of La. 124 westward to LaSalle parish line.

iv. Evangeline? All except the following portions: east of I-49 to junction of La. 29, east of La. 29 south of I-49 to Ville Platte, and north of U.S. 167 east of Ville Platte.

v. Grant? All except that portion south of La. 8 and east of U.S. 165.

- vi. Jefferson Davis? North of U.S. 190.
- vii. LaSalle? All except south of La. 8 from Little River eastward to La. 127 in Jena, east of La. 127 from Jena northward to U.S. 165, east of U.S. 165 from La. 127 northward to La. 124. South of La. 124 eastward to Catahoula Parish line.
- viii. Morehouse? West of U.S. 165 (from Arkansas state line) to Bonita, north and west of La. 140 to junction of La. 830-4 (Cooper Lake Road), west of La. 830-4 to Bastrop, west of La. 139 to junction of La. 593, west and south of La. 593 to Collinston, west of La. 138 to junction of La. 134 and north of La. 134 to Ouachita line at Wham Brake.
- ix. Ouachita? All except south of U.S. 80 and east of Ouachita River, east of La. 139 from Sicard to junction of La. 134, south of La. 134 to Morehouse line at Wham Brake.
- x. Rapides? All except north of Red River and east of U.S. 165. South of La. 465 to junction of La. 121, west of La. 121 and La. 112 to Union Hill, and north of La. 113 from Union Hill to Vernon Parish line, and that portion south of Alexandria between Red River and U.S. 167 to junction of U.S. 167 with I-49 at Turkey Creek exit, east of I-49 southward to parish line.
- xi. Vernon? North of La. 10 from the parish line westward to La. 113, south of La. 113 eastward to the parish line. Also the portion north of La. 465, west of La. 117 from Kurthwood to Leesville, and north of La. 8 from Leesville to Texas state line.
- c. Still hunting only in all or portions of the following parishes:
 - i. Claiborne and Webster? Caney, Corney and Middlefork tracts of Kisatchie National Forest. (See Kisatchie National Forest Regulations).
 - ii. Ouachita? East of Ouachita River.
 - iii. Rapides? West of U.S. 167 from Alexandria southward to I-49 at Turkey Creek Exit, west of I-49 southward to Parish Line, north of Parish Line westward to U.S. 165, east of U.S. 165 northward to U.S. 167 at Alexandria. North of La. 465 from Vernon Parish line to La. 121, west of La. 121 to I-49, west of I-49 to La. 8, south and east of La. 8 to La. 118 (Mora Road), south and west of La. 118 to Natchitoches Parish line.
 - iv. Vernon? East of Mora-Hutton Road from Natchitoches Parish line to Hillman Loop Road, south and east of Hillman Loop Road to Comrade Road, south of Comrade Road to La. 465, east and north of La. 465 to Rapides Parish line.
- 3. Area 3
 - a. All of Acadia, Cameron and Vermilion Parishes are open.
 - b. Portions of the following parishes are also open:
 - i. Allen? South of U.S. 190 and west of La. 113.
 - ii. Beauregard? West of La. 113. ALSO east of La. 27 from the parish line north to DeRidder and north of U.S. 190 westward from DeRidder to Texas line.
 - iii. Calcasieu? South of U.S. 90 from Sulphur to Texas State line. Also east of La. 27 from Sulphur northward to the parish line.
 - iv. Iberia? West of U.S. 90 and north of La. 14.
 - v. Jefferson Davis? All except north of U.S. 190.
 - vi. Lafayette? West of I-49 and U.S. 90.
 - vii. Rapides? South of La. 465 to junction of La. 121, west of La. 121 and La. 112 to Union Hill, and north of La. 113 from Union Hill to Vernon Parish line.
 - viii. St. Landry? West of U.S. 167.
 - ix. Vernon? West and north of La. 113, south of La. 465, east of La. 117 from Kurthwood to Leesville, and south of La. 8 from Leesville to Texas state line.
 - 4. Area 4
 - a. All of East Carroll and Richland Parishes are open.
 - b. Portions of the following parishes are open:
 - i. Morehouse? East of U.S. 165 (from Arkansas state line) to Bonita, south and east of La. 140 to junction of La. 830-4 (Cooper Lake Road), east of La. 830-4 to Bastrop, east of La. 139 at Bastrop to junction of La. 593, east and north of La. 593 to Collinston, east of La. 138 to junction of La. 134 and south of La. 134 to Ouachita line at Wham Brake.
 - ii. Ouachita? South of U.S. 80 and east of Ouachita River, east of La. 139 from Sicard to junction of La. 134, south of La. 134 to Morehouse line at Wham Bake.
 - 5. Area 5
 - a. All of West Carroll Parish is open.
 - 6. Area 6
 - a. All of Orleans Parish is closed to all forms of deer hunting.
 - b. All of the following parishes are open: Ascension, Assumption, Iberville, Jefferson, Lafourche, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. James, St. John, St. Martin, West Baton Rouge.
 - c. Portions of the following parishes are also open:
 - i. Avoyelles? All except that portion west of I-49.
 - ii. Evangeline? That portion east of I-49 to junction of La. 29, east of La. 29 south of I-49 to Ville Platte and north of U.S. 167 east of Ville Platte.
 - iii. Iberia? East of U.S. 90.
 - iv. Lafayette? East of I-49 and U.S. 90.
 - v. Livingston? South of I-12.
 - vi. Rapides? South of Alexandria between Red River and U.S. 167 to the junction of U.S. 167 with I-49 at Turkey Creek Exit, east of I-49 southward to parish line.
 - vii. St. Landry? East of U.S. 167.
 - viii. St. Mary? North of U.S. 90.
 - ix. St. Tammany? That portion south of I-12, west of Hwy. 1077 to La. 22, south of La. 22 to Tchefuncte River, west of Tchefuncte River southward to Lake Pontchartrain.
 - x. Tangipahoa? South of I-12.
 - xi. Terrebonne? North of La. 182 from Assumption Parish line eastward to Houma, east of Houma Navigation Canal southward to the Gulf of Mexico.
 - xii. West Feliciana? West of Mississippi River, known as Raccourci and Turnbull Islands.
 - d. Still hunting only in all or portions of the following parishes:
 - i. Avoyelles? North of La. 1 from Simmesport westward to La. 115 at Marksville, east of La. 115 from Marksville northward to the Red River near Moncla, south and west of the Red River to La. 1 at Simmesport.
 - ii. Plaquemines? East of the Mississippi River.
 - iii. Rapides? South of Alexandria between Red River and U.S. 167 to the junction of U.S. 167 with I-49 at Turkey Creek Exit, east of I-49 southward to parish line.

iv. St. Bernard? All of the parish shall be still hunting only except that portion of St. Bernard known as the spoil area between the MRGO on the east and Access Canal on the west, south of Bayou Bienvenue and north of Bayou la Loutre.

v. St. John? South of Pass Manchac from Lake Pontchartrain to U.S. 51, east of U.S. 51 from Pass Manchac to La. 638 (Frenier Beach Road). North of La. 638 from U.S. 51 to Lake Pontchartrain. West of Lake Pontchartrain from La. 638 to Pass Manchac.

vi. St. Landry? Those lands surrounding Thistlethwaite WMA bounded north and east by La. 359, west by La. 10, and south by La. 103.

7. Area 7

a. Portions of the following parishes are open:

i. Iberia and St. Mary Parishes - South of La. 14 and west of U.S. Hwy. 90.

ii. Terrebonne? South of La. 182 from Assumption Parish line eastward to Houma, west of Houma Navigation Canal southward to the Gulf of Mexico.

8. Area 8

a. Portions of the following parishes are open:

i. Allen? That portion east of La. 113 from the parish line to U.S. 190, north of U.S. 190 eastward to Kinder, west of U.S. 165 northward to La. 10 at Oakdale and south of La. 10 from Oakdale westward to parish line;

ii. Vernon? That portion east of La. 113 from the parish line northward to Pitkin, and south of La. 10 from Pitkin southward to the parish line;

iii. Beauregard? That portion east of La. 113. Also that portion west of La. 27 from parish line northward to DeRidder, south of U.S. 190 from DeRidder to Texas state line;

iv. Calcasieu? That portion west of La. 27 from the parish line southward to Sulphur and north of U.S. 90 from Sulphur to the Texas state line.

G Wildlife Management Area Regulations

1. General

a. The following rules and regulations concerning the management, protection and harvest of wildlife have been officially approved and adopted by the Wildlife and Fisheries Commission in accordance with the authority provided in Louisiana Revised Statutes of 1950, Section 109 of Title 56. Failure to comply with these regulations will subject individual to citation and/or expulsion from the management area.

b. Citizens are cautioned that by entering a WMA managed by the LDWF they may be subjecting themselves and/or their vehicles to game and/or license checks, inspections and searches.

c. Wildlife management area seasons may be altered or closed anytime by the department secretary in emergency situations (floods, fire or other critical circumstances).

d. Hunters may enter the WMA no earlier than 3 a.m. unless otherwise specified. On days when Daily permits are required, permit stations will open 2 hours before legal shooting hours. Hunters must check out and exit the WMA no later than two hours after sunset, or as otherwise specified.

e. Lands within WMA boundaries will have the same seasons and regulations pertaining to baiting and use of

dogs as the WMA within which the lands are enclosed; however, with respect to private lands enclosed within a WMA, the owner or lessee may elect to hunt according to the regular season dates applicable to the geographic area in which the lands are located, provided that the lands are first enrolled in DMAP. Interested parties should contact the nearest LDWF regional office for additional information.

f. Dumping garbage or trash on WMAs is prohibited. Garbage and trash may be properly disposed of in designated locations if provided.

g. Disorderly conduct or hunting under influence of alcoholic beverages, chemicals and other similar substances is prohibited.

h. Damage to or removal of trees, shrubs, hard mast (acorn, pecans, etc.), wild plants and non-game wildlife (including reptiles and amphibians) is prohibited without prior approval from the Baton Rouge Office. Gathering and/or removal of soft fruits, mushrooms and berries shall be limited to five gallons per person per day.

i. Burning of marshes is prohibited. Hunting actively burning marsh prohibited.

j. Nature trails. Trails shall be limited to pedestrians only. No vehicles, ATVs, horses, mules, bicycles, etc. allowed. Removal of vegetation (standing or down) or other natural material prohibited.

k. Deer seasons are for legal buck deer unless otherwise specified.

l. Small game, when listed under the WMA regulations may include both resident game animals and game birds as well as migratory species of birds.

m. Oysters may not be harvested from any WMA, except that oysters may be harvested from private oyster leases and State Seed Grounds located within a WMA, when authorized by the Wildlife and Fisheries Commission and upon approval by the Department of Health and Hospitals.

n. Free ranging livestock prohibited.

2. Permits

a. A WMA Hunting Permit is required to hunt on WMAs.

b. Daily. Daily permits when required shall be obtained at permit stations on or near each WMA after first presenting a valid hunting license to a department employee. Hunters must retain permit in possession while hunting. Hunters may enter the area no earlier than two hours before legal shooting time unless otherwise specified. Hunters must checkout daily and exit the area not later than two hours after sunset unless otherwise specified.

c. Self-Clearing Permits. A Self-Clearing Permit is required for all activities (hunting, fishing, hiking, birdwatching, sightseeing, etc.) on WMAs unless otherwise specified. The Self-Clearing Permit will consist of three portions: check in, check out and a Vehicle Tag. On WMAs where Self-Clearing Permits are required, all persons must obtain a WMA Self-Clearing Permit from an Information Station. The check in portion must be completed and put in a permit box before each day's activity on the day of the activity (except if hunting from a camp users need only to check in once during any 72 hour period). Users may check-in one day in advance of use. The check out portion must be carried by each person while on the WMA and must be completed and put in a permit box immediately upon exiting the WMA or within 72 hours after checking in if hunting

from a camp, each person must leave the Vehicle Tag portion of his permit on the dashboard of the vehicle used to enter into the WMA in such a way that it can be easily read from outside of the vehicle. This must be done only when the vehicle is parked and left unattended on the WMA. If an ATV, boat or other type vehicle was used to enter the WMA, then the vehicle tag must be attached to that vehicle in such a manner that it can be readily seen and read. No permit is required of fishers and boaters who do not travel on a WMA road and/or launch on the WMA as long as they do not get out of the boat and onto the WMA. When Mandatory Deer Checks are specified on WMAs, hunters must check deer at a check station. Call the appropriate Region office for the location of the deer check station on these WMAs. (Self-Clearing Permits are not required for persons only traveling through the WMA provided that the most direct route is taken and no activities or stops take place.)

d. Wild Louisiana Stamp. Persons using WMAs or other department administered lands for purposes other than hunting and fishing, such as camping, shooting on rifle ranges, berry picking, hiking, photography, bird-watching and the like, must possess one of the following: a valid Wild Louisiana stamp, a valid Louisiana fishing license, or a valid Louisiana hunting license. Persons younger than 16 or older than 60 years of age are exempt from this requirement.

3. Special Seasons

a. Youth Deer Hunt. Only youths younger than 16 years of age may hunt. All other seasons are closed except Handicapped Seasons. Youths must possess a hunter safety certification or proof of successful completion of a hunter safety course. Each youth must be accompanied by one adult 18 years of age or older. If the accompanying adult is in possession of a hunter safety certification, a valid Louisiana hunting license or proof of successful completion of a hunter safety course, this requirement is waived for the youth. Adults may not possess a firearm. Youths may possess only one firearm while hunting. Legal firearms are the same as described for deer hunting. The supervising adult shall maintain visual and voice contact with the youth at all times. An adult may supervise only one youth during this special hunt. Contact the appropriate region office for special check station locations when daily permits are required and maps of specific hunting areas. Either-sex deer may be taken on WMAs with youth hunts. Consult the regulations pamphlet for WMAs offering youth hunts. NOTE: Some hunts may be by pre-application lottery.

b. Youth Mourning Dove Hunt. A youth mourning dove hunt will be conducted on specific WMAs and will follow the same regulations provided for youth deer hunts on the second weekend of the mourning dove season (Saturday and Sunday only). Consult the regulations pamphlet for WMAs offering youth mourning dove hunts.

c. Handicapped Season. An either-sex deer season will be held for hunters possessing a Physically Challenged Hunter Permit on WMAs during the dates specified under the individual WMA. Participants must possess a Physically Challenged Hunter Permit. Contact region office for permit application and map of specific hunting area. Consult the regulations pamphlet for WMAs offering Handicapped Seasons. Pointe-aux-Chenes will have an experimental Lottery Handicapped waterfowl hunt. Contact New Iberia Office, Fur and Refuge Division for details.

d. Deer Lottery Hunts. Hunts restricted to those persons selected as a result of the pre-application lottery. Consult the regulations pamphlet for deadlines. A non-refundable application fee must be sent with application. Contact region offices for applications. Consult regulations pamphlet for WMAs offering lottery deer hunts.

e. Turkey Lottery Hunts. Hunts restricted to those persons selected by lottery. Consult the regulations pamphlet for deadlines. All turkeys must be reported at Self Clearing station. Contact Region Offices for more details. Consult separate turkey hunting regulations pamphlet for more details.

f. Waterfowl Lottery Hunts. Hunts restricted to those persons selected by lottery. Consult the regulations pamphlet for deadline. Consult regulations pamphlet for individual WMA schedules or contact any Wildlife Division Office for more details.

g. Mourning Dove Lottery Hunts. Consult regulations pamphlet for individual WMA schedules or contact any Wildlife Division Office for more details.

h. Trapping. Permits to take furbearers from WMAs may be obtained at appropriate offices when required. Consult Annual Trapping Regulations for specific dates. All traps must be run daily. Traps with teeth are illegal. On WMAs where permits are required, each trapper must submit an annual trapping report to the Region Office where his permit was obtained. Non-compliance will result in forfeiture of trapping privileges on the WMAs. Permits may be obtained only between hours of 8 a.m. to 4:30 p.m. on normal working days at region offices. Hunter orange required when a deer gun season is in progress. A permit is required to carry a firearm outside of the normal hunting season and is available at the Region Office.

i. Raccoon hunting. A licensed hunter may take raccoon or opossum, one per person per day, during daylight hours only, during the open rabbit season on WMAs. Nighttime Experimental? All nighttime raccoon hunting where allowed is with dogs only. There is no bag limit. Raccoon hunters with dogs must submit an annual report of their kill to the region office for WMAs where permits are required. Non-compliance will result in forfeiture of raccoon or all hunting privileges on WMAs. Permits, when required, may be obtained at region offices only between hours of 8 a.m. to 4:30 p.m. on normal working days.

j. Sport fishing. Sport fishing, crawfishing and frogging are allowed on WMAs when in compliance with current laws and regulations except as otherwise specified under individual WMA listings.

k. Additional Department Lands. The department manages additional lands that are included in the WMA system and available for public recreation. Small tracts are located in Rapides, Vernon, Evangeline, St. Helena and other parishes. These small tracts have been acquired from the Farmers Home Administration or other sources for conservation purposes. Contact the appropriate Wildlife and Fisheries Region Office for specific information and any additional season dates.

4. Firearms

a. Firearms having live ammunition in the chamber, magazine, cylinder or clip when attached to firearms are not allowed in or on vehicles, boats under power, motorcycles, ATVs, ATCs or in camping areas on WMAs. Firearms may

not be carried on any area before or after permitted hours except in authorized camping areas and except as may be permitted for authorized trappers).

b. Firearms and bows and arrows are not allowed on WMAs during closed seasons except on designated shooting ranges or as permitted for trapping. Bows and broadhead arrows are not allowed on WMAs except during deer archery season, turkey season or as permitted for bowfishing.

c. Encased or broken down firearms and any game harvested may be transported through the areas by the most direct route provided that no other route exists except as specified under Wildlife Management Area listing.

d. Loaded firearms are not allowed near WMA check stations.

e. Centerfire rifles and handguns larger than .22 caliber rimfire, shotgun slugs or shot larger than BB lead or F steel shot cannot be carried onto any WMA except during modern firearm deer season.

f. Target shooting and other forms of practice shooting are prohibited on WMAs except as otherwise specified.

g. Discharging of firearms on or hunting from designated roads, ATV trails or their rights-of-way is prohibited during the modern firearm and muzzleloader deer season.

5. Methods of Taking Game

a. Moving deer or hogs on a WMA with organized drivers and standers, drivers or making use of noises or noise-making devices is prohibited.

b. On Wildlife Management Areas, Federal Refuges and National Forest Lands the daily limit shall be one deer per day. Season limit is six, two of which may be antlered, (all segments included) by all methods of take.

c. Baiting or hunting over bait is prohibited on all WMAs (hogs included). Unmarked hogs may be taken on some WMAs by properly licensed hunters from the beginning of archery season on the area until February 28 and only with guns/ammunition or bow and arrow legal for specified seasons in progress. Consult the specific WMA for additional information. Proper licenses and permits are required for hunting. Hogs may not be taken with the aid of dogs.

d. Hunters who kill deer on WMAs that require daily permits must have deer checked at the check station on same day of kill. Deer may not be skinned or have any external body parts removed including but not limited to feet, legs, tail, head or ears before being checked out.

e. Deer hunting on WMAs is restricted to still hunting only. No WMA will be open for deer during early still hunt season unless specified in the regulation pamphlet.

f. Construction of and/or hunting from permanent tree stands or permanent blinds on WMAs is prohibited. Any permanent stand or permanent blind will be removed and destroyed.

g. On Wildlife Management Areas and Refuges, all deer stands must be removed from the area no later than two hours after the end of legal shooting hours each day. Hunting from utility poles, high tension power lines, oil and gas exploration facilities or platforms is prohibited.

h. A permanent blind is any blind using non-natural materials or having a frame which is not dismantled within

two hours after the end of legal shooting time each day. Blinds with frames of wood, plastic, metal poles, wire, mesh, webbing or other materials may be used but must be removed from the WMA within two hours after the end of legal shooting time each day. Blinds made solely of natural vegetation and not held together by nails or other metallic fasteners may be left in place but cannot be used to reserve hunting locations. All decoys must be removed from the WMA daily.

i. It is illegal to save or reserve hunting locations using permanent stands or blinds. Stands or blinds attached to trees with screws, nails, spikes, etc. are illegal.

j. Tree climbing spurs, spikes or screw-in steps are prohibited.

k. Unattended decoys will be confiscated and forfeited to the Department of Wildlife and Fisheries and disposed of by the department. This action is necessary to prevent preemption of hunting space.

l. Spot lighting (shining) from vehicles is prohibited on all WMAs.

m. Horses and mules may be ridden on Wildlife Management Areas except where prohibited and except during gun seasons for deer and turkey. Riding is restricted to designated roads and trails. Hunting and trapping from horses and mules is prohibited except for quail hunting or as otherwise specified.

n. All hunters except waterfowl hunters and mourning dove hunters (including archers and small game hunters) on WMAs must display 400 square inches of "hunter orange" and wear a "hunter orange" cap during open gun season for deer. Hunters participating in special dog seasons for rabbit and squirrel are required to wear a minimum of a "hunter orange" cap. All other hunters and archers (while on the ground) also must wear a minimum of a "hunter orange" cap during special dog seasons for rabbit and squirrel. Also all persons afield during hunting seasons are encouraged to display "hunter orange."

o. Archery Season for Deer. The archery season on WMAs is the same as outside and is open for either-sex deer except as otherwise specified on individual WMAs. Archery season restricted on Atchafalaya Delta and closed on certain WMAs when special seasons for youth or handicapped hunts are in progress. Consult regulations pamphlet for specific seasons.

p. Either-sex deer may be taken on WMAs at any time during archery season except when bucks only seasons are in progress on the respective WMAs. Archers must abide by bucks only regulations and other restrictions when such seasons are in progress.

q. Muzzleloader season for deer. Either-sex unless otherwise specified. See WMA deer schedule.

6. Camping

a. Camping on WMAs, including trailers, houseboats, recreational vehicles and tents, is allowed only in designated areas and for a period not to exceed 16 consecutive days, regardless if the camp is attended or unattended. Houseboats shall not impede navigation. At the end of the 16-day period, camps must be removed from the area for at least 48 hours. Camping area use limited exclusively to outdoor recreational activities.

b. Houseboats are prohibited from overnight mooring within WMAs except on stream banks adjacent to

department-owned designated camping areas. Overnight mooring of vessels that provide lodging for hire are prohibited on WMAs. On Atchafalaya Delta WMA and Pass-a-Loutre, houseboats may be moored in specially designated areas throughout the hunting season. At all other times of the year, mooring is limited to a period not to exceed 16 consecutive days. Permits are required for the mooring of houseboats on Pass-a-Loutre and Atchafalaya Delta WMAs. Permits must be obtained from the New Iberia office.

c. Discharge of human waste onto lands or waters of any WMA is strictly prohibited by state and federal law. In the event public restroom facilities are not available at a WMA, the following is required. Anyone camping on a WMA in a camper, trailer, or other unit (other than a houseboat or tent) shall have and shall utilize an operational disposal system attached to the unit. Tent campers shall have and shall utilize portable waste disposal units and shall remove all human waste from the WMA upon leaving. Houseboats moored on a WMA shall have a permit or letter of certification from the Health Unit (Department of Health and Hospitals) of the parish within which the WMA occurs verifying that it has an approved sewerage disposal system on board. Further, that system shall be utilized by occupants of the houseboats when on the WMA.

d. No refuse or garbage may be dumped from these boats.

e. Firearms may not be kept loaded or discharged in a camping area.

f. Campsites must be cleaned by occupants prior to leaving and all refuse placed in designated locations when provided or carried off by campers.

g. Non-compliance with camping regulations will subject occupant to immediate expulsion and/or citation, including restitution for damages.

h. Swimming is prohibited within 100 yards of boat launching ramps.

7. Restricted Areas

a. For your safety, all oil and gas production facilities (wells, pumping stations and storage facilities) are off limits.

b. No unauthorized entry or unauthorized hunting in restricted areas or refuges.

8. Dogs. All use of dogs on WMAs, except for bird hunting and duck hunting, is experimental as required by law. Having or using dogs on any WMA is prohibited except for nighttime experimental raccoon hunting, squirrel hunting, rabbit hunting, bird hunting, duck hunting and bird dog training when allowed; see individual WMA season listings for WMAs that allow dogs and dates. Dogs running at large are prohibited on WMAs. The owner or handler of said dogs shall be liable. Only recognizable breeds of bird dogs and retrievers are allowed for quail and migratory bird hunting. Only beagle hounds which do not exceed 15 inches at the front shoulders and which have recognizable characteristics of the breed may be used on WMAs having experimental rabbit seasons.

9. Vehicles

a. An all-terrain vehicle is an off-road vehicle (not legal for highway use) with factory specifications not to exceed the following: weight-750 pounds, length-85", and width-48". ATV tires are restricted to those no larger than 25

x 12 with a maximum 1" lug height and a maximum allowable tire pressure of 7 psi. as indicated on the tire by the manufacturer.

b. Vehicles having wheels with a wheel-tire combination having a radius of 17 inches or more from the center of the hub (measured horizontal to ground) are prohibited.

c. The testing, racing, speeding or unusual maneuvering of any type of vehicle is prohibited within wildlife management areas due to property damages resulting in high maintenance costs, disturbance of wildlife and destruction of forest reproduction.

d. Tractor or implement tires with farm tread designs R1, R2 and R4 known commonly as spade or lug grip types are prohibited on all vehicles.

e. Airboats, aircraft, personal water craft "mud crawling vessels" (commonly referred to as crawfish combines which use paddle wheels for locomotion) and hover craft are prohibited on all WMAs and Refuges. Personal water craft are defined as a vessel which uses an inboard motor powering a water jet pump as its primary source of propulsion and is designed to be operated by a person sitting, standing or kneeling on the vessel rather than in the conventional manner of sitting or standing inside the vessel. Personal water craft allowed on designated areas of Alexander State Forest WMA.

f. No internal combustion engines allowed in certain Greentree reservoirs.

g. Driving or parking vehicles on food or cover plots and strips is prohibited.

h. Blocking the entrance to roads and trails is prohibited.

i. Motorized vehicles, including ATVs, and motorcycles, are restricted entirely to designated roads and ATV trails as indicated on WMA maps. WMA maps available at all region offices. This restriction does not apply to bicycles.

j. Use of special ATV trails for handicapped persons is restricted to special ATV handicapped permittees. Handicapped ATV permittees are restricted to handicapped ATV trails or other ATV trails only as indicated on WMA maps. Persons 60 years of age and older, with proof of age, are also allowed to use special handicapped trails and need not obtain a permit. However, these persons must abide by all rules in place for these trails. Handicapped persons should make application for a Physically Challenged Hunter Program Permit with the department.

k. Entrances to ATV trails will be marked with peach colored paint. Entrances to handicapped-only ATV trails will be marked with blue colored paint. Routes of all trails are as indicated on WMA maps. Deviation from the trails indicated on the map constitutes a violation of WMA rules and regulations.

l. Roads and trails may be closed due to poor condition, construction or wet weather.

m. ATVs, and motorcycles cannot be left overnight on WMAs except on designated camping areas. ATVs are prohibited from two hours after sunset to 3:00 a.m. ATVs are prohibited from March 1 through August 31 except certain trails may be open during this time period to provide access for fishing or other purposes. These trails will be marked by signs at the entrance of the trail and designated on WMA

maps. Raccoon hunters may use ATVs during nighttime raccoon take seasons only.

n. Caution: Many department-maintained roadways on WMAs are unimproved and substandard. A maximum 20 mph speed limit is recommended for all land vehicles using these roads.

10. Commercial Activities

a. Hunting Guides/Outfitters: No person or group may act as a hunting guide, outfitter or in any other capacity for which they are paid or promised to be paid directly or indirectly by any other individual or individuals for services rendered to any other person or persons hunting on any Wildlife Management Area, regardless of whether such payment is for guiding, outfitting, lodging or club memberships.

b. Commercial activities prohibited without prior approval from Baton Rouge office or unless otherwise specified.

c. Commercial fishing. Permits are required of all commercial fishermen using Grassy Lake, Pomme de Terre and Spring Bayou WMAs. Drag seines (except minnow and bait seines) are prohibited except experimental bait seines allowed on Dewey Wills WMA north of La. 28 in Diversion Canal. Commercial fishing is prohibited during regular waterfowl seasons on Grand Bay, Silver Lake and Lower Sunk Lake on Three Rivers WMA. Commercial fishing is prohibited on Salvador/Timken, Ouachita and Pointe-aux-Chenes WMAs except commercial fishing on Pointe-aux-Chenes is allowed in Cut Off Canal and Wonder Lake. No commercial fishing activity shall impede navigation and no unattended vessels or barges will be allowed. Non-compliance with permit regulations will result in revocation of commercial fishing privileges for the period the license is issued and one year thereafter. Commercial fishing is allowed on Pass-a-Loutre and Atchafalaya Delta WMAs. See Pass-a-Loutre for additional commercial fishing regulations on mullet.

11. Wildlife Management Areas Basic Season Structure. For season dates, bag limits, shooting hours, special seasons and other information consult the annual regulations pamphlet for specific details.

12. Resident Small Game (squirrel, rabbit, quail, mourning dove, woodcock, snipe, rail and gallinule). Consult regulations pamphlet. Unless otherwise specified under a specific WMA hunting schedule, the use of dogs for rabbit and squirrel hunting is prohibited.

13. Waterfowl (ducks, geese and coots). Consult regulations pamphlet. Hunting after 2 p.m. prohibited on all WMAs except for Atchafalaya Delta, Biloxi, Lake Boeuf, Pass-a-Loutre, Pointe-aux-Chenes, Salvador/Timken and Wisner WMAs. Consult specific WMA regulations for shooting hours on these WMAs.

14. Archery. Consult regulations pamphlet.

15. Hogs. Consult regulations pamphlet.

16. Outlaw Quadrupeds and Birds. Consult regulations pamphlet. During hunting seasons specified on WMAs, incidental take of outlaw quadrupeds and birds is allowed by properly licensed hunters and only with guns or bows and arrows legal for season in progress on WMA. However, crows, blackbirds, grackles and cowbirds may not be taken before September 1 or after January 2.

17. Wildlife Management Areas Hunting Schedule and Regulations:

a. Acadiana Conservation Corridor

b. Alexander State Forest. Vehicles restricted to paved and graveled roads. No parking on or fishing or swimming from bridges. No open fires except in recreation areas.

c. Atchafalaya Delta. Water control structures are not to be tampered with or altered by anyone other than employees of the Department of Wildlife and Fisheries at any time. ATVs, ATCs and motorcycles prohibited except as permitted for authorized WMA trappers.

d. Attakapas

e. Bayou Macon. All night activities prohibited except as otherwise provided. Mules are allowed for nighttime raccoon hunting.

f. Bayou Pierre

g. Bens Creek

h. Big Colewa Bayou. All nighttime activities prohibited.

i. Big Lake

j. Biloxi

k. Bodcau

l. Boeuf

m. Boise-Vernon

n. Buckhorn

o. Camp Beauregard. Daily military clearance required for all recreational users. Registration for use of Self Clearing Permit required once per year. All game harvested must be reported. Retriever training allowed on selected portions of the WMA. Contact the Region office for specific details.

p. Dewey W. Wills. Crawfish: 100 pounds per person per day.

q. Elbow Slough. Steel shot only for all hunting.

r. Elm Hall. No ATVs allowed.

s. Floy Ward McElroy

t. Fort Polk. Daily military clearance required to hunt or trap. Registration for use of Self-Clearing Permit required once per year. Special regulations apply to ATV users.

u. Grassy Lake. Commercial Fishing: Permitted except on Smith Bay, Red River Bay and Grassy Lake proper on Saturday and Sunday and during waterfowl season. Permits available from area supervisor at Spring Bayou headquarters or Opelousas Region Office. No hunting in restricted area.

v. Jackson-Bienville. Beginning September 1, 2004, ATVs are allowed ONLY on non-public maintained gravel roads and marked ATV trails.

w. Joyce. Swamp Walk: Adhere to all WMA rules and regulations. No firearms or hunting allowed within 100 yards of walkways. Check hunting schedule and use walkway at your own risk.

x. Lake Boeuf. Hunting allowed until 12:00 noon on all game.

y. Lake Ramsay. Foot traffic only - all vehicles restricted to Parish Roads.

z. Little River

aa. Loggy Bayou

bb. Manchac. Crabs: No crab traps allowed. Attended lift nets are allowed.

cc. Maurepas Swamp

dd. Ouachita. Waterfowl Refuge: North of La. Hwy. 15 closed to all hunting, fishing and trapping during duck season including early teal season. Crawfish: 100 pounds per person per day limit. Night crawfishing prohibited. No traps or nets left overnight. Commercial Fishing: Closed. All nighttime activities prohibited except as otherwise provided.

ee. Pass-a-Loutre. Commercial Fishing: Same as outside. Commercial mullet fishing open only in: South Pass, Pass-a-Loutre, North Pass, Southeast Pass, Northeast Pass, Dennis Pass, Johnson Pass, Loomis Pass, Cadro Pass, Wright Pass, Viveats Pass, Cognevich Pass, Blind Bay, Redfish Bay, Garden Island Bay, Northshore Bay, East Bay (west of barrier islands) and oil and gas canals as described on the department Pass-a-Loutre WMA map. ATVs, ATCs and motorcycles prohibited on this area. Oyster harvesting is prohibited.

ff. Pearl River. All roads closed 8 p.m. to 4:30 a.m. to all vehicles. Old Hwy. 11 will be closed when river gauge at Pearl River, Louisiana, reaches 16.5 feet. All hunting will be closed when the river stage at Pearl River reaches 16.5 feet except waterfowl hunting south of Hwy. 90. No hunting in the vicinity of Nature Trail. Observe "No Hunting" signs. Rifle range open noon until 4 p.m. Friday, and 8 a.m. to 4:30 p.m. Saturday and Sunday with a fee.

gg. Peason Ridge. Daily military clearance required to hunt or trap. Registration for use of Self-Clearing Permit required once per year. Special federal regulations apply to ATV users.

hh. Pointe-aux-Chenes. Hunting until 12 noon on ALL GAME, except for mourning dove hunting and youth lottery deer hunt as specified in regulation pamphlet. Point Farm: Gate will be open only on the first 3 Saturdays of the second split of mourning dove season and all weekends during month of February. No motorized vessels allowed in the drainage ditches. Recreational Fishing: Shrimp may be taken by the use of cast nets only. During the inside open shrimp season, 25 pounds per boat per day (heads on) shall be allowed. Size count to conform with open season requirements. During the inside closed season, 10 pounds per boat per day (heads on) may be taken for bait. Oyster harvesting is prohibited. Fish may be taken only by rod and reel or hand lines for recreational purposes only. Crabs may be taken only through the use of hand lines or nets; however, none are to remain set overnight. Twelve dozen crabs are allowed per boat or vehicle per day. Crawfish may be harvested in unrestricted portions of the wildlife management area and shall be limited to 100 pounds per boat or group. Fishing gear used to catch crawfish shall not remain set overnight. The harvest of all fish, shrimp, crabs and crawfish are for recreational purposes only and any commercial use is prohibited. Mudboats or vessels with engines larger than 25 hp prohibited in the Montegut and Grand Bayou marsh management units. Public is permitted to travel anytime through the WMA for access purposes only, in the waterways known as Grand Bayou, Humble Canal, Little Bayou Blue and Grand Bayou Blue. All other motorized vehicles, horses and mules are prohibited unless authorized by the department.

ii. Pomme de Terre. Commercial Fishing: permitted Monday through Friday, except closed during duck season. Commercial Fishing permits available from area supervisor, Opelousas Region Office or Spring Bayou headquarters. Sport Fishing: Same as outside except allowed only after 2 p.m. only during waterfowl season. Crawfish: April 1 - July 31, recreational only, 100 lbs. per boat or group daily.

jj. Red River. Crawfishing prohibited on Yakey Farms Wetland Restoration Areas.

kk. Russell Sage. Transporting trash or garbage on WMA roads is prohibited. All nighttime activities prohibited except as otherwise provided. NOTE: All season dates on Chauvin Tract (U.S. 165 North) same as outside, except still hunt only and except deer hunting restricted to archery only. Waterfowl hunting after 2 p.m. prohibited. All vehicles including ATVs prohibited.

ll. Sabine

mm. Sabine Island. Sabine Island boundaries are Sabine River on the west, Cut-Off Bayou on the north, and Old River and Big Bayou on the south and east.

nn. Salvador/Timken. Hunting until 12 noon only for all game. All nighttime activities prohibited, including frogging. Recreational Fishing: Shrimp may be taken by the use of cast nets only. During the inside open shrimp season, 25 pounds per boat per day (heads on) shall be permitted. Size count to conform with open season requirements. During the inside closed season, 10 pounds per boat per day (heads on) may be taken for bait. Fish may be taken only by rod and reel or hand lines for recreational purposes only. Crabs may be taken only through the use of hand lines or nets; however, none of the lines are to remain set overnight. Twelve dozen crabs maximum are allowed per boat or vehicle per day. Crawfish may be harvested in unrestricted portions of the wildlife management area and shall be limited to 100 pounds per boat or group. Fishing gear used to catch crawfish shall not remain set overnight. The harvest of all fish, shrimp, crabs and crawfish are for recreational purposes only and any commercial use is prohibited. Boats powered by internal combustion engines having horsepower ratings above 25 hp are permitted only in oil company access canals, Louisiana Cypress Canal, the Netherlands Pond including the West Canal, Lakes - "Baie Des Chactas" and Baie du Cabanage" and the Rathborne Access ditch. Use of mudboats powered by internal combustion engines with four cylinders or less is permitted in interior ditches from September 6-February 1. Pulling boats over levees, dams or water control structures or any other activities which cause detriment to the integrity of levees, dams and water control structures is prohibited. ATVs, ATCs and motorcycles prohibited on this area.

oo. Sandy Hollow. Bird Dog Training: Consult regulation pamphlet. Wild birds only (use of pen-raised birds prohibited). Bird Dog Field Trials: Permit required from Baton Rouge Region Office. Horseback Riding: Organized trail rides prohibited. Riding allowed only on designated roads and trails. Horses and mules are specifically prohibited during turkey and gun season for deer except as allowed for bird dog field trials. No horses and mules on green planted areas. No motorized vehicles allowed off designated roads.

pp. Sherburne. Crawfishing: Recreational crawfishing only on the South Farm Complexes. Crawfish harvest limited to 100 pounds per vehicle or boat per day.

No traps or nets left overnight. No motorized watercraft allowed on farm complex. Commercial crawfishing allowed on the remainder of the area. Permit is required. Retriever training allowed on selected portions of the WMA. Contact the Region office for specific details. Vehicular traffic prohibited on east Atchafalaya River levee within Sherburne WMA boundaries. Rifle and Pistol Range open daily. Skeet ranges open by appointment only, contact Hunter Education Office. No trespassing in restricted area behind ranges. Note: Atchafalaya National Wildlife Refuge, and U.S. Army Corps of Engineers land holdings adjacent to the Sherburne Wildlife Management Area will have the same rules and regulations as Sherburne WMA. No hunting or trapping in restricted area.

qq. Sicily Island Hills

rr. Soda Lake. No motorized vehicles allowed. All trapping and hunting prohibited except archery hunting for deer.

ss. Spring Bayou. Commercial Fishing: permitted Monday through Friday except slat traps and hoop nets permitted any day. Permits available from area supervisor or Opelousas Region Office. Closed until after 2 p.m. during waterfowl season. Sport Fishing: Same as outside except allowed only after 2 p.m. during waterfowl season. Crawfish: recreational only. No hunting allowed in headquarters area. Only overnight campers allowed in the improved Boggy Bayou Camping area. Rules and regulations posted at camp site. A fee is assessed for use of this camp site. Water skiing allowed only in Old River and Grand Lac.

tt. Tangipahoa Parish School Board. No horseback riding during gun season for deer or turkey. ATVs are not allowed.

uu. Thistlethwaite. No hunting or trapping in restricted area (See WMA Map). All motorized vehicles restricted to improved roads only. All users must enter and leave through main gate only. No entry into restricted areas.

vv. Three Rivers

ww. Tunica Hills. All vehicles restricted to Parish roads. ATVs restricted to designated trails. Driving on food plots prohibited. Access to restricted areas is unauthorized. Refer to WMA map. Camping prohibited on area. North of Hwy. 66 (Angola Tract) closed to the general public March 1-September 30 except spring turkey hunting access allowed for those individuals drawn for special lottery hunt.

xx. Union. All nighttime activities prohibited except as otherwise provided.

yy. West Bay

zz. Wisner

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115 and R.S. 56:116.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:1279 (July 1999), amended LR 26:1494 (July 2000), LR 27:1049 (July 2001), LR 28:1603 (July 2002), LR 29:1124 (July 2003), repromulgated LR 29:1522 (August 2003), amended LR 30:

Public hearings will be held at the following locations: Region 1? March 16, 6:30 p.m., Minden Civic Center, Minden, LA; Region 2? March 8, 6:30 p.m., Ruston Civic Center, Ruston, LA; Region 3? March 10, 6:00 p.m., Alexandria City Hall, Alexandria, LA; Region 4? March 11,

6:30 PM, Council on Aging Building, Winnsboro, LA; Region 5? March 18, 6:00 p.m., Burton Coliseum Chalkley Room, Lake Charles, LA; Region 6? March 9, 6:00 p.m., Estuarine Habitats and Coastal Fisheries Center, Lafayette, LA; Region 7? March 11, 7:00 p.m., Department of Wildlife and Fisheries Louisiana Room, Baton Rouge, LA; and March 9, 7:00 p.m., Jefferson Parish Library, Metairie, LA. Also comments will be accepted at regularly scheduled Wildlife and Fisheries Commission Meetings from April through July. Interested persons may submit written comments relative to the proposed rule until Thursday, May 6, 2004 to Mr. Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Bill A. Busbice, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: General and Wildlife Management Area
(WMA) Hunting**

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

This Rule amends permanent Rules and Regulations for the state at large as well as Wildlife Management Areas. Establishment of hunting regulations is an annual process. The cost of implementing the proposed Rules, aside from staff time, is the production and distribution of the regulation pamphlet. Cost of printing and distributing the 2003-2004 state hunting pamphlet was \$10,857 and no major increase in expenditures is anticipated. Local government units will not be impacted.

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

State hunting license fee collections are between 9.0-10.0 million dollars annually. Additionally, hunting and related activities generate approximately \$25.3 million in state sales tax; \$5.1 million in state income tax and \$23 million in local sales tax revenues annually (IAFWA; Southwick Associates, 2002). Failure to adopt Rule changes would result in no hunting season being established and a potential loss of some of these revenues.

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

Over 275,000 hunters and numerous businesses that provide goods and services to hunters are directly affected by this proposal. Hunting in Louisiana generates in excess of \$581

million annually through the sale of outdoor related equipment, associated items and trip related expenditures (IAFWA; Southwick Associates, 2002). Failure to adopt Rule changes would result in no hunting seasons being established and a potential loss of commerce revenues associated with these activities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Hunting in Louisiana provides 9,184 jobs (IAFWA; Southwick Associates, 2002). Not establishing hunting seasons might have a negative and direct impact on these jobs.

Janice A. Lansing
Undersecretary
0403#045

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

Resident Game Hunting Season? 2004-2005
(LAC 76:XIX.101 and 103)

The Wildlife and Fisheries Commission does hereby give notice of its intent to promulgate rules and regulations governing the hunting of resident game birds and game quadrupeds.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with this Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Title 76

WILDLIFE AND FISHERIES

Part XIX. Hunting and WMA Regulations

Chapter 1. Resident Game Hunting Season

§101. General

A. The Resident Game Hunting Season, 2004-2005 regulations are hereby adopted by the Wildlife and Fisheries Commission. A complete copy of the Regulation Pamphlet may be obtained from the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:1122 (July 2003), LR 30:

§103. Resident Game Birds and Animals 2004-2005

A. Shooting hours. One-half hour before sunrise to one-half hour after sunset.

B. Consult Regulation Pamphlet for seasons or specific regulations on Wildlife Management Areas or specific localities.

Species	Season Dates	Daily Bag Limit	Possession Limit
Quail	Nov. 13-Feb. 28	10	20
Rabbit	Oct. 2-Feb. 28	8	16
Squirrel	Oct. 2-Feb. 6	8	16
Deer	See Schedule	1 antlered and 1 antlerless (when legal on private lands)	6/season (Only two may be antlered)

C. Deer Hunting Schedule

Area	Archery	Muzzleloader (All Either Sex)	Still Hunt (No Dogs allowed)	With or Without Dogs
1	Oct. 1- Jan. 31	Nov. 13-Nov. 19 Jan. 17-Jan. 23	Nov. 20-Dec.3 Jan. 3-Jan.16	Dec. 4- Jan. 2
2	Oct. 1- Jan. 31	Oct. 23-Oct. 29 Jan. 8-Jan. 14	Oct. 30-Dec.3	Dec. 4- Jan. 7
3	Sept.18- Jan.15	Oct. 9-Oct.15 Nov.29-Dec. 3	Oct.16-Nov.28 Dec. 4-Jan. 2	
4	Oct. 1- Jan. 31	Nov. 6-Nov. 12 Jan. 8-Jan. 17	Nov.13-Jan. 7	
5	Oct. 1- Jan. 31	Nov. 13-Nov. 19 Dec. 27-Jan. 2 Bucks Only	Nov.26-Dec.12	
6	Oct. 16- Feb. 15	Nov. 20-Nov. 24 Jan. 24-Jan. 31	Nov.25-Dec.10	Dec.11- Jan.23
7	Oct. 1- Jan. 31	Oct. 9-Oct. 15 Nov. 6-Nov. 12	Oct.16-Nov. 5 Nov.13-Nov.28	Nov.29- Dec.29
8	Sept.18- Jan. 15	Oct. 9-Oct. 15 Nov. 29-Dec. 3	Oct.16-Nov.28	Dec. 4- Jan. 2

D. Modern Firearm Schedule (Either Sex Seasons)

Parish	Area	Modern Firearm Either-Sex Days
Acadia	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
Allen	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
	Area 8	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
Ascension	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Assumption	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Avoyelles	Area 2	Oct. 30-31, Nov. 20-21, 26-28, Dec. 4-5, 25-26, Jan. 1-2
	Area 6	Nov. 20-21, 26-28, Dec. 4-5
Beauregard	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
	Area 8	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
Bienville	Area 2	Oct. 30-Nov. 7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
Bossier	Area 2	Oct. 30-Nov. 7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
Caddo	Area 2	Oct. 30-Nov. 7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
Calcasieu	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
	Area 8	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
Caldwell	Area 2	Oct. 30-31, Nov. 20-21, 26-28, Dec. 4-5, 11-12, 25-26, Jan. 1-2
Cameron	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
Catahoula	Area 1	Nov. 20-21, 26-28, Dec. 4-5, 11-12
	Area 2	Oct. 30-31, Nov. 20-21, 26-28, Dec. 4-5, 11-12, 25-26, Jan. 1-2
Claiborne	Area 2	Oct. 30-Nov. 7, 13-14, 20-28, Dec. 4-5
Concordia	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12, 18-19, 25-26,

Parish	Area	Modern Firearm Either-Sex Days
		Jan. 1-2
DeSoto	Area 2	Oct. 30-Nov. 7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
East Baton Rouge	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12
East Carroll	Area 4 portion	Nov. 13-14, 20-21, 26-28, Dec. 4-5, 11-12, 18-19, east of mainline Mississippi River Levee and south and east of La. 877 from West Carroll Parish line to La. 580, south of La. 580 to U.S. 65, west of U.S. 65 to Madison Parish line.
	Area 4	Nov. 13-14, 26-28, remainder of the parish
East Feliciana	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Evangeline	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Franklin	Area 1	Nov. 20-21, 24-28, Dec. 4-5
Grant	Area 1	Nov. 20-21, 24-28, Dec. 4-5
	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-21, 26-28, Dec. 4-5, 25-26, Jan. 1-2
Iberia	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
	Area 7	Oct. 16-17, Nov. 13-14, 20-21, 26-28, Dec. 4-5
Iberville	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Jackson	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
Jefferson	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Jefferson Davis	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
Lafayette	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-21, 26-28, Dec. 4-5
	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Lafourche	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
LaSalle	Area 1	Nov. 20-21, 26-28, Dec. 4-5
	Area 2	Oct. 30-31, Nov. 20-21, 26-28, Dec. 4-5, 25-26, Jan. 1-2
Lincoln	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
Livingston	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12
	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Madison	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12, 18-19, 25-26, Jan. 1-2
Morehouse	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
	Area 4	Nov. 13-14, 20-21, 26-28
Natchitoches	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-21, 26-28, Dec. 4-5, 25-26, Jan. 1-2
Orleans		Closed to all deer hunting
Ouachita	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
	Area 4	Nov. 13-14, 20-21, 26-28
Plaquemines	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Pointe Coupee	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Rapides	Area 1	Nov. 20-21, 24-28, Dec. 4-5
	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-21, 26-28, Dec. 4-5, 25-26, Jan. 1-2
	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-21, 26-28, Dec. 4-5
	Area 6	Nov. 20-21, 24-28, Dec. 4-5
Red River	Area 2	Oct. 30-Nov. 7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
Richland	Area 4	Nov. 13-14, 20-21, 26-28
Sabine	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-21, 26-28, Dec. 4-5, 25-26, Jan. 1-2
St. Bernard	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
St. Charles	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
St. Helena	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12
St. James	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
St. John	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12

Parish	Area	Modern Firearm Either-Sex Days
St. Landry	Area 3	Oct. 16-17, Nov. 26-28, Dec. 4-5
	Area 6	Nov. 20-21, 26-28, Dec. 4-5
St. Martin	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
St. Mary	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
	Area 7	Oct. 16-17, Nov. 13-14, 20-21, 26-28, Dec. 4-5
St. Tammany	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12
	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Tangipahoa	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12
	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Tensas	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12, 18-19
Terrebonne	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
	Area 7	Oct. 16-17, Nov. 13-14, 20-21, 26-28, Dec. 4-5
Union	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
Vermilion	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
Vernon	Area 2	Oct. 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
	Area 3	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
	Area 8	Oct. 16-17, 23-24, 30-31, Nov. 6-7, 13-14, 20-28, Dec. 4-5
Washington	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Webster	Area 2	Oct. 30-Nov. 7, 13-14, 20-28, Dec. 4-5, 25-26, Jan. 1-2
West Baton Rouge	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
West Carroll	Area 5	Nov. 26
West Feliciana	Area 1	Nov. 20-21, 24-28, Dec. 4-5, 11-12
	Area 6	Nov. 20-21, 24-28, Dec. 4-5, 11-12
Winn	Area	Oct. 30-31, Nov. 6-7, 13-14, 20-21, 26-28, Dec. 4-5, 25-26, Jan. 1-2

E. Farm Raised White-tailed Deer on Supplemented Shooting Preserves

Archery	Modern Firearm	Either Sex
Oct. 1-Jan. 31 (Either Sex)	Nov. 1-Jan. 31	Nov. 1-7 Dec. 1-7 Jan. 1-7

F. Exotics on Supplemented Shooting Preserves: Either Sex, no closed season.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 21:707 (July 1995), amended LR 22:585 (July 1996), LR 23:871 (July 1997), LR 24:1324 (July 1998), LR 25:1290 (July 1999), repromulgated LR 25:1526 (August 1999), LR 26:1506 (July 2000), LR 27:1061 (July 2001), LR 28:1615 (July 2002), LR 29:1122 (July 2003), repromulgated LR 29:1521 (August 2003), LR 30:

Public hearings will be held at the following locations: Region 1? March 16, 6:30 p.m., Minden Civic Center, Minden, LA; Region 2? March 8, 6:30 p.m., Ruston Civic Center, Ruston, LA; Region 3? March 10, 6 p.m., Alexandria City Hall, Alexandria, LA; Region 4? March 11, 6:30 p.m. Council on Aging Building, Winnsboro, LA; Region 5? March 18, 6 p.m., Burton Coliseum Chalkley Room, Lake Charles, LA; Region 6? March 9, 6 p.m., Estuarine Habitats and Coastal Fisheries Center, Lafayette, LA; Region 7? March 11, 7 p.m., Department of Wildlife and Fisheries Louisiana Room, Baton Rouge, LA; and March 9, 7 p.m., Jefferson Parish Library, Metairie, LA. Also comments will be accepted at regularly scheduled Wildlife and Fisheries Commission Meetings from April

through July. Interested persons may submit written comments relative to the proposed Rule until Thursday, May 6, 2004 to Mr. Tommy Prickett, Wildlife Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA, 70898-9000.

Bill A. Busbice, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Resident Game
Hunting Season? 2004-2005**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
Establishment of hunting regulations is an annual process. The cost of implementing the proposed rules, aside from staff time, is the production and distribution of the regulation pamphlet. Cost of printing and distributing the 2003-2003 state hunting pamphlet was \$10,857 and no major increase in expenditures is anticipated. Local government units will not be impeded.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
State hunting license fee collections are between 9.0-10.0 million dollars annually. Additionally, hunting and related activities generate approximately \$25.3 million in state sales tax, \$5.1 million in state income tax and \$23 million in local sales tax revenues annually (IAFWA; Southwick Associates, 2002). Failure to adopt rule changes would result in no hunting season being established and a potential loss of some of these revenues.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Over 275,000 hunters and numerous businesses that provide goods and services to hunters are directly affected by this proposal. Hunting in Louisiana generates in excess of \$581,000,000 annually in retail sales of outdoor related equipment, associated items and trip related expenditures (IAFWA; Southwick Associates, 2002). Failure to adopt rule changes would result in no hunting season being established and a potential loss of commerce revenues associated with these activities.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Hunting in Louisiana provides 9,184 jobs (IAFWA; Southwick Associates, 2002). Not establishing hunting seasons may have a negative and direct impact on these jobs.

Janice A. Lansing Undersecretary 0403#046	Robert E. Hosse General Government Section Director Legislative Fiscal Office
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NOTICE OF INTENT

**Department of Wildlife and Fisheries
Wildlife and Fisheries Commission**

**Sharks and Sawfishes? Harvest Regulations
(LAC 76:VII.357)**

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a Rule, LAC 76:VII.357, modifying the existing Rule. Authority for adoption of this Rule is included in R.S. 56:6(10), 56:320.2(C), 56:325.2 (A),

56:326.1, 56:326.3, and 56:326(E)(2). Said Rule is attached to and made a part of this Notice of Intent.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and the final Rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

In accordance with Act 1183 of 1999, the Department of Wildlife and Fisheries/Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with this Notice of Intent: This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

**Chapter 3. Saltwater Sport and Commercial Fishery
§357. Sharks and Sawfishes? Harvest Regulations**

A. The following rules and regulations are established for the taking and possession of sharks (including sawfishes) (Class Elasmobranchiomorphi: Orders Hexanchiformes, Lamniformes, Squaliformes, and Rajiformes) from within or without Louisiana waters. The provisions of this Section shall not apply to shrimp or menhaden harvest, and nothing contained herein is intended or shall be construed to repeal, amend, or otherwise modify the provisions of law applicable to shrimp or menhaden fishing, except for provisions:

- 1. outlawing finning of shark;
- 2. requiring a Commercial State Shark Permit for sale, barter, trade, or exchange;
- A.3. - 5. ...

B. For management purposes, sharks are divided into the following categories:

- 1. small coastal sharks? bonnethead shark, Atlantic sharpnose shark, blacknose shark, finetooth shark;
- 2. large coastal sharks? great hammerhead, scalloped hammerhead, smooth hammerhead, nurse shark, blacktip shark, bull shark, lemon shark, sandbar shark, silky shark, spinner shark, tiger shark;
- 3. pelagic sharks? porbeagle shark, shortfin mako, blue shark, oceanic whitetip shark, thresher shark;
- 4. prohibited species? basking shark, white shark, bigeye sand tiger, sand tiger, whale shark, smalltooth sawfish, largetooth sawfish, Atlantic angel shark, Caribbean sharpnose shark, smalltail shark, bignose shark, Caribbean reef shark, dusky shark, Galapagos shark, narrowtooth shark, night shark, bigeye sixgill shark, bigeye thresher shark, longfin mako, sevengill shark, sixgill shark.

C. In addition to all other licenses and permits required by law, a valid original Commercial State Shark Permit shall be annually required for persons commercially taking shark from Louisiana waters and for persons selling, exchanging, or bartering sharks as required by law; the valid original permit shall be in immediate possession of the permittee while engaged in fishing for, possessing, selling, bartering, trading, or exchanging shark.

D. No person shall purchase, sell, exchange, barter or attempt to purchase, sell, exchange, or barter any sharks in excess of any possession limit for which a state or federal commercial permit was issued.

E.1. All persons who do not possess a Commercial State Shark Permit issued by the Department of Wildlife and Fisheries, and, if applicable, a Federal Commercial Directed or Incidental Limited Shark Permit issued by the National Marine Fisheries Service, are limited to a recreational possession limit. All persons who do not possess a Louisiana Commercial State Shark Permit and, if applicable, a Federal Commercial Directed or Incidental Limited Shark Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks, shall not sell, barter, trade, exchange or attempt to sell, barter, trade or exchange any sharks, or possess any sharks in excess of a recreational possession limit. Sharks taken incidental to menhaden fishing, that are retained on the vessel as part of the harvest, may be retained and sold only as a mixed part of the total harvest, and shall not be retained, held, or sold, purchased, bartered, traded, or exchanged separately. Sharks retained as a result of menhaden fishing shall not exceed legal bycatch allowances for menhaden fishing as provided for in R.S. 56:324.

2. Legally licensed Louisiana wholesale/retail seafood dealers, retail seafood dealers, restaurants, and retail grocers are not required to hold a Commercial State Shark Permit in order to purchase, possess, exchange, barter and sell any quantities of sharks, so long as they maintain records as required by R.S. 56:306.5 and R.S. 56:306.6.

F. Sharks taken under a recreational bag limit shall not be sold, purchased, exchanged, traded, bartered, or attempted to be sold, purchased, exchanged, traded, or bartered. A person subject to a bag limit shall not possess at any time, regardless of the number of trips or the duration of a trip, any shark in excess of the recreational bag limits or less than minimum size limits as follows.

1. All sharks taken under a recreational bag limit within or without Louisiana waters must be at least 54 inches fork length, except that the minimum size limit does not apply for Atlantic sharpnose or bonnethead sharks.

2. Owners/operators of vessels other than those taking sharks in compliance with a state or federal commercial permit are restricted to no more than one shark from either the large coastal, small coastal or pelagic group per vessel per trip within or without Louisiana waters, subject to the size limits described in LAC 76:VII.357.F.1, and, in addition, no person shall possess more than one Atlantic sharpnose shark and one bonnethead shark per person per trip within or without Louisiana waters, regardless of the length of a trip.

3. All owners/operators of vessels recreationally fishing for and/or retaining regulated Atlantic Highly Migratory Species (Atlantic tunas, sharks, swordfish and billfish) in or from the EEZ must obtain and possess a Federal Atlantic Highly Migratory Species Angling permit.

G Those persons possessing a Federal Commercial Directed or Incidental Limited Access Shark Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks are limited to daily take, trip and possession limits as specified in that federal permit. Regardless of where fishing, a person aboard a vessel for which a Federal Shark Permit has been issued shall not retain, possess, barter, trade, or exchange shark of any species group for which the commercial quota has been reached and the season closed in federal waters.

H.1. A vessel that has been issued or possesses a Federal Commercial Directed or Incidental Limited Access Shark Permit issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for Atlantic Sharks shall not possess on any trip, or land from any trip, or sell, barter, trade, or exchange large coastal species in excess of the designated trip limits, as established under the Atlantic Highly Migratory Species Plan and published in the Federal Register, regardless of where taken. No person shall purchase, barter, trade, or exchange shark in excess of the designated trip limits or from any person who does not possess a Commercial State Shark Permit or Federal Commercial Directed or Incidental Limited Access Permit, if applicable.

2. Persons possessing a Commercial State Shark Permit shall not possess on any trip, or land from any trip, or sell, barter, trade, or exchange large coastal species in excess of 4,000 pounds, dressed weight, taken from Louisiana state waters.

3. Wholesale/retail seafood dealers who receive, purchase, trade for, or barter for Atlantic sharks, taken from the EEZ, from a fishing vessel must possess a valid Federal Dealer Permit.

I. A person aboard a vessel for which a Federal Commercial Directed or Incidental Limited Access Shark Permit has been issued, or persons aboard a vessel fishing for or possessing shark in the EEZ shall comply with all applicable federal regulations.

J. Fins

1. ...

2. All sharks possessed by a recreational fisherman shall be maintained with head and fins intact and shall not be skinned until set or put on shore.

3. Shark fins that are possessed aboard or offloaded from a fishing vessel must not exceed 5 percent of the weight of the shark carcasses. All fins must be weighed in conjunction with the weighing of the carcasses at the vessel's first point of landing and such weights of the fins landed must be recorded on dealer records in compliance with R.S. 56:306.5 and R.S. 56:306.6. Fins from shark harvested by a vessel that are in excess of 5 percent of the weight of the carcasses landed shall not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

4. Shark fins shall not be possessed aboard a fishing vessel after the vessel's first point of landing.

5. All mako sharks possessed aboard a commercial fishing vessel shall have fins intact.

K. - L. ...

M. Seasonal Closures

1. All Louisiana state waters out to the seaward boundary of the Louisiana Territorial Sea shall be closed to the recreational and commercial harvest of all sharks between April 1 and June 30 of each year. A holder of a Federal Commercial Directed or Incidental Limited Access Shark Permit may legally harvest sharks from federal waters beyond the Louisiana Territorial Sea and bring those sharks into Louisiana waters for sale within the provisions of that Federal Shark Permit. Effective with this closure, no person shall commercially harvest, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell sharks from the closed area. Effective with the closure, no person shall retain

or possess any sharks in the closed area. Sharks taken incidental to shrimp or menhaden fishing in the closed area, that are retained on the vessel as part of the harvest, may be retained only as a mixed part of the total harvest, and shall not be retained, held, purchased, bartered, traded, exchanged, sold or attempted to be purchased, bartered, traded, exchanged or sold.

M.2. - O. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(10), R.S. 56:326(E)(2), R.S. 56:326.1, R.S. 56:326.3, R.S. 56:320.2(C), and R.S. 325.2(A).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 25:543 (March 1999), amended LR 27:2267 (December 2001), LR 30:

Interested persons may submit comments relative to the proposed Rule to Randy Pausina, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, May 6, 2004.

Bill A. Busbice, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Sharks and Sawfishes
Harvest Regulations**

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

There will be no state or local governmental implementation costs. Enforcement of the proposed rule will be carried out using existing staff and funding levels.

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

There will be no effect on revenues to state or local governmental units from the proposed rule.

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

The proposed rule modification incorporates existing federal regulations of sharks for commercial and recreational harvest as part of state regulations and attempts to clarify existing language in the current rule. It identifies federal and state shark permit requirements, addresses commercial and recreational trip, size and possession limits and describes the condition in which harvested sharks must be maintained aboard recreational and commercial vessels for ease of identification.

The overall impact of the proposed rule change to commercial and recreational fishers is anticipated to be negligible, since these changes have already been implemented in federal waters. Some Louisiana recreational anglers will benefit from the 54-inch size exemption for bonnethead shark and the additional possession limit of one bonnethead shark per person per trip. However, this impact is anticipated to be negligible, since sharks are seldom reported as a targeted species by Louisiana recreational anglers, but normally are taken as incidental catch. Commercial fishers who harvest mako sharks may experience a negative impact from having to maintain fins on all mako sharks aboard their vessels. However, this impact is also anticipated to be negligible, since mako sharks only make up approximately one percent of total annual commercial shark landings in Louisiana.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment in the public or private sector.

Janice A. Lansing
Undersecretary
0403#047

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Office of the Commissioner

Lifting of Quarantine on Out-of-State Apiaries

In accordance with the Administrative Procedure Act, R.S. 49:953 et seq., and R.S. 3:2303 and 3:2304, the Commissioner of Agriculture and Forestry hereby exercises the powers granted to him by R.S. 3:2303 and 2304, lifting the quarantine imposed by the commissioner on out-of-state apiaries to control the small hive beetle. This Quarantine was enacted on February 1, 1999 and published in the *Louisiana Register*, Vol. 25, No. 2, page 392. The lifting of the quarantine on out-of-state apiaries to control the small hive beetle becomes effective immediately, March 3, 2004.

Bob Odom
Commissioner

0403#026

POTPOURRI

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Water Quality Management Plan Volume 1: Continuing Planning Process

Under the authority of the Environmental Quality Act, R.S. 30:2071 et seq., the secretary gives notice that procedures have been initiated to amend Volume 1 of the Louisiana Water Quality Management Plan (WQMP).

The Louisiana Water Quality Management Plan is a document associated with water quality management activities carried out by the state to assist in implementation of the Louisiana Water Quality Regulations, LAC 33:Part IX, and the federal Clean Water Act. The WQMP is divided into volumes. Each volume addresses different issues. Updates and changes to the different volumes are made periodically. Volume 1 of the WQMP is entitled *The Continuing Planning Process* (CPP). The CPP specifies the various processes that the state employs to manage its water quality programs. The last revision to the CPP, Volume 1 of the WQMP, identified by log number 0209Pot2 in the September 20, 2002, issue of the *Louisiana Register*, was approved by the Environmental Protection Agency in a letter from Miguel I. Flores, Director, Water Quality Protection Division, USEPA 6, to L. Hall Bohlinger, Secretary, LDEQ, dated March 28, 2003. These proposed changes to the CPP are intended to clarify the minor differences in the certification and approval process between changes to regulations and changes to the WQMP/CPP.

A public hearing on these proposed changes will be held on April 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street,

Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed changes. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when department personnel at the hearing validate the parking ticket.

All interested persons are invited to submit written comments on the proposed amendments to the CPP. Such comments must be received no later than May 3, 2004, at 4:30 p.m., and should be sent to Kimberly Hamilton-Davis, Office of Environmental Assessment, Environmental Planning Division, Standards, Assessment and Nonpoint Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to kimberly.hamilton-davis@la.gov. A copy of this proposal can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy.

This proposed document is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0403#079

POTPOURRI

Office of the Governor Oil Spill Coordinator's Office

Lake Palourde Oil Spill

The Louisiana Oil Spill Coordinator's Office (LOSCO) as the trustee coordinator for the state of Louisiana, in consultation and agreement with the state natural resource trustees, namely the Louisiana Department of Environmental Quality (LDEQ), the Louisiana Department of Wildlife and Fisheries (LDWF); and the federal natural resource trustee, the U.S. Department of the Interior (USDOI), represented by the U.S. Fish and Wildlife Service (USFWS), have determined that the impacts of the discharges of crude oil from two pipelines, over which such trustees have jurisdiction, warrant conducting a natural resource damage assessment that will include restoration planning.

Site and Release Information

On undetermined dates, two separate pipelines, owned and operated by Union Oil Company of California (Unocal), discharged undetermined amounts of crude oil into East

Lake Palourde's cypress-tupelo swamp and surrounding float marsh in Assumption Parish, Louisiana. An undetermined amount of alluvial river swamp flora and fauna inhabiting this area may have been exposed to crude oil as a result of these discharges. The trustees have determined that Unocal is the Responsible Party (RP) for these incidents.

East Lake Palourde is bordered by extensive acreage of forested wetlands. This forested wetland, or swamp, is composed of an over story of bald cypress and water tupelo trees and an under story of young trees and shrubs, with the water surface mostly covered by fresh float marsh. This cypress-tupelo swamp is valuable habitat for numerous species of fauna and provides many ecological services to other resources.

Aquatic species present include, but are not limited to, finfish, such as catfish, sunfish, bass, and crappie, reptiles, and crustaceans such as crawfish. Wildlife species that may be present in the East Lake Palourde swamp area include, but are not limited to, resident and migratory birds and furbearers. Some of the species that may be present have threatened or endangered status.

Authorities

The trustees are designated pursuant to 33 U.S.C. §2706(b), Executive Order 12777, and the National Contingency Plan, 40 C.F.R. §§300.600 and 300.605. Pursuant to R.S. 30:2460, the State of Louisiana Oil Spill Contingency Plan, September 1995, describes state trust resources, including the following: vegetated wetlands, surface waters, ground waters, air, soil, wildlife, aquatic life, and the appropriate habitats on which they depend. The USDO, through the involvement of USFWS, is trustee for natural resources described within the National Contingency Plan, 40 C.F.R. §300.600(b)(2) and (3), which include the following and their supporting ecosystems: migratory birds, anadromous fish, endangered species, federally owned minerals, certain federally managed water resources, and natural resources located on, over, or under land administered by USDO.

Trustees' Determinations

Following the notice of the discharge, the trustees have made the following determinations required by 15 C.F.R. §990.41(a):

The natural resource Trustees have jurisdiction to pursue restoration pursuant to the Oil Pollution Act (OPA), 33 U.S.C. §§2702 and 2706(c) and the Oil Spill Prevention and Response Act (OSPR), R.S. 30:2451, et seq. The trustees have further determined that the discharges of crude oil into East Lake Palourde's surrounding swamp on the undetermined dates, were incidents, as defined in 15 C.F.R. §990.30 and LAC 43:XXIX.109.

These discharges were not permitted under state, federal, or local law.

These discharges were not from a public vessel.

These discharges were not from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. §1651, et seq.

Natural resources under the trusteeship of the natural resource trustees listed above may have been injured as a result of the incident. The crude oil discharged contains components that may be toxic to aquatic organisms, birds,

wildlife and vegetation. Vegetation, birds, and aquatic organisms may have been exposed to the oil from these discharges, and mortalities to some flora and fauna and lost ecological services may have resulted from these incidents.

Because the conditions of 15 C.F.R. §990.41(a) were met, as described above, the Trustees made the further determination pursuant to 15 C.F.R. §990.41(b) and LAC 43:XXIX.101 to proceed with pre-assessment. Unocal, at the invitation of the Trustees, agreed to participate in the pre-assessments, pursuant to 15 C.F.R. §990.14(c) and LAC 43:XXIX.115.

Determination to Conduct Restoration Activities

For the reasons discussed below, the natural resource Trustees have made the determinations required by 15 C.F.R. §990.42(a) and are providing notice pursuant to 15 C.F.R. §990.44 and LAC 43:XXIX.123 that they intend to conduct restoration planning in order to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of natural resources injured and/or natural resource services lost as a result of these incidents.

Injuries have resulted from these incidents, the extent of which has not been fully determined at this time. The Trustees base this determination upon data, which is collected and analyzed pursuant to 15 C.F.R. §990.43 and LAC 43:XXIX.119, which demonstrate that resources and services have been injured from these incidents. Natural resources injured as a result of the discharges and the response actions may include, but are not limited to, sediment infauna, forested wetlands, birds, and wildlife species.

Although response actions were pursued, the nature of the discharges and the sensitivity of the environment precluded prevention of some injuries to natural resources. The trustees believe that injured natural resources could return to baseline through natural or enhanced recovery, but interim losses have occurred and will continue to occur until a return to baseline is achieved.

Feasible compensatory restoration actions exist to address injuries from these incidents. Restoration actions that could be considered include, but are not limited to: replanting native wetland vegetation in appropriate areas, creation, enhancement, or protection of forested wetlands, protection of endangered species, and creation of bird colony areas.

Assessment procedures are available to evaluate the injuries and define the appropriate type and scale of restoration for the injured natural resources and services. Among these procedures are habitat injury assessment studies to be used in conjunction with the Habitat Equivalency Analysis, to determine compensation for injuries to swamp habitat. Models, comparisons to observations of injury resulting from similar releases, and/or other methodologies are available for evaluating injuries to the ecosystem.

Public Involvement

Pursuant to 15 C.F.R. §990.44(c) and LAC 43:XXIX.135, the trustees seek public involvement in restoration planning for this discharge, through public review of and comments on the documents contained in the administrative record, which is maintained in the Louisiana Oil Spill Coordinator's Office, as well as on the draft plan when completed.

For more information, please contact the Louisiana Oil Spill Coordinator's Office, State Office Building, 150 3rd Street, Suite 405, Baton Rouge, LA, 70801; phone (225) 219-5800 (Attn: Oil Spill/Gina Muhs Saizan).

The Louisiana Oil Spill Coordinator, as the lead administrative trustee, and on behalf of the natural resource trustees of the state of Louisiana and USDOJ/USFWS, pursuant to the determinations made above and in accordance with 15 C.F.R. §990.44(d) and LAC 43:XXIX.135, hereby provides Unocal this Notice of Intent to conduct restoration planning and invites their participation in conducting the restoration planning for these incidents.

Roland J. Guidry
Louisiana Oil Spill Coordinator

0403#067

POTPOURRI

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

Stage 1? Disinfectants and Disinfection By-Products Rule
(LAC 51:XII.101, 311, 367, 1103,
1110-1112, 1115, Chapters 13 and 15)

A Notice of Intent concerning the above referenced proposed Rule was published on October 20, 2003 in the *Louisiana Register* (see LR 29:2165-2174). Written comments on the proposed Rule were received and a public hearing was held on November 25, 2003. Based upon such comments, the department has decided to amend certain

portions of the proposed Rule. At least one of these changes may be considered to be substantive to the parties to be regulated; therefore, in accord with the Administrative Procedure Act, specifically R.S. 49:968(H)(2), notice is hereby given that the department will hold a public hearing on the substantive changes. The public hearing will be held at 10 a.m. on Tuesday, April 20, 2004, in Room 118 of the Blanche Appleby Computer Complex Building (on the Jimmy Swaggart Ministries Campus), 6867 Bluebonnet Blvd., Baton Rouge, LA. All interested persons are invited to attend and present data, views, comments, or arguments, orally or in writing.

Any questions concerning this notice may be directed to Mr. Bobby Savoie, Deputy Assistant Secretary, DHH/OPH/Center for Environmental Health Services, at (225) 763-3590.

Frederick P. Cerise, M.D., M.P.H.
Secretary

0403#051

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
McMoran Exploration Company	So. La. New Orleans District	L	E. P. Brady	1	137591
Samedan-Empire	Bayou De Fleur	L	Brady Estate	1	128597
Temple Hargrove et al.	Golden Meadow	L	Mrs. Leon Theriot	1	060294
Pioneer Oil & Gas Co., Inc.	Boutte	L	Joseph Rathborne Land Co., Inc	1	078858
L. B. J. Co.	Alden Bridge	S	S. L. Herold et al.	1	189944
Ball Marketing, Inc.	Lake Arthur	L	Richard Miller	1	226455
Occidental Petroleum Corp.	So. La. New Orleans District	L	Laura S. Brady et al .	1	105655
Occidental Petroleum Corp.	So. La. New Orleans District	L	Laura S Brady et al.	2	106631
F. A. Callery, Inc	Bayou de Fleur	L	E. P. Brady et al	2	076312 (29)
Charles A. O'Niell	Golden Meadow	L	Tamplain & Talbot	1	046171
Midhurst Oil Corp.	Port Barre	L	J. S. Watkins	1	068423 (30)
W. R. Jennings, Jr.	Wildcat	M	Magee-Smith	1	205117
Houston Oil & Minerals Corp	Bayou des Glaises	L	Wilbert Minerals Corp "B"	033	143755 (30)
Houston Oil & Minerals Corp	Bayou des Glaises	L	Wilbert Minerals Corp "B"	033-D	144895 (30)

James H. Welsh
Commissioner

0403#066

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 24 claims in the amount of \$89,584.82 were received for payment during the period January 1, 2004 through February 29, 2004. There were 22 claims paid and 2 claims denied.

Loran Coordinates of reported underwater obstructions are:

27680	46908	St. Mary
28645	46869	Jefferson

Latitude/Longitude Coordinates of reported underwater obstructions are:

2901.964	9057.602	Lafourche
2910.788	9104.228	Terrebonne
2912.314	9026.971	Terrebonne
2913.147	9026.479	Terrebonne
2916.305	9059.304	Terrebonne
2918.970	8950.460	Jefferson
2921.135	9000.425	Jefferson
2921.47	9015.072	Lafourche
2922.53	9001.286	Jefferson
2922.539	9043.799	Terrebonne
2924.460	9130.500	St. Mary
2936.061	8925.366	St. Bernard
2943.301	8948.001	Plaquemines
2944.147	8927.767	St. Bernard
2945.273	8942.611	St. Bernard
2950.15	8933.312	St. Bernard
2951.456	8941.055	St. Bernard
2958.233	8927.512	St. Bernard
3001.351	8931.304	St. Bernard
3009.008	8956.452	Orleans

A list of claimants and amounts paid can be obtained from Verlie Wims, Administrator, Fishermen's Gear Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-0122.

Scott A. Angelle
Secretary

0403#074

POTPOURRI

Department of Social Services
Office of Community Services

Social Services Block Grant Intended Use Report

The Department of Social Services (DSS) announces opportunities for public review of the state's pre-expenditure report on intended uses of Social Services Block Grant (SSBG) funds for the state fiscal year (SFY) beginning July 1, 2004, and ending June 30, 2005. The proposed 2004-2005 SSBG intended use report has been developed in compliance with the requirements of Section 2004 of the Social Security Act, as amended, and includes information on the types of activities to be supported and the categories or characteristics of individuals to be served through use of the state's allocation of SSBG funds. Section 2004 of the Social Security Act further requires that the SSBG pre-expenditure report shall be made public within the state in such manner as to facilitate comment by any person. The DSS, as the designated state services agency, will continue to administer programs funded under the SSBG in accordance with applicable statutory requirements and federal regulations. The DSS/Office of Community Services (OCS) will be responsible for provision of social services, by direct delivery and vendor purchase, through use of federal SSBG funds. Estimated SSBG expenditures for SFY 2004-2005 total \$42,675,876.

Louisiana, through the DSS/OCS, will utilize its allotted funds to provide comprehensive social services on behalf of children and families in fulfillment of legislative mandates for child protection and child welfare programs. These mandated services, and certain other essential social services, are provided without regard to income to individuals in need. Individuals to be served also include low-income persons as defined in the intended use report who meet eligibility criteria for services provided through SSBG funding.

Services designated for provision through SSBG funding for state fiscal year 2004-2005 are:

- A. Adoption (pre-placement to termination of parental rights)
- B. Child Protection (investigation of child abuse/neglect reports, assessment, evaluation, social work intervention, shelter care, counseling, referrals, and follow-up)
- C. Day Care for Children (direct care for portion of the 24-hour day as follow-up to investigations of child abuse/neglect)
- D. Family Services (social work intervention subsequent to validation of a report of child abuse/neglect, counseling to high risk groups)

E. Foster Care/Residential Habilitation Services (foster care, residential care, and treatment on a 24-hour basis)

Definitions for the proposed services are set forth in the intended use report.

Persons eligible for SSBG funded services include:

A. Persons without regard to income, who are in need of adoption services, child protection, family services, and foster care/residential habilitation services.

B. Individuals without regard to income who are recipients of Title IV-E adoption assistance.

C. Recipients of supplemental security income and recipients of temporary assistance for needy families (TANF) and those persons whose needs were taken into account in determining the needs of TANF recipients.

D. Low-income persons (income eligibles) whose gross monthly income is not more than 125 percent of the poverty level. A family of four with gross monthly income of not more than \$1,964 would qualify as income eligible for services.

E. Persons receiving Title XIX (Medicaid) benefits and certain Medicaid applicants identified in the proposed plan as group eligibles.

Post expenditure reports for the SSBG program for state fiscal years 2001-2002 and 2002-2003 are included in the SSBG intended use report for SFY 2004-2005. The report is available for public review at all OCS parish and regional offices, Monday through Friday from 8:30 a.m. to 4 p.m. Free copies are available by telephone request to (225) 342-1553 or by writing to the Assistant Secretary, P. O. Box 3318, Baton Rouge, LA 70821.

Interested persons will have the opportunity to provide recommendations on the proposed 2004-2005 SSBG intended use report, at a public hearing scheduled for 10 a.m., Thursday, April 8, 2004, at the Office of Community Services, Commerce Building, 333 Laurel Street, Room 652, Baton Rouge, LA. Written comments should be directed to the Assistant Secretary of OCS at the above post office box

address. Comments must be received by the close of business Friday, May 7, 2004.

Ann S. Williamson
Secretary

0403#080

POTPOURRI

Department of Wildlife and Fisheries Office of Fisheries

Spotted Seatrout Management Measures

At its March 4, 2004 Meeting, the Wildlife and Fisheries Commission passed a Resolution to modify its January 8, 2004 Notice of Intent to reduce from five to two the number of spotted seatrout in excess of 25 inches which may be possessed by recreational fishermen in Calcasieu Lake, Sabine Lake and surrounding areas. (See original Notice of Intent, on page 159, *Louisiana Register*, January 20, 2004, for area description.) Because of this change, the commission resolved to hold the Notice of Intent open for public comment for an additional month. Therefore, the Wildlife and Fisheries Commission hereby solicits public comment regarding the proposed Rule, which comment will be taken into account at the commission's April meeting, at which time the commission will take final action on the Rule. Comments will be accepted until final adjournment of the April 1, 2004 Wildlife and Fisheries Commission Meeting. Written comments may be sent to Randy Pausina, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, April 1, 2004.

Bill A. Busbice, Jr.
Chairman

0403#048

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