

I. EXECUTIVE ORDER

BJ 11-18 Homeowner Protections for Community Development Disaster Recovery Unit Hazard Mitigation Grant Program 2552

BJ 11-19 Designation of North Capital Regional Alliance Planning Region 2553

BJ 11-20 In Memoriam 2553

II. EMERGENCY RULES

Education

Student Financial Assistance Commission—Office of Student Financial Assistance Scholarship/Grant Programs—Establishing Eligibility (LAC 28:IV.703)..... 2554

Health and Hospitals

Bureau of Health Services Financing—Disproportionate Share Hospital Payments (LAC 50:V.2501, 2701, 2705, and 2707)..... 2555

Home and Community-Based Services Waivers—Children’s Choice—Money Follows the Person Rebalancing Demonstration Extension (LAC 50:XXI.11107)..... 2557

Home and Community-Based Services Waivers—Community Choices Waiver (LAC 50:XXI.Chapters 81-95) 2558

Inpatient Hospital Services—Pre-Admission Certification (LAC 50:V.301) 2567

Medical Transportation Program—Emergency Ambulance Services—Supplemental Payments (LAC 50:XXVII.327 and 355)..... 2568

Nursing Facilities—Reimbursement Methodology—Minimum Data Set Assessments (LAC 50:II.20001, 20007, 20013 and 20015) 2571

Outpatient Hospital Services—Diabetes Self-Management Training (LAC 50:V.Chapter 63)..... 2574

Pharmacy Benefits Management Program—Maximum Allowable Costs (LAC 50:XXIX.949)..... 2575

Pharmacy Benefits Management Program—Prescription Limit Reduction (LAC 50:XXIX.113) 2576

Professional Services Program—Diabetes Self-Management Training (LAC 50:IX.Chapter 7 and 15103).... 2577

Office of Aging and Adult Services— Home and Community-Based Services Waivers—Community Choices Waiver (LAC 50:XXI.Chapters 81-95)..... 2558

Office of Public Health—Added Use of Vital Records in Program Administration (LAC 48:V.11710)..... 2578

Revenue

Policy Services Division—Income Tax Credits for Wind or Solar Energy Systems (LAC 61:I.1907)..... 2579

Wildlife and Fisheries

Wildlife and Fisheries Commission—2011 Commercial Amberjack Season Reopens..... 2579

2011-12 Deer Seasons on Kisatchie National Forest..... 2580

2011-12 Oyster Season 2581

2011-2012 Waterfowl Season..... 2580

III. RULES

Agriculture and Forestry

Office of Agriculture and Environmental Sciences—Boll Weevil Eradication Commission—Cotton Acreage Reporting and Collection of Assessments (LAC 7:XV.303, 319, and 321)..... 2583

Children and Family Services

Office of the Secretary—Community and Family Support System—Flexible Family Fund (LAC 48:I.Chapter 161)..... 2584

Economic Development

Office of Business Development—Quality Jobs Program (LAC 13:I.Chapter 11)..... 2587

Education

Board of Elementary and Secondary Education—Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.2401 and 2403)..... 2595

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators (LAC 28:LXXIX.2109, 2331, and 2335)..... 2597

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Student Financial Assistance Commission—Office of Student Financial Assistance—Bylaws of the Advisory Committee to the Student Financial Assistance Commission (LAC 28:V.221)	2598
Governor	
Public Defender Board—Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings (LAC 22:XV.Chapters 13 and 15)	2599
Health and Hospitals	
Board of Certified Social Worker Examiners—Social Work (LAC 46:XXV.Chapters 1-9).....	2615
Board of Examiners for Speech-Language—Pathology and Audiology—Speech Pathology and Audiology (LAC 46:LXXV.Chapters 1, 3, 5, and 7).....	2622
Bureau of Health Services Financing—Home and Community-Based Services Waivers Adult Day Health Care (LAC 50:XXI.2103, 2107, 2301, 2501, 2503, 2701, 2901-2905, and 2915)	2624
Federally Qualified Health Centers—Diabetes—Self-Management Training (LAC 50:XI.Chapters 103-105 and 10701).....	2629
Nursing Facilities—Minimum Licensing Standards—Approval of Facility Plans (LAC 48:I.9707).....	2630
Nursing Facilities—Reimbursement Methodology—Direct Care Multiplier and Fair Rental Value Component (LAC 50:II.20005)	2631
Rural Health Clinics—Diabetes Self-Management Training (LAC 50:XI.Chapters 163-165 and 16701)	2631
Office of Aging and Adult Services—Home and Community-Based Services Waivers—Adult Day Health Care (LAC 50:XXI.2103, 2107, 2301, 2501, 2503, 2701, 2901-2905, and 2915)	2624
Office of Public Health—Milk Code (LAC 51:VII; VIII; XXI.105; XXIII.1115, 4525, and 4527).....	2633
Natural Resources	
Office of Conservation—Surface Mining—Statewide Order 29-O-1 (LAC 43:XV.Chapters 1, 23, 29, 31, 35, 54, 65, and 85)	2729
Public Safety and Corrections	
Louisiana State Uniform Construction Code Council—State Uniform Construction Code (LAC 55:VI.301)	2736
Office of the State Fire Marshal—Property Protection Licensing (LAC 55:V.Chapter 32)	2736
Transportation and Development	
Professional Engineering and Land Surveying Board—General Provisions (LAC 46:LXI.Chapters 7, 9, 13, 15, 17, 29, and 31)	2752
Wildlife and Fisheries	
Wildlife and Fisheries Commission—Deer Management Assistance Program (LAC 76:V.111 and 119).....	2752
IV. NOTICES OF INTENT	
Amite River Basin and Water Conservation District	
Expropriation of Property	2755
Agriculture and Forestry	
Horticulture Commission— Retail Florist Exam (LAC 7:XXIX.107, 109, 111, and 113).....	2762
Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides—Pesticides (LAC 7:XXIII.Chapters 1-35)	2764
Children and Family Services	
Economic Stability Section—Child Care Assistance Program and Quality Start (LAC 67:III.Chapter 51)	2789
Civil Service	
Civil Service Commission—Civil Service Rule 2.10—Rule Promulgation	2795
Economic Development	
Office of Business Development Services—Industry Assistance Program (LAC 13:I.Chapter 17)	2795
Tax Equalization Program (LAC 13:I.Chapter 19).....	2799
Office of the Secretary—Angel Investor Tax Credit Program (LAC13:I.3301, 3303, 3305 and 3307).....	2806
Education	
Board of Elementary and Secondary Education—Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.409, 613, 3301, 3303, 3501, and 4313).....	2809
Student Financial Assistance Commission, Office of Student Financial Assistance—Scholarship/Grant Programs—Award Amount (LAC 28:IV.1401)	2814
Environmental Quality	
Office of the Secretary—Regulatory Permit for Rock, Concrete, and Asphalt Crushing Facilities (LAC 33:III.317)(AQ321).....	2815
Permit Review (LAC 33:I.1503 and 1507)(OS087)	2817
Governor	
Board of Examiners of Certified Shorthand Reporters—Examinations (LAC 46:XXI.301, 307 and 309).....	2819
Division of Administration, Office of State Uniform Payroll—Payroll Deduction (LAC 4:III.101, 106, 112, 114, 127 and 131)	2820
Homeland Security and Emergency Preparedness—Homeland Security and Emergency Preparedness (LAC 55:XXI.Chapters 1, 3, and 5).....	2822

Health and Hospitals	
Board of Dentistry—Dentistry Requirements (LAC 46:XXXIII.124, 306, 403, 409, 415, 1611, 1709, and 1711)	2826
Board of Medical Examiners—Respiratory Therapists, Licensure, Certification and Practice (LAC 46:XLV.2501-2575, and 5501-5517).....	2828
Bureau of Health Services Financing—Home and Community-Based Services Waivers	
Active Duty Military Families (LAC 50:XXI.303).....	2840
Home and Community-Based Services Waivers—Community Choices Waiver (LAC 50:XXI.Chapters 81-95)	2842
Home and Community-Based Services Waivers—New Opportunities Waiver—Allocation of Waiver Opportunities for ICF-DD Transitions (LAC 50:XXI.13707)	2852
Office for Citizens with Developmental Disabilities—Home and Community-Based Services Waivers	
Active Duty Military Families (LAC 50:XXI.303).....	2840
Home and Community-Based Services Waivers—New Opportunities Waiver—Allocation of Waiver Opportunities for ICF-DD Transitions (LAC 50:XXI.13707)	2852
Office of Aging and Adult Services—Home and Community-Based Services Waivers—Community Choices Waiver (LAC 50:XXI.Chapters 81-95).....	2842
Labor	
Office of Workers' Compensation—Electronic Billing (LAC 40:I.Chapter 3)	2853
Natural Resources	
Office of Conservation—Hazardous Liquids Pipeline Safety (LAC 33:V.Chapters 301-313).....	2859
Natural Gas Pipeline Safety (LAC 43:III.Chapters 3-51).....	2870
Public Safety and Corrections	
Office of State Police—Operator Qualifications (LAC 55:I.503).....	2886
Transportation and Development	
Office of Highways/Engineering—Advertising on Department of Transportation-Owned Assets (LAC 70:III.Chapter 8).....	2887
Treasury	
Housing Finance Agency—Turnkey Mortgage Origination Program (LAC 16:II.Chapter 7)	2889
Wildlife and Fisheries	
Wildlife and Fisheries Commission—Removal of Abandoned Crab Traps (LAC 76:VII.367).....	2890
V. POTPOURRI	
Agriculture	
Horticulture Commission—Landscape Architect Registration Exam	2893
Natural Resources	
Office of the Secretary, Fishermen's Gear Compensation Fund—Loran Coordinates	2893
Workforce Commission	
Office of Workers' Compensation Administration—Public Hearing—Substantive Changes to Proposed Rules (LAC 40:I.2915).....	2893
VI. INDEX	2895

Executive Orders

EXECUTIVE ORDER BJ 11-18

Homeowner Protections for Community Development
Disaster Recovery Unit Hazard Mitigation Grant Program

WHEREAS, the State of Louisiana Division of Administration Office of Community Development Disaster Recovery Unit is administering a \$750 million Hazard Mitigation Grant Program ("Hazard Mitigation Program") funded by the Federal Emergency Management Agency, which provides funding to homeowners to mitigate against future storm and flood damage through construction;

WHEREAS, the Hazard Mitigation Program is resulting in an unprecedented amount of construction work to elevate existing structures by contractors hired by the homeowners;

WHEREAS, homeowners participating in the Hazard Mitigation Program have a reasonable expectation that all work performed on their homes shall be conducted using safe, sound, quality construction methods and materials, built in compliance with all existing local, state, and federal building codes and ordinances, with quality building components and materials properly installed in accordance with manufacturers' specifications;

WHEREAS, it is vital that homeowners participating in the Hazard Mitigation Program are empowered to make informed decisions about mitigating damage to their homes to protect their families in the future;

WHEREAS, the State also expects, and has always expected, that all work performed under the Hazard Mitigation Program shall meet these expectations and all work shall be performed by competent, experienced contractors and sub-contractors;

WHEREAS, it is paramount to public safety to ensure that the people of Louisiana are protected from unsafe construction methods and unscrupulous predatory marketing and contracting methods; and

WHEREAS, it is critical to public safety and the economic welfare of the citizens of Louisiana to empower homeowners participating in the Hazard Mitigation Program to protect themselves against dilatory, incompetent, unscrupulous, or predatory contractors and sub-contractors;

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

SECTION 1: The Louisiana State Licensing Board for Contractors shall conduct investigations and proceedings necessary to suspend or revoke licenses or issue cease and desist orders against any contractor or sub-contractor performing work funded by the Hazard Mitigation Program if such contractor or sub-contractor fails to demonstrate an ability to adequately meet all State expectations for participation in the Hazard Mitigation Program; fails to meet generally accepted standards of construction or expectations

of the particular area of licensing expertise; violates any federal, state, or local building codes or ordinances; or ceases to possess the necessary qualifications of responsibility, skill, experience and integrity expected of a contractor or subcontractor engaged in work funded by the Hazard Mitigation Program.

SECTION 2: It is further ordered that the Commissioner of Administration is directed to:

1. Implement a process that will empower homeowners to change contractors and complete their elevation projects in a timely and proper manner, including engaging a new contractor or if necessary, transferring remaining grant funds to a new contractor;

2. Promptly inspect or investigate, through his delegate, any residence involved in the complaint of deficient construction methods;

3. Suspend payments to contractors under any existing contract, and/or suspend a contractor from entering into any future contracts funded by the Hazard Mitigation Program if the Commissioner or his delegate finds that the complaint of deficient construction was well-founded and the contractor fails to correct the work in a timely manner, including the repair of any additional damage caused by the contractor or his subcontractor in connection with the deficient construction or caused by a delay in repairing the deficient construction;

4. Increase insurance requirements on contractors participating in the Hazard Mitigation Program to ensure that contractors and subcontractors are sufficiently insured so that homeowners are protected against poor or incomplete construction as well as any additional damage caused by a contractor's deficient construction methods.

5. Notify the Contractor's Licensing Board of any finding that may be cause for suspension or revocation of a contractor or sub-contractor's license by the Board and file any complaint he deems appropriate or necessary with the Board to institute such proceedings;

6. Ensure transparency in the program through publicly posting on the Internet and other publicly accessible places a list of contractors and/or sub-contractors who have been suspended or barred from participation in the Hazard Mitigation Program;

7. Educate homeowners, contractors, and sub-contractors on the Hazard Mitigation Program requirements and resources, including contract requirements for appropriate construction insurance and bonding, in collaboration with the Office of the Louisiana Attorney General Consumer Protection Division and the Contractor Licensing Board;

8. Continue and strengthen anti-fraud, waste, and abuse measures through active participation of the Inspector General Office of the U.S. Department of Homeland Security and the Office of the Attorney General in all aspects of the Hazard Mitigation Program;

9. Design any other measures which the Commissioner in his discretion deems appropriate to implement in the spirit and intent of this mandate.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 19th day of August, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1109#068

EXECUTIVE ORDER BJ 11-19

Designation of North Capital Regional Alliance Planning Region

WHEREAS, The Parish of Pointe Coupee, the East Feliciana Parish Economic Development District, the Parish of West Feliciana and the City of Zachary propose to engage collaboratively in regional planning for sustainable development and economic competitiveness, under the name North Capital Regional Alliance;

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

SECTION 1: Pointe Coupee Parish, East Feliciana Parish, West Feliciana Parish and the City of Zachary are hereby designated as a region for the purpose of facilitating and coordinating local government planning for land use, transportation and economic development, parks and open space, and other related activities.

SECTION 2: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 25th day of August, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1109#069

EXECUTIVE ORDER BJ 11-20

In Memoriam

WHEREAS, every year, on September 11th, the people of Louisiana recognize and honor all those who lost their lives on September 11, 2001, as well as the heroic men and women who sacrificed their lives through civilian and military service in connection with related ongoing overseas combat operations;

WHEREAS, since September 11, 2001, the people of Louisiana have lost 130 brave men and women in these combat operations and more are currently risking their lives daily in defense of our freedom;

WHEREAS, September 11, 2011, marks the ten year anniversary of the tragic events that occurred on September 11, 2001, and provides a special opportunity for remembering their patriotic commitment to the democratic principles of freedom and equality;

WHEREAS, these service members represent all branches of the armed forces, the Marines, Army, Air Force, Navy, National Guard and Reserves;

WHEREAS, these courageous and ambitious Louisianians loved their country and the military and devoted their lives to serving their state and country;

WHEREAS, all tragically lost their lives giving their last full measure of devotion in defense of our beloved country and the freedoms that we as Americans hold dear;

WHEREAS, the memory of these dedicated men and women will live on in the hearts of their family, friends, and fellow service members forever.

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

SECTION 1: As an expression of respect for Louisiana's fallen civilian and service members who lost their lives on September 11, 2001, and the days since to defend this country, the flags of the United States and the State of Louisiana shall be flown at half staff over the State Capitol and all public buildings and institutions of the State of Louisiana from sunrise September 5, 2011, until sunset September 11, 2011.

SECTION 2: This Order is effective upon signature and shall remain in effect until amended, modified, terminated or rescinded.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the city of Baton Rouge, on this 2nd day of September, 2011.

Bobby Jindal
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1109#070

Emergency Rules

DECLARATION OF EMERGENCY

Student Financial Assistance Commission Office of Student Financial Assistance

Scholarship/Grant Programs—Establishing Eligibility (LAC 28:IV.703)

The Louisiana Student Financial Assistance Commission (LASFAC) is exercising the emergency provisions of the Administrative Procedure Act [R.S. 49:953(B)] to amend and re-promulgate the rules of the Scholarship/Grant programs (R.S. 17:3021-3025, R.S. 3041.10-3041.15, and R.S. 17:3042.1.1-3042.8, R.S. 17:3048.1, R.S. 56:797.D(2)).

This rulemaking implements Act 203 of the 2011 Regular Session of the Louisiana Legislature to revise the TOPS core curriculum requirements for students graduating during the 2013-2014 school year and thereafter to add History of Religion to the list of advanced social science courses and to reduce from two to one the number of art units required to substitute for one unit of Fine Arts Survey.

This Emergency Rule is necessary to implement changes to the Scholarship/Grant programs to allow the Louisiana Office of Student Financial Assistance to effectively administer the programs. A delay in promulgating rules would have an adverse impact on the financial welfare of the eligible candidates. LASFAC has determined that this Emergency Rule is necessary in order to prevent imminent financial peril to the welfare of the affected recipients.

This Declaration of Emergency is effective August 30, 2011, and shall remain in effect for the maximum period allowed under the Administrative Procedure Act. (SG12134E)

Title 28 EDUCATION

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

Chapter 7. Taylor Opportunity Program for Students (TOPS) Opportunity, Performance, and Honors Awards

§703. Establishing Eligibility

A. - A.5.a.i.(e). ...

* * *

(f). beginning with the graduates of academic year (high school) 2013-14, at the time of high school graduation, an applicant must have successfully completed 19 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 as follows.

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I (1 unit) or Applied Algebra 1A and 1B (2 units)
1	Algebra II
2	Geometry, Calculus, Pre-Calculus, Algebra III, Probability and Statistics, Discrete Mathematics, Applied Mathematics III, Advanced Math – Pre-Calculus, Advanced Math – Functions and Statistics, Integrated Mathematics III
1	Biology
1	Chemistry
2	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II, Physics, Physics II, or Physics for Technology or Agriscience I and II (both for 1 unit)
1	American History
2	World History, Western Civilization, World Geography or History of Religion
1	Civics and Free Enterprise (1 unit combined) or Civics (1 unit)
1	Fine Arts Survey; (or substitute one unit of a performance course in music, dance, or theater; or substitute one unit of a visual art course; or substitute one unit of a studio art course)
2	Foreign Language, both units in the same language

A.5.a.ii.(a). - J.4.b.ii. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3025, 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 22:338 (May 1996), repromulgated 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, 67 (January 2000), LR 26:689 (April 2000), LR 26:1262 (June 2000), LR 26:1602 (August 2000), LR 26:1996, 1999, 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, 1219 (August 2001), repromulgated LR 27:1850 (November 2001), amended LR 28:772 (April 2002), LR 28:2330, 2332 (November 2002), LR 29:125 (February 2003), LR 29:2372 (November 2003), LR 30:1162 (June 2004), LR 30:1471 (July 2004), LR 30:2019 (September 2004), LR 31:37 (January 2005), LR 31:2213 (September 2005), LR 31:3112 (December 2005), LR 32:2239 (December 2006), LR 33:435 (March 2007), LR 33:2357 (November 2007), LR 33:2612 (December 2007), LR 34:1389 (July 2008), LR 35:228 (February 2009), LR 36:312 (February 2010), LR 36:490 (March 2010), LR 36:2269 (October 2010), LR 36:2855 (December 2010), LR 37:

George Badge Eldredge
General Counsel

1109#016

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Disproportionate Share Hospital Payments (LAC 50:V.2501, 2701, 2705, and 2707)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:V.2501, §§2705, 2701, 2705, and 2707 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amended the provisions governing disproportionate share hospital (DSH) payments to revise the provisions governing non-rural community hospitals and federally mandated statutory hospitals to clarify that hospitals qualifying as a non-rural community hospital in state fiscal year 2007-08 may also qualify in the federally mandated statutory hospital category, and to revise the definition of a non-rural community hospital (*Louisiana Register*, Volume 34, Number 11). In compliance with Act 228 of the 2009 Regular Session of the Louisiana Legislature, the department promulgated an Emergency Rule to amend the provisions governing disproportionate share hospital payments to reallocate any remaining funds from the fiscal year 2009 DSH appropriation to non-rural community hospitals and issue a supplemental payment to these hospitals for their uncompensated care costs (*Louisiana Register*, Volume 35, Number 7).

Act 10 of the 2009 Regular Session of the Louisiana Legislature directed the department to amend the DSH qualifying criteria and payment methodologies for non-rural community hospitals. In compliance with Act 10, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions of the June 26, 2009 Emergency Rule governing supplemental DSH payments to non-rural community hospitals (*Louisiana Register*, Volume 36, Number 1). The department promulgated an Emergency Rule which amended the January 20, 2010 Emergency Rule to amend the provisions governing supplemental DSH payments to non-rural community hospitals in order to redistribute the funds allocated for the state fiscal year 2010 DSH appropriation (*Louisiana Register*, Volume 36, Number 7).

The department promulgated an Emergency Rule which amended the June 29, 2010 Emergency Rule to revise the provisions governing DSH payments to allow for additional payments after completion of the Centers for Medicare and Medicaid Services' mandated independent audit for the state fiscal year (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule. This action is being taken to promote the public health and welfare of uninsured individuals and to ensure their continued access to

health care by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective October 19, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing DSH payments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Medical Assistance Program—Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 25. Disproportionate Share Hospital Payment Methodologies

§2501. General Provisions

A. - B.3. ...

4. Qualification is based on the hospital's latest filed cost report and related uncompensated cost data as required by the Department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments with the exception of public state-operated hospitals, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. After completion of a Center for Medicare and Medicaid Services' (CMS) mandated independent audit for the state fiscal year, additional payments may occur subject to the conditions specified in §2701 B.1, §2705.D.2, and §2707.B. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

B.5. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:654 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:65 (January 2010), amended LR 36:512 (March 2010), LR 37:

Chapter 27. Qualifying Hospitals

§2701. Non-Rural Community Hospitals

A. ...

B. DSH payments to a public, non-rural community hospital shall be calculated as follows.

1. Each qualifying public, non-rural community hospital shall certify to the Department of Health and Hospitals its uncompensated care costs. The basis of the certification shall be 100 percent of the hospital's allowable costs for these services, as determined by the most recently filed Medicare/Medicaid cost report. The certification shall be submitted in a form satisfactory to the department no later than October 1 of each fiscal year. The department will claim the federal share for these certified public expenditures. The department's subsequent reimbursement to the hospital shall be in accordance with the qualifying criteria and payment methodology for non-rural community hospitals included in Act 11 of the 2010 Regular Session of the Louisiana Legislature, and may be more or less than the

federal share so claimed. Qualifying public, non-rural community hospitals that fail to make such certifications by October 1 may not receive Title XIX claim payments or any disproportionate share payments until the department receives the required certifications. Adjustments to the certification amounts shall be made in accordance with the final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

C. Private, non-rural community hospitals (other than freestanding psychiatric hospitals) shall be reimbursed as follows:

1. If the hospital's qualifying uninsured cost is less than 4 percent of total hospital cost, no payment shall be made.

2. If the hospital's qualifying uninsured cost is equal to or greater than 4 percent of total hospital cost, but less than 7 percent, the payment shall be 50 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 4 percent of total hospital cost.

3. If the hospital's qualifying uninsured cost is equal to or greater than 7 percent of total hospital cost, but less than or equal to 10 percent, the payment shall be 80 percent of an amount equal to the difference between the total qualifying uninsured cost as a percent of total hospital cost and 4 percent of total hospital cost.

4. If the hospital's qualifying uninsured cost is greater than 10 percent of total hospital cost, the payment shall be 90 percent of qualifying uninsured cost for the portion in excess of 10 percent of total hospital cost and 80 percent of an amount equal to 5 percent of total hospital cost.

5. Qualifying uninsured cost as used for this distribution shall mean the hospital's total charges for care provided to uninsured patients multiplied by the hospital's cost-to-charge ratio as required by the CMS DHS audit rule for the applicable cost report period.

D. The department shall determine each qualifying hospital's uninsured percentage on a hospital-wide basis utilizing charges for dates of service from July 1, 2009 through June 30, 2010.

D.1. - D.5. Repealed.

E. Hospitals shall submit supporting patient specific data in a format specified by the department, reports on their efforts to collect reimbursement for medical services from patients to reduce gross uninsured costs and their most current year-end financial statements. Those hospitals that fail to provide such statements shall receive no payments and any payment previously made shall be refunded to the department. Submitted hospital charge data must agree with the hospital's monthly revenue and usage reports which reconcile to the monthly and annual financial statements. The submitted data shall be subject to verification by the department before DSH payments are made.

F. In the event that the total payments calculated for all recipient hospitals are anticipated to exceed the total amount appropriated, the department shall reduce payments on a pro rata basis in order to achieve a total cost that is not in excess of the amounts appropriated for this purpose. Any funding not distributed per the methodology outlined in C.1-C.5 above shall be reallocated to these qualifying hospitals based on their reported uninsured costs. The \$10,000,000 appropriation for the non-rural community hospital pool

shall be effective only for state fiscal year 2011 and distributions from the pool shall be considered nonrecurring.

G. Of the total appropriation for the non-rural community hospital pool, \$1,000,000 shall be allocated to public and private non-rural community hospitals with a distinct part psychiatric unit and \$1,000,000 shall be allocated to freestanding psychiatric hospitals.

1. To qualify for this payment hospitals must have uninsured cost as defined in §2701.C.5 equal to or greater than 4 percent of total hospital cost and:

a. be a public or private non-rural community hospital, as defined in §2701.A. that has a Medicaid enrolled distinct part psychiatric unit; or

b. enrolled in Medicaid as a freestanding psychiatric hospital that pursuant to 42 CFR 441.151 is accredited by the Joint Commission on the Accreditation of Healthcare Organizations.

2. Payment shall be calculated by:

a. Dividing each qualifying hospital's distinct part psychiatric unit's uninsured days by the sum of all qualifying psychiatric unit's uninsured days and multiplying by \$1,000,000.

b. Dividing each qualifying freestanding psychiatric hospital's uninsured days by the sum of all qualifying freestanding psychiatric hospital's uninsured days and multiplying by \$1,000,000.

H. The DSH payment shall be made as an annual lump sum payment.

I. Hospitals qualifying as non-rural community hospitals in state fiscal year 2007-2008 and subsequent years may also qualify in the federally mandated statutory hospital category. J. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:655 (April 2008), amended LR 34:2402 (November 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

§2705. Small Rural Hospitals

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

2. Additional payments shall only be made after finalization of the CMS mandated DSH audit for the state fiscal year. Payments shall be limited to the aggregate amount recouped from small rural hospitals based on these reported audit results. If the small rural hospitals' aggregate amount of underpayments reported per the audit results exceeds the aggregate amount overpaid, the payment redistribution to underpaid shall be paid on a pro rata basis calculated using each hospital's amount underpaid divided by the sum of underpayments for all small rural hospitals.

E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:657 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

§2707. Public State-Operated Hospitals

A. ...

B. DSH payments to individual public state-owned or operated hospitals shall be up to 100 percent of the hospital's net uncompensated costs. Final payment shall be made in accordance with final uncompensated care costs as calculated per the CMS mandated audit for the state fiscal year.

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

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:658 (April 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Center for Medicaid Services (CMS) if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#058

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Home and Community-Based Services Waivers
Children's Choice
Money Follows the Person Rebalancing
Demonstration Extension
(LAC 50:XXI.11107)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend LAC 50:XXI.11107 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities adopted provisions in the Children's Choice Waiver for the allocation of additional waiver opportunities for the Money Follows the Person Rebalancing Demonstration Program (*Louisiana Register*, Volume 35, Number 9). The department promulgated an Emergency Rule which amended the provisions of the Children's Choice Waiver to provide for the allocation of waiver opportunities for children who have been identified

by the Office for Citizens with Developmental Disabilities regional offices and human services authorities and districts as meeting state-funded family support criteria for priority level 1 and 2, and needing more family support services than what is currently available through state-funded family support services (*Louisiana Register*, Volume 36, Number 9).

The allocation of opportunities for the Money Follows the Person Rebalancing Demonstration Program was scheduled to end September 30, 2011. Section 2403 of the Affordable Care Act of 2010 authorized an extension of the Money Follows the Person Rebalancing Demonstration Program until September 30, 2016. The department now proposes to amend the provisions of the Children's Choice Waiver in order to allow allocation of waiver opportunities until September 30, 2016. This action is being taken to secure enhanced federal funding. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2011-12.

Effective September 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities amend the provisions governing the allocation of opportunities in the Children's Choice Waiver.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services

Waivers

Subpart 9. Children's Choice

Chapter 111. General Provisions§11107. Allocation of Waiver Opportunities

A. - B. ...

1. The MFP Rebalancing Demonstration will stop allocation of opportunities on September 30, 2016.

a. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed before September 30, 2016, the opportunity will be returned to the MFP Rebalancing Demonstration pool and an offer will be made based upon the approved program guidelines.

b. In the event that an MFP Rebalancing Demonstration opportunity is vacated or closed after September 30, 2016, the opportunity will cease to exist.

C. - C.7. ...

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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 35:1892 (September 2009), amended LR 37:

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#065

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers Community Choices Waiver (LAC 50:XXI.Chapters 81-95)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services repeal and replace LAC 50:XXI.Chapters 81-91 and adopt LAC 50:XXI.Chapters 93-95 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing a home and community-based services (HBCS) waiver for elderly and disabled adults in a codified format for inclusion in the *Louisiana Administrative Code* (LAC) in LAC 50:XXI.Chapters 81-91 (*Louisiana Register*, Volume 30, Number 8). The Elderly and Disabled Adults (EDA) Waiver provides an array of services to the elderly or persons with disabilities in their home or community.

House Concurrent Resolution (HCR) 142 of the 2009 Regular Session of the Louisiana Legislature directed the department to develop a new waiver or state plan options for a sustainable system of home and community-based services and to continue to implement approved cost control mechanisms for the EDA Waiver. Federal requirements also mandate that the department must operate cost-effective home and community-based waiver programs. To assure compliance with federal requirements regarding the cost-effectiveness of the EDA Waiver and in compliance with the directives of HCR 142, the department amended the provisions governing the EDA Waiver to: 1) change the allocation priority of waiver opportunities; 2) implement uniform needs-based assessments to determine the level of support needs and establish an individual cost cap based on need; 3) clarify the service cap for environmental accessibility adaptation services; 4) add shared supports to companion services; 5) mandate that personal representatives cannot be the paid companion care worker; and 6) clarify the provisions governing the development of the waiver recipient's annual services budget (*Louisiana Register*, Volume 35, Number 11). In spite of the revisions to the EDA Waiver program, costs remain higher than comparable waiver programs in many states.

The current federal approval for the EDA Waiver was extended through September 2011. Rather than seek renewal of the EDA Waiver program, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an

Emergency Rule which adopted provisions to establish a new waiver program called the Community Choices Waiver (*Louisiana Register*, Volume 37, Number 9). While subject to the same levels and federal cost restrictions as the EDA Waiver, the Community Choices Waiver will provide a broader range of service options to enable the participant, in conjunction with their support coordinator, families and providers, to tailor a plan of care more responsive to the individual needs of the waiver participant. The Community Choices Waiver will have all of the services currently offered in the EDA Waiver program as well as new services to increase the options available and to provide, where appropriate, less costly alternatives to one-to-one assistance.

This action is being taken to promote the health and welfare of waiver participants and to ensure that these services are rendered in a more cost-effective manner. It is estimated that implementation of this Emergency Rule will increase expenditures in the Medicaid Program for the Community Choices Waiver by approximately \$79,869,077 and will reduce expenditures for the EDA Waiver by approximately \$79,869,077; therefore, the overall fiscal impact for implementation of this Emergency Rule is estimated to be cost neutral to the Medicaid Program in state fiscal year 2011-2012.

Effective October 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services adopt provisions to establish the Community Choices Waiver Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 7. Community Choices Waiver

Chapter 81. General Provisions

§8101. Introduction

A. The target population for the Community Choices Waiver includes individuals who:

1. are currently in the Elderly and Disabled Adults Waiver as of September 30, 2011;
2. are 65 years of age or older; or
3. are 21-64 years of age with a physical disability; and
4. meet nursing facility level of care requirements.

B. Services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

C. Requests for Community Choices Waiver services shall be accepted from the following:

1. an individual requestor/applicant;
2. an individual who is legally responsible for a requestor/applicant; or
3. a responsible representative designated by the requestor/applicant to act on his/her behalf.

D. Each individual who requests Community Choices Waiver services has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the individual to act on his/her behalf in the process of accessing and/or maintaining Community Choices Waiver services.

1. The appropriate form authorized by the Office of Aging and Adult Services (OAAS) shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not take away the right of the individual to continue to transact business on his/her own behalf nor does it give the representative any legal authority other than as specified in the designation form.

b. The written designation is valid until revoked by the individual granting the designation. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

a. assist and represent the individual in the assessment, care plan development and service delivery processes; and

b. to aid the participant in obtaining all of the necessary documentation for these processes.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8103. Request for Services Registry

A. The Department of Health and Hospitals (DHH) is responsible for the request for services registry, hereafter referred to as “the registry,” for the Community Choices Waiver. An individual who wishes to have his or her name placed on the registry must contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the Community Choices Waiver registry shall be screened to determine whether they meet nursing facility level of care. Only individuals who pass this screen shall be added to the registry.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8105. Programmatic Allocation of Waiver Opportunities

A. When funding is available for a new Community Choices Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. If the individual accepts the opportunity, that individual shall be evaluated for a possible Community Choices Waiver opportunity assignment.

B. Community Choices Waiver opportunities shall be offered to individuals on the registry according to priority groups. The following groups shall have priority for Community Choices Waiver opportunities, in the order listed:

1. individuals with substantiated cases of abuse or neglect referred by Adult Protective Services (APS) or Elderly Protective Services (EPS) who, without Community Choices Waiver services, would require institutional placement to prevent further abuse or neglect;

2. individuals diagnosed with Amyotrophic Lateral Sclerosis (ALS), also known as Lou Gehrig’s disease;

3. individuals admitted to a nursing facility who are approved for a stay of more than 90 days;

4. individuals who are not presently receiving home and community-based services (HCBS) under another approved Medicaid waiver program, including, but not limited to the:

a. Adult Day Health Care (ADHC) Waiver;

b. New Opportunities Waiver (NOW);

c. Supports Waiver, and/or

d. Residential Options Waiver (ROW); and

5. all other eligible individuals on the Request for Services Registry (RFSR), by date of first request for services.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process shall continue until an individual is determined eligible. A Community Choices Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

D. Notwithstanding the priority group provisions, 75 Community Choices Waiver opportunities are reserved for qualifying individuals who have been diagnosed with Amyotrophic Lateral Sclerosis (ALS). Qualifying individuals who have been diagnosed with ALS shall be offered an opportunity on a first-come, first-serve basis.

E. Notwithstanding the priority group provisions, up to 100 EDA Waiver opportunities may be granted to qualified individuals who require emergency waiver services. These individuals shall be offered an opportunity on a first-come, first-serve basis.

1. To be considered for an emergency waiver opportunity, the individual must, at the time of the request for the emergency opportunity, be approved for the maximum amount of services allowable under the Long Term Personal Care Services Program and require institutional placement, unless offered an emergency waiver opportunity.

2. The following criteria shall be considered in determining whether or not to grant an emergency waiver opportunity:

a. support through other programs is either unavailable or inadequate to prevent nursing facility placement;

b. the death or incapacitation of an informal caregiver leaves the person without other supports;

c. the support from an informal caregiver is not available due to a family crisis; or

d. the person lives alone and has no access to informal support.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8107. Resource Assessment Process

A. Each Community Choices Waiver applicant/participant shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC). The MDS-HC is designed to verify that an individual meets nursing facility level of care and to assess multiple key domains of function, health, social support and service use. The MDS-HC assessment generates a score that assigns the individual to a Resource Utilization Group (RUG-III/HC).

B. The following seven primary RUG-III/HC categories and subcategories will be utilized to determine the assistance needed for various activities of daily living (ADLs) and instrumental activities of daily living (IADLs):

1. Special Rehabilitation. Individuals in this category have had at least 120 minutes of rehabilitation therapy (physical, occupational and/or speech) within the seven days prior to their MDS-HC assessment.

2. Extensive Services. Individuals in this category have a medium to high level of need for assistance with ADLs and require one or more of the following services:

- a. tracheostomy;
- b. ventilator or respirator; or
- c. suctioning.

3. Special Care. Individuals in this category have a medium to high level of need for assistance with ADLs and have one or more of the following conditions or require one or more of the following treatments:

- a. stage 3 or 4 pressure ulcers;
- b. tube feeding;
- c. multiple sclerosis diagnosis;
- d. quadriplegia;
- e. burn treatment;
- f. radiation treatment;
- g. IV medications; or
- h. fever and one or more of the following

conditions:

- i. dehydration diagnosis;
- ii. pneumonia diagnosis;
- iii. vomiting; or
- iv. unintended weight loss.

4. Clinically Complex. Individuals in this category have the following specific clinical diagnoses or require the specified treatments:

- a. dehydration;
- b. any stasis ulcer. A stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;
- c. end-stage/terminal illness;
- d. chemotherapy;
- e. blood transfusion;
- f. skin problem;
- g. cerebral palsy diagnosis;
- h. urinary tract infection;
- i. hemiplegia diagnosis. Hemiplegia diagnosis shall include a total or partial inability to move, experienced on one side of the body, caused by brain disease or injury;
- j. dialysis treatment;
- k. diagnosis of pneumonia;
- l. one or more of the eight criteria in Special Care (with low ADL need); or
- m. one or more of the three criteria in Extensive Services (with low ADL need).

5. Impaired Cognition. Individuals in this category have a low to medium need for assistance with ADLs and impairment in cognitive ability. This category includes individuals with short-term memory loss, trouble in decision-making, difficulty in making themselves understood by others and difficulty in eating performance.

6. Behavior Problems. Individuals in this category have a low to medium need for assistance with ADLs and behavior problems. This category includes individuals that

may have socially inappropriate behavior, are physically or verbally abusive, have hallucinations or exhibit wandering behavior.

7. Reduced Physical Function. Persons in this category do not meet the criteria in one of the previous six categories.

C. Based on the RUG III/HC score, the applicant/participant is assigned to a level of support category and is eligible for a set annual services budget associated with that level.

1. If the applicant/participant disagrees with his/her annual services budget, the applicant/participant or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/participant may qualify for an increase in the annual services budget amount upon showing that:

a. one or more answers are incorrect as recorded on the MDS-HC (except for the answers in Sections AA, BB, A, and R); or

b. he/she needs an increase in the annual services budget to avoid entering into a nursing facility.

D. Each Community Choices Waiver participant shall be re-assessed at least annually.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 83. Covered Services

§8301. Support Coordination

A. Support coordination is services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing, and other services, regardless of the funding source for these services. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved plan of care (POC) as well as:

1. evaluation and/or re-evaluation of the level of care;
2. assessment and/or re-assessment of the need for waiver services;
3. development and/or review of the service plan;
4. coordination of multiple services and/or among multiple providers;
5. linking waiver participants to other federal, state and local programs;
6. monitoring the implementation of the service plan and participant health and welfare;
7. addressing problems in service provision;
8. responding to participant crises; and
9. determining the cost neutrality of waiver services for an individual.

B. Support coordinators shall provide information and assistance to waiver participants in directing and managing their services. When participants choose to self-direct their waiver services, the support coordinators are responsible for reviewing the *Self-Direction Employer Handbook* with participants who have elected this option for service delivery. Support coordinators shall be available to participants for on-going support and assistance in these decision-making areas and with employer responsibilities.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8303. Transition Intensive Support Coordination

A. Transition intensive support coordination is services that will assist participants who are currently residing in nursing facilities in gaining access to needed waiver and other state plan services, as well as needed medical, social, housing, educational and other services, regardless of the funding source for these services. Support coordinators shall initiate and oversee the process for assessment and reassessment, as well as be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

1. This service is paid for up to six months prior to transition from the nursing facility when adequate pre-transition supports and activities are provided and documented.

2. The scope of transition intensive support coordination shall not overlap with the scope of support coordination.

B. Support coordinators may assist persons to transition for up to 180 days while the individual still resides in the facility.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8305. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are necessary physical adaptations that will be made to the home to reasonably assure the health and welfare of the participant, or enable the participant to function with greater independence in the home. Without these necessary adaptations, the participant would require institutionalization.

1. There must be an identified need for environmental accessibility adaptations as indicated by the MDS-HC.

a. Once identified by MDS-HC, a credential assessor must verify the need for, and draft specifications for, the environmental accessibility adaptation(s).

b. A credentialed assessor must ensure that the environmental accessibility adaptation(s) meets all specifications before payment shall be made to the contractor that performed the environmental accessibility adaptation(s).

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8307. Personal Assistance Services

A. Personal assistance services (PAS) provide assistance and/or supervision necessary for the participant with functional impairments to remain safely in the community. PAS include the following services and supports based on the approved POC:

1. supervision or assistance in performing activities of daily living;

2. supervision or assistance in performing instrumental activities of daily living;

3. protective supervision provided solely to assure the health and welfare of a participant;

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) in accordance with applicable delegation/medication administration;

5. supervision or assistance while escorting/accompanying the individual outside of the home to perform tasks, including instrumental activities of daily living, health maintenance or other needs as identified in the POC and to provide the same supervision or assistance as would be rendered in the home; and

6. extension of therapy services, defined as follows:

a. Licensed therapists may choose to instruct the attendants on the proper way to assist the participant in follow-up therapy sessions. This assistance and support provides reinforcement of instruction and aids in the rehabilitative process.

b. In addition, a Registered Nurse may instruct an attendant to perform basic interventions with a participant that would increase and optimize functional abilities for maximum independence in performing activities of daily living such as range of motion exercises.

B. PAS is provided in the participant's home or in another location outside of the home if the provision of these services allows the individual to participate in normal life activities pertaining to the ADLs and IADLs cited in the POC. IADLs may not be performed in the participant's home when the participant is absent from the home. There shall be no duplication of services. PAS may not be provided while the participant is admitted to or attending a program which provides in-home assistance with ADLs or IADLs or while attending or admitted to a program or setting where such assistance is provided.

C. The provision of PAS services outside of the participant's home does not include trips outside of the borders of the state without prior written approval by OAAS or its designee, through the POC or otherwise.

D. Participants who receive PAS cannot receive Long-Term Personal Care Services.

E. PAS may be provided through the "a.m. and p.m." delivery option defined as follows:

1. a minimum of 1 hour and a maximum of 2 hours of PAS provided to assist the participant at the beginning of his/her day, referred to as the "a.m." portion of this PAS delivery method; and

2. a minimum of 1 hour and a maximum of 2 hours to assist the participant at the end of his/her day, referred to as the "p.m." portion of this PAS delivery method; and

3. a minimum 4 hours break between the "a.m." and the "p.m." portions of this PAS delivery method; and

4. not to exceed a maximum of 4 hours of PAS being provided within a calendar day.

5. "A.m. and p.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

6. It is permissible to receive only the "a.m." or "p.m." portion of PAS within a calendar day. However, "a.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

F. PAS may be provided by one worker for up to three waiver participants who live together and who have a common direct service provider. Waiver participants may

share PAS staff when agreed to by the participants and as long as the health and welfare of each participant can be reasonably assured. Shared PAS is to be reflected in the POC of each participant. Reimbursement rates shall be adjusted accordingly.

G. A home health agency direct service worker who renders personal assistance services must be a qualified home health aide as specified in Louisiana's Minimum Licensing Standards for Home Health Agencies.

H. Every PAS provider shall ensure that each waiver participant who receives PAS has a written individualized back-up staffing plan and agreement for use in the event that the assigned PAS worker is unable to provide support due to unplanned circumstances, including emergencies which arise during a shift. The individualized plan and agreement shall be developed and maintained in accordance with OAAS policy.

I. Every PAS provider shall ensure timely completion of the OAAS Emergency Plan and Agreement Form for each waiver participant they serve in accordance with OAAS Policy.

J. The following individuals are prohibited from being reimbursed for providing services to a participant:

1. the participant's spouse;
2. the participant's curator;
3. the participant's tutor;
4. the participant's legal guardian;
5. the participant's responsible representative; or
6. the person to whom the participant has given representative and mandate authority (also known as power of attorney).

K. Participants are not permitted to receive PAS while living in a home or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8309. Transition Services

A. Transition Services are time limited, non-recurring set-up expenses available for individuals who have been offered and approved for a Community Choices Waiver opportunity and are transitioning from a nursing facility to a living arrangement in a private residence where the individual is directly responsible for his/her own living expenses.

B. Allowable expenses are those necessary to enable the individual to establish a basic household, excluding expenses for room and board, but includes:

1. security deposits that are required to obtain a lease on an apartment or house;
2. specific set up fees or deposits (telephone, electric, gas, water and other such necessary housing set up fees or deposits);
3. essential furnishings to establish basic living arrangements; and
4. health and welfare assurances (pest control/eradication, fire extinguisher, smoke detector and first aid supplies/kit).

C. These services must be prior approved in the participant's POC.

D. These services do not include monthly rental, mortgage expenses, food, monthly utility charges and household appliances and/or items intended for purely diversional/recreational purposes. These services may not be used to pay for furnishing or to set-up living arrangements that are owned or leased by a waiver provider.

E. Support coordinators shall exhaust all other resources to obtain these items prior to utilizing the waiver.

F. Funds are available one time per \$1500 lifetime maximum for specific items as prior approved in the participant's POC.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8311. Adult Day Health Care Services

A. Adult day health care (ADHC) services are furnished as specified in the POC at an ADHC center, in a non-institutional, community-based setting encompassing both health/medical and social services needed to ensure the optimal functioning of the participant.

B. ADHC Services include:

1. meals, which shall not constitute a "full nutritional regimen" (3 meals per day) but will include 2 snacks and a hot nutritious lunch;
2. transportation between the participant's place of residence and the ADHC;
3. assistance with activities of daily living;
4. health and nutrition counseling;
5. individualized exercise program;
6. individualized goal-directed recreation

Programs;

7. health education classes; and
8. individualized health/nursing services.

C. ADHC services may be provided no more than 10 hours per day and no more than 50 hours per week.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8313. Caregiver Temporary Support Services

A. Caregiver temporary support services are furnished on a short-term basis because of the absence or need for relief of caregivers during the time they are normally providing unpaid care for the participant.

B. Federal financial participation is not claimed for the cost of room and board except when provided as part of caregiver temporary support services care furnished in a facility approved by the state that is not a private residence.

C. The intent of caregiver temporary support services is to provide relief to unpaid caregivers to maintain the informal support system.

D. Caregiver temporary support services are provided in the following locations:

1. the participant's home or place of residence;
2. nursing facilities;
3. assisted living facilities;

4. respite centers; or
5. adult day health care centers.

E. Caregiver temporary support services provided by nursing facilities, assisted living facilities and respite centers must include an overnight stay.

F. When Caregiver temporary support service is provided by an ADHC center, services may be provided no more than 10 hours per day.

G. Services may be utilized no more than 30 calendar days or 29 overnight stays per plan of care year for no more than 14 consecutive calendar days or 13 consecutive overnight stays. The service limit may be increased based on documented need and prior approval by OAAS.

H. Caregiver temporary support may not be delivered at the same time as adult day health care or personal assistance 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8315. Assistive Devices and Medical Supplies

A. Assistive devices and medical supplies are specialized medical equipment and supplies which include devices, controls, appliances, or nutritional supplements specified in the POC that enable individuals to:

1. increase or maintain their abilities to perform activities of daily living; or
2. to perceive, control, or communicate with the environment in which they live or provide emergency response.

B. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of assistive devices, and durable and non-durable medical equipment. This service includes personal emergency response systems (PERS) and other in-home monitoring and medication management devices and technology.

C. This service may also be used for routine maintenance or repair of specialized equipment. Batteries, extended warranties, and service contracts that are cost effective may be reimbursed. This includes medical equipment not available under the State Plan that is necessary to address participant functional limitations and necessary medical supplies not available under the State Plan that are addressed in the POC.

D. Where applicable, participant must use Medicaid State Plan, Medicare, or other available payers first. The participant's preference for a certain brand or supplier is not grounds for declining another payer in order to access waiver services.

E. All services must be based on a verified need of the participant and the service must have a direct or remedial benefit to the participant with specific goals and outcomes. This benefit must be determined by an independent assessment on any items whose cost exceeds \$500 and on all communication devices, mobility devices, and environmental controls. Independent assessments are done by the appropriate professional, *e.g.*, an occupational therapist, physical therapist, and/or speech-language pathologist, who has no fiduciary relationship with the manufacturer, supplier, or vendor of the item.

F. All items must reduce reliance on other Medicaid State Plan or waiver services.

G. All items must meet applicable standards of manufacture, design, and installation.

H. All items must be prior authorized and no experimental items shall be authorized.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8317. Home Delivered Meals

A. The purpose of home delivered meals is to assist in meeting the nutritional needs of an individual in support of the maintenance of self-sufficiency and enhancing the quality of life.

B. Up to two nutritionally balanced meals per day may be delivered to the home of an eligible participant who is unable to leave his/her home without assistance, unable to prepare his/her own meals, and/or has no responsible caregiver in the home.

C. Each meal shall provide a minimum of one-third of the current recommended dietary allowance (RDA) for the participant as adopted by the United States Department of Agriculture. The provision of home delivered meals does not provide a full nutritional regimen.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8319. Non-Medical Transportation

A. Non-medical transportation is a service offered to enable waiver participants to participate in normal life activities pertaining to the IADLs cited in the POC and includes activities needed to facilitate transition to the community.

B. Waiver transportation services may not be used to:

1. replace unpaid caregivers, volunteer transportation, and other transportation services available to the individual;
2. replace services that are included in a service provider's reimbursement;
3. obtain items that can be delivered by a supplier or by mail-order; or
4. compensate the service provider for travel to or from the service provider's home.

C. This service shall be offered in addition to medical transportation required under 42 CFR §431.53 and transportation services under the State Plan, defined at 42 CFR §440.170(a) (if applicable), and shall not replace them.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8321. Nursing Services

A. Nursing services are services that are medically necessary and may only be provided efficiently and effectively by a nurse practitioner, registered nurse, or a licensed practical nurse working under the supervision of a registered nurse. The nursing services provided must be within the scope of the Louisiana statutes governing the practice of nursing.

B. Nursing services may include periodic assessment of the participant's medical condition when the condition requires a skilled nurse to identify and evaluate the need for medical intervention or to monitor and/or modify the medical treatment services provided by non-professional care providers.

C. Services may also include regular, ongoing monitoring of a participant's fragile or complex medical condition as well as the monitoring of a participant with a history of noncompliance with medication or other medical treatment needs.

D. Nursing may also be used to assess a participant's need for assistive devices or home modifications, training the participant and family members in the use of the purchased devices, and training of direct service workers in tasks necessary to carry out the POC.

E. Where applicable, a participant must use Medicare, Medicaid State Plan services, or other available payers first. The participant's preference for a certain staff or agencies is not grounds for declining another payer in order to access waiver services.

F. All services must be based on a verified need of the participant. The service must have a direct or remedial benefit to the participant with specific goals and outcomes.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8323. Skilled Maintenance Therapy

A. Skilled maintenance therapy is therapy services that may be received by Community Choices Waiver participants in the home or in a rehabilitative center. Unlike State Plan therapy services, provision of therapy services under the Community Choices Waiver expands the provider base to rehabilitative centers and individually licensed therapists so that participants may receive maintenance therapies either at home, work, or at a rehabilitative center in order to increase access to therapy services.

B. Skilled maintenance therapy services include physical therapy, occupational therapy, respiratory therapy and speech and language therapy.

D. Therapy services provided to recipients under the Community Choices Waiver are not necessarily tied to an episode of illness or injury and instead focus primarily on the person's functional need for maintenance of, or reducing the decline in, the participant's ability to carry out activities of daily living.

E. Skilled maintenance therapies may also be used to assess a participant's need for assistive devices or home modifications, training the participant and family members in the use of the purchased devices, performance of in-home fall prevention assessments, and participation on the POC planning team.

F. Services may be provided in a variety of locations including the participant's home, place of employment or a clinic as approved by the POC planning team.

G. Skilled maintenance therapy services specifically include:

1. physical therapy services which promote the maintenance of, or the reduction in, the loss of gross/fine motor skills, and facilitate independent functioning and/or prevent progressive disabilities including:

a. professional assessment(s), evaluation(s) and monitoring for therapeutic purposes;

b. physical therapy treatments and interventions;

c. training regarding physical therapy activities, use of equipment and technologies;

d. designing, modifying or monitoring the use of related environmental modifications;

e. designing, modifying, and monitoring the use of related activities supportive to the POC goals and objectives; or

f. consulting or collaborating with other service providers or family members, as specified in the POC;

2. occupational therapy (OT) services which promote the maintenance of, or reduction in, the loss of fine motor skills, coordination, sensory integration, and/or facilitate the use of adaptive equipment or other assistive technology including:

a. teaching of daily living skills;

b. development of perceptual motor skills and sensory integrative functioning;

c. design, fabrication, or modification of assistive technology or adaptive devices;

d. provision of assistive technology services;

e. design, fabrication, or applying selected orthotic or prosthetic devices or selecting adaptive equipment;

f. use of specifically designed crafts and exercise to enhance function;

g. training regarding OT activities; and

h. consulting or collaborating with other service providers or family members, as specified in the POC;

3. speech language therapy (SLT) services which preserve abilities for independent function in communication, facilitate oral motor and swallowing function, facilitate use of assistive technology, and/or prevent progressive disabilities including:

a. identification of communicative or oropharyngeal disorders;

b. prevention of communicative or oropharyngeal disorders;

c. development of eating or swallowing plans and monitoring their effectiveness;

d. use of specifically designed equipment, tools, and exercises to enhance function;

e. design, fabrication, or modification of assistive technology or adaptive devices;

f. provision of assistive technology services;

g. adaptation of the participant's environment to meet his/her needs;

h. training regarding SLT activities; and

i. consulting or collaborating with other service providers or family members, as specified in the POC; and

4. Respiratory therapy services which provide preventative and maintenance airway-related techniques and procedures including:

a. application of medical gases, humidity and aerosols;

b. intermittent positive pressure;

c. continuous artificial ventilation;

d. administration of drugs through inhalation and related airway management;

e. individual care;

f. instruction administered to the waiver participant and informal supports; and

g. periodic management of ventilation equipment for participants whose ventilation care is performed by informal caregivers.

H. Where applicable, the participant must use Medicaid State Plan, Medicare, or other available payers first. The participant's preference for a certain therapist or agency is not grounds for declining another payer in order to access waiver services.

I. All services must be based on a verified need of the participant and the service must have a direct or remedial benefit to the participant with specific goals and outcomes.

The authorized service will be reviewed/monitored by the support coordinator to verify the continued need for the service and that the service meets the participant's needs in the most cost effective manner.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 85. Self-Direction Initiative

§8501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the participant to coordinate the delivery of Community Choices personal assistance services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the participant utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Participant Responsibilities. Waiver participants choosing the self-directed services option must understand the rights, risks, and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he/she must have a responsible representative who understands the rights, risks, and responsibilities of managing his/her care and supports within his/her individual budget.

C. Termination of the Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. A waiver participant may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a participant and require him/her to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-directed option;

b. the participant is no longer able to direct his/her own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the responsible representative; or

d. the participant or responsible representative:

i. places barriers to the payment of the salaries and related state and federal payroll taxes of direct support staff;

ii. fails to follow the POC;

iii. fails to provide required documentation of expenditures and related items; or

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 87. Plan of Care

§8701. Plan of Care

A. The applicant and support coordinator have the flexibility to construct a plan of care that serves the participant's health and welfare needs. The service package provided under the POC may include the array of services covered under the Community Choices Waiver in addition to services covered under the Medicaid State Plan (not to exceed the established service limits for either waiver or state plan services) as well as other services, regardless of the funding source for these services. All services approved pursuant to the POC shall be medically necessary and provided in a cost-effective manner. The POC shall be developed using a person-centered process coordinated by the support coordinator.

B. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's, or its designee's, approval of the POC.

C. The support coordinator shall complete a POC which shall contain the:

1. types and number of services (including waiver and all other services) necessary to reasonably assure health and welfare and to maintain the person in the community;

2. individual cost of each service (including waiver and all other services); and

3. the total cost of services covered by the POC.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 89. Admission and Discharge Criteria

§8901. Admission Criteria

A. Admission to the Community Choices Waiver Program shall be determined in accordance with the following criteria:

1. meets the target population criteria as specified in the approved waiver document;

2. initial and continued Medicaid eligibility;

3. initial and continued eligibility for a nursing facility level of care;

4. justification, as documented in the approved POC, that the Community Choices Waiver services are appropriate, cost effective and represent the least restrictive environment for the individual; and

5. reasonable assurance that the health and welfare of the participant can be maintained in the community with the provision of Community Choices Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria above shall result in denial of admission to the Community Choices Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8903. Admission Denial or Discharge Criteria

A. Admission shall be denied or the participant shall be discharged from the Community Choices Waiver Program if any of the following conditions are determined.

1. The individual does not meet the target population criteria as specified in the approved waiver document.

2. The individual does not meet the criteria for Medicaid eligibility.

3. The individual does not meet the criteria for a nursing facility level of care.

4. The participant resides in another state or has a change of residence to another state.

5. Continuity of services is interrupted as a result of the participant not receiving and/or refusing Community Choices Waiver services (exclusive of support coordination services) for a period of 30 consecutive days.

6. The health and welfare of the individual cannot be reasonably assured through the provision of Community Choices Waiver services.

7. The individual fails to cooperate in the eligibility determination process or in the performance of the POC.

8. Failure on behalf of the individual to maintain a safe and legal home environment.

9. It is not cost effective or appropriate to serve the individual in the Community Choices Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 91. Waiver Cost Neutrality

§9101. Waiver Costs Limit

A. The annual service budget for each of the RUG-III/HC groups shall be reviewed to ensure that the costs of the Community Choices Waiver remain within applicable federal rules regarding the cost-effectiveness of the waiver. To ensure cost-effectiveness, the mean expenditures across all RUG-III/HC categories must be less than or equal to the average cost to the state of providing care in a nursing facility. If the waiver is not cost-effective, the annual service budgets for some or all RUG-III/HC groups shall be reduced to bring the waiver into compliance.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 93. Provider Responsibilities

§9301. General Provisions

A. Any provider of services under the Community Choices Waiver shall abide by and adhere to any federal or state laws, rules, policy, procedures, or manuals issued by the department. Failure to do so may result in sanctions.

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving

services in accordance with the Community Choices Waiver Program provisions and the services have actually been provided.

C. Any provider of services under the Community Choices Waiver shall not refuse to serve any individual who chooses their agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide service and supports have failed and there is no option but to refuse services.

1. OAAS or its designee must be immediately notified of the circumstances surrounding a refusal by a provider to render services.

2. This requirement can only be waived by OAAS or its designee.

D. Providers must maintain adequate documentation as specified by OAAS, or its designee, to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department, or its designee.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§9303. Reporting Requirements

A. Support coordinators and direct service providers are obligated to report any changes to the department that could affect the waiver participant's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordinators and direct service providers are responsible for documenting the occurrence of incidents or accidents that affect the health and welfare of the participant and for completing an incident report. The incident report shall be submitted to the department or its designee with the specified requirements.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 95. Reimbursement

§9501. Reimbursement Methodology

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

1. personal assistance services (except for the "a.m. and p.m." service delivery model);

a. personal assistance services furnished to one participant shall be reimbursed at 100 percent of the full rate for the participant;

b. personal assistance services furnished to two participants shall be reimbursed at 75 percent of the full rate for each participant;

c. personal assistance services furnished to three participants shall be reimbursed at 66 percent of the full rate for each participant;

2. in-home caregiver temporary support service when provided by a personal care services or home health agency; and

3. caregiver temporary support services when provided by an adult day health care center.

B. The following services shall be reimbursed at the cost of the assessment, inspection, installation/fitting, maintenance, repairs, adaptation, device, equipment, or supply item and when the service has been prior authorized by the plan of care:

1. environmental accessibility adaptations;
2. assistive devices and medical supplies;
3. home delivered meals (not to exceed the maximum limit set by OAAS); and
4. transition expenses up to a lifetime maximum of \$1500.

C. The following services shall be reimbursed at a per diem rate:

1. caregiver temporary support services when rendered by the following providers:
 - a. assisted living providers;
 - b. nursing facility; or
 - c. respite center.

D. The following services shall be reimbursed at an established monthly rate:

1. support coordination; and
2. transition intensive support coordination.

E. Non-medical transportation is reimbursed per one-way trip at a fee established by OAAS.

F. Certain nursing and skilled maintenance therapy procedures as well as personal assistance services furnished via "a.m. and p.m." delivery method will be reimbursed on a per-visit basis.

G. Certain environmental accessibility adaptation, nursing, and skilled maintenance therapy procedures will be reimbursed on a per-service basis.

H. Adult day health care services shall be reimbursed a per quarter hour rate for services provided under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for all Community Choices Waiver participants by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

I. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's approval of the POC.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§9503. Direct Support Professionals Wage Enhancement

A. An hourly wage enhancement payment in the amount of \$2 shall be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide home and community-based waiver services to Community Choices Waiver participants. Direct support professionals are persons who deliver direct care services such as assistance with the activities of daily living.

1. At least 75 percent of the wage enhancement shall be paid in the aggregate to the direct support professionals as wages. If less than 100 percent of the enhancement is paid in

wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

B. The minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on October 1, 2011 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#066

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Inpatient Hospital Services—Pre-Admission Certification (LAC 50:V.301)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50: V.301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing repealed the December 20, 1985 Rule governing the reimbursement methodology and inpatient admission criteria for designated surgical procedures performed in an ambulatory (outpatient) setting, and amended the provisions of the June 20, 1994 Rule governing registration, length of stay assignments and pre-admission certification for inpatient hospital services to require pre-admission certification for all admissions to non-state and state operated acute care general hospitals (*Louisiana Register*; Volume 36, Number 1). The January 20, 2010 Rule also repromulgated the provisions contained in the June 20, 1994 Rule and a June 20, 2001 Rule governing pre-admission certification and length of stay assignments for inpatient psychiatric services for inclusion in the *Louisiana Administrative Code*.

The department determined that it was necessary to amend the provisions of the January 20, 2010 Rule to revise the provisions governing extensions of the initial length of stay

assignment for inpatient hospital admissions (*Louisiana Register*, Volume 36, Number 2). This Emergency Rule is being promulgated to continue the provisions of the January 26, 2010 Emergency Rule. This action is being taken to promote the health and welfare of Medicaid recipients who rely on the services provided by acute care hospitals.

Effective September 23, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing pre-admission certification for inpatient hospital services.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Pre-Admission Certification

§301. General Provisions

A. - F.2. ...

a. Subsequent approved extensions may be submitted for consideration referencing customized data, Southern Regional and national length of stay data.

F.3. - J.3. ...

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, Bureau of Health Services Financing, LR 36:66 (January 2010), amended LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#059

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Medical Transportation Program
Emergency Ambulance Services
Supplemental Payments
(LAC 50:XXVII.327 and 355)

The Department of Health and Hospitals, Bureau of Health Services Financing rescinds the July 1, 2011, the July 20, 2011 and the August 20, 2011 Emergency Rules governing supplemental payments for emergency ambulance services and amends LAC 50:XXVII.327 and §355 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum

period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing provides reimbursement for emergency ambulance transportation services. The department promulgated an Emergency Rule which established supplemental payments for governmental ambulance providers who render emergency medical transportation services to low income and needy patients in the state of Louisiana (*Louisiana Register*, Volume 37, Number 6). The department promulgated an Emergency Rule which amended the provisions of the July 1, 2011 Emergency Rule to allow supplemental payments for all ambulance providers who render emergency medical transportation services to low income and needy patients (*Louisiana Register*, Volume 37, Number 7). The July 20, 2011 Emergency Rule was amended to allow supplemental payments to providers of air ambulance transportation services (*Louisiana Register*, Volume 37, Number 8). The department now proposes to rescind and replace the July 1, 2011, the July 20, 2011, and the August 20, 2011 Emergency Rules in order to promulgate clear and concise provisions governing supplemental payments for emergency ambulance services. This action is being taken to promote the health and welfare of Medicaid recipients by ensuring continued access to emergency ambulance services.

Effective September 20, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing rescinds and replaces the July 1, 2011, the July 20, 2011, and the August 20, 2011 Emergency Rules governing supplemental payments for emergency medical transportation services rendered by ambulance providers.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXVII. Medical Transportation Program

Chapter 3. Emergency Medical Transportation

Subchapter B. Ground Transportation

§327. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical transportation services rendered during the quarter.

B. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to qualify to receive supplemental payments. The ambulance service provider must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider;
3. provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170; and
4. be affiliated with the Statewide Ambulance Service District.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of:

1. the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate; and

2. the difference between the payments made to these qualifying providers for emergency medical transportation and air ambulance services provided to uninsured patients and the average amount that would have been paid at the equivalent community rate.

D. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level. The community rate is defined as the average amount payable by commercial insurers for the same services.

E. Supplemental Payment Calculation. The following methodology shall be used to establish the quarterly supplemental payment for ambulance providers:

1. The department shall identify Medicaid ambulance service providers that were qualified to receive supplemental Medicaid reimbursement for emergency medical transportation services and air ambulance services during the quarter.

2. For each Medicaid ambulance service provider described in E.1, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

3. For each Medicaid ambulance service provider described in E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under E.2.

4. For each Medicaid ambulance service provider described in E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under E.2.

5. For each Medicaid ambulance service provider described in E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under E.3 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under E.4.

6. For each Medicaid ambulance service provider described in E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under E.5.

7. For each Medicaid ambulance service provider described in E.1, the department shall identify the emergency medical transportation and air ambulance services which the Medicaid ambulance service providers provided to uninsured patients.

8. For each Medicaid ambulance service provider described in E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under E.7.

9. For each Medicaid ambulance service provider described in E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under E.7.

10. For each Medicaid ambulance service provider described in E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the

emergency medical transportation and air ambulance services under E.8 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under E.9.

11. For each Medicaid ambulance service provider described in E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under E.10.

12. For each Medicaid ambulance service provider described in E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from E.6 and total uninsured payment differential from E.11.

13. The department will establish the following two pools from which supplemental payments will be made:

a. Pool One for ambulance service providers identified in E.1 who are located in large urban areas and owned by governmental entities; and

b. Pool Two for all other ambulance service providers identified in E.1.

14. The department will fund the two pools by contributing the appropriate amount as designated.

15. Each Medicaid ambulance service provider described in E.1 will share in the appropriate pool funding in proportion to its emergency medical transportation and air ambulance services utilization, not to exceed the Medicaid ambulance service provider's upper payment limit as described in E.12.

16. Any amount which would have been payable to a qualified Medicaid ambulance service provider because of its utilization, but which exceeds its upper payment limit, shall instead be distributed among the other qualifying Medicaid ambulance service providers in that pool.

17. Any amount which cannot be distributed from Pool One will be transferred to Pool Two for distribution according to E.15 and E.16.

F. Community Rate Calculations. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level.

1. For purposes of these provisions, the community rate level is defined as the average amount payable by the commercial payers for the same services.

G. The supplemental payment will be made effective for emergency medical transportation provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation will be made every three years.

H. The total amount to be paid by the state to qualified Medicaid ambulance service providers for supplemental Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under §327.E.6 for all qualified Medicaid ambulance service providers.

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, Bureau of Health Services Financing, LR 37:

Subchapter C. Air Transportation

§355. Supplemental Payments for Ambulance Providers

A. Effective for dates of service on or after September 20, 2011, quarterly supplemental payments shall be issued to qualifying ambulance providers for emergency medical air transportation services rendered during the quarter.

B. Qualifying Criteria. Ambulance service providers must meet the following requirements in order to qualify to receive supplemental payments. The ambulance service provider must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider;
3. provider of emergency medical transportation or air ambulance services pursuant to 42 CFR 440.170; and
4. be affiliated with the Statewide Ambulance Service District.

C. Payment Methodology. The supplemental payment to each qualifying ambulance service provider will not exceed the sum of:

1. the difference between the Medicaid payments otherwise made to these qualifying providers for emergency medical transportation and air ambulance services and the average amount that would have been paid at the equivalent community rate; and

2. the difference between the payments made to these qualifying providers for emergency medical transportation and air ambulance services provided to uninsured patients and the average amount that would have been paid at the equivalent community rate.

D. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level. The community rate is defined as the average amount payable by commercial insurers for the same services.

E. Supplemental Payment Calculation. The following methodology shall be used to establish the quarterly supplemental payment for ambulance providers:

1. The department shall identify Medicaid ambulance service providers that were qualified to receive supplemental Medicaid reimbursement for emergency medical transportation services and air ambulance services during the quarter.

2. For each Medicaid ambulance service provider described in E.1, the department shall identify the emergency medical transportation and air ambulance services for which the Medicaid ambulance service providers were eligible to be reimbursed.

3. For each Medicaid ambulance service provider described in E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under E.2.

4. For each Medicaid ambulance service provider described in E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under E.2.

5. For each Medicaid ambulance service provider described in E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance

services under E.3 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under E.4.

6. For each Medicaid ambulance service provider described in E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under E.5.

7. For each Medicaid ambulance service provider described in E.1, the department shall identify the emergency medical transportation and air ambulance services which the Medicaid ambulance service providers provided to uninsured patients.

8. For each Medicaid ambulance service provider described in E.1, the department shall calculate the reimbursement paid to the Medicaid ambulance service providers for the emergency medical transportation and air ambulance services identified under E.7.

9. For each Medicaid ambulance service provider described in E.1, the department shall calculate the Medicaid ambulance service provider's equivalent community rate for each of the Medicaid ambulance service provider's services identified under E.7.

10. For each Medicaid ambulance service provider described in E.1, the department shall subtract an amount equal to the reimbursement calculation for each of the emergency medical transportation and air ambulance services under E.8 from an amount equal to the amount calculated for each of the emergency medical transportation and air ambulance services under E.9.

11. For each Medicaid ambulance service provider described in E.1, the department shall calculate the sum of each of the amounts calculated for emergency medical transportation and air ambulance services under E.10.

12. For each Medicaid ambulance service provider described in E.1, the department shall calculate each emergency ambulance service provider's upper payment limit by totaling the provider's total Medicaid payment differential from E.6 and total uninsured payment differential from E.11.

13. The department will establish the following two pools from which supplemental payments will be made:

- a. Pool One for ambulance service providers identified in E.1 who are located in large urban areas and owned by governmental entities; and

- b. Pool Two for all other ambulance service providers identified in E.1.

14. The department will fund the two pools by contributing the appropriate amount as designated.

15. Each Medicaid ambulance service provider described in E.1 will share in the appropriate pool funding in proportion to its emergency medical transportation and air ambulance services utilization, not to exceed the Medicaid ambulance service provider's upper payment limit as described in E.12.

16. Any amount which would have been payable to a qualified Medicaid ambulance service provider because of its utilization, but which exceeds its upper payment limit, shall instead be distributed among the other qualifying Medicaid ambulance service providers in that pool.

17. Any amount which cannot be distributed from Pool One will be transferred to Pool Two for distribution according to E.15 and E.16.

F. Community Rate Calculations. The supplemental payment will be determined in a manner to bring payments for these services up to the community rate level.

1. For purposes of these provisions, the community rate level is defined as the average amount payable by the commercial payers for the same services.

G. The supplemental payment will be made effective for air ambulance services provided on or after September 20, 2011. This payment is based on the average amount that would have been paid at the equivalent community rate. After the initial calculation for fiscal year 2011-2012, the department will rebase the equivalent community rate using adjudicated claims data for services from the most recently completed fiscal year. This calculation will be made every three years.

H. The total amount to be paid by the state to qualified Medicaid ambulance service providers for supplemental Medicaid payments shall not exceed the total of the Medicaid payment differentials calculated under §327.E.6 for all qualified Medicaid ambulance service providers.

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, Bureau of Health Services Financing, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#067

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Reimbursement Methodology
Minimum Data Set Assessments
(LAC 50:II.20001, 20007, 20013 and 20015)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:II.20001, 20007, 20013 and 20015 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

In compliance with Act 694 of the 2001 Regular Session of the Louisiana Legislature, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repealed the provisions governing the prospective reimbursement methodology for private nursing facilities

and established a new reimbursement methodology based on a case-mix price-based reimbursement system for private and public nursing facilities (*Louisiana Register*, Volume 28, Number 6). The department amended the June 20, 2002 Rule to incorporate new definitions and revised current definitions governing nursing facility reimbursements. The December 20, 2002 Rule also revised the provisions governing the submission of cost reports and adopted provisions governing verification of minimum data set (MDS) assessments and the appeal process for dispute of MDS review findings (*Louisiana Register*, Volume 28, Number 12).

The department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing MDS assessments in order to comply with new federal requirements (*Louisiana Register*, Volume 36, Number 10). The October 20, 2010 Emergency Rule also changed the date that MDS assessments are due. This Emergency Rule is being promulgated to continue the provisions of the October 20, 2010 Emergency Rule. This action is being taken to avoid sanctions from the Centers for Medicare and Medicaid Services for noncompliance with the federal mandate to utilize the new MDS assessment data.

Effective October 18, 2011 the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities to revise the provisions governing MDS assessments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Long Term Care Services

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20001. Definitions

Assessment Reference Date—the date on the Minimum Data Set (MDS) used to determine the due date and delinquency of assessments. This date is used in the case-mix reimbursement system to determine the last assessment for each resident present in the facility and is included in the quarterly case-mix report.

Case-Mix Index—a numerical value that describes the resident's relative resource use within the groups under the Resource Utilization Group (RUG-III) classification system, or its successor, prescribed by the department based on the resident's MDS assessments. Two average CMIs will be determined for each facility on a quarterly basis, one using all residents (the facility average CMI) and one using only Medicaid residents (the Medicaid average CMI).

Case-Mix MDS Documentation Review (CMDR)—a review of original legal medical record documentation on a randomly selected MDS assessment sample. The original legal medical record documentation supplied by the nursing facility is to support certain reported values that resulted in a specific RUG classification. The review of the documentation provided by the nursing facility will result in the RUG classification being supported or unsupported.

Delinquent MDS Resident Assessment—an MDS assessment that is more than 121 days old, as measured by the Assessment Reference Date (ARD) field on the MDS.

* * *

Facility Cost Report Period Case-Mix Index—the average of quarterly facility-wide average case-mix indices, carried to four decimal places. The quarters used in this average will be the quarters that most closely coincide with the facility's cost reporting period that is used to determine the medians. This average includes any revisions made due to an on-site CMDR.

Example: A January 1, 2011–December 31, 2011 cost report period would use the facility-wide average case-mix indices calculated for March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011.

1. Repealed.

Facility-Wide Average Case-Mix Index—the simple average, carried to four decimal places, of all resident case-mix indices based on the last day of each calendar quarter. If a facility does not have any residents as of the last day of a calendar quarter or the average resident case-mix indices appear invalid due to temporary closure or other circumstances, as determined by the department, a statewide average case-mix index using occupied and valid statewide facility case-mix indices may be used.

Final Case-Mix Index Report (FCIR)—the final report that reflects the acuity of the residents in the nursing facility on the last day of the calendar quarter, referred to as the point-in-time.

* * *

Minimum Data Set (MDS)—a core set of screening and assessment data, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long-term care facilities certified to participate in the Medicaid Program. The items in the MDS standardize communication about resident problems, strengths, and conditions within facilities, between facilities, and between facilities and outside agencies. The Louisiana system will employ the current MDS assessment required and approved by the Centers for Medicare and Medicaid Services (CMS).

MDS Supportive Documentation Guidelines—the department's publication of the minimum medical record documentation guidelines for the MDS items associated with the RUG-III or its successor classification system. These guidelines shall be maintained by the department and updated and published as necessary.

On-Site MDS Review—Repealed.

* * *

Point-in-Time—Repealed.

Preliminary Case Mix Index Report (PCIR)—the preliminary report that reflects the acuity of the residents in the nursing facility on the last day of the calendar quarter.

* * *

RUG-III Resident Classification System—the resource utilization group used to classify residents. When a resident classifies into more than one RUG-III, or its successor's group, the RUG-III or its successor's group with the greatest CMI will be utilized to calculate the facility average CMI and Medicaid average CMI.

Summary Review Results Letter—a letter sent to the nursing facility that reports the final results of the case-mix MDS documentation review and concludes the review.

1. The Summary Review Results letter will be sent to the nursing facility within 10 business days after the final exit conference date.

* * *

Unsupported MDS Resident Assessment—an assessment where one or more data items that are used to classify a resident pursuant to the RUG-III, 34-group, or its successor's resident classification system is not supported according to the MDS supporting documentation guidelines and a different RUG-III, or its successor, classification would result; therefore, the MDS assessment would be considered "unsupported."

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

§20007. Case-Mix Index Calculation

A. The Resource Utilization Groups-III (RUG-III) Version 5.20, 34-group, or its successor, index maximizer model shall be used as the resident classification system to determine all case-mix indices, using data from the minimum data set (MDS) submitted by each facility. Standard Version 5.20, or its successor, case-mix indices developed by CMS shall be the basis for calculating average case-mix indices to be used to adjust the direct care cost component. Resident assessments that cannot be classified to a RUG-III group, or its successor, will be excluded from the average case-mix index calculation.

B. Effective with the January 1, 2011 rate setting, each resident in the facility, with a completed and submitted assessment, shall be assigned a RUG-III, 34-group, or its successor, on the last day of each calendar quarter. The RUG-III group, or its successor, is calculated based on the resident's most current assessment, available on the last day of each calendar quarter, and shall be translated to the appropriate case-mix index. From the individual resident case-mix indices, two average case-mix indices for each Medicaid nursing facility shall be determined four times per year based on the last day of each calendar quarter.

C. Effective with the January 1, 2011 rate setting, the facility-wide average case-mix index is the simple average, carried to four decimal places, of all resident case-mix indices. The Medicaid average case-mix index is the simple average, carried to four decimal places, of all indices for residents where Medicaid is known to be the per diem payor source on the last day of the calendar quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1792 (August 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

§20013. Case-Mix Minimum Data Set Documentation Reviews and Case-Mix Index Reports

A. The department or its contractor shall provide each nursing facility with the Preliminary Case-Mix Index Report (PCIR) by approximately the fifteenth day of the second month following the beginning of a calendar quarter. The PCIR will serve as notice of the MDS assessments transmitted and provide an opportunity for the nursing facility to correct and transmit any missing MDS assessments or tracking records or apply the CMS correction

policy where applicable. The department or its contractor shall provide each nursing facility with a Final Case-Mix Index Report (FCIR) (point-in-time) utilizing MDS assessments after allowing the facilities a reasonable amount of time to process their corrections (approximately two weeks).

1. If the department or its contractor determines that a nursing facility has delinquent MDS resident assessments, for purposes of determining both average CMIs, such assessments shall be assigned the case-mix index associated with the RUG-III group “BC1-Delinquent” or its successor. A delinquent MDS shall be assigned a CMI value equal to the lowest CMI in the RUG-III, or its successor, classification system.

B. The department or its contractor shall periodically review the MDS supporting documentation maintained by nursing facilities for all residents, regardless of payer type. Such reviews shall be conducted as frequently as deemed necessary by the department. The department shall notify facilities of the Case-Mix MDS Documentation Reviews (CMDR) not less than two business days prior to the start of the review date and a FAX, electronic mail or other form of communication will be provided to the administrator and MDS coordinator on the same date identifying possible documentation that will be required to be available at the start of the on-site CMDR.

1. The department or its contractor shall review a sample of MDS resident assessments equal to the greater of 20 percent of the occupied bed size of the facility or 10 assessments and shall include those transmitted assessments posted on the most current FCIR. The CMDR will determine the percentage of assessments in the sample that are unsupported MDS resident assessments. The department may review additional or alternative MDS assessments, if it is deemed necessary.

2. When conducting the CMDR, the department or its contractor shall consider all MDS supporting documentation that is provided by the nursing facility and is available to the RN reviewers prior to the exit conference. MDS supporting documentation that is provided by the nursing facility after the exit conference shall not be considered for the CMDR.

3. Upon request by the department or its contractor, the nursing facility shall be required to produce a computer-generated copy of the transmitted MDS assessment which shall be the basis for the CMDR.

4. After the close of the CMDR, the department or its contractor will submit its findings in a Summary Review Results (SRR) letter to the facility within 10 business days following the exit conference.

5. The following corrective action will apply to those facilities with unsupported MDS resident assessments identified during an on-site CMDR.

a. If the percentage of unsupported assessments in the initial on-site CMDR sample is greater than 25 percent, the sample shall be expanded, and shall include the greater of 20 percent of the remaining resident assessments or 10 assessments.

b. If the percentage of unsupported MDS assessments in the total sample is equal to or less than the threshold percentage as shown in column (B) of the table in Subparagraph e below, no corrective action will be applied.

c. If the percentage of unsupported MDS assessments in the total sample is greater than the threshold percentage as shown in column (B) of the table in Subparagraph e below, the RUG-III, or its successor, classification shall be recalculated for the unsupported MDS assessments based upon the available documentation obtained during the CMDR process. The facility’s CMI and resulting Medicaid rate shall be recalculated for the quarter in which the FCIR was used to determine the Medicaid rate. A follow-up CMDR process described in Subparagraphs d and e may be utilized at the discretion of the department.

d. Those providers exceeding the thresholds (see column (B) of the table in Subparagraph e during the initial on-site CMDR will be given 90 days to correct their assessing and documentation processes. A follow-up CMDR may be performed at the discretion of the department at least 30 days after the facility’s 90-day correction period. The department or its contractor shall notify the facility not less than two business days prior to the start of the CMDR date. A FAX, electronic mail, or other form of communication will be provided to the administrator and MDS coordinator on the same date identifying documentation that must be available at the start of the on-site CMDR.

e. After the follow-up CMDR, if the percentage of unsupported MDS assessments in the total sample is greater than the threshold percentage as shown in column (B) of the following table, the RUG-III, or its successor, classification shall be recalculated for the unsupported MDS assessments based upon the available documentation obtained during the CMDR process. The facility’s CMI and resulting Medicaid rate shall be recalculated for the quarter in which the FCIR was used to determine the Medicaid rate. In addition, facilities found to have unsupported MDS resident assessments in excess of the threshold in Column (B) of the table below may be required to enter into an MDS Documentation Improvement Plan with the Department of Health and Hospitals. Additional follow-up CMDR may be conducted at the discretion of the department.

Effective Date (A)	Threshold Percent (B)
January 1, 2003	Educational
January 1, 2004	40%
January 1, 2005	35%
January 1, 2006 and beyond	25%

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2537 (December 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

§20015. Appeal Process

A. If the facility disagrees with the CMDR findings, a written request for an informal reconsideration must be submitted to the department or its contractor within 15 business days of the facility’s receipt of the CMDR findings in the SRR letter. Otherwise, the results of the CMDR findings are considered final and not subject to appeal. The department or its contractor will review the facility’s informal reconsideration request within 10 business days of

receipt of the request and will send written notification of the final results of the reconsideration to the facility. No appeal of findings will be accepted until after communication of final results of the informal reconsideration process.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2538 (December 2002), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#060

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Outpatient Hospital Services Diabetes Self-Management Training (LAC 50:V.Chapter 63)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:V.Chapter 63 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 11 of the 2010 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals, through its primary and preventive care activity, to provide reimbursement to providers for rendering services that will educate and encourage Medicaid enrollees to obtain appropriate preventive and primary care in order to improve their overall health and quality of life. In keeping with the intent of Act 11, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions in the Hospital Program to provide Medicaid reimbursement for diabetes self-management training (DSMT) services rendered in an outpatient hospital setting (*Louisiana Register*, Volume 37, Number 6). This Emergency Rule is being promulgated to continue the provisions of the June 20, 2011 Emergency Rule.

It is anticipated that this new service will promote improved patient self-management skills which will reduce

diabetes-related complications that adversely affect quality of life, and subsequently reduce Medicaid costs associated with the care of recipients diagnosed with diabetes-related illnesses.

This action is being taken to promote the health and welfare of Medicaid recipients diagnosed with diabetes and to ultimately reduce the Medicaid costs associated with their care.

Effective October 19, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the Hospital Program to provide coverage for diabetes self-management training services rendered in an outpatient hospital setting.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 5. Outpatient Hospital Services

Chapter 63. Diabetes Education Services

Subchapter A. General Provisions

§6301. Introduction

A. Effective for dates of service on or after February 20, 2011, the department shall provide coverage of diabetes self-management training (DSMT) services rendered to Medicaid recipients diagnosed with diabetes.

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, Bureau of Health Services Financing, LR 37:

§6303. Scope of Services

A. DSMT services shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

B. Service Limits. Recipients shall receive up to 10 hours of services during the first 12-month period following the initial order. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management every 12 months.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

§6305. Provider Participation

A. In order to receive Medicaid reimbursement, outpatient hospitals must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

B. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:
a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators;
or

b. have recent didactic and experiential preparation in education and diabetes management.

2. At a minimum, the instructional team must consist of one the following professionals who is a CDE:

- a. a registered dietician;
- b. a registered nurse; or
- c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

C. Members of the instructional team must be either employed by or have a contract with a Medicaid enrolled outpatient hospital that will submit the claims for reimbursement of outpatient DSMT services rendered by the team. **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, Bureau of Health Services Financing, LR 37:

Subchapter B. Reimbursement

§6311. Reimbursement Methodology

A. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall provide reimbursement for diabetes self-management training services rendered by qualified health care professionals in an outpatient hospital setting.

B. Reimbursement for DSMT services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

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, Bureau of Health Services Financing, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#061

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Benefits Management Program
Maximum Allowable Costs (LAC 50:XXIX.949)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.949 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing repromulgated all of the Rules governing the Pharmacy Benefits Management Program in a codified format in Title

50 of the *Louisiana Administrative Code* (*Louisiana Register*, Volume 32, Number 6). The department later promulgated a Rule (*Louisiana Register*, Volume 34, Number 1) amending the provisions of the June 20, 2006 Rule governing methods of payments in order to comply with the directives of Act 801 of the 2006 Regular Session of the Louisiana Legislature, which directed the department to submit a Medicaid State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to increase the Medicaid dispensing fee on prescription drugs, contingent upon CMS' approval of the proposed amendment. CMS subsequently disapproved the proposed amendment to the Medicaid State Plan that had been submitted in compliance with Act 801. An Emergency Rule was later promulgated to repeal the January 20, 2008 Rule and to restore the repealed provisions of the June 20, 2006 Rule in the *Louisiana Administrative Code* (*Louisiana Register*, Volume 36, Number 1).

Act 10 of the 2009 Regular Session of the Louisiana Legislature provided that the department may redefine the reimbursement methodology for multiple source drugs in establishing the state maximum allowable cost (MAC) in order to control expenditures to the level of appropriations for the Medicaid Program. In accordance with the provisions of Act 10, the department promulgated an Emergency Rule to redefine the Louisiana maximum allowable cost (LMAC) (*Louisiana Register*, Volume 36, Number 1). In addition, the dispensing fee was increased for drugs with an LMAC.

The department subsequently determined that it was necessary to repeal the January 1, 2010 Emergency Rule in its entirety and amend the provisions governing the methods of payment for prescription drugs to redefine the LMAC (*Louisiana Register*, Volume 36, Number 2). The department promulgated an Emergency Rule to amend the February 1, 2010 Emergency Rule to revise the provisions governing the methods of payment for prescription drugs to further redefine the LMAC and increase the dispensing fee (*Louisiana Register*, Volume 36, Number 3). The department determined that it was necessary to repeal the March 1, 2010 Emergency Rule in its entirety and promulgated an Emergency Rule to amend the provisions governing the methods of payment for prescription drugs to revise the LMAC provisions (*Louisiana Register*, Volume 36, Number 3). This Emergency Rule is being promulgated to continue the provisions of the March 20, 2010 Emergency Rule. This action is being taken to control expenditures in the Medical Assistance Program and to avoid a budget deficit.

Effective October 15, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing the methods of payment for prescriptions covered under the Pharmacy Benefits Management Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 9. Methods of Payment

Subchapter D. Maximum Allowable Costs

§949. Cost Limits

A. - B. ...

1. Louisiana Maximum Allowable Cost (LMAC) is the average actual acquisition cost of a drug, defined as the

pharmacist's payment made to purchase a drug product, adjusted by a multiplier of 2.35.

2. LMAC reimbursement will apply to certain multiple source drug products that meet therapeutic equivalency, market availability, and other criteria deemed appropriate by the Louisiana Medicaid Agency. Drugs are subject to LMAC if there are at least two non-innovator multiple source alternative products available that are classified by the FDA as Category "A" in the Approved Drug Products with Therapeutic Equivalence Evaluations.

3. LMAC rates are based on the average actual acquisition cost per drug, adjusted by a multiplier of 2.35, which assures that each rate is sufficient to allow reasonable access by providers to the drug at or below the established LMAC rate. The LMAC rate will apply to all versions of a drug that share the same active ingredient combination, strength, dosage form, and route of administration.

4. Average actual acquisition cost will be determined through a semi-annual collection and review of pharmacy invoices and other information deemed necessary by the Louisiana Medicaid Agency and in accordance with applicable State and Federal law.

5. In addition to the semi-annual review, the Louisiana Medicaid Agency will evaluate on an ongoing basis throughout the year and adjust the rates as necessary to reflect prevailing market conditions and to assure that pharmacies have reasonable access to drugs at or below the applicable LMAC rate. Providers shall be given advance notice of any additions, deletions, or adjustments in price. A complete LMAC rate listing will be available to providers and updated periodically.

6. In no case shall a recipient be required to provide payment for any difference in a prescription price that may occur with implementation of the LMAC limit, nor may BHSF use a cost which exceeds the established maximums except for physician certification for brand name drugs.

C. - E.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1065 (June 2006), amended LR 34:88 (January 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#062

DECLARATION OF EMERGENCY

Department of Health and Hospitals Bureau of Health Services Financing

Pharmacy Benefits Management Program
Prescription Limit Reduction
(LAC 50:XXIX.113)

The Department of Health and Hospitals, Bureau of Health Services Financing amends LAC 50:XXIX.113 in 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 Act 11 of the 2010 Regular Session of the Louisiana Legislature which states: "The secretary is directed to utilize various cost containment measures to ensure expenditures in the Medicaid Program do not exceed the level appropriated in this Schedule, including but not limited to precertification, preadmission screening, diversion, fraud control, utilization review and management, prior authorization, service limitations, drug therapy management, disease management, cost sharing, and other measures as permitted under federal law." This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

As a result of a budgetary shortfall in state fiscal year 2009, the Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing prescription limits in the Pharmacy Benefits Management Program to reduce the number of prescriptions covered by the Medicaid Program within a calendar month for certain recipients (*Louisiana Register*, Volume 35, Number 9).

Due to a budgetary shortfall in state fiscal year 2011, the department promulgated an Emergency Rule which amended the provisions governing the Pharmacy Benefits Management Program to further reduce the number of prescriptions covered by the Medicaid Program within a calendar month (*Louisiana Register*, Volume 37, Number 2). This Emergency Rule is being promulgated to continue the provisions of the February 1, 2011 Emergency Rule. This action is being taken to avoid a budget deficit in the medical assistance programs.

Effective October 1, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions governing prescription limits in the Pharmacy Benefits Management Program.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXIX. Pharmacy

Chapter 1. General Provisions

§113. Prescription Limit

A. Effective February 1, 2011, the Department of Health and Hospitals will pay for a maximum of four prescriptions per calendar month for Medicaid recipients.

B. The following federally mandated recipient groups are exempt from the four prescriptions per calendar month limitation:

1. persons under 21 years of age;
2. persons who are residents of long-term care institutions, such as nursing homes and ICF-DD facilities; and
3. pregnant women.

C. The four prescriptions per month limit can be exceeded when the prescriber determines an additional prescription is medically necessary and communicates the following information to the pharmacist in his own handwriting or by telephone or other telecommunications device:

1. “medically necessary override;” and
2. a valid ICD-9-CM, or its successor, diagnosis code that is directly related to each drug prescribed that is over the four prescription limit (no ICD-9-CM, or its successor, literal description is acceptable).

D. The prescriber should use the Clinical Drug Inquiry (CDI) internet web application developed by the fiscal intermediary in his/her clinical assessment of the patient’s disease state or medical condition and the current drug regime before making a determination that more than four prescriptions per calendar month is required by the recipient.

E. ...

F. An acceptable statement and ICD-9-CM, or its successor, diagnosis code is required for each prescription in excess of four for that month.

G. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1055 (June 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1901 (September 2009), LR 37:

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#063

DECLARATION OF EMERGENCY

**Department of Health and Hospitals
Bureau of Health Services Financing**

Professional Services Program—Diabetes
Self-Management Training
(LAC 50:IX.Chapter 7 and 15103)

The Department of Health and Hospitals, Bureau of Health Services Financing adopts LAC 50:IX.Chapter 7 and §15103 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Act 11 of the 2010 Regular Session of the Louisiana Legislature authorized the Department of Health and Hospitals, through its primary and preventive care activity, to provide reimbursement to providers for rendering services that will educate and encourage Medicaid enrollees to obtain appropriate preventive and primary care in order to improve their overall health and quality of life. In keeping with the intent of Act 11, the Department of Health and Hospitals, Bureau of Health Services Financing promulgated an Emergency Rule which amended the provisions governing the Professional Services Program to provide Medicaid reimbursement for diabetes self-management training (DSMT) services (*Louisiana Register*, Volume 37, Number 2). It is anticipated that this new service will promote improved patient self-management skills which will reduce diabetes-related complications that adversely affect quality of life, and subsequently reduce Medicaid costs associated with the care of recipients diagnosed with diabetes-related illnesses.

The department promulgated an Emergency Rule which amended the provisions of the February 20, 2011 Emergency Rule governing the Professional Services Program in order to clarify the provider participation requirements for the provision of DSMT services (*Louisiana Register*, Volume 37, Number 6). This action is being taken to promote the health and welfare of Medicaid recipients diagnosed with diabetes and to reduce the Medicaid costs associated with their care.

Effective October 18, 2011, the Department of Health and Hospitals, Bureau of Health Services Financing amends the provisions of the February 20, 2011 Emergency Rule governing diabetes self-management training services rendered in the Professional Services Program.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 1. General Provisions

Chapter 7. Diabetes Education Services

§701. General Provisions

A. Effective for dates of service on or after February 20, 2011, the department shall provide coverage of diabetes self-management training (DSMT) services rendered to Medicaid recipients diagnosed with diabetes.

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, Bureau of Health Services Financing, LR 37:

§703. Scope of Services

A. DSMT shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

B. Service Limits. Recipients shall receive up to 10 hours of services during the first 12-month period beginning with the initial training. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management per calendar year.

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, Bureau of Health Services Financing, LR 37:

§705. Provider Participation

A. In order to receive Medicaid reimbursement, professional services providers must have a DSMT program

that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

B. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:
 - a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or
 - b. have recent didactic and experiential preparation in education and diabetes management.
2. At a minimum, the instructional team must consist of one of the following professionals who are also a CDE:
 - a. a registered dietician;
 - b. a registered nurse; or
 - c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

C. Members of the instructional team must be either employed by or have a contract with a Medicaid enrolled professional services provider that will submit the claims for reimbursement of DSMT services rendered by the team.

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, Bureau of Health Services Financing, LR 37:

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15103. Diabetes Education Services

A. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall provide reimbursement for diabetes self-management training services rendered by qualified health care professionals.

B. Reimbursement for DSMT services shall be a flat fee based on the appropriate Healthcare Common Procedure Coding (HCPC) code.

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, Bureau of Health Services Financing, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Don Gregory, 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.

Bruce D. Greenstein
Secretary

1109#064

DECLARATION OF EMERGENCY

Department of Health and Hospitals Office of Public Health

Added Use of Vital Records in Program Administration
(LAC 48:V.11710)

The Department of Health and Hospitals, Office of Public Health (DHH/OPH), pursuant to the rulemaking authority granted to the secretary of DHH by R.S. 40:962(C), hereby adopts the following Rule for the protection of public health. This Rule is being promulgated in accordance with the Administrative Procedure Act (R.S. 49:950, et seq.).

The secretary, through DHH/OPH, finds it necessary to promulgate an Emergency Rule effective August 20, 2011. The Emergency Rule is scheduled to terminate 120 days from August 20, 2011. A Notice of Intent will be published in the September 20, 2011 issue of the *Louisiana Register* with the goal of adopting a permanent Rule soon, but no earlier than December 20, 2011. A public hearing for the proposed permanent rule will be held on October 25, 2011.

Pursuant to R.S. 40:41(D)(1), the substance of the Emergency Rule promulgated herein provides for the use of data contained in the Vital Records by the La. Department of Health and Hospitals for program administration. Realizing the importance of measuring quality outcomes and the need to streamline access to data between offices within the department and Vital Records, this Rule is being promulgated to provide for the development of uniform procedures to accomplish the same.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Preventative Health Services

Chapter 117. Availability of Records

§11710. Use of Vital Records in Program Administration

A. Data contained in vital records shall be made available upon request by the Department of Health and Hospitals for use in the administration of the programs of the department, provided that such access and use of data shall be solely for that purpose.

B. The state health officer shall establish procedures to ensure that all identifying information is kept confidential. Any Department of Health and Hospitals employee using data that contains identifying information must establish reasonable administrative, physical and technical safeguards to prevent unauthorized use or disclosure of such information. Any information that allows an individual to be identified must be removed or destroyed at the earliest time which is consistent with the purpose for which it is being used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:41(D)(1).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:

Bruce D. Greenstein
Secretary

1109#001

DECLARATION OF EMERGENCY

Department of Revenue Policy Services Division

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

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, which allows the Department of Revenue to use emergency procedures to establish rules and R.S. 47:1511, which allow the Department to make reasonable rules and regulations, and R.S. 47:603), the Secretary of Revenue hereby finds that imminent peril to the public welfare exists and accordingly adopts the following Emergency Rule. This Emergency Rule shall be effective August 22, 2011, and shall remain in effect until the expiration of the maximum period allowed under the Administrative Procedure Act or the adoption of the final rule, whichever comes first.

Louisiana Revised Statutes 47:6030 provides for an income tax credit for the cost of purchase and installation of a wind energy system or solar energy system, or both, by a taxpayer at his residence located in this state, by the owner of a residential rental apartment project, or by a taxpayer who purchases and installs such a system in a residence or a residential rental apartment project which is located in Louisiana. Under the current version of the wind and solar energy system credit regulation, in order to be eligible for the tax credit all electrical components must be "UL listed."

Since the time the current rule was promulgated, new technologies have become available many of which are not "UL listed." As the global renewable energy sector continues to rapidly advance, several national and international testing laboratories recognized by the federal Occupational Safety & Health Administration (OSHA) are testing and certifying new renewable energy components. OSHA recognizes several Nationally Recognized Testing Laboratories (NRTLs) such as Canadian Standards Association (CSA), TUV Rheinland of North America, Inc. (TUV) and Underwriters Laboratories, Inc. (UL). All of these OSHA recognized testing laboratories have been involved in the recent technology advances and several solar companies have elected to have their products tested by one of OSHA's NRTLs other than Underwriters Laboratories (UL). Many of these new components are less expensive, more efficient and more widely available than the currently required "UL listed" components.

This Emergency Rule is necessary for the Department of Revenue to allow the wind and solar energy systems tax credit for systems using electrical components tested by all OSHA Nationally Recognized Testing Laboratories and to keep up with this rapidly evolving industry.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 19. Miscellaneous Tax Exemptions

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

A. - E.5. ...

6. All photovoltaic panels, wind turbines, inverters and other electrical apparatus claiming the tax credit must be

tested and certified by a federal Occupational Safety and Health Administration (OSHA) Nationally Recognized Testing Laboratory and must be installed in compliance with manufacturer specifications and all applicable building and electrical codes.

E.7. - G.2. ...

AUTHORITY NOTE: Adopted in accordance with R.S. 47:44.1, R.S. 47:1511, and R.S. 47:6030.

HISTORICAL NOTE: Promulgated by the Department of Revenue, LR 34:2206 (October 2008), amended LR 36:2048 (September 2010).

Cynthia Bridges
Secretary

1109#012

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2011 Commercial Amberjack Season Reopens

The commercial season for the harvest of greater amberjack in Louisiana state waters has previously been closed at 12:01 a.m., June 18, 2011. The Secretary has been informed that the commercial season for greater amberjack in the Federal waters of the Gulf of Mexico off the coast of Louisiana will re-open at 12:01 a.m. on September 1, 2011, and will remain open until 12:01 a.m., October 31, 2011, at which time the season will close and remain closed until 12:01 a.m., January 1, 2012, when the season is scheduled to re-open in both state and federal waters.

In accordance with the provisions of R.S. 49:953, which allows the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission to use seasonal rules to set finfish seasons, R.S. 56:326.3 which provides that the Wildlife and Fisheries Commission may set seasons for saltwater finfish, and the authority given to the Secretary of the Department by the Commission in its resolution of January 6, 2011 to modify opening and closing dates of 2011-2012 commercial reef fish seasons in Louisiana state waters when he is informed by the Regional Director of NOAA Fisheries that the seasons have been closed in adjacent Federal waters, and that NOAA Fisheries requests that the season be modified in Louisiana State waters, the Secretary hereby declares:

The commercial fisheries for greater amberjack in Louisiana waters will re-open at 12:01 a.m. on September 1, 2011, and remain open until 11:59 p.m., October 30, 2011, at which time the season will close and remain closed until 12:01 a.m., January 1, 2012. No person shall commercially harvest, possess, purchase, barter, trade, sell or attempt to purchase, barter, trade or sell greater amberjack whether within or without Louisiana waters outside of the open dates and times set out herein. Nothing shall prohibit the possession or sale of fish legally taken prior to the closure providing that all commercial dealers possessing greater amberjack 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 NOAA Fisheries that the commercial greater amberjack season in Federal waters

of the Gulf of Mexico will re-open at 12:01 a.m. on September 1, 2011, and the season will remain open until 12:01 a.m., October 31, 2011, when the season will close and remain closed until 12:01 a.m., January 1, 2012. This Declaration of Emergency would close state waters two minutes prior to the Federal waters closure, but the language would be consistent with other state fishery closures. This minor variance in closure time is to provide additional clarity on the closure. Having compatible season regulations in State waters is necessary to provide effective rules and efficient enforcement for the fishery, to prevent overfishing of the species in the long term.

Robert J. Barham
Secretary

1109#008

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2011-12 Deer Seasons on Kisatchie National Forest

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:115 and 116, the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule.

The season dates for deer hunting with or without dogs was changed due to a federal ban on the use of dogs for hunting deer on the Kisatchie National Forest; however, this decision was subsequently reversed and is currently not in effect. Therefore, effective August 17, 2011, the Wildlife and Fisheries Commission hereby adopts the following dates and regulations:

Catahoula, Winn and Kisatchie Ranger Districts and the Evangeline Unit of the Calcasieu Ranger District:

December 17–December 25—with or without dogs;

December 26–January 1—still hunt only.

Deer hunting with dogs on the Catahoula Ranger District shall occur only north of La. 8, excluding the National Catahoula Wildlife Management Preserve. Deer hunting with dogs on the Evangeline Unit shall occur only in the portion of the unit located south of La. 121 from near McNutt southwesterly to Spring Creek, east of Spring Creek southeasterly to US 165, except dogs may be used in Palustris Experimental Forest. National Forest lands within the Evangeline Unit, Calcasieu Ranger District, described in still hunt only area shall be still hunt only. Permit required from Department of Wildlife and Fisheries for all deer hunters during the with or without dogs deer season.

This action must be taken by Declaration of Emergency since the commission's season date rule has already been submitted to the legislative leadership and the *Louisiana Register*, and insufficient time remains to make these changes via standard rulemaking prior to the opening dates of these seasons.

Stephen W. Sagraera
Chairman

1109#002

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2011-12 Oyster Season

In accordance with the emergency provisions of the Administrative Procedure Act, Louisiana Revised Statutes (R.S.) 49:953 and under the authority of R.S. 56:433, R.S. 56:435.1, and R.S. 56:435.1.1(D) notice is hereby given that the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby declare the 2011/2012 oyster season as follows:

The Little Lake Public Oyster Seed Grounds as described in LAC 76:VII:521 shall open one-half hour before sunrise on Wednesday, September 7, 2011.

With the exception of Calcasieu and Sabine Lakes, all remaining public oyster seed grounds and reservations, as described in R.S. 56:434, Louisiana Administrative Code (LAC) 76:VII.507, LAC 76:VII.509, LAC 76:VII.511, LAC 76:VII.513, LAC 76:VII.517, and LAC 76:VII.521, including the Lake Machais/Fortuna Sacking-Only Area of the public grounds which is generally Lake Fortuna and Lake Machias to a line from Mozambique Point to Point Gardner to Grace Point at the Mississippi River Gulf Outlet, the Sacking-Only Area in the American Bay area which is that portion of the public grounds within Bay Long west of a line running generally north/south from a point at 29 degrees 31 minutes 13.78 seconds N latitude, 89 degrees 34 minutes 9.79 seconds W longitude to a point at 29 degrees 29 minutes 40.67 seconds N latitude, 89 degrees 34 minutes and 8.48 seconds W longitude, shall open at one-half hour before sunrise on Monday, October 17, 2011.

The oyster season in west cove portion of the Calcasieu Lake public oyster area, as described in R.S. 56:435.1.1, shall open one-half hour before sunrise on Tuesday, November 1, 2011. The sack limit for west cove portion of Calcasieu Lake is set at 10 sacks per person per vessel per day as provided for in R.S. 56:435.1.1. However, these conservation actions shall not supersede public health closures.

The following areas will remain closed for the entire 2011/2012 oyster season:

1. the east side of the Calcasieu Lake public oyster area;
2. Sabine Lake Public Oyster Area (as described in R.S. 56:435.1).

The Secretary of the Department of Wildlife and Fisheries is authorized to take emergency action as necessary to close areas if oyster mortalities are occurring or to delay the season or close areas where significant spat catch has occurred with good probability of survival, or where it is found that there are excessive amounts of non-living reef material in seed oyster loads, or if oyster resources and/or reefs are being adversely impacted, or if enforcement problems are encountered. The Secretary shall notify the Chairman of the Wildlife and Fisheries Commission of his intention to close an area.

The secretary is authorized to take emergency action to reopen areas previously closed if the threat to the resource

has ended, or may open areas if substantial oyster resources are located.

Notice of any opening, delaying or closing of a season will be made by public notice at least 72 hours prior to such action unless such closure is ordered by the Louisiana Department of Health and Hospitals for public health concerns.

Stephen W. Sagrera
Chairman

1109#022

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

2011-2012 Waterfowl Season

In accordance with the emergency provisions of R.S. 49:953 of the Administrative Procedure Act, and under the authority of R.S. 56:115, the Secretary of the Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission hereby adopts the following Emergency Rule.

The hunting season for ducks, coots and geese during the 2011-2012 hunting season shall be as follows:

Ducks And Coots: 60 days

West Zone: November 12-December 4
December 17 - January 22

East Zone: November 19-November 27

(Including December 10-January 29 Catahoula Lake)

Youth Waterfowl Weekend—November 5-6 in West Zone, November 12-13 in East Zone

Daily Bag Limits: The daily bag limit on ducks is 6 and may include no more than 4 mallards (no more than 2 of which may be females), 1 canvasback, 1 mottled duck, 1 black duck, 3 wood ducks, 2 scaup, 2 redheads, and 2 pintails.

Daily bag limit on coots is 15.

Mergansers—The daily bag limit for mergansers is 5, only 2 of which may be hooded mergansers. Merganser limits are in addition to the daily bag limit for ducks.

Possession Limit—The possession limit on ducks, coots and mergansers is twice the daily bag limit.

Geese:

Light Geese (Snow, Blue and Ross') And White-Fronted Geese

West Zone: November 12-December 4
(74 days) December 17-February 5

East Zone: November 5-November 27
(74 days) December 10-January 29

Daily bag limit on light geese
(snow, blue and Ross'): 20

Possession limit on light geese
(snow, blue and Ross'): None

Daily Limit on white-fronted geese: 2

Possession Limit on white-fronted geese: 4

NOTE: During the open Canada goose season, the daily bag limit is 2 dark geese (White-fronted and Canada) no more than 1 of which may be a Canada goose.

Canada Geese: Closed In The Area Described Below

December 17-January 29

Daily Limit on Canada geese:

1 in aggregate with White-fronts

Possession limit on Canada geese:

2 in aggregate with White-fronts

NOTE: During the open Canada goose season, the daily bag limit is 2 dark geese (White-fronted and Canada) no more than 1 of which may be a Canada.

The Canada goose Season will be open statewide except for a portion of southwest Louisiana. The closed area is described as follows: Beginning at the Texas State Line, proceeding east along Hwy. 82 to the Calcasieu Ship Channel, then north along the Calcasieu Ship Channel to its junction with the Intracoastal Canal, then east along the Intracoastal Canal to its juncture with LA Hwy. 82, then south along LA Hwy. 82 to its juncture with Parish Road 3147, then south and east along Parish Road 3147 to Freshwater Bayou Canal, then south to the Gulf of Mexico, then west along the shoreline of the Gulf of Mexico to the Texas State Line, then north to the point of beginning at LA Hwy. 82.

Conservation Order for Light Geese (Snow, Blue and Ross's):

West Zone: December 5-December 16
February 6-March 11

East Zone: November 28-December 9
January 30-March 11

Only snow, blue and Ross's geese may be taken under the terms of the Conservation Order, which allows the use of electronic calls and unplugged shotguns and eliminates the daily bag and possession limits. During the Conservation Order, shooting hours begins one-half hour before sunrise and extends until one-half hour after sunset.

Rails: November 12-January 4

King and Clapper: Daily bag limit 15 in the aggregate, Possession 30.

Sora and Virginia: Daily bag and possession 25 in the aggregate.

Gallinules: November 12 - January 4

Daily bag limit 15, Possession limit 30

Snipe:

West Zone: November 5-December 7
December 17-February 28

East Zone: November 5-November 30
December 10-February 28

Daily bag limit 8, Possession limit 16

Shooting Hours: One-half hour before sunrise to sunset, except at the Spanish Lake Recreation Area in Iberia Parish where shooting hours, including the Conservation Order, end at 2 p.m.

Extended Falconry Seasons for Ducks, Rails and Gallinules:

Statewide: November 5-February 3

(16 days of the total season lengths for rails, gallinules and extended falconry seasons were used during the September teal season.)

A Declaration of Emergency is necessary because the U.S. Fish and Wildlife Service establishes the framework for

all migratory species. In order for Louisiana to provide hunting opportunities to the 200,000 sportsmen, selection of season dates, bag limits and shooting hours must be established and presented to the U.S. Fish and Wildlife Service immediately.

The aforementioned season dates, bag limits and shooting hours will become effective November 1, 2011 and

extend through one-half hour after sunset on March 11, 2012.

Robert J. Barham
Secretary

1109#021

Rules

RULE

Department of Agriculture and Forestry Office of Agriculture and Environmental Sciences Boll Weevil Eradication Commission

Cotton Acreage Reporting and Collection of Assessments (LAC 7:XV.303, 319, and 321)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:1604.1, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission (commission) amends these rules and regulations (“the proposed action”) to direct cotton producers to report their cotton acreage and to pay their assessments directly to the Department of Agriculture and Forestry rather than the Farm Service Agency (FSA) of the U.S. Department of Agriculture. The proposed action is required because the FSA has decided that it will no longer be directly involved in the reporting of cotton acreage to the department or the collection of the assessment.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 3. Boll Weevil

§303. Definitions Applicable to Boll Weevil

A. The words and terms defined in R.S. 3:1603 are applicable to this Chapter.

B. The following words and terms are defined for the purposes of this Chapter.

APHIS—the Animal and Plant Health Inspection Service of the United States Department of Agriculture.

ASCS—the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture, now known as FSA (Farm Service Agency).

Compliance Agreement—a written agreement between the department and any person engaged in growing, dealing in or moving regulated articles wherein the latter agrees to comply with specified provisions to prevent dissemination of the boll weevil.

Cotton Acre—any acre of land devoted to the growing of cotton, regardless of row width or planting pattern.

FSA—the Farm Service Agency of the United States Department of Agriculture (formerly ASCS).

Gin Trash—all material produced during the cleaning and ginning of seed cotton, bollies or snapped cotton, except lint, cottonseed or gin waste.

Penalty Fee—the fee assessed against a cotton producer for late reporting of acreage, underreporting of acreage or late payment of assessments. It does not refer to the assessment fee itself nor to any penalty assessed for any violation of the regulations.

Premises—any parcel of land, including any buildings located thereon, irrigation systems and any other similar locations where the boll weevil is, may be, or where conditions are conducive to supporting the boll weevil.

Seed Cotton—cotton as it comes from the field prior to ginning.

Used Cotton Equipment—any equipment used previously to harvest, strip, transport or process cotton.

Waiver—a written authorization which exempts a person from compliance with one or more requirements of these regulations and the Boll Weevil Eradication Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:17 (January 1995), amended LR 23:195 (February 1997), LR 37:2583 (September 2011).

§319. Reporting of Cotton Acreage

A. All cotton producers growing cotton in the state of Louisiana shall certify their planted cotton acreage by the later of July 1 or at final certification of the current growing season at the FSA office responsible for the parish or parishes in which they produce cotton. The certification shall be filed for each year of the program and shall include the actual acreage and location of cotton planted during the current growing season.

B. All cotton producers growing cotton in the state of Louisiana shall, for each year of the program, also complete and sign a cotton acreage reporting and payment form provided by the commissioner and return the signed and completed form to the department along with FSA form 578 at the time the assessment is paid to the department.

C. Noncommercial cotton shall not be planted in the Louisiana Eradication Zone unless an application for a written waiver has been submitted in writing to the commissioner stating the conditions under which such written waiver is requested, and unless such written waiver is granted by the commissioner. The commissioner's decision to grant or deny a written waiver for noncommercial cotton shall include consideration of the location, size, pest conditions, accessibility of the growing area, any stipulations set forth in any compliance agreement between the applicant and the commissioner, and any other factors deemed relevant to effectuate the boll weevil eradication program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1607, 1609.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:20 (January 1995), amended LR 23:195 (February 1997), LR 37:2583 (September 2011).

§321. Assessments, Payment and Penalties

A. The September 2003 referendum set the maximum annual assessment at \$6 per acre of cotton planted in the state. The annual assessment on cotton producers in the Louisiana Eradication Zone shall be \$6 per acre for each acre of cotton planted in the state. Each cotton producer shall pay his annual assessment directly to the department no later than July 1 or final certification by the FSA of the growing season, whichever is later. The signed and completed cotton

acreage reporting and payment form with FSA Form 578 attached shall be submitted with the annual payment of the assessment.

B. - C. ...

D. Any cotton producer failing to certify his planted cotton acreage by the later of July 1 or final certification of the current growing season shall, in addition to the assessment fee and other penalties provided in the Boll Weevil Eradication Law and these regulations, be subject to a penalty fee of \$2 per acre.

E. ...

F. Repealed and Reserved.

G. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1604.1, 1609, 1612, and 1613.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:20 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), LR 24:2231 (December 1998), LR 25:829 (May 1999), LR 29:859 (June 2003), LR 30:1142 (June 2004), LR 30:2443 (November 2004), LR 37:2583 (September 2011).

Mike Strain, DVM
Commissioner

1109#029

RULE

**Department of Health and Hospitals
Office of the Secretary
and
Department of Children and Family Services
Office of the Secretary**

**Community and Family Support System—Flexible
Family Fund (LAC 48:I.Chapter 161)**

The Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary has amended the entire Chapter 161 of Part I concerning the Community and Family Support System Flexible Family Fund as authorized by R.S. 28:821. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 378 of the 1989 Regular Session of the Louisiana Legislature and Act 1011 of the 1991 Regular Session of the Louisiana Legislature created and continued the Community and Family Support System (R.S. 28:821 et seq.). The original Rule was promulgated to implement the Cash Subsidy Program to provide a cash stipend to families of eligible children with severe and profound disabilities to offset the cost of keeping their children at home. The Rule was amended in June 20, 2007 to recognize human services districts and human services authorities (in addition to state program offices) and return management of the program waiting lists to the administration of these regional governing agencies. This Rule is promulgated to introduce a universal screening protocol for all children with indentified qualifying exceptionalities for severity of functional limitation and changes terminology for qualifying exceptionalities to reflect current usage. This Rule also

changes the name of the program from Cash Subsidy to Flexible Family Fund.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 11. Community and Family Support System Chapter 161. Community and Family Support System—Flexible Family Fund

§16101. Introduction

A. The first and primary natural environment for all people is the family. Children, regardless of the severity of their disability, need families and enduring relationships with adults in a nurturing home environment. As with all children, children with developmental disabilities need families and family relationships to develop to their fullest potential. Services for persons with developmental disabilities should be responsive to the needs of the individual and the individual's family, rather than fitting the person into existing programs. Family supports are those supports that enable a family to keep their child with developmental disabilities at home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:186 (February 1992), repromulgated LR 33:1135 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2584 (September 2011).

§16103. Definitions

Agency—the Department of Health and Hospitals, Office for Citizens with Developmental Disabilities (OCDD) Regional Offices and Human Services Districts (districts) and Human Services Authorities (authorities) providing developmental disabilities services which shall administer the flexible family fund for the exceptionalities of developmental delay for children between the ages of three through eight years, autism, mental disability/severe, mental disability/profound, deaf-blind (deaf and blind), traumatic brain injury, multiple disabilities, other health impairment and orthopedic impairment, and the Office of Behavioral Health (OBH) and districts and authorities providing behavioral health services which shall administer the flexible family fund for the exceptionality, emotional disturbance.

Appropriate Documentation for Exceptionalities Served by the OCDD and Districts and Authorities Providing Developmental Disabilities Services—the most recent report, current within a year, which demonstrates parental participation with the Louisiana state Department of Education (Department of Education) in development of specialized educational services and/or authorization of specialized educational settings for children with special needs or a report from a licensed health professional which states that a child's exceptionality conforms to standards established in the Department of Education's Bulletin 1508 for autism. Only documentation that is current within a year can be accepted into consideration for eligibility determination. Appropriate documentation includes the individualized family services plan (for EarlySteps eligibility for infants and toddlers until age three), also referred to as the IFSP; the individualized education plan (IEP); the independent education evaluation (IEE); or an approved

home study plan. A report from a licensed health professional which states that a child's exceptionality conforms to standards established in the Department of Education's Bulletin 1508 for autism may also be considered as appropriate documentation.

Appropriate Documentation for the Exceptionality served by the OBH and Districts and Authorities Providing Behavioral Health Services—the most recent report, current within a year, which demonstrates parental participation with the Louisiana state Department of Education (Department of Education) in development of specialized educational services and/or authorization of specialized educational settings for children with special needs. Appropriate documents includes the pupil appraisal evaluation or the individualized education plan (IEP), the independent education evaluation (IEE), current within a year; or, evidence of an interagency service coordination process; or, a certification from a licensed health professional that the child meets the Department of Education's criteria for emotional disturbance; or, a current treatment plan from a licensed community behavioral health center. A report from a licensed health professional which states that a child's exceptionality conforms to standards established in the Department of Education's Bulletin 1508 for emotional disturbance may also be considered as appropriate documentation.

Child—an individual under the age of 18.

Developmental Disability—defined in accordance with the Developmental Disability Law at R.S. 28:451.2(12).

Flexible Family Fund (formerly *Cash Subsidy Program*)—a monetary payment to eligible families of children with severe or profound developmental disabilities to offset the costs of keeping their child at home.

Licensed Health Professional—a person credentialed to provide health services by a professional board established and approved by the state of Louisiana, including those boards which examine physicians, psychiatrists, psychologists, social workers, counselors, nurse practitioners, etc.

Qualifying Exceptionality—only the following exceptionalities identified through the Department of Education's evaluation process or licensed health professional may be considered for the flexible family fund from the OCDD and districts and authorities providing developmental disabilities services: autism, deaf-blindness (deaf and blind), mental disability/severe, mental disability/profound, multiple disabilities, orthopedic impairment, other health impairment, traumatic brain injury, and developmentally delayed for children between the ages of three through eight years; other exceptionalities listed through that process are not eligible for participation in the flexible family fund except that the exceptionality, emotional disturbance may be considered for the flexible family fund from the OBH and districts and authorities providing behavioral health services.

Responsible Care Giver—a child's natural or adoptive mother or father or the person who is responsible for the primary care and management of the child.

Universal Screening Protocol—a tool used to determine severity of functional limitation for all applicants for the flexible family fund for children with developmental disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1019 (May 2002), LR 33:1135 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2584 (September 2011)

§16105. Application Process

A. Applications for flexible family fund will be accepted by mail only and only in the OCDD regional office or OBH or district or authority providing developmental disability or behavioral health services in which the child resides. There is no closing date for accepting applications.

B. The responsible care giver is responsible for completing the application and submission of appropriate documentation of a qualifying exceptionality. The responsible care giver is responsible for all aspects of the application process and for maintaining eligibility of their child.

C. To be complete the documentation listed in §16103 of this Chapter, which identifies a qualifying exceptionality must accompany the application for the flexible family fund and the application must be signed by the responsible care giver and received by the appropriate agency through the mail.

D. Applications for the flexible family fund shall be screened at the point of initial application to determine whether the child has a qualifying exceptionality and the child is appropriately served by the agency to ensure that applications are routed to the appropriate agency.

E. Only complete applications will be placed on the waiting list for eligibility determination with a post mark date of application of the envelope containing the complete application. Applications that are not complete will be returned to the responsible care giver with instructions on how to complete the application.

F. Applications will be maintained on the waiting list by date/time order of application, only in the region in which the child lives; no child may be placed on a waiting list or receive a flexible family fund from more than one region or agency.

G. Responsible care givers will receive confirmation of the date of receipt of the initial completed application and of their post marked date of application on the waiting list for eligibility determination, and annually thereafter.

H. A re-application can be submitted at any time a flexible family fund is terminated for any reason other than exceeding the eligible age for participation in the flexible family fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:862 (July 1997), LR 28:1020 (May 2002), LR 33:1136 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2585 (September 2011).

§16107. Determining Children Eligible for the Flexible Family Fund

A. In all cases, the exceptionality reported on the most current, current within a year, appropriate documentation referenced in §16103 of this Chapter shall be used to make a determination of eligibility for the flexible family fund.

B. Only evaluations reported through the appropriate documentation of exceptionalities identified in §16103 of this Chapter will be accepted for consideration for exceptionalities served by the OCDD, OBH, or districts or authorities providing developmental disabilities services or behavioral health services.

C. Children must be involved in an educational setting approved by the Department of Education; documentation of such approval must be received on an annual basis.

D. All children must meet the criteria for developmental disability and severity of exceptionality, as determined by the universal screening protocol, to be eligible to participate in the flexible family fund through the OCDD or district or authority providing developmental disabilities services.

E. If a child is classified with an exceptionality of emotional disturbance or presents other appropriate documentation that identifies an emotional disturbance, the child shall be screened by the OBH or district or authority providing behavioral health services to determine whether they meet the severity criteria specific to that exceptionality to be eligible to receive the flexible family fund.

F. Children who are adopted are eligible to participate in the flexible family fund, including families who are receiving a specialized adoption subsidy; families who have more than one child who is eligible to participate in the flexible family fund will be eligible for the flexible family fund amount for each qualifying child.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:186 (February 1992), amended LR 23:863 (July 1997), LR 28:1020 (May 2002), LR 33:1136 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2586 (September 2011).

§16109. Children Ineligible for the Flexible Family Fund

A. These children cannot participate in the flexible family fund:

1. children living in subsidized out-of-home settings such as state-funded foster care;
2. children living and/or attending schools outside the state of Louisiana; and
3. children in residence at the Louisiana School for the Deaf and the Louisiana School for the Visually Impaired.

B. Any removal of the flexible family fund recipient from the home of the responsible care giver that exceeds 30 days may be considered an out-of-home placement, except that acute care hospitalization does not disqualify a child, and psychiatric hospitalizations of up to 90 days are not automatically considered out-of-home placements. With appropriate documentation, the responsible agency shall make an individual assessment of the continuation of the flexible family fund in light of family situation and circumstances.

C. It will be the responsibility of the responsible care giver to notify the agency when a child is removed from the home; failure to notify the responsible agency of such removal shall be potential grounds for termination of the flexible family fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:187 (February 1992), amended LR 23:863 (July 1997), LR 28:1021 (May 2002), LR 33:1136 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2586 (September 2011).

§16111. Eligibility Determination

A. The OCDD regional offices and the OBH or districts or authorities providing developmental disabilities or behavioral health services shall be responsible for determination of eligibility of all applicants for the flexible family fund for which they have responsibility.

B. An initial (face to face) determination for eligibility for the flexible family fund will be made at the time that a flexible family fund opportunity becomes available at a site agreeable to both the agency and the responsible care giver; subsequent (annual) re-determinations of eligibility shall be made in a manner suitable to both the agency and the responsible care giver.

C. At any time a responsible care giver cannot provide adequate and appropriate documentation of a qualifying exceptionality pursuant to §16103 of this Chapter, the responsible care giver may request the local school agency or licensed health provider to re-evaluate the child's exceptionality.

1. If the request for re-evaluation occurs at the initial determination of eligibility, the eligibility determination process will be held open for the period of re-evaluation, plus 10 working days. If the child can then be determined to be eligible, the flexible family fund will begin in the month that the next opportunity becomes available.

2. If the request for re-evaluation occurs at the annual determination of eligibility, the flexible family fund will be discontinued until the re-evaluation becomes available, plus 10 working days. If the child can then be determined to be eligible, the flexible family fund will resume in the month when the determination is made.

D. The OCDD regional offices and the OBH and districts and authorities providing developmental disabilities or behavioral health services shall be responsible to maintain a waiting list of all flexible family fund applicants to the agency according to their post marked date of application. Flexible family fund opportunities will be offered to applicants by date/time order of application (first come, first serve) within the agency's regional responsibility.

E. There shall be no financial criteria for eligibility for the flexible family fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:187 (February 1992), amended LR 23:863 (July 1997), LR 28:1021 (May 2002), LR 33:1137 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of

Children and Family Services, Office of the Secretary, LR 37:2586 (September 2011).

§16113. Payment Guidelines

A. The amount of the flexible family fund shall be \$258 monthly to families of eligible children with severe and profound disabilities to off-set the cost of keeping their child at home; families will not be required to document how the subsidy is used.

B. The termination date for a child attaining age 18 years shall be the last day of the birthday month.

C. If for any reason a recipient receives excess payment, repayment of that amount will be requested. Failure to cooperate with repayment will be referred to DHH for recoupment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:864 (July 1997), LR 28:1021 (May 2002), LR 33:1137 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2587 (September 2011).

§16115. Terminations

A. Reasons for termination may include the following:

1. child moves out of state;
2. family requests termination of the flexible family fund payment;
3. child is placed into a subsidized living setting or resides in a school away from the home or in another state;
4. death of the child;
5. fraud;
6. termination or limitation of funding of the program;
7. failure to comply with the provisions of the individual agreement or the flexible family fund including the requirement to maintain quarterly contact with the agency administering the flexible family fund;
8. child's exceptionality or degree of severity no longer meets eligibility criteria; child attains age 18 years; and
9. responsible care giver fails to maintain the child in an approved educational program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:864 (July 1997), LR 28:1022 (May 2002), LR 33:1137 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2587 (September 2011).

§16117. Ongoing Monitoring

A. The responsible care giver is responsible to maintain contact with the agency administering the flexible family fund at least every 90 days to verify that the child is in the home and the conditions of the individual agreement and flexible family fund are being met.

B. Such quarterly contact shall be accepted by mails, e-mail, fax, face-to-face meetings and telephone provided the responsible care giver attests that the conditions of eligibility continue to be in effect; failure to report significant changes in the child status which may result in disqualification to

participate in the flexible family fund shall be subject to termination of the subsidy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:865 (July 1997), LR 28:1022 (May 2002), LR 33:1137 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2587 (September 2011).

§16119. Appeals

A. All persons receiving an eligibility determination shall have access to the Department of Health and Hospital's appeal process and shall be informed of their right of appeal and the process to make an appeal at the point of initial eligibility determination and at termination of a flexible family fund for any reason other than exceeding the eligible age for participation in the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:865 (July 1997), LR 28:1022 (May 2002), LR 33:1137 (June 2007), amended by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2587 (September 2011).

§16121. Program Evaluation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary and the Department of Social Services, Office of the Secretary, LR 18:188 (February 1992), amended LR 23:865 (July 1997), LR 28:1022 (May 2002), LR 33:1138 (June 2007), repealed by the Department of Health and Hospitals, Office of the Secretary and the Department of Children and Family Services, Office of the Secretary, LR 37:2587 (September 2011).

Bruce D. Greenstein
Secretary

1109#025

RULE

Department of Economic Development Office of Business Development

Quality Jobs Program (LAC 13:I.Chapter 11)

The Department of Economic Development, Office of Business Development, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., hereby amends and reenacts Sections 1101 through 1131 of the Quality Jobs Program as LAC 13:I.Chapter 11.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 11. Quality Jobs Program

§1101. General

A. Purpose. The Quality Jobs Program provides rebates as an inducement for businesses in traditional or seed

clusters targeted for development by the department to locate or expand existing operations in Louisiana, and to support employers who will make significant contributions to the development of the state economy.

B. Program Description

1. The amount of the rebate is directly related to the new direct jobs created and to the new annual gross payroll generated as the result of the employer locating or expanding existing operations in the state.

2. The employer may be entitled to sales and use tax rebates or the investment tax credit authorized in R.S. 51:1787 if the employer meets the Enterprise Zone Program hiring requirements, in addition to the requirements of this Chapter.

C. Effective date of Act 387 of the 2007 Regular Session

1. The provisions of Act 387 shall apply to all contracts executed on or after June 30, 2007, except as provided below.

2. The provisions of the Quality Jobs Program prior to the enactment of Act 387 shall apply to contracts executed or advance notifications filed prior to June 30, 2008, if at the time the contract is executed, amended or renewed the employer does not elect to apply the provisions of Act 387.

3. The provisions of Act 387 shall apply to contracts executed or advance notifications filed prior to June 30, 2008 if at the time the contract is executed, amended or renewed the employer elects to apply the provisions of Act 387. Upon such election, the provisions of Act 387 shall be applied beginning with the fiscal year in which the election is made.

4. The provisions of Act 387 may not be applied to any fiscal year beginning prior to January 1, 2007.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2305 (November 2003), amended by the Office of Business Development, LR 37:2587 (September 2011).

§1103. Definitions

Act 387—Act 387 of the 2007 Regular Session of the Louisiana Legislature.

Affiliate—

1. any business entity that is:
 - a. controlled by the employer;
 - b. a controlling owner of the employer; or
 - c. controlled by an entity described in Subparagraph a or b;
2. control, for purposes of this definition, means owning either directly or indirectly through control of or by another business entity:
 - a. a majority of the voting stock or other voting interest of such business entity or the employer; or
 - b. stock or other interest whose value is a majority of the total value of such business entity or the employer;
3. a controlled or controlling business entity will be deemed a non-affiliate (not an affiliate) if the department determines that neither the employer nor any of its controlling owners exercise authority over the management, business policies and operations of the business entity.

Basic Health Benefits Plan or the Health Insurance Coverage—that which is required to be offered shall include individual coverage for basic hospital care, coverage for physician care, and coverage for health care which shall be the same as that provided to executive, administrative, or professional employees. Coverage must become effective no later than the first day of the month 90 days after hire date.

Benefit Rate—one of the following percentages:

1. contracts subject to the provisions of Act 387:
 - a. the benefit rate shall be 5 percent for new direct jobs which pay at least \$14.50 per hour in wages and health care benefits;
 - b. the benefit rate shall be 6 percent for new direct jobs which pay at least \$19.10 per hour in wages and health care benefits;
 - c. health care benefits paid shall be the value of the health care benefits plan elected by an employee, as determined by the department;
2. contracts not subject to the provisions of Act 387:
 - a. the benefit rate shall be 5 percent for new direct jobs which pay at least 1 3/4 times the federal minimum hourly wage rate;
 - b. the benefit rate shall be 6 percent for new direct jobs which pay at least 2 1/4 times the federal minimum hourly wage rate and meet one of the following criteria:
 - i. the new direct jobs are located in a distressed region, or at least 50 percent of the new direct jobs shall be filled by persons who reside in a distressed region;
 - ii. the new direct jobs are with an employer categorized in a traditional or seed cluster targeted by the department.

Board—the Louisiana Board of Commerce and Industry.

Contract Effective Date—the day that the advance notification and fee were received by the department, or a later contract effective date specified on the application. The contract effective date cannot be earlier than the date the advance notification and fee are received by the department.

Contract Execution—means the date the contract is signed by the governor.

Department—the Louisiana Department of Economic Development.

Distressed Region—as designated by the department:

1. a parish with a per capita income in the lowest 25 percent of the parishes; or
2. a census tract and block group that is below the state median per capita income, based on the most recent federal decennial census.

Domicile—the place of a person's principal establishment or habitual residence. A change of domicile may be shown by positive and satisfactory proof of establishment of domicile as a matter of fact with the intention of remaining in the new place and of abandoning the former domicile. Such proof may include a sworn declaration of intent recorded in the parish to which a person intends to move, voter registration, or similar evidence of such intent.

Employment Baseline—the median statewide number of employees of an employer, including affiliates, working the average hours per week required in §1105, excluding employees engaged in lines of business that the department determines are unrelated to the activities for which quality job program benefits are sought, during the payroll periods including the twelfth day of the month, in the last four

months completed prior to the contract effective date (the median is calculated by discarding the months with the highest and lowest number of employees, and averaging the number in the remaining two months). The employment baseline must be maintained in any year for which the employer requests payroll rebates. The employment baseline may be reduced by the number of employees retained and continued in employment for at least one year by an unrelated third party business acquiring a site or line of business.

Employer—a legal person who applies for and executes a Quality Jobs Program contract with the department pursuant to the provisions of R.S. 51:2452-2462.

Gross Payroll—

1. wages for the new direct jobs upon which the specified benefit rate is calculated;

2. for medical industries serving rural hospitals, gross wages shall include only those wages directly related to providing services to a rural hospital.

Health Care Benefits—means the amount of any payment to or on behalf of an individual in its employ for individual coverage under a plan or system established by an employer which makes provision for individuals in its employ generally or for a class or classes of such individuals including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment for the basic health benefits plan or health insurance coverage, or the value of the health plan or health insurance coverage offered by the employer to an individual it employs.

Hire Date—the first day of work for which the employer directly pays an employee.

Medical Industries—a person, or entity licensed or certified by this state to provide health care or professional services as a physician, hospital, nursing home, community blood center, tissue bank, dentist, registered or licensed practical nurse or certified nurse assistant, ambulance service, certified registered nurse anesthetist, nurse midwife, licensed midwife, pharmacist, optometrist, podiatrist, chiropractor, physical therapist, occupational therapist, psychologist, social worker, licensed professional counselor, licensed perfusionist.

LDR—the Louisiana Department of Revenue.

LWC—the Louisiana Workforce Commission, formerly the Louisiana Department of Labor.

NAICS—North American Industrial Classification System.

New Direct Job—employment at a Louisiana site:

1. of an employee:
 - a. whose domicile is in the state of Louisiana;
 - b. working the average hours per week required by §1105; and
 - c. who prior to the contract effective date was not on the payroll in Louisiana of:
 - i. the employer;
 - ii. the employer's parent entity, subsidiary, or affiliate; or
 - iii. any business whose physical plant and employees were or are substantially the same as those of the employer, unless either:

(a). there has been an arm's length transfer of ownership between unrelated companies (not affiliates), and either the location has been out of operations for at least three months; or

(b). the secretary determines that the jobs would have likely been lost to the state absent the transfer (under such circumstances jobs at the re-opened plant are deemed not to have previously existed for purposes of Subparagraph 2.b. below);

2. in a job (a position of employment) that:

a. is with an employer that has qualified for the incentive rebate;

b. did not exist in this state prior to the advance notification being filed by the employer with the department pursuant to the provisions of R.S. 51:2455; and

c. is not part of the employment baseline;

d. is based at the project site, as determined by the department considering the employee's physical work site, the site to which the employee reports or which administers the employment, the site from which the employee receives work, and the nature of the business;

3. the following jobs are not new direct jobs:

a. jobs created as a result of the employer securing a contract to supply goods and services in the state of Louisiana, if another business was under an obligation to supply the same goods and services from a facility located in Louisiana and such obligation was terminated within three months prior to creation of the job by the employer;

b. jobs transferred, or jobs associated with work or sales transferred, from other Louisiana sites as a result of the employer (including affiliates) acquiring a business operation, or substantially all of its assets, and continuing the business operation.

Project Site—the single contiguous physical location shown on the application.

Rural Hospital—as defined by R.S. 40:1300.

Wages—all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and dismissal payments which the employer is required by law or contract to make. Gratuities shall be estimated in accordance with the Internal Revenue Code and its rules and regulations. Wages shall not include the following:

1. the amount of any payment with respect to services performed after January 1, 1951, to or on behalf of an individual in its employ under a plan or system established by an employer which makes provision for individuals in its employ generally, or for a class or classes of such individuals, including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment, on account of:

a. retirement;

b. sickness or accident disability;

c. medical and hospitalization expenses in connection with sickness or accident disability;

d. death, provided the individual in its employment does not have the option to receive, instead of provision of such death benefit, any part of such payment or, if such death benefit is insured, any part of the premium or contributions to premiums paid by his employer or does not have the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon the termination of

such plan or system or policy of insurance or of his services with such employer; or

e. a bona fide thrift or savings fund, providing such payment is conditioned upon a payment of a substantial sum by such individuals in its employment and such sum paid by the employer cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any 12 month period, except upon an individual's separation from that employment;

2. any payment made to, or on behalf of, an employee or his beneficiary under a cafeteria plan of the type described in 26 U.S.C. 125 and referred to in 26 U.S.C. 3306(b)(5)(G);

3. any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such financing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C. 127 or a dependent care assistance program as described in 26 U.S.C. 129 and as referred to in 26 U.S.C. 3306(b)(13);

4. the payment by an employer, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under Section 3101 of the federal Internal Revenue Code with respect to domestic services in a private home of the employer or for agricultural labor performed after December 31, 1980;

5. dismissal payments that the employer is not required by law or contract to make; or

6. the value of any meals and lodging furnished by or on behalf of an employer to an individual in his employ, provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2306 (November 2003), amended by the Office of Business Development, LR 37:2588 (September 2011).

§1105. Qualified Employers

A. To qualify for a Quality Jobs Program contract an employer must meet the following requirements.

1. Eligible Businesses. The nature of the employer's business must fall within one of the following categories:

a. one of the following six Vision 2020 cluster industries:

i. biotechnology, biomedical, or medical industries serving rural hospitals;

ii. micromanufacturing;

iii. software, auto regulation, Internet, or telecommunications technologies;

iv. environmental technologies;

v. food technologies; or

vi. advanced materials;

b. a manufacturer whose primary function is identified by NAICS Codes 113310, 211, 213111, 541360, 311-339, 511-512, or 54171;

c. an oil and gas field services business identified by the NAICS Code 213112, that has Louisiana as the national or regional headquarters of a multi-state business whose service territory includes Louisiana and the Gulf of Mexico, with new direct jobs that pay wages not less than \$30,000 per year;

d.i. a business that has, or within one year will have, at least 50 percent of its total annual sales to:

(a). out-of-state customers or buyers;

(b). in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use; or

(c). the federal government;

ii. for contracts not subject to the provisions of Act 387, qualification under this Subparagraph also requires either:

(a). 75 percent of total annual sales to the buyers specified above; or

(b). the nature of the employer's business must fall within one of the following categories:

(i). an industry defined by NAICS codes that have a direct state employer multiplier of 2.0 or greater in accordance with the most current edition of the Regional Input/Output Multiplier System II or its successor;

(ii). a central administrative office that influences the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions are accomplished;

(iii). data processing, back office operations, and telephone call center operations (NAICS Code 56142);

(iv). a wholesale trade business (NAICS Code 42) with a distribution center of not less than 25,000 square feet;

e. located in a designated distressed region. Such designation shall be maintained during the contract period, including any renewal period. The employer must be located in a distressed region or at least 50 percent of the new direct jobs must be filled by persons residing in a distressed region.

2. Ineligible Businesses. The following employers or persons shall not be eligible for benefits provided under this Chapter:

a. retail employers identified by NAICS Code Sections 44 and 45;

b. business associations and professional organizations identified by NAICS Code 8139;

c. state and local government enterprises;

d. real estate agents, operators, and lessors;

e. automotive rental and leasing;

f. local solid waste disposal, local sewage systems, and local water systems businesses;

g. nonprofit organizations, unless the department determines that the new direct jobs created by the organization would have a significant impact on Louisiana;

h. employers engaged in the gaming industry identified by NAICS Code sections 713210 and 721120; and

i. attorneys.

3. Payroll

a. The employer must create a minimum of five new direct jobs.

b. If the employer employs more than 50 employees prior to the beginning of the contract, it must have an annual gross payroll for new direct jobs equal to or greater than \$500,000.

c. If the employer employs 50 or fewer employees prior to the beginning of the contract, it must have an annual gross payroll for new direct jobs equal to or greater than \$250,000.

d. The annual payroll for new direct jobs and the minimum number of new direct jobs must be created by the end of the third fiscal year of the contract, or the contract is cancelled and any rebates received must be repaid.

4. Full-time Employee Work Hours

a. For contracts subject to Act 387, the employer must employ full-time employees working 30 or more hours per week in new direct jobs.

b. For contracts prior to Act 387, the employer must employ full-time employees working 35 or more hours per week in new direct jobs. If the employer is a call center (NAICS Code 56142) it must employ full-time employees working 30 or more hours per week in new direct jobs.

5. Health Benefits. The employer must offer, or will offer within 90 days of the contract effective date, a basic health benefits plan or health insurance coverage to the individuals it employs in new direct jobs, in accordance with the following requirements:

a. contract effective dates before June 1, 2000—the employer shall pay not less than 50 percent of the insurance premium;

b. contract effective dates on or after June 1, 2000, but before May 1, 2002—the employer shall pay not less than 75 percent of the premium for full-time employees. The employer shall offer group coverage for dependents of full-time employees, but the employer is not required to pay the premium;

c. contract effective dates on or after May 1, 2002—the employer shall offer the employee the choice of one of the following:

i. the employer shall pay not less than 85 percent of the total premium for full-time employees choosing to participate under individual coverage and shall offer coverage for dependents of full-time employees, but the employer is not required to pay the premium; or

ii. the employer shall pay not less than 50 percent of the total premium for full-time employees who choose to participate and choose to cover their dependents;

d. for contracts subject to the provisions of Act 387, the health care benefits must be determined by the department to have a value of at least \$1.25 per hour. The department's valuation analysis shall be made in accordance with standard operating procedures which shall be posted on the department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2307 (November 2003), amended by the Office of Business Development, LR 37:2590 (September 2011).

§1107. Application Fees, Timely Filing

A. The applicant shall submit an advance notification on the prescribed form before locating the establishment or the creation of any new direct jobs in the state. All financial incentive programs for a given project shall be filed at the same time, on the same advance notification form. An advance notification fee of \$100, for each program applied for, shall be submitted with the advance notification form. An advance notification filing shall be considered by the department to be a public record under Louisiana Revised Statutes, Title 44, Chapter 1, Louisiana Public Records Law, and subject to disclosure to the public.

B. An application for the Quality Jobs Program must be filed with the Office of Business Development, Business Incentives Services, P.O. Box 94185, Baton Rouge, Louisiana 70804-9185 on the prescribed forms within 18 months after the first new direct job is hired; however, no more than 24 months after the department has received the advance notification and fee. Failure to file an application within the prescribed timeframe will result in the expiration of the advance notification. An extension to the advance notification of no more than 6 months may be granted if the applicant requests, in writing, the extension prior to the expiration of the advance notification.

C. An application fee shall be submitted with the application based on the following:

1. 0.2 percent (.002) times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is \$200 and the maximum application fee is \$5,000 for a single project;

3. an additional application fee will be due if a project's employment or investment scope is or has increased, unless the maximum has been paid.

D. An application to renew a contract shall be filed within 60 days of the initial contract expiring. A fee of \$50 must be filed with the renewal contract.

E. The Office of Business Development reserves the right to return the advance notification, application, or annual certification to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications, applications, or annual certification that have been accepted for eligible projects shall not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011).

§1109. Application Review and Determination

A. Application Review

1. The department will assign a project number and review the advance notification form to determine if the employer is qualified pursuant to §1105. The employer will be notified of the project number and due date of the

application packet. Certification of the employer's primary qualification, on the prescribed form, must be submitted by the applicant, prior to the application being received by the department.

2. The application packet must be completed and returned to the department by the due date. If the application is incomplete, the department may request additional information prior to further action. The application fee must accompany the application packet pursuant to §1107.C.

3. The employer must provide all information requested by the department for purposes of verifying employer qualifications, gross payroll, wages, new direct jobs, and the value of the basic health benefits plan or health insurance coverage, including but not limited to a list of all employees, their positions and wages, and a copy of the basic health benefits plan or health insurance coverage policy.

B. Determination. The department shall determine whether the employer is qualified, the amount of gross payroll, the value of the basic health benefits plan or the health insurance coverage, the number of new direct jobs and the benefit rate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003), amended by the Office of Business Development, LR 37:2591 (September 2011).

§1111. Consultation with the LWC and the LDR

A. The department will provide a copy of the application and all relative information to the LWC and the LDR for review. Either the LWC or the LDR or both may require additional information from the applicant.

B. The department must obtain a letter-of-no-objection or a letter-of-approval from the LWC and the LDR, prior to submitting the application to the board for action. Contracts will not be generated or executed until a letter-of-approval is received from the LWC and LDR.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011).

§1115. Department Recommendations to Board

A. After its review and determination the department will prepare the application information in a format suitable for presentation to the board.

B. The department will make a presentation to the board as to the economic impact and the benefits to be received.

C. The department will make recommendations for approval or disapproval, and will provide information on behalf of the LWC and the LDR.

D. The board must approve the application prior to a contract being issued.

E. Applicant or its representatives will be notified of the board meeting date at which their application will be

considered. The applicant should have someone present who is able to answer any questions the board may have regarding the information contained in the application, otherwise, the application may be deferred or denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011).

§1117. The Contract

A. The board, after no objection from the executive director of the LWC and secretary of the LDR, and with the approval of the governor, may enter into a contract with an employer for a period up to five years.

1. A contract with an employer shall be limited to a single project site and the benefits the employer shall receive will be based upon the operations at that location. An employer may have only one contract in effect for a project site, except as provided below.

2. An employer may have one additional contract in effect for a project site for a subsequent expansion project that is distinct from the project associated with the original contract, and that increases the number of new direct jobs at the site by at least 25 percent. If new direct jobs are not increased by at least 25 percent by the end of the third fiscal year of the additional contract, the contract shall be terminated and all benefits for the site shall be determined under the original contract.

3. An employer may have multiple contracts covering multiple locations. The eligibility of each location shall be determined separately.

4. For each contract, the department shall certify that the employer has a net overall increase in employment statewide for each new direct job.

5. A contract may, with the approval of the board, be transferred to a business entity purchasing and continuing the operation of a project site. Upon such transfer, the employment baseline shall be that of the purchaser during the 45-day period prior to the purchase.

B. The contract may be renewed for an additional five years provided that:

1. the employer has complied with all the terms of the contract;

2. the employer has met the statutory minimum hourly wage for the new direct jobs subject to the benefit rate established when the contract was entered into; and

3. the hourly wage rate has increased by an amount which is no less than the greater of either of the following:

a. the hourly wage rate has grown by the percentage increase in the Consumer Price Index published by the U.S. Department of Labor for the five years of the initial term of the contract, compounded; or

b. the hourly wage rate has increased by 2 percent for each of the five years of the initial term of the contract, compounded annually;

c. the greater of the increases required under items a. and b. above shall become the minimum hourly wage for the renewal contract.

C. No contract shall be executed if:

1. the employer has defaulted, not repaid a loan, or not repaid an obligation involving public funds;
2. the employer declared bankruptcy and the obligation to pay or repay public funds or monies was discharged as part of such bankruptcy a contract shall not be executed; or
3. the employer is in default on any filing or payment to the state, or any of its agencies or political subdivisions, for which an assessment or judgment is final.

D. Contract Voided. Violation of the provisions of §1117.C shall void the contract and any rebates paid to the employer prior to the date the violation is discovered, the rebates will be recovered by adding to the income tax liability for the taxable year the violation occurred. Additionally, interest will be assessed from the date of the violation and the employer shall receive no further rebates.

E. Contract Suspended

1. If a rebate is received by an employer as provided under this provision and the employer is rendered an assessment or judgment that is final and nonappealable in favor of the state or any of its agencies or any of its political subdivisions, the contract shall be suspended pending the settlement of the assessment. No rebate shall accrue to the employer under the contract during the period of suspension.

2. After the employer's fiscal year for which the employer applied for his third annual rebate, if at any other time during the 10-year contract period the employer applies for a rebate following the end of the employer's fiscal year, and the verified gross payroll for the fiscal year does not demonstrate the required minimum of five new direct jobs and the gross payroll does not equal or exceed a total of \$500,000 or \$250,000, whichever is applicable to said contract, the rebates shall be suspended and shall not be resumed until such time as the payroll and job requirements are met. No rebate shall accrue or be paid to the employer during a period of suspension.

F. Contract Rebates Reduced

1. If the employer receives a rebate and it is subsequently determined the employer did not qualify for the rebate, future rebates will be reduced by the amount received by the employer.

2. If there are no future rebates to deduct the amount owed the state, the tax liability of the employer will be increased by the amount of the rebate for the taxable period non-qualification was determined.

3. The secretary of the LDR may recover any rebates previously granted to an employer but which rebates disallowed as authorized by R.S. 47:1561.2. The employer shall waive prescription for the purpose of recovering any disallowed rebates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003), amended by the Office of Business Development, LR 37:2592 (September 2011).

§1119. Incentive Rebates

A. Except as otherwise provided herein an employer who has entered into a contract may receive a rebate that is

calculated by multiplying the benefit rate times the annual gross payroll.

B. Notwithstanding anything to the contrary in either Chapter 1 or Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as amended, the following rules shall apply with respect to the application of the rebate allowed.

1. The incentive rebate allowed an S corporation shall be paid to the S corporation entity and not the individual shareholders of the corporation.

2. The incentive rebate allowed a partnership, limited liability partnership (LLP), or limited liability company (LLC) shall be paid to the entity and shall not be paid to the individual partners or members of the entity.

C. Notwithstanding any other provision of law to the contrary in Title 47 of the Louisiana Revised Statutes of 1950, as amended, the secretary of the LDR shall make the rebate.

D. In order to receive the rebate provided for by the contract, an employer shall apply with the department.

1. The application shall be filed on the prescribed form designated by the department and shall contain the required information to determine if the applicant is qualified.

2. The application shall contain a sworn statement, by a duly authorized officer of the employer, listing the names of persons or other entities who have received or who will receive any payment or other consideration from the employer for the purpose of representing the employer in applying for or receiving the benefits of this program.

E. In order to qualify to receive the rebate, the employer applying shall meet the requirements of §1101.B.1 and 2.

F. The department shall determine if an applicant is qualified to receive rebates.

G. The approved employer shall apply annually for rebates with the department in the prescribed format and provide the information as described in §1123. The employer may be audited by the department to verify eligibility. The rebates may continue as long as the employer complies with the approved contract and remains eligible.

H. The benefit rate shall be determined annually based on information provided by the employer on the rebate claim reports made annually.

I. The payroll rebates shall be paid annually after the employer submits the required annual report as specified in §1123 and the department determines the employer is eligible for the rebate for that fiscal year. The report shall be filed within 90 days following the end of the employer's fiscal year with the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003), amended by the Office of Business Development, LR 37:2593 (September 2011).

§1121. Rebate Payments

A. In addition to the payroll rebates, an employer shall be entitled to sales and use tax rebates or the investment tax credit as authorized in R.S. 51:1787, if the employer meets the hiring requirements as defined in the Enterprise Zone Program and meets the other limitations, procedures, and

requirements of R.S. 51:1787 and the rules promulgated there under, Louisiana Administrative Code, Title 13, Part I, Chapter 7.

B. A request for rebate of local sales and use taxes must be accompanied by an endorsement resolution approved by the governing authority of the appropriate political subdivision from which rebates will be sought. The endorsement resolution must clearly state the local governmental subdivision intends to rebate the allowable sales and use taxes for the project. The resolution must be filed with the department prior to the board taking action on the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003), amended by the Office of Business Development, LR 37:2593 (September 2011).

§1123. Rebate Claim Filing

A. Payroll Rebate

1. An annual certification and a fee of \$100 shall be filed annually, commencing within six months after completion of the applicant's fiscal year or execution of the contract, whichever is later. The department may grant an extension of up to an additional six months provided the extension is requested prior to the filing deadline. Failure to file an annual certification within the prescribed timeframe may result in the annual rebate being denied or restricted. An annual certification is required in each year the contract is active, irrespective of whether annual rebates are being claimed.

2. The annual report will provide information on the number of employees at the site, the number of employees statewide, the number of new direct jobs created at the site, the number of hours worked by each employee weekly, the hourly wage paid employees in the new direct jobs, the position title, the employee's address, the hire date, the term date, the insurance acceptability, the percentage of the insurance paid by the employer, and the annual gross wages.

3. The department may request additional information and documentation from the employer as may be necessary to determine the eligibility for the annual rebate for that fiscal year or may request the employer revise the annual report.

4. Upon approval the department will advise the LDR of the eligible rebate. The LDR shall make payment of the rebate after offset, if applicable, under R.S. 47:1622. The rebate shall be considered a refundable overpayment for the purpose of such offset.

5. If the actual verified annual gross payroll for the employer's third fiscal year does not show a minimum of five new direct jobs and does not equal or exceed a total annual payroll for new direct jobs of either \$500,000 or \$250,000, whichever is applicable, the employer will be determined to be ineligible under this Chapter. The LDR will be notified and the tax liability for the current tax period in which the failure to meet the requirements occurs shall be increased by the amount of rebates previously allowed.

6. If the department determines that the employer has large number of employees, multiple locations, or other factors that would cause the number of new direct jobs to be not readily determined, the department may require the

employer to obtain a new and separate unemployment compensation number with the LWC for reporting new direct jobs.

B. Sales and Use Tax Rebate or Investment Tax Credit

1. An annual employee certification report must be filed on all active contracts for the employer to qualify for the sales and use tax rebate or investment tax credit under this Chapter. Employers must meet the requirements of the Enterprise Zone legislation and rules to qualify.

2. Sales and Use Tax Rebate or Investment Tax Credit Advance Notification. An employer who receives a Quality Jobs Act contract and who meets the requirements for sales and use tax rebates as authorized in R.S. 51:1787 and §1121 of these rules, will satisfy the advance notification requirement for sales and use tax rebates or investment tax credit for the Quality Jobs Act contract by submission of the Quality Jobs Act Program advance notification referred to in §1107 of these rules. The sales and use tax rebate period shall begin on the contract effective date, unless otherwise provided in the contract, and shall be no longer than 24 months, except to the extent that a longer period is authorized under the Enterprise Zone Program, but shall not extend beyond the term of the Quality Jobs Act contract. In order to receive rebates of local sales and use taxes, the employer must satisfy the provisions of §1121.B of these rules.

3. Subsequent Sales and Use Tax Rebate/Investment Tax Credit Periods. On the expiration of the initial sale and use tax rebate or investment tax credit period under the Quality Jobs Act contract, the employer may file additional advance notifications on Form, "Quality Jobs Act Sales and Use Tax Rebate/Investment Tax Credit Advance Notification," to seek additional state and local sales and use tax rebates or investment tax credits as authorized in R.S. 51:1787 and §1121 of these rules if the employer meets the hiring requirements as defined in the Enterprise Zone Program and meets the other limitations, procedures, and requirements of R.S. 51:1787 and the rules promulgated thereunder, Louisiana Administrative Code, Title 13, Part I, Chapter 7, for each subsequent sales and use tax rebate or investment tax credit period during the term of the Quality Jobs Act contract. Each subsequent sales and use tax rebate or investment tax credit period shall be no longer than 24 months, except to the extent that a longer period is authorized under the Enterprise Zone Program. The local endorsement resolution requirements of §1121.B shall apply to each subsequent sales and use tax rebate period for which the employer under a Quality Jobs Act contract seeks the rebate of local sales and use taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003), amended by the Office of Business Development, LR 37:2594 (September 2011).

§1125. Prohibited Incentives

A. A qualified employer that enters into a contract under this Chapter shall not be eligible to receive the other credits or exemptions provided for in the following provisions of law except as provided for in R.S. 51:2456(B):

1. R.S. 47:34 (tax credit for generation of new jobs in Louisiana);

2. R.S. 47:38 and 287.757 (income tax credit for conversion of vehicles to alternate fuel usage);

3. R.S. 47:4301 through 4306 (Industry Assistance Program—income tax, corporate franchise tax, state sales tax, and excise tax exemptions for manufacturing establishments);

4. R.S. 47:6004 (employer credit for employment of previously unemployed person);

5. R.S. 47:6009 (Louisiana basic skills training tax credit-income tax credit);

6. R.S. 47:6010 (employer income tax credit for employee alcohol and substance abuse treatment programs);

7. R.S. 51:1787 (Enterprise Zone Program—incentives tax exemption from sales and use tax materials to be used in the construction of a building and for machinery and income tax credit for each employee in an enterprise zone);

8. R.S. 47:287.748 (re-entrant jobs credit for formerly incarcerated employees—corporate income tax);

9. R.S. 47:287.749 (corporate income tax credit for new jobs);

10. R.S. 47:287.753 (neighborhood assistance income tax credit);

11. R.S. 51:2351 et seq. (Technology Commercialization Credit and Jobs Program).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003), amended by the Office of Business Development, LR 37:2594 (September 2011).

§1127. Penalties

A. Penalties are provided under R.S. 51:2460 for false or fraudulent information in making application, making a claim for rebate, or other instrument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2312 (November 2003), amended by the Office of Business Development, LR 37:2595 (September 2011).

§1129. Termination of Program

A. The board shall approve no new applications for rebates as provided for under this Chapter on and after January 1, 2012.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2312 (November 2003), amended by the Office of Business Development, LR 37:2595 (September 2011).

§1131. Severability

A. If any Section or provision of this Chapter is held invalid, such invalidity shall not affect other provisions of this Chapter. Any provision of this Chapter that is in conflict with R.S. 51:2451-R.S. 51:2462 or any other statute will be invalid and will be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development,

Business Resources Division, LR 29:2312 (November 2003), amended by the Office of Business Development, LR 37:2595 (September 2011).

Kristy G. McKearn
UnderSecretary

1109#035

RULE

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System (LAC 28:LXXXIII.2401 and 2403)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended and adopted revisions to *Bulletin 111—The Louisiana School, District, and State Accountability System*: §2401. Eligibility for Transfer to the Recovery School District and §2403. Transfer of Schools out of the Recovery School District. Proposed changes in Bulletin 111, Chapter 24, provide detail for governing the transfer of schools that have been under the jurisdiction of the recovery school district for five years. The process will begin this fall with those schools meeting the performance requirement earning the right to return to their former Louisiana Education Authority or those schools that remain in academically unacceptable schools status being eligible for takeover via a request for application competition. Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 24. Recovery School District

§2401. Eligibility for Transfer to the Recovery School District

A. The Louisiana legislature established the recovery school district with the passage of R.S. 17:1990. A school is eligible for the recovery school district under any of the following conditions.

1. The LEA fails to submit a reconstitution plan for a school in AUS 4 to BESE for approval.

2. A school's reconstitution plan is submitted to BESE but is deemed to be unacceptable.

3. A school and/or the LEA fails to comply with the terms of a BESE approved reconstitution plan.

4. A school is labeled academically unacceptable for four consecutive years.

B. The recovery school district under R.S. 17:10.5 and 10.7 shall retain jurisdiction of any school transferred to it for a period of not less than five school years not including the school year in which the transfer occurred if the transfer occurred during a school year.

1. No later than October 1 each year, the recovery school district shall make a report to the state Board of Elementary and Secondary Education.

a. The report shall include at a minimum each of the following elements:

- i. the status of each school transferred;
- ii. the nature of its faculty and administration;
- iii. the demographics and size of its student body;
- iv. its organizational and management structure;
- v. whether there has been improvement in student academic performance and, if so, how much and, if not, why not.

2. No later than January 1 prior to the expiration of the five-year period, the state Board of Elementary and Secondary Education shall take action on the recommendations of the recovery school district concerning the transfer of schools.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1028 (June 2006), amended LR 33:2599 (December 2007), LR 34:431 (March 2008), LR 35:640 (April 2009), LR 37:2595 (September 2011).

§2403. Transfer of Schools out of the Recovery School District

A. This policy provides the mechanism for transferring of eligible schools from the jurisdiction of the recovery school district (RSD) while ensuring that the school's autonomy and flexibility is retained to allow continued substantial improvement and high standards of accountability. An eligible school may elect to transfer from the RSD and return to its former local educational authority (LEA) or an alternative governing authority (AGA), if authorized by law. If a school chooses not to transfer to its LEA, it will automatically remain within the RSD for an additional five year period.

B. No school shall be eligible for transfer from the jurisdiction of the recovery school district until the conclusion of the 2011-2012 school year. No school shall be transferred from the RSD without the approval of the Louisiana Board of Elementary and Secondary School (BESE).

C. A non-failing school is eligible for transfer from the jurisdiction of the recovery school district provided it meets all of the following.

1. The school has been under the jurisdiction of the recovery school district for a minimum of five years as either a direct-run RSD school or a Type-5 charter school.

2. The school meets the performance requirement as defined by having established two consecutive years of a school performance score (SPS) that is at least 80 or if the academically unacceptable school (AUS) bar is raised above 75, then at least 5 points above the AUS bar as established by BESE pursuant to the statewide school and district accountability system.

3. The school elects to transfer from the RSD and has notified BESE no later than December 1 of the year preceding the effective date of the proposed transfer.

a. Type 5 Charter School. The charter school's governing authority, in accordance with its by-laws, shall notify BESE in writing of its desire to transfer from the jurisdiction of the RSD.

b. Direct-Run RSD School. The superintendent of the RSD, in consultation with the parents of students attending the school, and the school's staff, shall make a recommendation to BESE seeking transfer from the jurisdiction of the RSD.

4. No later than January 1 of the school year preceding the effective date of the proposed transfer, BESE shall make a determination whether or not to transfer the school and the mechanism of such transfer.

5. The former local educational authority or the alternative governing authority (collectively referred to as recipient authority) has agreed to accept jurisdiction of the transferring school.

6. The following parties must agree to transfer no later than April 1 of the school year preceding the effective date of such transfer:

- a. the governing authority of a charter school, if a charter school; or
- b. the superintendent of the RSD, if a direct-run RSD school; and
- c. BESE; and
- d. the recipient authority.

D. A direct-run RSD school that is deemed a failing school may be eligible for transfer from the jurisdiction of the recovery school district provided it meets all of the following.

1. The school has been under the jurisdiction of the recovery school district for a minimum of five years.

2. The school is labeled as in AUS status as defined by the statewide school and district accountability system during its fifth year, or any subsequent year the school remains within the RSD.

3. The school is not undergoing a charter conversion or phase-out, as defined in Subsection I below.

4. The recipient authority has agreed to accept the school and has developed a proposal for the school's turnaround.

5. BESE has approved the recipient authority's turnaround proposal for the school.

6. The following parties have agreed to such transfer from the RSD:

- a. the superintendent of the RSD; and
- b. BESE; and
- c. the recipient authority.

E. Type 5 Charter Schools. The transfer of a Type 5 charter school from the RSD shall become effective on July 1 of the year following BESE's approval of such transfer.

1. The charter school must negotiate a new charter agreement with the recipient authority to become either a Type 3 or Type 4 charter school. A copy of the signed negotiated charter agreement must be provided to BESE no later than April 1 preceding the effective date of the proposed transfer. The new charter agreement must:

- a. be effective on the date of transfer (July 1);
- b. be consistent with all state and federal laws governing charter school authorization; and
- c. contain academic performance standards and other requirements for extension and renewal that are equal to or greater than Type 5 charter school performance standards as enumerated in BESE Bulletin 126.

2. Transfer to a Type 3 Charter School. If the charter school elects to become a Type 3 charter school, the non-profit charter organization shall apply to the recipient authority to operate the school. The charter contract agreement must conform to all the laws and requirements governing Type 3 charter schools.

3. Transfer to a Type 4 Charter School. If the charter school elects to become a Type 4 charter school, the recipient authority must apply to BESE to operate the charter school, with the approval from the charter operator. The charter contract agreement must conform to all the laws and requirements governing Type 4 charter schools.

F. Direct-Run RSD Schools. A direct-run RSD school may transfer directly to the recipient authority as a direct-run school, or may transfer as a Type 3 or Type 4 charter school.

1. Transfer to a Charter School. A non-failing direct-run RSD school may elect to transfer to the recipient authority as either a Type 3 or a Type 4 charter school. Such transfer to the recipient authority shall be made in the same manner as described in Paragraph E.1 above.

2. Transfer as a Direct-Run School. A direct-run RSD school may elect to become a direct-run school under the recipient authority, in which case the recipient authority shall enter into a memorandum of understanding (MOU) with BESE. The MOU shall be effective for a maximum of three years, and shall provide, at a minimum, the following.

a. Non-Failing Direct-Run RSD Schools

i. Preserve the Existing School Autonomy. The transferring school shall retain its existing level of autonomy over such elements, including but not limited to, its educational program and curricula, its staffing, and its budget decisions.

ii. Continued Performance. The recipient authority shall be required to maintain school performance equal to or greater than that achieved by the RSD. Should the transferring school become AUS during the term of the MOU, the school shall be immediately returned to the jurisdiction of the RSD.

iii. School Budget. The transferring school shall maintain its school-level budget at a level at least equal to that school-level budget it maintained while in the RSD, adjusted for current enrollment, the MFP and/or federal, local and/or other sources of revenue.

iv. Recourse. Violation of the MOU may result in the school being returned to the RSD.

b. Failing Direct-Run RSD Schools

i. Turnaround Plan. The MOU shall identify key benchmarks and milestones demonstrating the turnaround strategy being executed and successfully improving student academic outcomes.

G. The RSD has the responsibility to maintain high educational standards for all direct-run schools and charter schools under its jurisdiction.

H. Type 5 Charter School Accountability. The renewal of a charter agreement for any Type 5 charter school that is labeled AUS in its fifth year of operation shall be governed by provisions found in Bulletin 126. If not renewed, the charter school will either revert to the direct control of the RSD, be closed, or may be transferred to another non-profit charter organization.

I. Direct-Run RSD Schools. Any direct-run RSD school that is labeled AUS in its fifth year of operation within the RSD shall be subject to one of the following.

1. Phase-Out. The school will be closed according to a timeline and its students will be transferred to other high performing schools.

2. Charter Conversion. The school may be converted to the control of a charter school that has a proven ability to implement a school turnaround model and will operate as a Type 5 charter school.

3. Transfer to a Recipient Authority. The school may be transferred to a recipient authority, which has the proven ability to implement a school turnaround plan.

4. Remain within the RSD. The school may remain within the RSD for an additional five-year period. The school performance will be reviewed on an annual basis and, if the school remains in AUS, a charter operator or recipient authority may submit a proposal to BESE for operation of the school.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 37:2596 (September 2011).

Catherine R. Pozniak
Executive Director

1109#009

RULE

Board of Elementary and Secondary Education

Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators (LAC 28:LXXIX.2109, 2331, and 2335)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended *Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators*: §2109. High School Graduation Requirements, §2331. Social Studies, and §2335. Course Credit for Religious Studies. These policy revisions add the courses History of Religion and World Religions to the Religious Studies Program of Study for nonpublic schools. The revisions were recommended by the study group required by HR 204 of the 2010 Regular Legislative Session.

Title 28

EDUCATION

Part LXXIX. Bulletin 741 (Nonpublic)—Louisiana Handbook for Nonpublic School Administrators
Chapter 21. Curriculum and Instruction
Subchapter C. Secondary Schools
§2109. High School Graduation Requirements

A. - E.3.c.xiv.(b). ...

4. Social Studies—four units, shall be:

a. one unit of civics or AP American government, or 1/2 unit of civics or AP American Government and 1/2 unit of free enterprise;

b. one unit of American history;

- c. one unit from the following:
 - i. world history;
 - ii. world geography;
 - iii. western civilization; or
 - iv. AP European history;
- d. one unit from the following:
 - i. world history;
 - ii. world geography;
 - iii. western civilization;
 - iv. AP European history;
 - v. law studies;
 - vi. psychology;
 - vii. sociology;
 - viii. African American studies; or
 - ix. a course from the religious studies program of study (§2335).

E.5. - F.7. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2351 (November 2003), amended LR 30:2776 (December 2004), LR 31:3081 (December 2005), LR 34:2099 (October 2008), LR 36:2849 (December 2010), LR 37:2142, 2144 (July 2011), repromulgated LR 37:2390 (August 2011), LR 37:2597 (September 2011).

Chapter 23. High School Program of Studies

§2331. Social Studies

A. - C. ...

D. One unit of religious studies (§2335) may be used as the fourth social studies course required for the Louisiana Core 4 curriculum.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2356 (November 2003), amended LR 31:3088 (December 2005), LR 34:2102 (October 2008), LR 37:2144 (July 2011), LR 37:2598 (September 2011).

§2335. Course Credit for Religious Studies

A. A maximum of four units in religion shall be granted to students transferring from state-approved private and sectarian high schools who have completed such course work. Those credits shall be accepted in meeting the requirements for high school graduation.

Course Title	Units
Religious Studies I	1
Religious Studies II	1
Religious Studies III	1
Religious Studies IV	1
World Religions	1
History of Religion	1

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2356 (November 2003), amended

LR 31:3088 (December 2005), LR 37:2145 (July 2011), LR 37:2598 (September 2011).

Catherine R. Pozniak
Executive Director

1109#010

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Bylaws of the Advisory Committee to the Student Financial Assistance Commission (LAC 28:V.221)

The Louisiana Student Financial Assistance Commission (LASFAC) has amended its Bylaws (R.S. 17:3021-3025 and R.S. 17:3048.1). (AC11128R)

Title 28

EDUCATION

Part V. Student Financial Assistance—Higher Education Loan Program

Chapter 2. Bylaws of the Advisory Committee to the Student Financial Assistance Commission

Subchapter C. Membership and Officers of the Committee

§221. Membership

A.1. The committee shall be composed of nine voting members, who shall be the financial aid director or his/her designee representing the Louisiana State University System, the Southern University System, the University of Louisiana System, the Louisiana Community and Technical College System, the Professional Schools, the Louisiana Association of Independent Colleges and Universities, and proprietary schools selected by the Louisiana Career College Association; a student member through September 30, 2010; and beginning October 1, 2011, one active public high school counselor and one active non-public high school counselor appointed by the Louisiana School Counselor Association.

A.2. - B.7.b. ...

8. Student—Through September 30, 2010

a. A student member shall be selected by the financial aid officer who is a member of the advisory committee beginning with the member from the Louisiana State University System and rotating in the order of members listed above.

b. Student members shall serve one year terms and may not serve two consecutive terms.

c. The student selected should be an employee of the financial aid office, have financial aid experience or otherwise have an interest in financial aid.

9. High School Counselors—Beginning October 1, 2011

a. One active public high school counselor selected by the Louisiana Student Counselor Association whose initial term shall be one year.

b. One active non-public high school counselor selected by the Louisiana Student Counselor Association whose initial term shall be two years.

C. - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:435 (March 1998), amended LR 33:1339 (July 2007), LR 34:610 (April 2008), LR 37:2598 (September 2011).

George Badge Eldredge
General Counsel

1109#013

RULE

Office of the Governor Public Defender Board

Trial Court Performance Standards for Attorneys
Representing Children in Delinquency Proceedings
(LAC 22:XV.Chapters 13 and 15)

The Public Defender Board, a state agency within the Office of the Governor, has adopted LAC 22:XV.Chapter 13 and LAC 22:XV.Chapter 15, as authorized by R.S. 15:148. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Act 307 of the 2007 Regular Session of the Louisiana Legislature directed the Public Defender Board to adopt rules creating mandatory: 1) statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state; and 2) qualification standards for public defenders that ensure that public defender services are provided by competent counsel. Said standards are to ensure that public defenders are qualified to handle specific case types, taking into consideration the level of education and experience that is necessary to competently handle certain cases and case types, including representation of children in delinquency cases. In compliance with the directives of Act 307, the Public Defender Board has adopted these standards for trial court performance for attorneys representing children in delinquency cases.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XV. Public Defender Board

Chapter 13. Trial Court Performance Standards for Attorneys Representing Children in Delinquency—Detention through Adjudication

§1301. Purpose

A. The standards for attorneys representing children in delinquency proceedings are intended to serve several purposes. First and foremost, the standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of children in delinquency proceedings.

B. The standards are also intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in

deciding upon the particular actions to be taken in each case to ensure that the client receives the best representation possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action that is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word "shall." In those instances where a particular action is usually necessary to providing quality representation, the standards use the word "should." Even where the standards use the word "shall," in certain situations the lawyer's best informed professional judgment and discretion may indicate otherwise.

D. These standards are not criteria for the judicial evaluation of alleged misconduct of defense counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011).

§1303. Obligations of Defense Counsel

A. The primary and most fundamental obligation of the attorney representing a child in a delinquency case is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney's duty and responsibility is to promote and protect the expressed interests of the child. Attorneys also have an obligation to uphold the ethical standards of the Louisiana Rules of Professional Conduct, to act in accordance with the Louisiana Rules of the Court, and to properly document case files to reflect adherence to these standards.

B. The attorney who provides legal services for a juvenile client owes the same duties of undivided loyalty, confidentiality and zealous representation to the child client as is due to an adult client. The attorney's personal opinion of the child's guilt is not relevant to the defense of the case.

C. The attorney should communicate with the child in a manner that will be effective, considering the child's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, the attorney should file a motion to have a foreign language or sign language interpreter appointed by the court and present at the initial interview and at all stages of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011).

§1305. Child's Expressed Preferences

A. The attorney should represent the child's expressed preferences and follow the juvenile client's direction throughout the course of litigation. In addition, the attorney has a responsibility to counsel the child and advise the client as to potential outcomes of various courses of action. The attorney should refrain from the waiving of substantial rights or the substitution of his or her own view or the parents' wishes for the position of the juvenile client. The use of the word *parent* hereafter refers to the parent, guardian,

custodial adult or person assuming legal responsibility for the juvenile.

B. Considerations of personal and professional advantage or convenience should not influence counsel's advice or performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2599 (September 2011).

§1307. Scope of Representation

A. Certain decisions relating to the conduct of the case are ultimately for the child and other decisions are ultimately for the attorney. The child, after full consultation with counsel, is ordinarily responsible for determining:

1. the plea to be entered at adjudication;
2. whether to accept a plea agreement;
3. whether to participate in a diversionary program;
4. whether to testify on his or her own behalf; and
5. whether to appeal.

B. The attorney should explain that final decisions concerning trial strategy, after full consultation with the child and after investigation of the applicable facts and law, are ultimately to be made by the attorney. The client should be made aware that the attorney is primarily responsible for deciding what motions to file, which witnesses to call, whether and how to conduct cross-examination, and what other evidence to present. Implicit in the exercise of the attorney's decision-making role in this regard is consideration of the child's input and full disclosure by the attorney to the client of the factors considered by the attorney in making the decisions.

C. If a disagreement on significant matters of tactics or strategy arises between the lawyer and the child, the lawyer should make a record of the circumstances, his or her advice and reasons, and the conclusion reached. This record should be made in a manner that protects the confidentiality of the attorney-client relationship.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2600 (September 2011).

§1309. Basic Competency in Juvenile Proceedings

A. Before agreeing to defend a juvenile client, an attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge and experience to offer quality representation to the child. Before an attorney defends a juvenile client, the attorney should observe juvenile court, including every stage of a delinquency proceeding, and have a working knowledge of juvenile law and practice.

B. Prior to representing a juvenile client, at a minimum, the attorney should receive training or be knowledgeable in the following areas:

1. relevant federal and state statutes, court decisions and the Louisiana court rules, including but not limited to:
 - a. Louisiana Children's Code and Code of Criminal Procedure;
 - b. Louisiana statutory chapters defining criminal offenses;
 - c. Louisiana Rules of Evidence;
 - d. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 et seq.;

e. Family Education Rights Privacy Act (FERPA), 20 U.S.C. §1232g;

f. Health Insurance Portability and Accountability Act of 1996 (HIPPA), P.L., 104-192 § 264, 42 U.S.C. § 1320d-2 (in relevant part);

g. Louisiana Administrative Code, Title 28, Part XLIII (*Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act*) and Part CI (*Bulletin 1508—Pupil Appraisal Handbook*);

h. state laws concerning privilege and confidentiality, public benefits, education and disabilities; and

i. state laws and rules of professional responsibility or other relevant ethics standards.

2. overview of the court process and key personnel in the delinquency process, including the practices of the specific judge before whom a case is pending;

3. placement options for detention and disposition;

4. trial and appellate advocacy;

5. ethical obligations for juvenile representation including these guidelines for representation and the special role played in juvenile courts; and

6. child development, including the needs and abilities of juveniles.

C. An attorney representing juveniles shall annually complete six hours of training relevant to the representation of juveniles. Additional training may include, but is not limited to:

1. adolescent mental health diagnoses and treatment, including the use of psychotropic medications;

2. how to read a psychological or psychiatric evaluation and how to use these in motions, including but not limited to those involving issues of consent and competency relating to Miranda warnings, searches and waivers;

3. normal childhood development (including brain development), developmental delays and mental retardation;

4. information on the multidisciplinary input required in child-related cases, including information on local experts who can provide consultation and testimony;

5. information on educational rights, including special educational rights and services and how to access and interpret school records and how to use them in motions, including but not limited to those related to consent and competency issues;

6. school suspension and expulsion procedures;

7. skills for communicating with children;

8. information gathering and investigative techniques;

9. use and application of the current assessment tool(s) used in the applicable jurisdiction and possible challenges that can be used to protect juvenile clients;

10. immigration issues regarding children;

11. gang involvement and activity;

12. factors leading children to delinquent behavior, signs of abuse and/or neglect, and issues pertaining to status offenses; and

13. information on religious background and racial and ethnic heritage, and sensitivity to issues of cultural and socio-economic diversity, sexual orientation, and gender identity.

D. Individual lawyers who are new to juvenile representation should take the opportunity to practice under

the guidance of a senior lawyer mentor. Correspondingly, experienced attorneys are encouraged to provide mentoring to new attorneys, assist new attorneys in preparing cases, debrief following court hearings, and answer questions as they arise.

E. If personal matters make it impossible for the defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2600 (September 2011).

§1311. Basic Obligations

A. The attorney should obtain copies of all pleadings and relevant notices.

B. The attorney should participate in all negotiations, discovery, pre-adjudication conferences, and hearings.

C. The attorney should confer with the juvenile within 48 hours of being appointed and prior to every court appearance to counsel the child concerning the subject matter of the litigation, the client's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process.

D. Lawyers should promptly inform the child of his or her rights and pursue any investigatory or procedural steps necessary to protect the child's interests throughout the process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011).

§1313. Conflicts of Interest

A. The attorney shall be alert to all potential and actual conflicts of interest that would impair his or her ability to represent a juvenile client. Loyalty and independent judgment are essential elements in the lawyer's relationship to a juvenile client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. Each potential conflict shall be evaluated with the particular facts and circumstances of the case and the juvenile client in mind. Where appropriate, attorneys may be obligated to contact the Office of Disciplinary Counsel to seek an advisory opinion on any potential conflicts.

B. Joint representation of co-defendants is not a per se violation of the constitutional guarantee of effective assistance of counsel. However, if the attorney must forbear from doing something on behalf of a juvenile client because of responsibilities or obligations to another client, there is a conflict. Similarly, if by doing something for one client, another client is harmed, there is a conflict.

C. The attorney's obligation is to the juvenile client. An attorney should not permit a parent or custodian to direct the representation. The attorney should not share information unless disclosure of such information has been approved by the child. With the child's permission, the attorney should maintain rapport with the child's parent or guardian, but should not allow that rapport to interfere with the attorney's duties to the child or the expressed interests of the child. Where there are conflicts of interests or opinions between the client and the client's parent or custodian, the attorney

need not discuss the case with parents and shall not represent the views of a parent that are contrary to the client's wishes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011).

§1315. Client Communications

A. The attorney shall keep the child informed of the developments in the case and the progress of preparing the defense and should promptly comply with all reasonable requests for information.

B. Where the attorney is unable to communicate with the child or his or her guardian because of language differences, the attorney shall take whatever steps are necessary to ensure that he or she is able to communicate with the client and that the client is able to communicate his or her understanding of the proceedings. Such steps could include obtaining funds for an interpreter to assist with pre-adjudication preparation, interviews, and investigation, as well as in-court proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011).

§1317. Client Confidentiality

A. Juvenile defense counsel is bound by attorney-client confidentiality and privilege. The duty of confidentiality that the attorney owes the child is coextensive with the duty of confidentiality that attorneys owe their adult clients.

B. The attorney should seek from the outset to establish a relationship of trust and confidence with the child. The attorney should explain that full disclosure to counsel of all facts known to the child is necessary for effective representation and, at the same time, explain that the attorney's obligation of confidentiality makes privileged the client's disclosures relating to the case.

C. There is no exception to attorney-client confidentiality in juvenile cases for parents or guardians. Juvenile defense counsel has an affirmative obligation to safeguard a child's information or secrets from parents or guardians. Absent the child's informed consent, the attorney's interviews with the client shall take place outside the presence of the parents or guardians. Parents or guardians do not have any right to inspect juvenile defense counsel's file, notes, discovery, or any other case-related documents without the client's express consent. While it may often be a helpful or even necessary strategy to enlist the parents or guardians as allies in the case, juvenile defense counsel's primary obligation is to keep the child's secrets. Information relating to the representation of the child includes all information relating to the representation, whatever its source. Even if revealing the information might allow the client to receive sorely-needed services, defense counsel is bound to protect the child's confidences, unless the client gives the attorney explicit permission to reveal the information to get the particular services or disclosure is impliedly authorized to carry out the client's case objectives.

D. In accordance with Louisiana Rule of Professional Conduct 1.6(b), a lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

1. to prevent reasonably certain death or substantial bodily harm;

2. to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

3. to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

4. to secure legal advice about the lawyer's compliance with the rules of professional conduct;

5. to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

6. to comply with other law or a court order.

E. To observe the attorney's ethical duty to safeguard the child's confidentiality, attorney-client interviews shall take place in a private environment. This limitation requires that, at the courthouse, juvenile defense counsel should arrange for access to private interview rooms, instead of discussing case specifics with the child in the hallways; in detention facilities, juvenile defense counsel should have means to talk with the child out of the earshot of other inmates and guards; and in the courtroom, juvenile defense counsel should ask for a private space in which to consult with the child and speak with the child out of range of any microphones or recording devices.

F. An attorney shall exercise discretion in revealing or discussing the contents of psychiatric, psychological, medical and social reports, tests or evaluations bearing on the juvenile client's history or condition. In general, the lawyer should not disclose data or conclusions contained in such reports to the extent that, in the lawyer's judgment based on knowledge of the child and the child's family, the revelation would be likely to affect adversely the client's well-being or relationships within the family and disclosure is not necessary to protect the client's interests in the proceeding.

G. An attorney should ensure that communications with a client in an institution, including a detention center, are confidential. One way to ensure confidentiality is to stamp all mail as legal and confidential.

H. In cases where delinquency proceedings are public, to protect the confidential and sometimes embarrassing information involved, the attorney, in consultation with the child, should move to close the proceedings or request the case to be called last on the docket when the courtroom is empty.

I. The media may report on certain delinquency cases. If a decision is made to speak to the media, the attorney should be cautious due to confidentiality, other rules of professional conduct, the potential for inaccurate reporting and strategic considerations. The attorney representing a child before the juvenile court should avoid personal publicity connected with the case, both during adjudication and thereafter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2601 (September 2011).

§1319. Case File

A. The attorney has the obligation to ensure that the case file is properly documented to demonstrate adherence to these standards, such as, where relevant, documentation of intake and contact information, client and witness interviews, critical deadlines, motions, and any other relevant information regarding the case. The case file should also contain, where relevant, copies of all pleadings, orders, releases (school, medical, mental health, or other types), discovery, and correspondence associated with the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

§1321. Continuity of Representation

A. The attorney initially appointed should continue his or her representation through all stages of the proceedings. Unless otherwise ordered by the court, the attorney of record should continue to represent the child from the point of detention through disposition, post-disposition review hearings, and any other related proceedings, until the case is closed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

§1323. Stand-In Counsel

A. Any attorney appointed to stand in for another at any delinquency proceeding shall:

1. represent the child zealously as if the child is his or her own client;

2. ensure that the child knows how to contact stand-in counsel in case the child does not hear from the attorney of record;

3. immediately communicate with the attorney of record regarding upcoming dates/hearings, how to contact the child, placement of the child, nature of charges, and other timely issues that the attorney of record may need to know or address; and

4. immediately or within a reasonable time thereafter provide to the child's attorney of record all notes, documents, and any discovery received.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

§1325. Caseloads

A. The attorney should not have such a large number of cases that he or she is unable to comply with these guidelines and the rules of professional conduct. Before agreeing to act as the attorney or accepting appointment by a court, the attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge, and experience to offer quality legal services in a particular matter. If, after accepting an appointment, it later appears that the attorney is unable to offer effective representation, the attorney should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2602 (September 2011).

§1327. Social Work and Probation Personnel

A. Attorneys should cooperate with social workers and probation personnel and should instruct the client to do so, except to the extent such cooperation is or will likely become inconsistent with protection of the client's legitimate interests in the proceeding or of any other rights of the client under the law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011).

§1329. Detention

A. For purposes of appointment of counsel, children are presumed to be indigent. The attorney shall meet with a detained child within 48 hours of notice of appointment or before the continued custody hearing, whichever is earlier, and shall take other prompt action necessary to provide quality representation, including:

1. personally reviewing the well-being of the child and the conditions of the facility, and ascertaining the need for any medical or mental health treatment;

2. ascertaining whether the child was arrested pursuant to a warrant or a timely determination of probable cause by a judicial officer;

3. making a motion for the release of the child where no determination of probable cause has been made by a judicial officer within 48 hours of arrest; and

4. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of the child, and revoking any waivers of these protections purportedly given by the child, as soon as practicable via a notice of appearance or other pleading filed with the state and court.

B. Where the child is detained, the attorney shall:

1. be familiar with the legal criteria for determining pre-adjudication release and conditions of release, and the procedures that will be followed in setting those conditions, including but not limited to the use and accuracy of any risk assessment instruments;

2. be familiar with the different types of pre-adjudication release conditions the court may set and whether private or public agencies are available to act as a custodian for the child's release; and

3. be familiar with any procedures available for reviewing the judge's setting of bail.

C. The attorney shall attempt to secure the pre-adjudication release of the child under the conditions most favorable and acceptable to the client unless contrary to the expressed wishes of the child.

D. If the child is detained, the attorney should try to ensure, prior to any initial court hearing, that the child does not appear before the judge in inappropriate clothing, shackles or handcuffs.

E. The attorney should determine whether a parent or other adult is able and willing to assume custody of the juvenile client. Every effort should be made to locate and contact such a responsible adult if none is present at the continued custody hearing.

F. The attorney should arrange to have witnesses to support release. This may include a minister or spiritual

advisor, teacher, relative, other mentor or other persons who are willing to provide guidance, supervision and positive activities for the youth during release.

G. If the juvenile is released, the attorney should fully explain the conditions of release to the child and advise him or her of the potential consequences of a violation of those conditions. If special conditions of release have been imposed (e.g., random drug screening) or other orders restricting the client's conduct have been entered (e.g., a no contact order), the client should be advised of the legal consequences of failure to comply with such conditions.

H. The attorney should know the detention facilities, community placements and other services available for placement.

I. Where the child is detained and unable to obtain pre-adjudication release, the attorney should be aware of any special medical, mental health, education and security needs of the child and, in consultation with the child, request that the appropriate officials, including the court, take steps to meet those special needs.

J. Following the continued custody hearing, the attorney should continue to advocate for release or expeditious placement of the child. If the child is not released, he or she should be advised of the right to have the placement decision reviewed or appealed.

K. Whenever the child is held in some form of detention, the attorney should visit the child no less often than once a month and personally review his or her well-being, the conditions of the facility, and the opportunities to obtain release.

L. Whenever the child is held in some form of detention, the attorney should be prepared for an expedited adjudicatory hearing.

M. Where the child is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

N. If the court sets conditions of release which require the posting of monetary bond or the posting of real property as collateral for release, counsel should make sure the child understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the child and others acting in his or her behalf how to properly post such assets.

O. The lawyer should not personally guarantee the attendance or behavior of the child or any other person, whether as surety on a bail bond or otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011).

§1331. Initial Interview with Child

A. The attorney should conduct a client interview as soon as practicable in order to obtain the information necessary to provide quality representation at the early stages of the case and to provide the child with information concerning the representation and the case proceedings. Establishing and maintaining a relationship with the child is the foundation of quality representation. Irrespective of the child's age, the attorney should consult with the child well before each court hearing. The attorney shall explain to the client how to contact the attorney and should promptly comply with child's requests for contact and assistance.

B. A meeting or conversation conducted in a hallway or holding cell at the courthouse is not a substitute for a thorough interview conducted in private and may waive confidentiality.

C. Prior to conducting the initial interview, the attorney should, where possible:

1. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

2. obtain copies of any relevant documents that are available, including copies of any charging documents, recommendations and reports concerning pre-adjudication release, and law enforcement reports that might be available;

3. request mental health, juvenile assessment center, detention center or educational records, including any screenings or assessments, that may help in the initial interview with the client;

D. The purposes of the initial interview are to provide the child with information concerning the case and to acquire information from the child concerning the facts of the case.

1. To provide information to the client, the attorney should specifically:

a. explain the nature of the attorney-client relationship to the child, including the requirements of confidentiality;

b. explain the attorney-client privilege and instruct the child not to talk to anyone about the facts of the case without first consulting with the attorney;

c. ensure the child understands that he or she has the right to speak with his or her attorney;

d. explain the nature of the allegations, what the government must prove, and the likely and maximum potential consequences;

e. explain a general procedural overview of the progression of the case;

f. explain the role of each player in the system;

g. explain the consequences of non-compliance with court orders;

h. explain how and when to contact the attorney;

i. provide the names of any other persons who may be contacting the child on behalf of the attorney;

j. obtain a signed release authorizing the attorney and/or his or her agent to obtain official records related to the client, including medical and mental health records, school records, employment records, etc.;

k. discuss arrangements to address the child's most critical needs (e.g., medical or mental health attention, request for separation during detention, or contact with family or employers); and

l. assess whether the child is competent to proceed or has a disability that would impact a possible defense or mitigation.

2. For a child who is detained, the attorney should also:

a. explain the procedures that will be followed in setting the conditions of pre-adjudication release;

b. explain the type of information that will be requested in any interview that may be conducted by a pre-adjudication release agency, explain that the child should not make statements concerning the offense, and explain that the

right to not testify against oneself extends to all situations, including mental health evaluations; and

c. warn the child of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by detention officials.

3. The attorney or a representative of the attorney should collect information from the child including, but not limited to:

a. the facts surrounding the charges leading to the child's detention, to the extent the child knows and is willing to discuss these facts;

b. the child's version of the arrest, with or without a warrant; whether the child was searched and if anything was seized, with or without warrant or consent; whether the child was interrogated and if so, whether a statement was given; the child's physical and mental status at the time any statement was given; whether any samples were provided, such as blood, tissue, hair, DNA, handwriting, etc., and whether any scientific tests were performed on the child's body or bodily fluids;

c. the existence of any tangible evidence in the possession of the state (when appropriate, the attorney shall take steps to ensure that this evidence is preserved);

d. the names and custodial status of all co-defendants and the names of the attorneys for the co-defendants (if counsel has been appointed or retained);

e. the names and locating information of any witnesses to the crime and/or the arrest, regardless of whether these are witnesses for the prosecution or for the defense;

f. the child's current living arrangements, family relationships, and ties to the community, including the length of time his or her family has lived at the current and former addresses, as well as the child's supervision when at home;

g. any prior names or aliases used, employment record and history, and social security number;

h. the immigration status of the child and his or her family members, if applicable;

i. the child's educational history, including current grade level, attendance and any disciplinary history;

j. the child's physical and mental health, including any impairing conditions such as substance abuse or learning disabilities, and any prescribed medications and other immediate needs;

k. the child's delinquency history, if any, including arrests, detentions, diversions, adjudications, and failures to appear in court;

l. whether there are any other pending charges against the child and the identity of any other appointed or retained counsel;

m. whether the child is on probation (and the nature of the probation) or post-release supervision and, if so, the name of his or her probation officer or counselor and the child's past or present performance under supervision;

n. the options available to the child for release if the child is in secure custody;

o. the names of individuals or other sources that the attorney can contact to verify the information provided by the child and the permission of the child to contact those sources;

p. the ability of the child's family to meet any financial conditions of release (for clients in detention); and
q. where appropriate, evidence of the child's competence to participate in delinquency proceedings and/or mental state at the time of the offense, including releases from the client for any records for treatment or testing for mental health or mental retardation.

E. Throughout the delinquency process, the attorney should take the time to:

1. keep the child informed of the nature and status of the proceedings on an ongoing basis;
2. maintain regular contact with the child during the course of the case and especially before court hearings;
3. review all discovery with the child as part of the case theory development;
4. promptly respond to telephone calls and other types of contact from the child, where possible, within one business day or a reasonable time thereafter;
5. counsel the child on options and related consequences and decisions to be made; and
6. seek the lawful objectives of the child and not substitute the attorney's judgment for that of the child in those case decisions that are the responsibility of the child. Where an attorney believes that the child's desires are not in his or her best interest, the attorney should discuss the consequences of the child's position. If the child maintains his or her position, the attorney should defend the child's expressed interests vigorously within the bounds of the law.

F. In interviewing a child, it is proper for the lawyer to question the credibility of the child's statements or those of any other witness. The lawyer shall not, however, suggest expressly or by implication that the child or any other witness prepare or give, on oath or to the lawyer, a version of the facts which is in any respect untruthful, nor shall the lawyer intimate that the child should be less than candid in revealing material facts to the attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2603 (September 2011).

§1333. Transfer to Adult Proceedings

A. The attorney should be familiar with laws subjecting a child to the exclusive jurisdiction of a court exercising criminal jurisdiction, including the offenses subjecting the client to such jurisdiction. Counsel should seek to discover at the earliest opportunity whether transfer will be sought and, if so, the procedure and criteria according to which that determination will be made.

B. Upon learning that transfer will be sought or may be elected, the attorney should fully explain the nature of the proceeding and the consequences of transfer to the child and the child's parents. In so doing, counsel may further advise the child concerning participation in diagnostic and treatment programs that may provide information material to the transfer decision.

C. The attorney should be aware when an indictment may be filed directly in adult court by a district attorney and take actions to prevent such a filing including:

1. promptly investigating all circumstances of the case bearing on the appropriateness of filing the case in adult court and seeking disclosure of any reports or other evidence that the district attorney is using in his or her consideration of a direct filing;

2. moving promptly for appointment of an investigator or expert witness to aid in the preparation of the defense when circumstances warrant; and

3. where appropriate, moving promptly for the appointment of a competency or sanity commission prior to the transfer.

D. Where a district attorney may transfer the case either through indictment filed directly in adult court or by a finding of probable cause at a continued custody hearing in juvenile court, the attorney should present all facts and mitigating evidence to the district attorney to keep the child in juvenile court.

E. Where the district attorney makes a motion to conduct a hearing to consider whether to transfer the child, the attorney should prepare in the same way and with as much care as for an adjudication. The attorney should:

1. conduct an in-person interview with the child;
2. identify, locate and interview exculpatory or mitigating witnesses;
3. consider obtaining an expert witness to testify to the amenability of the child to rehabilitation; and
4. present all facts and mitigating evidence to the court to keep the juvenile client in juvenile court.

F. In preparing for a transfer hearing, the attorney should be familiar with all the procedural protections available to the child including but not limited to discovery, cross-examination, compelling witnesses.

G. If the attorney who represented the child in the delinquency court will not represent the child in the adult proceeding, the delinquency attorney should ensure the new attorney has all the information acquired to help in the adult proceedings.

H. If transfer for criminal prosecution is ordered, the lawyer should act promptly to preserve an appeal from that order and should be prepared to make any appropriate motions for post-transfer relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011).

§1335. Mental Health Examinations

A. Throughout a delinquency proceeding, either party may request or the judge may order a mental health examination of the child. Admissions made during such examinations may not be protected from disclosure. The attorney should ensure the child understands the consequences of admissions during such examinations and advise the client that personal information about the child or the child's family may be revealed to the court or other personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011).

§1337. Mental Incapacity to Proceed

A. The attorney should be familiar with procedures for a determination of mental incapacity to proceed under the Louisiana Children's Code and other provisions of Louisiana law.

B. Although the client's expressed interests ordinarily control, the attorney should question capacity to proceed without the child's approval or over the child's objection, if necessary.

C. If, at any time, the child's behavior or mental ability indicates that he or she may be incompetent, the attorney should consider filing a motion for a competency commission.

D. The attorney should prepare for and participate fully in the competency hearing.

E. Prior to the evaluation by the commission, the attorney should request from the child and provide to the commission all relevant documents including but not limited to the arrest report, prior psychological/psychiatric evaluations, school records and any other important medical records.

F. Where appropriate, the attorney should advise the client of the potential consequences of a finding of incompetence. Prior to any proceeding, the attorney should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. If the competency commission's finding is that the child is competent, where appropriate, the attorney should consider calling an independent mental health expert to testify at the competency hearing.

G. The attorney should be aware that the burden of proof is on the child to prove incompetency and that the standard of proof is a preponderance of the evidence.

H. If the child is found incompetent, the attorney should participate, to the extent possible, in the development of the mental competency plan and in any subsequent meetings or hearings regarding the child's mental capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2605 (September 2011).

§1339. Insanity

A. The attorney should be familiar with the procedures for determination of sanity at the time of the offense and notice requirements under the Louisiana Children's Code and other provisions of Louisiana law when proceeding with an insanity defense.

B. If the attorney believes that the child did not appreciate the consequences of his or her actions at the time of the offense, the attorney should consider filing for a sanity commission.

C. The attorney should advise the child that if he or she is found not delinquent by reason of insanity, the court may involuntarily commit the child to the Department of Health and Hospitals for treatment. The attorney should be prepared to advocate on behalf of the child against involuntary commitment and provide other treatment options such as outpatient counseling or services.

D. The attorney should be prepared to raise the issue of sanity during all phases of the proceedings, if the attorney's relationship with the child reveals that such a plea is appropriate.

E. The attorney should be aware that the child has the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

§1341. Manifestation of a Disability

A. Where the child's actions that are the subject of the delinquency charge suggest a manifestation of a disability,

the attorney should argue that the disability prevented the client from having the mental capacity or specific intent to commit the crime. Where appropriate, for school-based offenses, the attorney should argue that the school did not follow the child's individual education program, which could have prevented the client's behavior. The attorney should seek a judgment of dismissal or a finding that the juvenile is not delinquent. This information may also be used for mitigation at the time of disposition following a plea or a finding of delinquency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

§1343. Ensure Official Recording of Court Proceedings

A. The attorney should take all necessary steps to ensure a full official recording of all aspects of the court proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

§1345. Investigation

A. The child's attorney shall conduct a prompt and diligent independent case investigation. The child's admissions of responsibility or other statements to counsel do not necessarily obviate the need for investigation.

B. The attorney should ensure that the charges and disposition are factually and legally correct and the child is aware of potential defenses to the charges.

C. The attorney should examine all charging documents to determine the specific charges that have been brought against the child, including the arrest warrant, accusation and/or indictment documents, and copies of all charging documents in the case. The relevant statutes and precedents should be examined to identify the elements of the offense(s) with which the child is charged, both the ordinary and affirmative defenses that may be available, any lesser included offenses that may be available, and any defects in the charging documents, constitutional or otherwise, such as statute of limitations or double jeopardy.

D. The attorney should seek investigators and experts, as needed, to assist the attorney in the preparation of a defense, in the understanding of the prosecution's case, or in the rebuttal of the prosecution's case.

E. Where circumstances appear to warrant it, the lawyer should also investigate resources and services available in the community and, if appropriate, recommend them to the child and child's family.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

§1347. Diversion/Alternatives

A. The attorney should be familiar with diversionary programs and alternative solutions available in the community. Such programs may include diversion, mediation, or other alternatives that could result in a child's case being dismissed or handled informally. When appropriate and available, the attorney shall advocate for the use of informal mechanisms that could divert the client's case from the formal court process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2606 (September 2011).

§1349. Continued Custody Hearing

A. The attorney should take steps to see that the continued custody hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;
2. the law for establishing probable cause;
3. factual information that is available concerning probable cause;
4. the subpoena process for obtaining compulsory attendance of witnesses at continued custody hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings;
5. the child's custodial situation, including all persons living in the home;
6. alternative living arrangements for the client where the current custodial situation is an obstacle to release from detention; and
7. potential conditions for release from detention and local options to fulfill those conditions, including the criteria for setting bail and options for the family to meet bail requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

§1351. Appearance to Answer

A. The attorney should preserve the child's rights at the appearance to answer on the charges by requesting a speedy trial, preserving the right to file motions, demanding discovery, and entering a plea of denial in most circumstances, unless there is a sound tactical reason for not doing so or the child expresses an informed decision to resolve the matter quickly.

B. Where appropriate, the attorney should arrange for the court to address any immediate needs of the child, such as educational/vocational needs, emotional/mental/physical health needs, and safety needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

§1353. Child's Right to Speedy Trial

A. The attorney should be aware of and protect the child's right to a speedy trial, unless strategic considerations warrant otherwise. Requests or agreements to continue a contested hearing date should not be made without consultation with the child. The attorney shall diligently work to complete the investigation and preparation in order to be fully prepared for all court proceedings. In the event an attorney finds it necessary to seek additional time to adequately prepare for a proceeding, the attorney should consult with the child and discuss seeking a continuance of the upcoming proceeding. Whenever possible, written motions for continuance made in advance of the proceeding are preferable to oral requests for continuance. All requests for a continuance should be supported by well-articulated reasons on the record in the event it becomes an appealable issue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

§1355. Discovery

A. The attorney should pursue discovery, including filing a motion for discovery and conducting appropriate interviews. The attorney has a duty to pursue, as soon as practicable, discovery procedures provided by the rules of the jurisdiction and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case.

B. In considering discovery requests, the attorney should take into account that such requests may trigger reciprocal discovery obligations. The attorney shall be familiar with the rules regarding reciprocal discovery. The attorney shall be aware of any potential obligations and time limits regarding reciprocal discovery. Where the attorney intends to offer an alibi defense, he or she shall provide notice to the district attorney as required by law.

C. The attorney should consider seeking discovery, at a minimum, of the following items:

1. potential exculpatory information;
2. potential mitigating information;
3. the names and addresses of all prosecution witnesses, their prior statements, and criminal/delinquency records, if any;
4. all oral and/or written statements by the child, and the details of the circumstances under which the statements were made;
5. the prior delinquency record of the child and any evidence of other misconduct that the government may intend to use against the accused;
6. all books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
7. all results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
8. statements of co-defendants;
9. all investigative reports by all law enforcement and other agencies involved in the case; and
10. all records of evidence collected and retained by law enforcement.

D. The attorney shall monitor the dates to ensure the state complies with its discovery obligations. If discovery violations occur, the attorney should seek prompt compliance and/or sanctions for failure to comply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

§1357. Theory of the Case

A. During the investigation and adjudication hearing preparation, the attorney should develop and continually reassess a theory of the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

§1359. Motions

A. The attorney should file motions, responses or objections as necessary to zealously represent the client. The

attorney should consider filing an appropriate motion whenever there exists a good faith reason to believe that the child is entitled to relief that the court has discretion to grant. The attorney should file motions as soon as possible due to the time constraints of juvenile court.

B. The decision to file motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Among the issues that counsel should consider addressing in a motion include, but are not limited to:

1. the pre-adjudication custody of the child;
2. the constitutionality of the implicated statute or statutes;
3. the potential defects in the charging process;
4. the sufficiency of the charging document;
5. the propriety and prejudice of any joinder of charges or defendants in the charging document;
6. the discovery obligations of the state and the reciprocal discovery obligations of the defense;
7. the suppression of evidence gathered as the result of violations of the Fourth, Fifth or Sixth Amendments to the United States Constitution, state constitutional provisions or statutes, including:
 - a. the fruits of illegal searches or seizures;
 - b. involuntary statements or confessions;
 - c. statements or confessions obtained in violation of the child's right to an attorney, or privilege against self-incrimination; or
 - d. unreliable identification evidence that would give rise to a substantial likelihood of irreparable misidentification.
8. the suppression of evidence gathered in violation of any right, duty or privilege arising out of state or local law;
9. in consultation with the child, a mental or physical examination of the child;
10. relief due to mental incapacity, incompetency, mental retardation or mental illness;
11. access to resources that or experts who may be denied to the child because of his or her indigence;
12. the child's right to a speedy trial;
13. the child's right to a continuance in order to adequately prepare his or her case;
14. matters of evidence which may be appropriately litigated by means of a pre-adjudication motion in limine;
15. motion for judgment of dismissal; or
16. matters of adjudication or courtroom procedures, including inappropriate clothing or restraints of the client.

D. The attorney should withdraw a motion or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the child's rights, including later claims of waiver or procedural default. The attorney has a continuing duty to file motions as new issues arise or new evidence is discovered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2607 (September 2011).

§1361. Plea Negotiations

A. The attorney should explore with the child the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to an adjudication, and in doing so, should fully explain the rights

that would be waived by a decision to enter a plea and not to proceed to adjudication. After the attorney is fully informed on the facts and the law, he or she should, with complete candor, advise the child concerning all aspects of the case, including counsel's frank estimate of the probable outcome. Counsel should not understate or overstate the risks, hazards or prospects of the case in order unduly or improperly to influence the child's determination of his or her posture in the matter.

B. The attorney shall not accept any plea agreement without the child's express authorization.

C. The existence of ongoing tentative plea negotiations with the prosecution should not prevent the attorney from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay the attorney's investigation into the facts of the case and preparation of the case for further proceedings, including adjudication.

D. The attorney should participate in plea negotiations to seek the best result possible for the child consistent with the child's interests and directions to the attorney. The attorney should consider narrowing contested issues or reaching global resolution of multiple pending cases. Prior to entering into any negotiations, the attorney shall have sufficient knowledge of the strengths and weaknesses of the child's case, or of the issue under negotiation, enabling the attorney to advise the child of the risks and benefits of settlement.

E. In conducting plea negotiations, the attorney should be familiar with:

1. the various types of pleas that may be agreed to, including an admission, a plea of nolo contendere, and a plea in which the child is not required to personally acknowledge his or her guilt (Alford plea);
2. the advantages and disadvantages of each available plea according to the circumstances of the case; and
3. whether the plea agreement is binding on the court and the Office of Juvenile Justice.

F. In conducting plea negotiations, the attorney should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department that may affect the content and likely results of negotiated pleas.

G. In preparing to enter a plea before the court, the attorney should explain to the child the nature of the plea hearing and prepare the child for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense and the appropriate disposition. Specifically, the attorney should:

1. be satisfied there is a factual or strategic basis for the plea or admission or Alford plea;
2. make certain that the child understands the rights he or she will waive by entering the plea and that the child's decision to waive those rights is knowing, voluntary and intelligent; and
3. be satisfied that the plea is voluntary and that the child understands the nature of the charges.

H. When the plea is against the advice of the attorney or without adequate time to investigate, the attorney should indicate this on the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2608 (September 2011).

§1363. Court Appearances

A. The attorney shall attend all hearings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1365. Preparing the Child for Hearings

A. The attorney should explain to the juvenile, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

B. The attorney should advise the client as to suitable courtroom dress and demeanor. If the client is detained, the attorney should consider requesting the client's appearance unshackled and unchained. The attorney should also be alert to the possible prejudicial effects of the client appearing before the court in jail or other inappropriate clothing.

C. The attorney should plan with the client the most convenient system for conferring throughout the delinquency proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1367. Adjudication Preparation

A. Where appropriate, the attorney should have the following materials available at the time of trial:

1. copies of all relevant documents filed in the case;
2. relevant documents prepared by investigators;
3. outline or draft of opening statement;
4. cross-examination plans for all possible prosecution witnesses;
5. direct examination plans for all prospective defense witnesses;
6. copies of defense subpoenas;
7. prior statements of all prosecution witnesses (e.g., transcripts, police reports) and prepared transcripts of any audio or video taped witness statements;
8. prior statements of all defense witnesses;
9. reports from all experts;
10. a list of all defense exhibits, and the witnesses through whom they will be introduced;
11. originals and copies of all documentary exhibits;
12. copies of all relevant statutes and cases; and
13. outline or draft of closing argument.

B. The attorney should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the delinquency proceedings, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudication.

C. The attorney should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior adjudications to impeach the child) and, where appropriate, the attorney should prepare motions and memoranda for such advance rulings.

D. Throughout the adjudication process, the attorney should endeavor to establish a proper record for appellate review. The attorney shall be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review, and should ensure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review unless there are strategic reasons for not doing so.

E. Where necessary, the attorney should seek a court order to have the child available for conferences.

F. Throughout preparation and adjudication, the attorney should consider the potential effects that particular actions may have upon sentencing if there is a finding of delinquency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1369. Objections

A. The attorney should make appropriate motions, including motions in limine and evidentiary and other objections, to advance the child's position at adjudication or during other hearings. The attorney should be aware of the burdens of proof, evidentiary principles and court procedures applying to the motion hearing. If necessary, the attorney should file briefs in support of evidentiary issues. Further, during all hearings, the attorney should preserve legal issues for appeal, as appropriate.

B. Control of proceedings is principally the responsibility of the court, and the lawyer should comply promptly with all rules, orders, and decisions of the judge. Counsel has the right to make respectful requests for reconsideration of adverse rulings and has the duty to set forth on the record adverse rulings or judicial conduct that the attorney considers prejudicial to the child's legitimate interests.

C. The attorney should be prepared to object to the introduction of any evidence damaging to the child's interests if counsel has any legitimate doubt concerning its admissibility under constitutional or local rules of evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1371. Sequestration of Witnesses

A. Prior to delivering an opening statement, the attorney should ask for the rule of sequestration of witnesses to be invoked, unless a strategic reason exists for not doing so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1373. Opening Statements

A. The attorney should be familiar with the law and the individual trial judge's rules regarding the permissibility and permissible content of an opening statement. The attorney should consider the strategic advantages and disadvantages of disclosure of particular information during the opening statement and of deferring the opening statement until the beginning of the defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1375. Confronting the Prosecutor's Case

A. The attorney should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of dismissal. The attorney should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2609 (September 2011).

§1377. Stipulations

A. The attorney should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

§1379. Cross-Examination

A. In preparing for cross-examination, the attorney should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, the attorney should be prepared to question witnesses as to the existence of prior statements that they may have made or adopted.

B. In preparing for cross-examination, the attorney should:

1. obtain the prior records of all state and defense witnesses;
2. be prepared to examine any witness;
3. consider the need to integrate cross-examination, the theory of the defense, and closing argument;
4. consider whether cross-examination of each individual witness is likely to generate helpful information;
5. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
6. consider a cross-examination plan for each of the anticipated witnesses;
7. be alert to inconsistencies in witnesses' testimony;
8. be alert to possible variations in witnesses' testimony;
9. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
10. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining police witnesses;
11. have prepared, for introduction into evidence, all documents that counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witnesses or prior sworn testimony of the witnesses; and
12. be alert to issues relating to witness credibility, including bias and motive for testifying.

C. The lawyer should be prepared to examine fully any witness whose testimony is damaging to the child's interests.

D. The lawyer's knowledge that a witness is telling the truth does not preclude cross-examination in all circumstances but may affect the method and scope of cross-examination.

E. The attorney should consider conducting a voir dire examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. The attorney should be aware of the law of competency of witnesses, in general, and admission of expert testimony, in particular, in order to be able to raise appropriate objections.

F. Before beginning cross-examination, the attorney should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by law. If the attorney does not receive prior statements of prosecution witnesses until they have completed direct examination, the attorney should request adequate time to review these documents before commencing cross-examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

§1381. Conclusion of Prosecution's Evidence

A. Where appropriate, at the close of the prosecution's case, the attorney should move for a dismissal of petition on each count charged. The attorney should request, when necessary, that the court immediately rule on the motion, in order that the attorney may make an informed decision about whether to present a defense case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

§1383. Defense Strategy

A. The attorney should develop, in consultation with the child, an overall defense strategy. In deciding on a defense strategy, the attorney should consider whether the child's legal interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. In developing and presenting the defense case, the attorney should consider the implications it may have for a rebuttal by the prosecutor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

§1385. Affirmative Defenses

A. The attorney should be aware of the elements and burdens of proof of any affirmative defense.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

§1387. Direct Examination

A. In preparing for presentation of a defense case, the attorney should, where appropriate:

1. develop a plan for direct examination of each potential defense witness;
2. determine the implications that the order of witnesses may have on the defense case;
3. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
4. consider the possible use of character witnesses, to the extent that use of character witnesses does not allow the prosecution to introduce potentially harmful evidence against the child;
5. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
6. review all documentary evidence that must be presented;
7. review all tangible evidence that must be presented; and

8. after the state's presentation of evidence and a discussion with the child, make the decision whether to call any witnesses.

B. The attorney should conduct redirect examination as appropriate.

C. The attorney should prepare all witnesses for direct and possible cross-examination. Where appropriate, the attorney should also advise witnesses of suitable courtroom dress and demeanor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2610 (September 2011).

§1389. Child's Right to Testify

A. The attorney shall respect the child's right to decide whether to testify.

B. The attorney should discuss with the child all of the considerations relevant to the child's decision to testify. This advice should include consideration of the child's need or desire to testify, any repercussions of testifying, the necessity of the child's direct testimony, the availability of other evidence or hearsay exceptions that may substitute for direct testimony by the child, and the child's developmental ability to provide direct testimony and withstand possible cross-examination.

C. The attorney should be familiar with his or her ethical responsibilities that may be applicable if the child insists on testifying untruthfully. If the child indicates an intent to commit perjury, the attorney shall advise the child against taking the stand to testify falsely and, if necessary, take appropriate steps to avoid lending aid to perjury. If the child persists in a course of action involving the attorney's services that the attorney reasonably believes is criminal or fraudulent, the attorney should seek the leave of the court to withdraw from the case. If withdrawal from the case is not feasible or is not permitted by the court, or if the situation arises during adjudication without notice, the attorney shall not lend aid to perjury or use the perjured testimony. The attorney should maintain a record of the advice provided to the child and the child's decision concerning whether to testify.

D. The attorney should protect the child's privilege against self-incrimination in juvenile court proceedings. When the child has elected not to testify, the lawyer should be alert to invoke the privilege and should insist on its recognition unless the client competently decides that invocation should not be continued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

§1391. Preparing the Child to Testify

A. If the child decides to testify, the attorney should prepare the child to testify. This should include familiarizing the child with the courtroom, court procedures, and what to expect during direct and cross-examination. Often the decision whether to testify may change at trial. Thus, the attorney should prepare the case for either contingency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

§1393. Questioning the Child

A. The attorney should seek to ensure that questions to the child are phrased in a developmentally appropriate manner. The attorney should object to any inappropriate questions by the court or an opposing attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

§1395. Closing Arguments

A. The attorney should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, and provisions for rebuttal argument by the prosecution. The attorney should consider the strategic advantages and disadvantages of a closing statement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

§1397. Motion for a New Trial

A. The attorney should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of delinquency has been entered against the client after trial, the attorney should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors the attorney should consider include:

1. the likelihood of success of the motion, given the nature of the error(s) that can be raised; and
2. the effect that such a motion might have upon the client's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the child's right to raise on appeal the issues that might be raised in the new trial motion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

§1399. Expungement

A. The attorney should inform the child of any procedures available for requesting that the record of conviction be expunged or sealed. The attorney should explain that some contents of juvenile court records may be made public (e.g., when a violent crime has been committed) and that there are limitations on the expungement of records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

Chapter 15. Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings—Post-Adjudication

§1501. Post-adjudication Placement Pending Disposition

A. Following the entry of an adjudication, the attorney should be prepared to argue for the least restrictive environment for the child pending disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2611 (September 2011).

§1503. Defense's Active Participation in Designing the Disposition

A. The active participation of the child's attorney at disposition is essential. In many cases, the attorney's most valuable service to the child will be rendered at this stage of the proceeding. Counsel should have the disposition hearing held on a subsequent date after the adjudication, unless there is a strategic reason for waiving the delay between adjudication and disposition.

B. Prior to disposition there may be non-court meetings and staffings that can affect the juvenile's placement or liberty interest. The attorney should attend or participate in these, where possible.

C. The attorney should not make or agree to a specific dispositional recommendation without the child's consent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011).

§1505. Obligations of Counsel Regarding Disposition

A. The child's attorney should prepare for a disposition hearing as the attorney would for any other evidentiary hearing, including the consideration of calling appropriate witnesses and the preparation of evidence in mitigation of or support of the recommended disposition. Among the attorney's obligations regarding the disposition hearing are:

1. to ensure all information presented to the court which may harm the child and which is not accurate and truthful or is otherwise improper is stricken from the text of the predisposition investigation report;

2. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the child, and which can reasonably be obtained based on the facts and circumstances of the offense, the child's background, the applicable sentencing provisions, and other information pertinent to the disposition;

3. to ensure all reasonably available mitigating and favorable information, which is likely to benefit the child, is presented to the court;

4. to consider preparing a letter or memorandum to the judge or juvenile probation officer that highlights the child's strengths and the appropriateness of the disposition plan proposed by the defense; and

5. where a defendant chooses not to proceed to disposition, to ensure that a plea agreement is negotiated with consideration of the disposition hearing, correctional, financial and collateral implications.

B. The attorney should be familiar with disposition provisions and options applicable to the case, including but not limited to:

1. any disposition assessment tools;
2. detention including any mandatory minimum requirements;
3. deferred disposition and diversionary programs;
4. probation or suspension of disposition and permissible conditions of probation;
5. credit for pre-adjudication detention;
6. restitution;
7. commitment to the Office of Juvenile Justice at a residential or non-residential program;

8. place of confinement and level of security and classification criteria used by Office of Juvenile Justice;

9. eligibility for correctional and educational programs; and

10. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs.

C. The attorney should be familiar with the direct and collateral consequences of adjudication and the disposition, including:

1. the impact of a fine or restitution and any resulting civil liability;

2. possible revocation of probation or parole if client is serving a prior sentence on a parole status;

3. future enhancement on dispositions;

4. loss of participation in extra-curricular activities;

5. loss of college scholarships;

6. suspension or expulsion from school;

7. the inability to be employed in certain occupations including the military;

8. suspension of a motor vehicle operator's permit or license;

9. ineligibility for various government programs (e.g., student loans) or the loss of public housing or other benefits;

10. the requirement to register as a sex offender;

11. the requirement to submit a DNA sample;

12. deportation/removal and other immigration consequences;

13. the loss of other rights (e.g., loss of the right to vote, to carry a firearm or to hold public office);

14. the availability of juvenile arrest or court records to the public, in certain cases; or

15. the transmission of juvenile arrest records, court records, or identifying information to federal law enforcement agencies.

D. The attorney should be familiar with disposition hearing procedures, including:

1. the effect that plea negotiations may have upon the disposition discretion of the court and/or the Office of Juvenile Justice;

2. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;

3. the use of "victim impact" evidence at any disposition hearing;

4. the right of the child to speak prior to receiving the disposition;

5. any discovery rules and reciprocal discovery rules that apply to disposition hearings; and

6. the use of any sentencing guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011).

§1507. Preparing the Child for the Disposition Hearing

A. In preparing for the disposition hearing, counsel should consider the need to:

1. explain to the child the nature of the disposition hearing, the issues involved, the applicable sentencing requirements, disposition options and alternatives available to the court, and the likely and possible consequences of the disposition alternatives;

2. explain fully and candidly to the child the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation or conditional release, the characteristics of any institution to which commitment is possible, and the probable duration of the child's responsibilities under the proposed dispositional plan;

3. obtain from the child relevant information concerning such subjects as his or her background and personal history, prior criminal or delinquency record, employment history and skills, education, and medical history and condition, and obtain from the child sources through which the information provided can be corroborated;

4. prepare the child to be interviewed by the official preparing the predisposition report, including informing the child of the effects that admissions and other statements may have upon an appeal, retrial or other judicial proceedings, such as forfeiture or restitution proceedings;

5. inform the client of his or her right to speak at the disposition hearing and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any admission to committing delinquent acts may have upon an appeal, subsequent retrial or trial on other offenses;

6. when psychological or psychiatric evaluations are ordered by the court or arranged by the attorney prior to disposition, the attorney should explain the nature of the procedure to the child and the potential lack of confidentiality of disclosures to the evaluator;

7. ensure the child has adequate time to examine the predisposition report, if one is utilized by the court; and

8. maintain regular contact with the child prior to the disposition hearing and inform the client of the steps being taken in preparation for disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2612 (September 2011).

§1509. Predisposition Report

A. Where the court uses a predisposition report, counsel should be familiar with the procedures concerning the preparation, submission, and verification of the predisposition report. Counsel should be prepared to use the predisposition report in defense of the child.

B. Counsel should be familiar with the practices of the officials who prepare the predisposition report and the defendant's rights in that process, including access to the predisposition report by the attorney and the child, and ability to waive such a report, if it is in the child's interest to do so.

C. Counsel should provide to the official preparing the report relevant information favorable to the client, including, where appropriate, the child's version of the alleged act. Counsel should also take appropriate steps to ensure that erroneous or misleading information which may harm the child is deleted from the report and to preserve and protect the child's interests, including requesting that a new report be prepared with the challenged or unproven information deleted before the report or memorandum is distributed to the Office of Juvenile Justice or treatment officials.

D. In preparation for a disposition hearing, the attorney should ensure receipt of the disposition report no later than

72 hours prior to the disposition hearing. Upon receipt of this report, the attorney should review the report with the client, ensure its accuracy and prepare a response to the report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011).

§1511. Prosecution's Disposition Position

A. The attorney should attempt to determine, unless there is a sound tactical reason for not doing so, whether the prosecution will advocate that a particular type or length of disposition be imposed and attempt to persuade the district attorney to support the child's requested disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011).

§1513. Disposition Hearing

A. The attorney should be prepared at the disposition hearing to take the steps necessary to advocate fully for the requested disposition and to protect the child's interest.

B. Where the dispositional hearing is not separate from adjudication or where the court does not have before it all evidence required by statute, rules of court or the circumstances of the case, the lawyer should seek a continuance until such evidence can be presented if to do so would serve the child's interests.

C. The lawyer at disposition should examine fully and, where possible, impeach any witness whose evidence is damaging to the child's interests and to challenge the accuracy, credibility, and weight of any reports, written statements, or other evidence before the court. The lawyer should not knowingly limit or forego examination or contradiction by proof of any witness, including a social worker or probation department officer, when failure to examine fully will prejudice the child's interests. Counsel should seek to compel the presence of witnesses whose statements of fact or opinion are before the court or the production of other evidence on which conclusions of fact presented at disposition are based.

D. Where information favorable to the child will be disputed or challenged, the attorney should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the child.

E. Where the court has the authority to do so, counsel should request specific recommendations from the court concerning the place of detention, probation or suspension of part or all of the sentence, psychiatric treatment or drug rehabilitation.

F. During the hearing if the court is indicating a commitment is likely, the attorney should attempt to ensure that the child is placed in the most appropriate, least restrictive placement available.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011).

§1515. Post-Disposition Counseling

A. When a disposition order has been entered, it is the attorney's duty to explain the nature, obligations and consequences of the disposition to the child and to urge upon the child the need for accepting and cooperating with the

dispositional order. The child should also understand the consequences of a violation of the order.

B. Where the court places the child in the custody of the Office of Juvenile Justice, with the child's permission and a parent's written release, the attorney should provide the Office of Juvenile Justice with a copy of the child's education records.

C. If appeal from either the adjudicative or dispositional decree is contemplated, the child should be advised of that possibility, but the attorney shall counsel compliance with the court's decision during the interim.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2613 (September 2011).

§1517. Reviewing or Drafting Court Orders

A. Counsel's attorney should review all written orders or when necessary draft orders to ensure that the child's interests are protected, to ensure the orders are clear and specific, and to ensure the order accurately reflects the court's oral pronouncement and complies with the applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

§1519. Monitoring the Child's Post-disposition

Detention

A. The attorney should monitor the child's post-disposition detention status and ensure that the child is placed in a commitment program in a timely manner as provided by law.

B. When a child is committed to a program, the attorney shall provide the child information on how to contact the attorney to discuss concerns.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

§1521. Post-Disposition Representation

A. The lawyer's responsibility to the child does not end with the entry of a final dispositional order. Louisiana law entitles juveniles to representation at every stage of the proceeding, including post-disposition matters. The attorney should be prepared to counsel and render or assist in securing appropriate legal services for the child in matters arising from the original proceeding.

B. The lawyer engaged in post-dispositional representation should conduct those proceedings according to the principles generally governing representation in juvenile court matters. The attorney should be prepared to actively participate in hearings regarding probation status. When a child is committed to a program and the attorney receives notice of an Office of Juvenile Justice transfer staffing or decision, the attorney should review and challenge the decision and, if appropriate, bring the matter to the trial court.

C. Where the lawyer is aware that the child or the child's family needs and desires community or other medical, psychiatric, psychological, social or legal services, he or she may render assistance in arranging for such services.

D. The lawyer should contact both the child and the agency or institution involved in the disposition plan at

regular intervals in order to ensure that the child's rights are respected and, where necessary, to counsel the child and the child's family concerning the dispositional plan.

E. Even after an attorney's representation in a case is complete, the attorney should comply with a child's reasonable requests for information and materials.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

§1523. Child's Right to Appeal

A. Following a delinquency adjudication, the attorney should inform the child of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal. This discussion should include the details of the appellate process including the time frames of decisions, the child's obligations pending appeal, and the possibility of success on appeal.

B. Counsel representing the child following a delinquency adjudication should promptly undertake any factual or legal investigation in order to determine whether grounds exist for relief from juvenile court or administrative action. If there is reasonable prospect of a favorable result, the lawyer should advise the child of the nature, consequences, probable outcome, and advantages or disadvantages associated with such proceedings.

C. After disposition, the attorney should consider filing a motion to reconsider the disposition. The attorney should consider an appeal of the disposition where appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

§1525. Counsel's Participation in Appeal

A. A lawyer who has represented a client through adjudication shall be prepared to continue representation in appellate actions, whether affirmative or defensive, unless new counsel is appointed at the request of the client or, in the case of a felony-grade delinquency matter, the trial attorney appropriately utilizes the services of the Louisiana Appellate Project, to the extent those appellate services are available.

B. Whether or not trial counsel expects to conduct the appeal, he or she shall promptly inform the child of the right to appeal and take all steps necessary to protect that right until appellate counsel is substituted or the child decides not to exercise this privilege.

C. If after such consultation and if the child wishes to appeal the order, the lawyer should take all steps necessary to perfect the appeal and seek appropriate temporary orders or extraordinary writs necessary to protect the interests of the client during the pendency of the appeal.

D. In circumstances where the child wants to file an appeal, the attorney should file the notice in accordance with the rules of the court and take such other steps as are necessary to preserve the defendant's right to appeal, such as ordering transcripts of the trial proceedings.

E. Where the child indicates a desire to appeal the judgment and/or disposition of the court, counsel should consider requesting a stay of execution of any disposition, particularly one involving out-of-home placement or secure care. If the stay is denied, the attorney should consider appealing the stay. The attorney should also inform the child

of any right that may exist to be released on bail pending the disposition of the appeal. Where an appeal is taken and the child requests bail pending appeal, trial counsel should cooperate with appellate counsel in providing information to pursue the request for bail.

F. Where the child takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

G. Where there exists an adequate pool of competent counsel available for assignment to appeals from juvenile court orders and substitution will not work substantial disadvantage to the child's interests, new counsel may be appointed in place of trial counsel.

H. When the appellate decision is received, the attorney or substitute appellate counsel should explain the outcome of the case to the client.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2614 (September 2011).

§1527. Probation Revocation Representation

A. Trial counsel should be prepared to continue representation if revocation of the child's probation or parole is sought, unless new counsel is appointed.

B. The attorney appointed to represent the child charged with a violation of probation should prepare in the same way and with as much care as for an adjudication. The attorney should:

1. conduct an in-person interview with the child;
2. review the probation department file;
3. identify, locate and interview exculpatory or mitigating witnesses;
4. consider reviewing the child's participation in mandated programs; and
5. consider obtaining expert assistance to test the validity of relevant scientific evidence (e.g., urinalysis results).

C. In preparing for a probation revocation, the attorney should be familiar with all the procedural protections available to the child including but not limited to discovery, cross-examination, compelling witnesses and timely filing of violations.

D. When representing a child in a revocation of probation hearing who was not a client of the attorney at the initial adjudication, the attorney should find out if the child was represented by an attorney in the underlying offense for which the child was placed on probation. The attorney may have an argument if the child entered an admission without counsel and did not give a valid waiver of counsel.

E. The attorney should prepare the child for the probation revocation hearing including the possibility of the child or parent being called as witnesses by the State. The attorney should also prepare the child for all possible consequences of a decision to enter a plea or the consequences of a probation revocation.

F. In preparing for the probation revocation, the attorney should prepare alternative dispositions including the possibility of negotiated alternatives such as a pre-hearing contempt proceeding or an additional disposition short of revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2615 (September 2011).

§1529. Challenges to the Effectiveness of Counsel

A. Where a lawyer appointed or retained to represent a child previously represented by other counsel has a good faith belief that prior counsel did not provide effective assistance, the child should be so advised and any appropriate relief for the child on that ground should be pursued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 37:2615 (September 2011).

Jean M. Faria
State Public Defender

1109#026

RULE

Department of Health and Hospitals Board of Certified Social Worker Examiners

Social Work (LAC 46:XXV.Chapters 1-9)

The Louisiana State Board of Certified Social Worker Examiners has amended the rules, standards and procedures following the adoption of Act 880 in January 2011, which implement the Louisiana Social Work Practice Act, R.S. 37:2701-2724. These amendments will apply to all credentialed social workers and amend §111. Practice Requirements, §301. Definitions, §303. Practice, §305. Qualifications for Registration, Certification, Licensure, §307. Administration of Examination, §309. Application Procedure, §311. Renewals and Cancellation, §313. Fees, §317. Continuing Education Requirements, §319. Reciprocity and Endorsement, §501. The GSW Who Pursues the LCSW Credential, or Who Provides Clinical Services Which Constitute Psychotherapy Must Be Supervised, §503. GSWs Seeking the LCSW Credential, §505. The GSW Not Receiving BACS Supervision or the Provisional GSW Not Eligible for BACS Supervision, §703. Purpose, §901. Authority, §903. Complaint Origination, §905. Investigation Procedures, §907. Disposition of an Investigation, §919. Motions for Continuance of Hearing, §925. Designation of Hearing Panel, Disqualification and Replacement, and §945. Declaratory Ruling.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXV. Credentialed Social Workers

Chapter 1. Standards of Practice

§111. Practice Requirements

A. - G.5. ...

6. Social workers shall not retain copies of client records after separation from an agency or employer without written agency/employer's consent.

H. - H.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:296 (February 2000), amended LR 37:2615 (September 2011).

Chapter 3. General Provisions

§301. Definitions

* * *

Credential—can be the registration (RSW), certification (CSW) or license (LMSW) and (LCSW) regulated by the Louisiana Social Work Practice Act.

* * *

Supervisee—any person under the supervision of a credentialed social worker. The supervisee may be an applicant for social work credentials, an employee under the supervision of the LCSW, LMSW, CSW or RSW, or a person who contracts with the licensed clinical social worker for supervision.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:300 (February 2000), amended LR 34:247 (February 2008). LR 37:2616 (September 2011).

§303. Practice

A. Social Work Practice. Any person practicing social work without license, certification, or registration is subject to the provisions of R.S. 37:2720, including injunctive proceedings and prosecution.

B. - C.4. ...

D. Licensed master social workers and certified social workers shall not:

1. - 4. ...

E. Licensed master social workers and certified social workers may:

1. ...

F. Applicants for registration, certification, or licensure who indicate on their application that they have been employed or engaged in independent practice as a social worker in the state of Louisiana are subject to the provisions of R.S. 37:2720.

G. In accordance with R.S. 37:2709, which states in part that the license, certificate, or registration shall be kept conspicuously posted in the office or place of business at all times, it is permissible to post the original certificate of license, certification, or registration or a copy of the original certificate of license, certification, or registration, or the current identification card received from the board upon renewal of the license, certification, or registration.

G.1. - H. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:301 (February 2000), amended LR 29:2382 (November 2003), LR 34:1401 (July 2008), LR 37:2616 (September 2011).

§305. Qualifications for Registration, Certification, Licensure

A. Registered Social Worker (RSW)

1. Must be of good moral character. As one element of good moral character, the board shall require each applicant to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records check, pursuant to authorizing state statute and applicable federal law. The state agency responsible for managing fingerprint data may submit fingerprints to and exchange data with the FBI. All good moral character information, including the information

obtained through criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

2. ...

B. Licensed Master Social Worker (LMSW)

1. Must be of good moral character. As one element of good moral character, the board shall require each applicant to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records check, pursuant to authorizing state statute and applicable federal law. The state agency responsible for managing fingerprint data may submit fingerprints to and exchange data with the FBI. All good moral character information, including the information obtained through criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

2. - 3. ...

4. Repealed.

C. Certified Social Worker (CSW)

1. The board may issue certification to an applicant who meets all requirements for the LMSW except for passing the examination approved by the board.

2. The individual may hold the certification for up to three years from the date of issuance of the original certificate provided the individual takes the examination approved by board within first 6 months after certification and annually for the next 2 1/2 years.

3. It is the responsibility of the CSW to submit proof of examination to the board office once each year of eligibility.

4. The CSW who does not pass the examination for the LMSW within three years from the date of issuance of the original certification may apply for the registered social work credential.

5. In the event that the CSW does not take the examination for the LMSW within the first 6 months of issuance of the original certificate or yearly thereafter, the CSW certificate will be subject to recall by the board and the CSW will be recorded as invalid in the board's database.

D. Licensed Clinical Social Worker (LCSW)

1. The applicant must be of good moral character. As one element of good moral character, the board shall require each applicant to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records check, pursuant to authorizing state statute and applicable federal law. The state agency responsible for managing fingerprint data may submit fingerprints to and exchange data with the FBI. All good moral character information, including the information obtained through criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

2. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:301 (February 2000), amended LR 29:2383 (November 2003), LR 34:1401 (July 2008), LR 37:2616 (September 2011).

§307. Administration of Examination

A. - B.1. ...

2. Applicants for the LCSW license must submit an employment verification form for each place of employment after receipt of the MSW degree.

3. The board shall observe the retake policy of the testing service.

4. Repealed.

C. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:302 (February 2000), repromulgated LR 29:2383 (November 2003), amended LR 37:2616 (September 2011).

§309. Application Procedure

A. Application forms and instructions can be downloaded from the board's website or obtained by making a written, telephone or electronic request to the board office.

B. - E. ...

F. The application fee for licensure, certification, or registration is non-refundable and must be submitted in the form of a money order, certified check, or by credit card.

G. As one element of good moral character, the board shall require each applicant to submit a full set of fingerprints for the purpose of obtaining State and Federal criminal records check, pursuant to authorizing state statute and applicable federal law. The state agency responsible for managing fingerprint data may submit fingerprints to and exchange data with the FBI. All good moral character information, including the information obtained through criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

H. Applicants for the LCSW license must submit an employment verification form for each place of employment in Louisiana after receipt of the MSW degree.

I. Applicants for the LCSW license must submit proof of 5760 hours of postgraduate social work practice. 3,840 of the 5760 hours of accumulated social work experience shall be in a setting practicing social work under the supervision of a board-approved clinical supervisor and submitted on the forms provided by the board.

J. Non-resident applicants may submit proof of 3840 hours or equivalent months of accumulated supervised experience completed out-of-state on the forms provided by the board and given by a social worker licensed at a level equivalent to the LCSW license.

K. Non-resident applicants may submit verification of 5760 hours or equivalent months of out-of-state accumulated social work employment to qualify for the LCSW license.

L. The application for licensure, certification, and registration shall include the applicant's Social Security number in accordance with R.S. 37:23. Submission is not optional.

M. The official transcript from a university accredited by the Council on Social Work Education verifying receipt of a master's degree must be received directly from the university.

N. An applicant shall be deemed to have abandoned the application if the requirements for the credential are not completed within one year of the date on which the application was received. An application submitted subsequent to the abandoned application shall be treated as a new application.

O. Initial social work credentials issued during the last quarter of the fiscal year, (i.e., April, May or June) will not be required to renew for the next fiscal year.

P. Procedure for Social Workers with Felony Convictions

1. The burden of proof for submitting the requested documentation is the responsibility of the BSW or MSW applicants in order to convince the Louisiana State Board of Social Work Examiners that he/she has good moral character and fitness to practice social work.

2. The BSW or MSW applicant should collect and deliver the following documents to the board office promptly:

a. copies of all court records containing information of the conviction and the imposition of sentence;

b. the current name, address, and telephone number of the judge who imposed sentence and who presided at the trial and/or accepted any plea upon which the felony conviction was based;

c. any documentation or records which reflect the term of any probationary period, the conditions of probation and the fulfillment and completion of all terms and conditions of probation;

d. the current name(s), addresses and telephone numbers of any probation officers or persons of similar title or job function to whom the applicant has reported or who has any information concerning the applicant's conduct during any probationary period;

e. if any form of restitution to a victim or victims was part of a sentence imposed or a condition of probation the applicant must provide the names, current addresses and telephone numbers of any such victim or victims and an affidavit of the applicant that affirms that all required restitution has been completed;

f. if the sentence included any form of imprisonment, residence at a half-way house, other forms of correctional and/or treatment facilities, the applicant must provide the complete address, names and current addresses of any persons having information relating to the satisfactory completion of any such prison term, residence or treatment, and any related documents. In the event that medical, psychiatric, psychological, substance or alcohol abuse evaluation, treatment and rehabilitation was in any way part of the sentence or a term or condition of probation, the applicant will execute any releases which may be required for the board to obtain information. Such information obtained will be maintained by the board on a confidential basis;

g. all records or documents relating to any arrest or conviction of any felony or misdemeanor which has occurred at any time since the applicant's original felony conviction or which occurs at any time during which the application is pending or being investigated (this requirement is an ongoing responsibility of the applicant);

h. any documents, records, or information which the applicant wishes to present in support of his or her application which shows or evidences rehabilitation, positive social contributions, awards, commendations, social or lifestyle adjustments, positive treatment outcomes, employment or academic evaluations, volunteer work or any other area in which the applicant participated which would reflect on the applicant's good moral character and fitness to practice social work. (The applicant should provide the names, current addresses and telephone numbers of any

references or persons having information in support of the application. While information in support of an application which occurred prior to the conviction may be submitted, the board will place greater emphasis on supporting documentation and information concerning events which have occurred since the felony conviction.);

i. true copies of any licenses, certificates to practice or similar documents issued by any board or licensing authority of any other state or the state of Louisiana obtained by the applicant since the date of the felony conviction. The applicant should provide a complete listing of any college, graduate school, trade or business school and employers to whom he or she has made application since the date of the felony conviction. This request includes any applications which were denied for any reason, including the felony conviction.

3. BSWs and MSWs should be aware of the following:

a. any delay in providing the requested information will delay the board's action on the application;

b. providing any false or misleading information, being evasive, concealing or making material omissions, or failing to cooperate shall form a basis for the denial of the application;

c. in the event that the application is denied by the board, the applicant may request a compliance hearing provided the application for such a hearing is made in writing within 30 days after the applicant receives the notice of the denial of the application. The request shall contain the applicant's receipt of the notice of the denial of the application, and the applicant's grounds for opposition to the denial of the application. The applicant is further aware that at such a hearing the applicant may be represented by legal counsel and the applicant bears the burden to establish that he or she meets the criteria for licensure;

d. the intent of the above enumerated items is to obtain the information upon which the board will evaluate the application.

Q. Additional Requirements for International Applicants/Speakers of English as a Second Language

1. Any document required to be submitted to the board with an application for license, certification or registration shall be in the English language, or accompanied by a certified translation thereof into the English language.

2. As a condition of the board's consideration of the application of a graduate of a foreign college or university, the applicant shall provide the board with a statement from the Council on Social Work Education that the applicant's degree is equivalent to an accredited social work degree in the United States.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:302 (February 2000), amended LR 29:2383 (November 2003), LR 34:1402 (July 2008), LR 37:2617 (September 2011).

§311. Renewals and Cancellation

A. Renewal notices are mailed on or before July 1 of each year. All licenses, certificates and registrations lapse annually on August 31.

B. Licensed clinical social workers must list those licensed master social workers and certified social workers

under their supervision for licensure requirements and agency setting on their renewal form.

C. Twenty clock hours of continuing education in programs approved by the board shall be obtained prior to June 30 of each year (see §317 for rules on acceptable continuing education). Applications for renewal may be subject to denial if continuing education requirements are not fulfilled.

D. ...

E. A lapsed license fee shall be paid between December 1, and February 28, of each year and the license, certificate or registration will be renewed. The lapsed fee equals twice the amount of the renewal fee.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:304 (February 2000), amended LR 29:2384 (November 2003), LR 34:247 (February 2008).

§313. Fees

A. The fees charged by the Louisiana State Board of Social Work Examiners shall be as follows.

Application Fee for LCSW	\$100
Application Fee for LMSW	75
Application Fee for RSW	50
Application fee for Retake of LCSW	50
Application fee for Retake of LMSW	50
Renewal Fee for LCSW	75
Renewal Fee for LMSW and CSW	50
Renewal Fee for RSW	25
Lapsed Renewal Fee for LCSW (postmarked after November 30)	150
Lapsed Renewal Fee for LMSW and CSW (postmarked after November 30)	100
Lapsed Renewal Fee for RSW (postmarked after November 30)	50
Fee for Returned Checks	25
Reissuance of Lost or Destroyed Certificate	25
Reissuance of Lost or Duplicate Identification Card	5
Fee for mailing lists per label plus postage and handling	\$0.05
Copy Fee for Documents:	\$0.25 per page plus postage and handling
Fax Transmissions:	\$5 first page \$1 each additional page
Written Verification of License, Certificate or Registration:	\$5

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:304 (February 2000), amended LR 29:2384 (November 2003), LR 34:248 (February 2008), LR 37:2618 (September 2011).

§317. Continuing Education Requirements

A. - F. ...

1. Continuing Education Waivers for Declared Emergencies. In response to a disaster or emergency declared by the appropriate authority or governor of the state, continuing education units required for renewal of a license may be waived by the board.

2. Continuing Education Extensions for Extenuating Circumstances. In response to extenuating circumstances, the time frame mandated to complete continuing education units required for renewal of a license, certification, or registration may be extended by the board.

G. - J.1. ...

K. Continuing Education Requirements for Licensed Master Social Worker and Certified Social Worker

K1. - M.1. ...

2. educational offerings sponsored by or offered by entities approved by the Association of Social Work Boards;

3. should the individual social worker make the determination that an education offering which is not pre-approved by one of the approval organizations has content applicable to social work practice, the *Guide for Assessment of Continuing Education* (§317.P) must be used. This document, as well as all the relevant course materials, and the certificate of completion should be maintained in the event you are audited;

4. distance learning (teleconferences, telecourses, home-study courses and internet courses) sponsored by entities listed in §317.M.1, or pre-approved by a LABSWE-authorized pre-approval organization cannot exceed a total of 10 clock hours of the required 20 clock hours of continuing education required annually for renewal of social work credentials;

5. continuing education activities or academic courses provided by accredited schools of social work. Academic course work counts per actual class hour;

6. presentations of content applicable to social work practice at professional conferences, staff development meetings, and other appropriate forums in which you are the primary presenter. These presentations count 1.5 times the actual time of the presentation, in order to give credit for preparation time. (Example: You prepare a presentation on Holiday Stress that lasts one hour. You will receive 1.5 hours continuing education credit for this presentation.) Presentation and preparation time may only be counted once for each topic. Academic preparation and teaching of social work content (undergraduate or graduate) may be counted once in the same manner, unless the course has been revised to include substantially new content and text books. Please be prepared to provide the exact nature of the content and presentation;

7. attendance at staff development presentations with content applicable to social work practice (such as staff meeting with a formal and in-depth presentation on working with clients who present borderline symptoms, etc.). Please be prepared to provide the presenter's name, credentials, date of presentation and nature of the content covered. Case based staffing meetings are not included as appropriate continuing education experiences;

8. attendance at professional social work meetings, Association of Social Work Boards (ASWB) item writing workshops, symposiums, panel discussions, or conferences sponsored by the professional associations suggested in §317.M.1. Please be prepared to provide the dates and nature of content or consultation covered;

9. formal study groups of three or more participants. Must submit name, address, telephone number and credentials of group members to the board office. Study

groups should maintain records of topics, attendance, meeting times, and presenters for audit purposes;

10. contracted professional consultation which the credentialed social worker receives. Must provide the paid consultant's name, address, telephone number, credentials, and the dates and focus of the consultation;

11. preparation of substantial written material with content applicable to social work practice which requires literature search, research, and explication of social work content (such as writing a social work article or book for publication, or a major grant application). Please provide specific information about the nature of the written work, the effort required, and the publisher or funding agency. These activities may be counted for no more than five hours continuing education;

12. social workers should be doing consistent independent study. However, such study does not meet the goal of increasing professional relationships and networks. Consequently independent study must receive pre-approval from the board.

N. - P. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705(C) and (G) and 37:2714.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:305 (February 2000), amended LR 29:2385 (November 2003), LR 34:248 (February 2008), LR 37:2618 (September 2011).

§319. Reciprocity and Endorsement

A. - C.5. ...

6. The applicant submits the completed application for endorsement along with the required documentation to demonstrate good moral character.

7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:306 (February 2000), amended LR 34:249 (February 2008), LR 37:2619 (September 2011).

Chapter 5. Minimum Supervision Requirements

§501. The LMSW Who Pursues the LCSW Credential, or Who Provides Services Which Constitute Psychotherapy Must Be Supervised

A. A LMSW must be a salaried employee of an agency, organization, or facility that delivers social work services or a contractual employee of a governmental agency. The individual is considered an employee if:

1. - 3. ...

B. A LMSW will be considered as providing social work services on behalf of a federal, state, or local governmental agency on a contractual basis if:

1. there is written documentation of the contractual relationship between the LMSW and the governmental agency;

2. ...

3. the governmental agency provides the LMSW with either a Form 1099 or evidence of withholding of federal income taxes and FICA.

C. ...

D. LMSWs shall not:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:307 (February 2000), amended LR 34:1402 (July 2008), LR 37:2619 (September 2011).

§503. LMSWs Seeking the LCSW Credential

A. Supervision for the LCSW license can begin after the MSW obtains LMSW.

B. Supervision for the LCSW license is conducted by a board approved clinical supervisor (BACS). LMSWs may obtain a list of BACS from the board's website or office.

C. Effective August 15, 2007, LMSWs seeking the LCSW credential must complete a minimum of 5760 hours of postgraduate social work practice and at least 3840 hours of that postgraduate social work practice must be under the supervision of a board approved clinical supervisor (BACS).

D. LMSW postgraduate social work practice and postgraduate BACS supervised social work practice for LMSW seeking the LCSW credential, which practice occurred prior to August 15, 2007, will be calculated by the board based on the prior requirements of at least 36 accumulated months of full-time postgraduate social work practice and 24 accumulated months of BACS supervised practice. In order to qualify for the appropriate credits, the postgraduate practice and the postgraduate supervised practice shall be in conformity with board rules governing such practice at that time. Copies of those prior rules and forms relating to postgraduate practice and supervised postgraduate practice can be obtained from the board office or the board's web site.

E. Notwithstanding Subsection C of this Section, LMSWs seeking the LCSW credential who have completed the 36-month postgraduate practice requirement and the 24-month postgraduate BACS supervised practice requirement prior to August 15, 2007 and who provide documentation thereof in conformity with applicable board rules and forms will be eligible for the LCSW examination and license.

F. LMSWs whose postgraduate social work practice or BACS supervised postgraduate social work practice occurs both before August 15, 2007 and after August 15, 2007 will be credited by the board based on the application of Subsection D of this Section (monthly calculation) for the postgraduate practice occurring prior to August 15, 2007 and based on Subsection C of this Section (hourly calculation) for postgraduate practice occurring after August 15, 2007. In order for LMSWs to determine whether they have obtained the total number of postgraduate credits necessary to qualify for LCSW examination and license, LMSWs will employ the conversion formula provided in Subsection G of this Section prior to the submission of their completed supervision documentation forms to the board.

G.1. - 2. ...

3. Example of Calculations. LMSW prior to August 15, 2007 completed 24 months of postgraduate practice 13 of which qualified as BACS supervised. Two ratios of 24/36 and 13/24 are formed. The resulting percentages, (66.67 percent of the postgraduate practice requirement and 54.17 percent of the supervision requirement) are then multiplied times the total hourly requirement in each category. In the example, the GSW converts by multiplying 66.67 percent times 5,760 to obtain 3840 hours of postgraduate practice credit for social work performed prior to August 15, 2007.

The LMSW determines that 1920 hours of postgraduate social work practice after August 15, 2007 are required by subtracting 3,840 by 5,760. Likewise the LMSW converts by multiplying 54.17 percent times 3,840 to obtain the 2080 hours of postgraduate BACS supervised practice credit performed prior to August 15, 2007. The LMSW determines that 1760 hours of postgraduate social work practice after August 15, 2007 are required by subtracting 2,080 from 3,840.

H. The requirement for supervision is at least 2 hours of face-to-face supervision with a BACS during every 80 hours increment of postgraduate social work practice. This hourly supervision requirement applies to each consecutive increment of 80 hours of social work practice. Postgraduate social work practice which exceeds 80 consecutive hours of practice without at least two hours of face-to-face BACS supervision will not be credited to the 3,840 hours of supervised practice.

I. - O.8. ...

P. To register her/his intent to initiate supervision, the LMSW must submit the completed registration of supervision form.

Q. - S. ...

T. When supervision is provided to a LMSW by a LCSW-BACS supervisor, not an agency employee, social work ethics require that the LCSW-BACS take responsibility for securing agency agreement to the plan of supervision, whether the fee for supervision is paid by the agency or the supervisee.

T.1. - U. ...

V. An evaluation of supervision form shall be submitted to the board office at the end of the supervisory period. Sometimes it is necessary for a supervisor to discontinue supervising a LMSW for licensure. When this occurs, no matter what length of time the supervisor actually supervised the supervisee, the supervisor must submit an evaluation of supervision form.

W. ...

X. If the LMSW receives supervision outside of the state of Louisiana, that supervision will be accepted if:

X.1. - Y. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:307 (February 2000), amended LR 29:2387 (November 2003), LR 34:1402 (July 2008), LR 37:2620 (September 2011).

§505. The LMSW Not Receiving BACS Supervision or the CSW Not Eligible for BACS Supervision

A. The LMSW who is not receiving BACS supervision or the CSW not eligible for BACS supervision, may deliver those clinical services which constitute psychotherapy only under the supervision of a LCSW. Supervision under these circumstances does not require that the supervising LCSW have the board approved clinical supervisor (BACS) designation.

B. Regardless of the time spent in clinical practice, the LMSW or CSW must be supervised in accordance with the following rules.

C. The employing agency ultimately is responsible and accountable for services rendered by the LMSW or CSW; therefore, the agency may provide access to LCSW

supervision to ensure quality of services. The LMSW or CSW may independently secure LCSW supervision.

D. - E. ...

F. Supervision for LMSWs or CSWs rendering clinical services constituting psychotherapy shall total a minimum of two hours per month, counted in increments of no fewer than 30 minutes, for the duration of the time that the LMSW or CSW is rendering psychotherapeutic services.

G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 26:307 (February 2000), amended LR 34:249 (February 2008), LR 37:2620 (September 2011).

Chapter 7. Impaired Professional Program Authority

§703. Purpose

A. ...

B. A social worker who meets the requirements of R.S. 37:2706, 2707, 2708, or 2724 may enter the program subsequent to voluntary disclosure of impairment via an initial or renewal application for a credential. Entrance into the program may also occur by determination of the board, following involuntary disclosure of impairment in accordance with R.S. 37:2717(A)(2) or R.S. 37:2717(B)(4), or by other circumstances deemed appropriate by the board. Participation in the program may hence be required as a prerequisite to continued social work practice in accordance with the conditions of any consent order, compliance or adjudication hearing. A social worker who enters the program may be allowed to maintain his/her social work credential while in compliance with the requirements of their program.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2389 (November 2003), amended LR 34:249 (February 2008), LR 37:2621 (September 2011).

Chapter 9. Procedural Rules

§901. Authority

A. Consistent with the legislative purpose specified in R.S. 37:2701 through 2724, and to protect the safety and welfare of the people of this state against unauthorized, unqualified and improper practice of social work, the following rules, standards, and procedures are established under the board's rule making authority of R.S. 37:2705(C), 37:2717(C)(E) and R.S. 49:952.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2390 (November 2003), amended LR 37:2621 (September 2011).

§903. Complaint Origination

A. The board is authorized to receive from any person a complaint or complaints against social workers licensed, certified, or registered under R.S. 2701 et seq., (hereinafter referred to as "social workers"), as well as complaints against any level of social work applicant. Throughout these rules, the term "license" or "licensed" includes the term certification and registration and also applies to any social workers who are certified or registered. The board is also

authorized to initiate such complaint(s) when the board otherwise possesses or obtains information which satisfies the board that such a complaint is warranted.

B. ...

C. The respondent may be represented by an attorney at law duly admitted to practice in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2390 (November 2003), amended LR 37:2621 (September 2011).

§905. Investigation Procedures

A. When the board receives a written complaint, report, or other information which, if established as being true, would constitute just cause under the law for revocation, suspension, denial of license, or any other form of discipline specified in R.S. 37:2717(B), the board may refer the complaint, report or information to the board administrator and/or to the board's designated complaint investigation officer (hereinafter referred to as the CIO). The CIO may be an employee of the board or provide investigation services under contract with the board. The board will stipulate the protocol and manner of the investigator. The board's administrator and staff and/or the CIO shall conduct such investigation or inquiry as the board deems appropriate to determine whether there is probable cause to initiate formal administrative proceedings against the involved social worker. To assist in the investigation, the board is authorized to issue, as necessary or upon request, such investigative subpoenas as may be required to obtain documents, the appearance of witnesses, or sworn statements or testimony.

B. Except for the notice required by §911.B and §937.C, all other notices, correspondence or written communication relating to complaints, investigations, notices of investigations, conferences, decisions, orders, etc., may be served on or delivered to the involved social worker, complainant(s), or witnesses by regular mail or, when deemed appropriate or necessary by the board or its administrator, by personal delivery (service) or other available means. Notices shall be delivered with the designation "personal and confidential" clearly marked on the outside of the envelope.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2391 (November 2003), amended LR 34:1405 (July 2008), LR 37:2621 (September 2011).

§907. Disposition of Investigation

A. - C. ...

D. If the investigation report contains a determination that there is probable cause to believe that the involved social worker has engaged or is engaging in conduct, acts, or omissions constituting legal cause under the law, these rules and regulations, or ethical standards for any form of disciplinary action as specified in R.S. 37:2717, then the administrator shall promptly notify the attorney general or the assistant attorney general assigned to prosecute such matters on behalf of the state pursuant to R.S. 37:2717(C). The notice shall deliver to the assistant attorney general all investigative reports, statements, notes, recordings, court

records, and other data obtained in the course of the investigation. It will also request the preparation of a draft of an administrative complaint regarding any violations which are disclosed in or suggested by the investigation. The assistant attorney general prosecuting the matter may request and obtain other information from the board's administrator, including access to consultants to assess the results of the investigation and prepare a draft of the administrative complaint. The draft of the administrative complaint shall identify the involved social worker and be prepared in the same form and content as the administrative complaint specified in §909.B of these rules. The draft of the administrative complaint shall be signed by the assistant attorney general and delivered to the board's administrator within 30 days of the notice and delivery to the assistant attorney general of the investigation, report and specified materials. The board's administrator is authorized to extend the time for the submission of the draft of the administrative complaint for a reasonable time as requested by the assistant attorney general, provided that such extensions do not foreclose action on the complaint or the scheduling of a hearing due to the limitations contained in R.S. 37:21.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2391 (November 2003), amended LR 37:2621 (September 2011).

§919. Motions for Continuance of Hearing

A. A motion for continuance of hearing shall be filed within the delay prescribed by §917 of these rules, provided that the board may accept the filing of a motion for a continuance at any time prior to hearing upon a showing of good cause not discoverable within the time otherwise provided for the filing of pre-hearing motions.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2393 (November 2003), amended LR 37:2622 (September 2011).

§925. Designation of Hearing Panel, Disqualification and Replacement

A. - B. ...

C. Any panel member having reason to believe that he or she is biased or prejudiced either for or against one of the parties to the proceeding, or who has a personal interest in the outcome, shall immediately notify the remaining board members and request to be disqualified. Likewise, any party to such a hearing or a compliance hearing as provided in §943, may file with the board a motion supported by an affidavit requesting disqualification because of bias, prejudice or personal interest. Motion for disqualification shall be filed with the board and the opposing party within 15 days following the notice of the composition of the hearing panel. Absent good cause shown, motions for disqualification filed more than 15 days following such notice will not be considered. As soon as possible, but not later than 10 calendar days preceding the beginning of the hearing, the majority of the hearing panel will consider the merits of the disqualification request and any opposition to

that request filed by the opposing party. The concerned board member shall not participate in the action to disqualify and shall not vote on that issue. If the board hearing panel determines there is no merit to the request for disqualification, the board will proceed with the hearing before the designated panel. However, any doubt as to the merits of the request for disqualification should be resolved in favor of disqualification, and the board chairperson shall immediately appoint one of the remaining board members as the replacement to the hearing panel.

D. ...

E. At least one member of the hearing panel including the panel members of a compliance hearing specified under §943 shall have the same social work credential as the respondent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2394 (November 2003), amended LR 37:2622 (September 2011).

§945. Declaratory Ruling

A. Any person or entity deemed to be governed by or under the jurisdiction of R.S. 37:2701-2724 may apply to the board for a declaratory order or ruling in order to determine the applicability of any of the above statutory provisions or any of the rules of this board. The board shall issue the declaratory order or ruling in connection with the request by majority vote of the board, signed and mailed to the requesting party within 30 days of the request.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2705.C.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Certified Social Work Examiners, LR 29:2398 (November 2003), amended LR 37:2622 (September 2011).

Emily Efferson
Administrator

1109#027

RULE

Department of Health and Hospitals Board of Examiners for Speech-Language Pathology and Audiology

Speech Pathology and Audiology
LAC 46:LXXV.Chapters 1, 3, 5, and 7)

Editor's Note: These Sections are being repromulgated to correct citation errors. The original Rule may be viewed in its entirety on pages 2392-2401 of the August 20, 2011 edition of the *Louisiana Register*.

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:2656(c), the Louisiana Board of Examiners for Speech-Language Pathology and Audiology has amended the rules, regulations and procedures to reflect current requirements set forth by universities to obtain undergraduate and graduate degrees, to clarify the Sections regarding supervision requirements, to implement rules specific to individuals who reapply after their license has

been lapsed for ten years, to revise the current code of ethics to have language specific to masters level practitioners and language specific to bachelors level practitioners. Lastly, the board is requesting other "housekeeping" type amendments to revise the language, but not the intent of the rule.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXXV. Speech Pathology and Audiology

Chapter 1. General Rules

§109. Application Procedures

A. - C. ...

D. The initial license fee submitted to this board shall be paid by check, money order, or credit card.

E. - J. ...

K. Applicants who have not obtained licensure within one year of having submitted the application shall be deemed to have abandoned the application, resulting in mandatory reporting to the appropriate federal databank. An applicant may request a withdrawal of the application subject to review and approval by the board.

L. Individuals holding an unrestricted speech-language pathology or audiology license from another state shall be allowed to practice in Louisiana for five consecutive days within each renewal period upon proof of current licensure submitted to the board office 10 days prior to the scheduled activity.

M. When there is probable cause to believe that an applicant practiced illegally in Louisiana as a speech-language pathologist, speech-language pathology assistant and/or audiologist, the board may offer a consent agreement and order which will grant the individual a license, subject to the following specified terms and conditions.

1. Within 90 days of the date of the consent agreement and order, the applicant shall take and pass an open book examination regarding R.S. 37:2650-2666, the board's rules, regulations and procedures, and ethical questions or within 10 months of the date of the consent agreement and order, the applicant shall complete not fewer than five hours of continuing education in the area of ethics.

a. Open book test fee shall be \$30. The retest fee shall be \$10 per section.

b. Applicants have 4 1/2 hours to complete all sections of the test.

c. The open book examination or any section may be re-taken anytime within the 90 days.

d. The applicant may be required to appear before the board following completion of the continuing education in ethics to answer questions regarding the continuing education.

e. Notice of the consent order and agreement shall be published.

f. If the applicant fails to successfully complete all requirements set forth in the above paragraphs, the applicant's license shall be suspended without further notice until the board receives and accepts documentation of the applicant's completion of the consent order and agreement requirements.

N. Applications for licensure will be denied for individuals who are in default on the repayment of any loan

guaranteed in accordance with R.S. 17:3023(A)(8) and R.S. 37:2951(A)(E).

O. Temporary Registration during a Declared Public Health Emergency

1. In a public health emergency lawfully declared as such by the governor of Louisiana, the requirement for a Louisiana license as an audiologist, speech-language pathologist, or speech-language pathology assistant may be suspended by the board at that time to those out of state audiologists, speech-language pathologists, or speech-language pathology assistants, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States, for a period of time not to exceed the duration and scope of R.S. 29:769(E), as more particularly set forth in this Section.

2. The following requirements for temporary registration may be imposed pursuant to the declared state of emergency and shall be in accordance with rules promulgated by the board.

3. An audiologist, speech-language pathologist, or speech-language pathology assistant not licensed in Louisiana, whose licenses, certifications or registrations are current and unrestricted in another jurisdiction of the United States, may gratuitously provide audiology and speech-language pathology services if:

a. the audiologist, speech-language pathologist, or speech-language pathology assistant has photo identification and a license to verify a current and unrestricted license, certification or registration in another jurisdiction of the United States, and properly registers with the board prior to providing audiology or speech language pathology services in Louisiana as follows:

i. the audiologist, speech-language pathologist, or speech-language pathology assistant is engaged in a legitimate relief effort during the emergency period, and provides satisfactory documentation to the board of the location site(s) that he will be providing gratuitous audiology or speech-language pathology services;

ii. the audiologist, speech-language pathologist, or speech-language pathology assistant shall comply with the Louisiana Speech-Language Pathology and Audiology Practice Act, board rules, and other applicable laws, as well as practice in good faith, and within the reasonable scope of his skill, training, and ability; and

iii. the audiologist, speech-language pathologist, or speech-language pathology assistant renders services on a gratuitous basis with no revenue of any kind to be derived whatsoever from the provision of services within the state of Louisiana.

4. The authority provided for in the emergency rule shall be applicable for a period of time not to exceed 60 days at the discretion of the board, with the potential extension of up to two additional periods not to exceed 60 days for each extension as determined appropriate and necessary by the board.

5. All interested audiologists, speech-language pathologists, and speech-language pathology assistants shall submit a copy of their respective current and unrestricted licenses, certifications or registrations issued in other jurisdictions of the United States and photographic

identification, as well as other requested information, to the Louisiana Board of Examiners for Speech-Language Pathology and Audiology for registration with this agency prior to gratuitously providing audiology or speech-language pathology services in Louisiana.

6. Should a qualified audiologist, speech-language pathologist, or speech-language pathology assistant registered with the board thereafter fail to comply with any requirement or condition established by this Section, the board may terminate his registration upon notice and hearing.

7. In the event an audiologist, speech-language pathologist, or speech-language pathology assistant fails to register with the board, but practices audiology or speech-language pathology, whether gratuitously or otherwise, then such conduct will be considered the unlawful practice of audiology or speech-language pathology and prosecuted accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 14:707 (October 1988), amended LR 22:352 (May 1996), LR 27:199 (February 2001), LR 28:1974 (September 2002), LR 30:2311 (October 2004), LR 33:2193 (October 2007), LR 37:2393 (August 2011), repromulgated LR 37:2623 (September 2011).

§131. Hearing Aid Dispensing

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

c. a basic audiological test battery conducted in a soundtreated environment within the preceding six month period, including:

- i. pure tone air and bone conduction testing;
- ii. speech reception threshold;
- iii. word recognition testing;
- iv. appropriate tolerance testing;
- v. Repealed;

d. middle ear measurements shall also be obtained when indicated.

2. - 3. ...

4. Audiologists shall conduct a post-fitting evaluation that includes functional gain measurements conducted in a soundtreated environment and/or real ear measurements unless the patient's physical conditions prohibit accomplishment of these procedures.

F.5. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 22:353 (May 1996), amended LR 27:201 (February 2001), LR 28:1975 (September 2002), LR 30:2317 (October 2004), LR 33:2198 (October 2007), LR 37:2398 (August 2011), repromulgated LR 37:2624 (September 2011).

Emily Efferson
Administrator

1109#024

RULE

Department of Health and Hospitals Bureau of Health Services Financing and Office of Aging and Adult Services

Home and Community-Based Services Waivers
Adult Day Health Care (LAC 50:XXI.2103, 2107, 2301,
2501, 2503, 2701, 2901-2905, and 2915)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services have amended LAC 50:XXI.2103, §2107, §2301, §2501, §2503, §2701, §2901-2905, and §2915 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

Subpart 3. Adult Day Health Care

Chapter 21. General Provisions

§2103. Program Description

A. An Adult Day Health Care Waiver Program expands the array of services available to individuals with functional impairments, and helps to bridge the gap between independence and institutional care by allowing them to remain in their own homes and communities. This program provides direct care for individuals who have physical, mental or functional impairments. ADHC waiver participants must attend a minimum of 36 days per calendar quarter, absent extenuating circumstances. Exceptions for extenuating circumstances must be approved by the assigned support coordinator based upon guidance provided by OAAS.

B. - C.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2034 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2161 (October 2008), repromulgated LR 34:2566 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2624 (September 2011).

§2107. Programmatic Allocation of Waiver Opportunities

A. ...

B. Adult day health care waiver opportunities shall be offered to individuals on the registry according to priority groups. The following groups shall have priority for ADHC waiver opportunities in the order listed:

1. individuals with substantiated cases of abuse or neglect with Adult Protective Services (APS) or Elderly Protective Services (EPS) and who, absent ADHC waiver

services, would require institutional placement to prevent further abuse and neglect;

a. - c. Repealed.

2. individuals who have been discharged after a hospitalization within the past 30 days that involved a stay of at least one night;

3. individuals presently residing in nursing facilities for 90 or more continuous days; and

4. all other eligible individuals on the Request for Services Registry (RFSR), by date of first request for services.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified and the process continues until an individual is determined eligible. An ADHC waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

D. Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008), repromulgated LR 34:2566 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2624 (September 2011).

Chapter 23. Services

§2301. Covered Services

A. ...

1. Adult Day Health Care. ADHC services are a planned, diverse daily program of individual services and group activities structured to enhance the recipient's physical functioning and to provide mental stimulation. Services are furnished on a regularly scheduled basis, not to exceed 10 hours a day, 50 hours a week. An adult day health care center shall, at a minimum, furnish the following services:

a. - j. ...

NOTE: Repealed.

2. Support Coordination. These services assist participants in gaining access to necessary waiver and other State Plan services, as well as medical, social, educational and other services, regardless of the funding source for these services. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the recipient's approved plan of care (POC). This is a mandatory service.

A.3. - B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2036 (September 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2162 (October 2008), repromulgated LR 34:2566 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011).

Chapter 25. Admission and Discharge Criteria

§2501. Admission Criteria

A. Admission to the ADHC Waiver Program shall be determined in accordance with the following criteria:

1. - 3. ...

4. reasonable assurance that the health and welfare of the individual can be maintained in the community with the provision of ADHC Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria in this Section will result in denial of admission to the ADHC Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2040 (September 2004), amended by the Department Of Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008), repromulgated LR 34:2568 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011).

§2503. Denial and Discharge Criteria

A. Admission shall be denied or the recipient shall be discharged from the ADHC Waiver Program if any of the following conditions are determined.

1. - 7. ...

8. The participant fails to attend the ADHC center for a minimum of 36 days per calendar quarter.

9. The individual fails to maintain a safe home environment.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2163 (October 2008), repromulgated LR 34:2568 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011).

Chapter 27. Provider Participation

§2701. General Provisions

A. - B. ...

C. ADHC providers shall ensure that all non-licensed direct care staff meet the minimum mandatory qualifications and requirements for direct service workers as required by R.S. 40:2179 - 2179.1.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by the Department of Health and Hospitals, Office for Aging and Adult Services, LR 34:2164 (October 2008), repromulgated LR 34:2568 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011).

Chapter 29. Reimbursement

§2901. General Provisions

A. Development. Adult day health care providers shall be reimbursed a per quarter hour rate for services provided under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for all adult day health care waiver recipients by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

B. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:2041 (September 2004), amended by

the Department of Health and Hospitals, Office of the Secretary, Office of Aging and Adult Services, LR 32:2257 (December 2006), LR 34:2164 (October 2008), repromulgated LR 34:2569 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2625 (September 2011).

§2903. Cost Reporting

A. Cost Centers Components

1. - 3.e. ...

4. Property. This component reimburses for depreciation, interest on capital assets, lease expenses, property taxes and other expenses related to capital assets, excluding property cost related to patient transportation.

5. Transportation. This component reimburses for in-house and contractual driver salaries and related benefits, non-emergency medical transportation, vehicle maintenance and supply expense, and automotive expenses related to ADHC patient transportation.

B. - L.2. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2164 (October 2008), repromulgated LR 34:2569 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2626 (September 2011).

§2905. Cost Categories Included in the Cost Report

A. - B.19. ...

C. Administrative and Operating Costs (AOC)

1. - 5. ...

6. Salaries, Other Administrative—gross salaries of other administrative personnel including bookkeepers, receptionists, administrative assistants and other office and clerical personnel.

7. Salaries, Owner or Owner/Administrator—gross salaries of all owners of the center that are paid through the center.

8. Payroll Taxes—cost of employer's portion of Federal Insurance Contribution Act (FICA), Federal Unemployment Tax Act (FUTA), State Unemployment Tax Act (SUTA), and Medicare tax for administrative and operating employees.

9. Group Insurance, AOC—cost of employer's contribution to employee health, life, accident and disability insurance for administrative and operating employees.

10. Pensions, AOC—cost of employer's contribution to employee pensions for administration and operating employees.

11. Uniform Allowance, AOC—employer's cost of uniform allowance and/or uniforms for administration and operating employees.

12. Worker's Compensation, AOC—cost of worker's compensation insurance for administration and operating employees.

13. Contract, Housekeeping—cost of housekeeping services and personnel hired through contract that are not employees of the center.

14. Contract, Laundry—cost of laundry services and personnel hired through contract that are not employees of the center.

15. Contract, Maintenance—cost of maintenance services and persons hired through contract that are not employees of the center.

16. Consultant Fees, Dietician—fees paid to consulting registered dietitians.

17. Accounting Fees—fees incurred for the preparation of the cost report, audits of financial records, bookkeeping, tax return preparation of the adult day health care center and other related services excluding personal tax planning and personal tax return preparation.

18. Amortization Expense, Non-Capital—costs incurred for legal and other expenses when organizing a corporation must be amortized over a period of 60 months. Amortization of costs attributable to the negotiation or settlement of the sale or purchase of any capital asset on or after July 18, 1984, whether by acquisition or merger, for which any payment has previously been made are nonallowable costs. If allowable cost is reported on this line, an amortization schedule must be submitted with the cost report.

19. Bank Service Charges—fees paid to banks for service charges, excluding penalties and insufficient funds charges.

20. Dietary Supplies—costs of consumable items such as soap, detergent, napkins, paper cups, straws, etc., used in the dietary department.

21. Dues—dues to one organization are allowable.

22. Educational Seminars and Training—the registration cost for attending educational seminars and training by employees of the center and costs incurred in the provision of in-house training for center staff, excluding owners or administrative personnel.

23. Housekeeping Supplies—cost of consumable housekeeping items including waxes, cleaners, soap, brooms and lavatory supplies.

24. Insurance, Professional Liability and Other—includes the costs of insuring the center against injury and malpractice claims.

25. Interest Expense, Non-Capital and Vehicles—interest paid on short term borrowing for center operations.

26. Laundry Supplies—cost of consumable goods used in the laundry including soap, detergent, starch and bleach.

27. Legal Fees—only actual and reasonable attorney fees incurred for non-litigation legal services related to patient care are allowed.

28. Linen Supplies—cost of sheets, blankets, pillows, gowns, under-pads and diapers (reusable and disposable).

29. Miscellaneous—costs incurred in providing center services that cannot be assigned to any other line item on the cost report. Examples of miscellaneous expense are small equipment purchases, all employees' physicals and shots, nominal gifts to all employees, such as a turkey or ham at Christmas, allowable advertising, and flowers purchased for the enjoyment of the clients. Items reported on this line must be specifically identified.

30. Management Fees and Home Office Costs—the cost of purchased management services or home office costs incurred that are allocable to the provider. Costs included that are for related management/home office costs must also be reported on a separate cost report that includes an allocation schedule.

31. Office Supplies and Subscriptions—cost of consumable goods used in the business office such as:

a. pencils, paper and computer supplies;

b. cost of printing forms and stationery including, but not limited to, nursing and medical forms, accounting and census forms, charge tickets, center letterhead and billing forms;

c. cost of subscribing to newspapers, magazines and periodicals.

32. Postage—cost of postage, including stamps, metered postage, freight charges and courier services.

33. Repairs and Maintenance—supplies and services, including electricians, plumbers, extended service agreements, etc., used to repair and maintain the center building, furniture and equipment except vehicles. This includes computer software maintenance.

34. Taxes and Licenses—the cost of taxes and licenses paid that are not included on any other line on Form 6. This includes tags for vehicles, licenses for center staff (including nurse aide re-certifications) and buildings.

35. Telephone and Communications—cost of telephone services, wats lines and fax services.

36. Travel—cost of travel (airfare, lodging, meals, etc.) by the administrator and other authorized personnel to attend professional and continuing educational seminars and meetings or to conduct center business. Commuting expenses and travel allowances are not allowable.

37. Utilities—cost of water, sewer, gas, electric, cable TV and garbage collection services.

38. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital as administrative and operating costs.

39. Total Administrative and Operating Costs.

D. Property and Equipment

1. - 7. ...

8. Allocated Costs, Hospital Based—costs that have been allocated through the step-down process from a hospital or state institution as property costs when those costs include allocated overhead.

9. Total Property and Equipment.

E. Transportation Costs

1. Salaries, Drivers—gross salaries of personnel involved in transporting clients to and from the center.

2. Non-Emergency Medical Transportation—the cost of purchased non-emergency medical transportation services including, but not limited to:

a. payments to employees for use of personal vehicle;

b. ambulance companies; and

c. other transportation companies for transporting patients of the center.

3. Vehicle Expenses—vehicle maintenance and supplies, including gas and oil.

4. Lease, Automotive—cost of leases for vehicles used for patient care. A mileage log must be maintained. If a leased vehicle is used for both patient care and personal purposes, cost must be allocated based on the mileage log.

5. Total Transportation Costs.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2166 (October 2008), repromulgated LR 34:2571 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2626 (September 2011).

§2915. Provider Reimbursement

A. Cost Determination Definitions

Base Rate Components—the base rate is the summation of the following:

a. direct care;

b. care related costs;

c. administrative and operating costs;

d. property costs; and

e. transportation costs.

B. Rate Determination

1. - 5. ...

6. Allowable quarter hours are used to calculate the per quarter hour costs for each of the rate components. Allowable quarter hours are calculated using the following criteria:

a. a maximum daily reimbursement limit of 10 hours per participant day;

b. reimbursement will be for full quarter hour (15 minute) increments only; and

c. the quarter hour data used in rate setting shall be from the database of hours provided by the department.

7. Formulae. Each median cost component shall be calculated as follows.

a. Direct Care Cost Component. Direct care allowable quarter hour costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the Consumer Price Index-Medical Services (South Region) Index for December of the year preceding the base rate year by the value of the index for the December of the year preceding the cost report year. The direct care rate component shall be set at 115 percent of the inflated median.

i.-ii. Repealed.

b. Care Related Cost Component. Care related allowable quarter hour costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by the value of the Consumer Price Index-All Items (South Region) Index for December of the year preceding the base rate year by the value of the index for the December of the year preceding the cost report year. The care related rate component shall be set at 105 percent of the inflated median.

c. Administrative and Operating Cost Component. Administrative and operating allowable quarter hour cost from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost of the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the CPI-All Items (South Region) Index for December of the year preceding the base rate year

by the value of the index for the December of the year preceding the cost report year. The administrative and operating rate component shall be set at 105 percent of the inflated median.

d. **Property Cost Component.** The property allowable quarter hour costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

e. **Transportation Cost Component.** The transportation allowable quarter hour costs from all acceptable full year cost reports, except those for which an audit disclaimer has been issued, will be calculated on a provider by provider basis. Should a provider not have filed an acceptable full year cost report, the provider's transportation cost will be reimbursed as follows:

i. New provider, as described in §2915.E.1, will be reimbursed in an amount equal to the statewide allowable quarter hour median transportation costs.

(a). In order to calculate the statewide allowable quarter hour median transportation costs, all acceptable full year cost reports, except those for which an audit disclaimer has been issued, shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. This will be the rate component. Inflation will not be added to transportation costs.

ii. Providers that gave gone through a change of ownership (CHOW), as described in §2915.E.2, will be reimbursed for transportation costs based upon the previous owner's specific allowable quarter hour transportation costs for the period of time between the effective date of the CHOW and the first succeeding base year in which the new owner could possibly file an allowable 12-month cost report. Thereafter, the new owner's data will be used to determine the provider's rate following the procedures specified in this Rule.

iii. Providers that have been issued an audit disclaimer, or have a non-filer status, as described in §2915.E.3, will be reimbursed for transportation costs at a rate equal to the lowest allowable quarter hour transportation cost in the state as of the most recent audited and/or desk reviewed rate database.

8. **Budgetary Constraint Rate Adjustment.** Effective July 1, 2011, the allowable quarter hour rate components for direct care, care related, administrative and operating, property, and transportation shall be reduced by 10.8563 percent.

9. **Interim Adjustments to Rates.** If an unanticipated change in conditions occurs that affects the cost of at least 50 percent of the enrolled ADHC providers by an average of five percent or more, the rate may be changed. The department will determine whether or not the rates should be changed when requested to do so by 25 percent or more of the enrolled providers, or an organization representing at least 25 percent of the enrolled providers. The burden of

proof as to the extent and cost effect of the unanticipated change will rest with the entities requesting the change. The department may initiate a rate change without a request to do so. Changes to the rates may be temporary adjustments or base rate adjustments as described below.

a. **Temporary Adjustments.** Temporary adjustments do not affect the base rate used to calculate new rates.

i. **Changes Reflected in the Economic Indices.** Temporary adjustments may be made when changes which will eventually be reflected in the economic indices, such as a change in the minimum wage, a change in FICA or a utility rate change, occur after the end of the period covered by the indices, i.e., after the December preceding the rate calculation. Temporary adjustments are effective only until the next annual base rate calculation.

ii. **Lump Sum Adjustments.** Lump sum adjustments may be made when the event causing the adjustment requires a substantial financial outlay, such as a change in certification standards mandating additional equipment or furnishings. Such adjustments shall be subject to the bureau's review and approval of costs prior to reimbursement.

b. **Base Rate Adjustment.** A base rate adjustment will result in a new base rate component value that will be used to calculate the new rate for the next fiscal year. A base rate adjustment may be made when the event causing the adjustment is not one that would be reflected in the indices.

10. **Provider Specific Adjustment.** When services required by these provisions are not made available to the recipient by the provider, the department may adjust the prospective payment rate of that specific provider by an amount that is proportional to the cost of providing the service. This adjustment to the rate will be retroactive to the date that is determined by the department that the provider last provided the service and shall remain in effect until the department validates, and accepts in writing, an affidavit that the provider is then providing the service and will continue to provide that service.

C. **Cost Settlement.** The direct care cost component shall be subject to cost settlement. The direct care floor shall be equal to 70 percent of the median direct care rate component trended forward for direct care services (plus 70 percent of any direct care incentive added to the rate). The Medicaid Program will recover the difference between the direct care floor and the actual direct care amount expended. If a provider receives an audit disclaimer, the cost settlement for that year will be based on the difference between the direct care floor and the lowest direct care per diem of all facilities in the most recent audited and/or desk reviewed database trended forward to the rate period related to the disclaimer.

D. **Support Coordination Services Reimbursement.** Support coordination services previously provided by ADHC providers and included in the rate, including the minimum data set home care (MDS/HC), the social assessment, the nursing assessment, the CPOC and home visits will no longer be the responsibility of the ADHC provider. Support coordination services shall be provided as a separate service covered in the ADHC waiver. As a result of the change in responsibilities, the rate paid to ADHC providers shall be adjusted accordingly.

1. - 2. Repealed.

E. New Facilities, Changes of Ownership of Existing Facilities, and Existing Facilities with Disclaimer or Non-Filer Status

1. New facilities are those entities whose beds have not previously been certified to participate, or otherwise have participated, in the Medicaid program. New facilities will be reimbursed in accordance with this Rule and receiving the direct care, care related, administrative and operating, property rate components as determined in §2915.B.1-7. These new facilities will also receive the state-wide average transportation rate component, as calculated in §2915.B.7.e.i.(a), effective the preceding July 1.

2. A change of ownership exists if the beds of the new owner have previously been certified to participate, or otherwise have participated, in the Medicaid program under the previous owner's provider agreement. Rates paid to facilities that have undergone a change in ownership will be based upon the rate paid to the previous owner for all rate components. Thereafter, the new owner's data will be used to determine the facility's rate following the procedures in this rule.

3. Existing providers that have been issued an audit disclaimer, or are a provider who has failed to file a complete cost report in accordance with §2903, will be reimbursed based upon the statewide allowable quarter hour median costs for the direct care, care related, administrative and operating, and property rate components as determined in §2915.B.1-7. The transportation component will be reimbursed as described in §2915.B.7.e.iii.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2170 (October 2008), repromulgated LR 34:2575 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:2627 (September 2011).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Bruce D. Greenstein
Secretary

1109#054

RULE

**Department of Health and Hospitals
Bureau of Health Services Financing**

Federally Qualified Health Centers
Diabetes Self-Management Training
(LAC 50:XI.Chapters 103-105 and 10701)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XI.Chapters 103-105 and §10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 13. Federally-Qualified Health Centers

Chapter 103. Services

§10301. Scope of Services

[Formerly 10501]

A. Medicaid reimbursement is limited to medically necessary services that are covered by the Medicaid State Plan and would be covered if furnished by a physician. The following services shall be covered:

1. services furnished by a physician within the scope of practice of his profession under Louisiana law;
2. services furnished by a:
 - a. physician assistant;
 - b. nurse practitioner;
 - c. nurse midwife;
 - d. clinical social worker;
 - e. clinical psychologist; or
 - f. dentist;
3. services and supplies that are furnished as an incident to professional services furnished by all eligible professionals;
4. other ambulatory services; and
5. diabetes self-management training (DSMT) services.

B. Effective February 20, 2011, the department shall provide coverage of diabetes self-management training services rendered to Medicaid recipients diagnosed with diabetes.

1. The services shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

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 30:2328 (October 2004), repromulgated LR 30:2488 (November 2004), amended LR 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2629 (September 2011).

§10303. Service Limits

[Formerly 10503]

A. Federally qualified health center visits (encounters) are limited to 12 visits per year for medically necessary services rendered to Medicaid recipients who are 21 years of age or older. Visits for Medicaid recipients who are under 21 years of age and for prenatal postpartum care are excluded from the service limitation.

B. Recipients of DSMT services shall receive up to 10 hours of services during the first 12-month period beginning with the initial training date.

1. After the first 12-month period has ended, recipients shall only be eligible for two hours of individual instruction on diabetes self-management per calendar year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2280 (October 2010), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2629 (September 2011).

Chapter 105. Provider Participation

§10501. Provider Enrollment

[Formerly 10301]

A. In order to enroll and participate in the Medicaid Program, an FQHC must submit a completed provider enrollment packet that includes a copy of the HRSA grant approving its FQHC status.

B. The effective date of a FQHC's enrollment to participate in the Medicaid Program shall not be prior to the date of receipt of the completed enrollment packet.

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 30:2328 (October 2004), repromulgated LR 30:2487 (November 2004), amended LR 32:1901 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011).

§10503. Standards for Participation

[Formerly 10303]

A. Federally qualified health centers must comply with the applicable licensure, accreditation and program participation standards for all services rendered. If a FQHC wishes to initiate participation, it shall be responsible for meeting all of the enrollment criteria of the program. The FQHC provider shall:

1. maintain an acceptable fiscal record keeping system that readily distinguishes one type of service from another type of service that may be provided;

2. retain all records necessary to fully disclose the extent of services provided to recipients for five years from the date of service and furnish such records, and any payments claimed for providing such services, to the Medicaid Program upon request; and

3. abide by and adhere to all federal and state regulations and policy manuals.

B. If a FQHC receives approval for a satellite site, the satellite site must enter into a separate provider agreement and obtain its own Medicaid provider number.

C. In order to receive Medicaid reimbursement for DSMT services, a FQHC must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

D. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:
a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or

b. have recent didactic and experiential preparation in education and diabetes management.

2. At a minimum, the instructional team must consist of one the following professionals who is a CDE:

- a. a registered dietician;
- b. a registered nurse; or
- c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:2280 (October 2010), amended LR 37:2630 (September 2011).

Chapter 107. Reimbursement Methodology

§10701. Prospective Payment System

A. - B.2.NOTE. ...

3. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall include coverage for diabetes self-management training services rendered by qualified health care professionals in the FQHC encounter rate.

a. Separate encounters for DSMT services are not permitted and the delivery of DSMT services alone does not constitute an encounter visit.

C. - F. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1902 (October 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011).

Bruce D. Greenstein
Secretary

1109#053

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Minimum Licensing Standards Approval of Facility Plans (LAC 48:I.9707)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 48:I.9707 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2009.1-2116.4. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 97. Nursing Facilities

Subchapter A. General Provisions

§9707. Approval of Plans

A. Plans and specifications for new construction of, or to a nursing facility, and any major alterations to a nursing facility shall be submitted for approval to the Department of Health and Hospitals, or the specific entity designated by the department, to conduct reviews of plans and specifications of such new construction or major alterations.

B. The plans and specifications shall comply with all of the following:

1. these nursing facility licensing requirements;
2. the Facility Guidelines Institute (FGI) *Guidelines for Design and Construction of Healthcare Facilities*, specifically the section(s) regarding nursing facilities;
 - a. Nursing facilities that submit plans prior to January 1, 2014 may opt out of complying with the specific reference in the FGI *Guidelines for Design and Construction of Healthcare Facilities* regarding the use of central air handling systems for outside air requirements for resident bedrooms; and
3. the Office of the State Fire Marshal's requirements for plan submittals and compliance with all codes required by that office.

C. The applicant must furnish one complete set of plans and specifications to the Department of Health and Hospitals or the specific entity designated by the department to conduct plan reviews, together with fees and other information as may be required.

1. ...
2. No residential conversions shall be considered for a nursing facility license.

D. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:46 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2630 (September 2011).

Bruce D. Greenstein
Secretary

1109#055

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Nursing Facilities—Reimbursement Methodology—Direct Care Multiplier and Fair Rental Value Component
(LAC 50:II.20005)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:II.20005 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology

§20005. Rate Determination

[Formerly LAC 50:VII.1305]

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

d. Effective July 1, 2011, the statewide direct care and care related price is established at 112.40 percent of the direct care and care related resident-day-weighted median cost.

1.e. - 3.b.ii. ...

iii. Effective July 1, 2011, the nursing facility's annual fair rental value shall be divided by the greater of the facility's annualized actual resident days during the cost reporting period or 85 percent of the annualized licensed capacity of the facility to determine the FRV per diem or capital component of the rate. Annualized total patient days will be adjusted to reflect any increase or decrease in the number of licensed beds as of the date of rebase by applying to the increase or decrease the greater of the facility's actual occupancy rate during the base year cost report period or 85 percent of the annualized licensed capacity of the facility.

D.3.b.iv. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 10:467 (June 1984), repealed and promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1791 (August 2002), amended LR 31:1596 (July 2005), LR 32:2263 (December 2006), LR 33:2203 (October 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:325 (February 2010), repromulgated LR 36:520 (March 2010), amended LR 36:1556 (July 2010), LR 36:1782 (August 2010), LR 36:2566 (November 2010), LR 37:1174 (April 2011), LR 37:2631 (September 2011).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Bruce D. Greenstein
Secretary

1109#056

RULE

Department of Health and Hospitals Bureau of Health Services Financing

Rural Health Clinics—Diabetes Self-Management Training
(LAC 50:XI.Chapters 163-165 and 16701)

The Department of Health and Hospitals, Bureau of Health Services Financing has amended LAC 50:XI.Chapters 163-165 and §16701 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. 49:953(B)(1) et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XI. Clinic Services

Subpart 15. Rural Health Clinics

Chapter 163. Services [Formerly Chapter 165]

§16301. Scope of Services

[Formerly §16501]

A. Medicaid reimbursement is limited to medically necessary services that are covered by the Medicaid State Plan and would be covered if furnished by a physician. The following services shall be covered:

1. services furnished by a physician, within the scope of practice of his profession under Louisiana law;

2. services furnished by a:
 - a. physician assistant;
 - b. nurse practitioner;
 - c. nurse midwife;
 - d. clinical social worker;
 - e. clinical psychologist; or
 - f. dentist;
3. services and supplies that are furnished as an incident to professional services furnished by all eligible professionals;
4. other ambulatory services; and
5. diabetes self-management training (DSMT) services.

B. Effective February 20, 2011, the department shall provide coverage of diabetes self-management training services rendered to Medicaid recipients diagnosed with diabetes.

1. The services shall be comprised of one hour of individual instruction and nine hours of group instruction on diabetes self-management.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1904 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2631 (September 2011).

§16303. Service Limits

[Formerly §16503]

A. Rural health clinic visits (encounters) are limited to 12 visits per year for medically necessary services rendered to Medicaid recipients who are 21 years of age or older. Visits for Medicaid recipients who are under 21 years of age and for prenatal and postpartum care are excluded from the service limitation.

B. Recipients of DSMT services shall receive up to 10 hours of services during the first 12-month period beginning with the initial training date.

1. After the first 12-month period ends, recipients shall only be eligible for two hours of individual instruction on diabetes self-management per calendar year.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011).

Chapter 165. Provider Participation

[Formerly Chapter 163]

§16501. Provider Enrollment

[Formerly §16301]

A. In order to enroll and participate in the Medicaid Program, a RHC must submit a completed provider enrollment packet.

B. The effective date of enrollment to participate in the Medicaid Program shall not be prior to the date of receipt of the completed enrollment packet.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011).

§16503. Standards for Participation

[Formerly §16303]

A. Rural health clinics must comply with the applicable licensure, accreditation and program participation standards for all services rendered. If a RHC wishes to initiate participation, it shall be responsible for meeting all of the enrollment criteria of the program. The RHC provider shall:

1. maintain an acceptable fiscal record keeping system that readily distinguishes one type of service from another type of service that may be provided;

2. retain all records necessary to fully disclose the extent of services provided to recipients for five years from the date of service and furnish such records, and any payments claimed for providing such services, to the Medicaid Program upon request; and

3. abide by and adhere to all federal and state regulations and policy manuals.

B. Medicaid enrollment can be no sooner than Medicaid's receipt of the complete enrollment packet. A complete enrollment packet for RHCs must include a copy of the CMS provider certification letter approving rural health clinic status.

C. In order to receive Medicaid reimbursement for DSMT services, a RHC must have a DSMT program that meets the quality standards of one of the following accreditation organizations:

1. the American Diabetes Association;
2. the American Association of Diabetes Educators; or
3. the Indian Health Service.

D. All DSMT programs must adhere to the national standards for diabetes self-management education.

1. Each member of the instructional team must:

a. be a certified diabetes educator (CDE) certified by the National Certification Board for Diabetes Educators; or

b. have recent didactic and experiential preparation in education and diabetes management.

2. At a minimum, the instructional team must consist of one of the following professionals who is a CDE:

- a. a registered dietician;
- b. a registered nurse; or
- c. a pharmacist.

3. All members of the instructional team must obtain the nationally recommended annual continuing education hours for diabetes management.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011).

Chapter 167. Reimbursement Methodology

§16701. Prospective Payment System

A. - B.2.NOTE. ...

3. Effective for dates of service on or after February 20, 2011, the Medicaid Program shall include coverage for diabetes self-management training services rendered by

qualified health care professionals in the RHC encounter rate.

a. Separate encounters for DSMT services are not permitted and the delivery of DSMT services alone does not constitute an encounter visit.

C. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:1905 (October 2006), repromulgated LR 32:2267 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:2632 (September 2011).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Bruce D. Greenstein
Secretary

1109#057

RULE

Department of Health and Hospitals Office of Public Health

Milk Code

(LAC 51:VII; VIII; XXI.105; XXIII.1115, 4525, and 4527)

Under the authority of R.S. 40:4, 40:5, and 40:922, and in accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the state health officer, acting through the Department of Health and Hospitals, Office of Public Health (DHH-OPH), repeals Part VIII (Frozen Desserts) of the Louisiana State Sanitary Code (LAC 51) in its entirety and incorporates frozen dessert regulations under Part VII (previously titled Milk, Milk Products, and Manufactured Milk Products). Previously existing regulations in both the old Part VII and Part VIII have been amended and incorporated herein to update the dairy products regulations. All of these updated regulations are now housed in Part VII which is now titled Dairy Products Regulations. Part VII now incorporates all milk, milk products, manufactured milk products, frozen desserts, dairy products, and manufacturing/processing regulations under this one Part.

Additionally, amendments are adopted to Section 105 of Part XXI (Day Care Centers and Residential Facilities) as well as to Section 1115 of Part XXIII (Retail Food Establishments) and Sections 4525 and 4527 of Part XXIII are enacted so that the requirements of these particular Sections (concerning how dairy products are used/handled) under these other Parts of the Louisiana State Sanitary Code (Title 51) will comport with the requirements of Part VII (Dairy Products Regulations).

Title 51

PUBLIC HEALTH—SANITARY CODE

Part VII. Dairy Products Regulations

Chapter 1. Milk and Dairy Products

§101. Definitions

A. Unless otherwise specifically provided herein, the following words and terms used in this Part of the Sanitary Code, and all other Parts which are adopted or may be adopted, are defined for the purposes thereof as follows.

3-A Standards—standards for dairy equipment and accepted practices promulgated jointly by the Sanitary Standards Subcommittee of the Dairy Industry Committee, the Committee on Sanitary Procedure of the International Subcommittee of the International Association for Food Protection and the Milk Safety Branch, the U. S. Food and Drug Administration (FDA), Public Health Service (PHS), Center for Food Safety and Applied Nutrition, Department of Health and Human Services. Equipment manufactured in conformity with the 3-A Standards complies with the sanitary design and construction standards of this Part. Copies may be obtained from 3-A Sanitary Standards Incorporated, 6888 Elm Street Suite 2D, McLean, Virginia 22101; (Internet URL address: “<http://www.3-A.org/>”).

Abnormal Milk—any milk or milk product shall be deemed to be abnormal if:

a. it is visibly changed in color, odor and/or texture from that of normal color, odor and/or texture;

b. prior to milking of the animal, it is known to be unsuitable for human consumption (such as milk containing colostrum); or

c. it is unfit for human consumption following treatment of the animal with veterinary products (i.e., antibiotics and other drugs which have withhold requirements) or following treatment or consumption of medicines or insecticides or other toxic compounds not approved for use on dairy animals by the FDA, Environmental Protection Agency (EPA) or the state health officer.

Acidified Milk and Acidified Milk Products, Acidified Filled Milk and Acidified Filled Milk Products, Acidified Anomalous Milk and Acidified Anomalous Milk Products—a milk product obtained by souring milk or milk products, filled milk or filled milk products or anomalous milk or anomalous milk products after pasteurization, ultra-pasteurization or aseptic processing with acetic acid, adipic acid, citric acid, fumaric acid, glucono-delta-lactone, hydrochloric acid, lactic acid, malic acid, phosphoric acid, succinic acid, tartaric acid or other substances, with or without the addition of characterizing microorganisms. Nutritive carbohydrate sweeteners or other sweeteners approved for use by the FDA, flavoring ingredients, stabilizers or salt may be added. All ingredients shall have been declared to be safe and suitable by the FDA. The acidified products shall contain a titratable acidity of not less than 0.5 percent calculated as lactic acid.

Adulterated Milk, Milk Products, or Dairy Products—any milk, milk products, or dairy products shall be deemed to be adulterated:

- a. if it is defined in these regulations and fails to conform to its definition or if it otherwise fails to conform to its standard of identity;
- b. if it contains any unwholesome substance; or,
- c. if [other than in anomalous (substitute) milk and anomalous (substitute) milk products, filled milk and filled milk products, and imitation milk or imitation milk products] any substance has been substituted wholly, or in part, for any substance naturally inherent in the milk, milk product, or dairy product.

Aged Cheese—see ripened or aged cheese.

Air Gap—the unobstructed vertical distance through the free atmosphere of at least twice the diameter of the largest incoming water, dairy product, Clean-In-Place (CIP) solution or other liquid supply pipe, faucet or valve to the flood level rim of the receiving vessel or receptacle, to prevent back siphonage of solutions in the receiving vessel or receptacle. The distance of the air gap is to be measured from the bottom of the inlet supply pipe, faucet or valve to the top of the effective overflow, i.e., flood level rim of the receiving vessel. In no case may the effective air gap be less than one inch (2.54 cm.). Tanks or vats or any other receiving vessel with water inlets below the flood level rim shall comply with the American Society of Mechanical Engineers (ASME) standard A112.1.2 (1991).

Anomalous (Substitute) Milk and Anomalous (Substitute) Milk Products—food that is not in conformity with the definitions and standards of identity contained in this Part or Title 21, Code of Federal Regulations (21 CFR) Part 131 (Milk and Cream), 21 CFR 133.128 (Cottage Cheese) and 21 CFR 133.129 (Dry Curd Cottage Cheese), but is made in semblance of, and resembles a standardized milk or milk product [milk and milk products that are in conformity with the definitions and standards of identity contained in 21 CFR Part 131 (Milk and Cream), 21 CFR 133.128 (Cottage Cheese) and 21 CFR 133.129 (Dry Curd Cottage Cheese)] in physical characteristics, sensory properties, manner in which it is manufactured or processed, functional attributes, propensity to support the growth of pathogenic microorganisms of human significance and being of such nature that it is not nutritionally inferior to, and may be used interchangeably with, the milk or milk product it resembles. These products are usually packed in containers similar to those in which Grade A milk and milk products are packaged, such as paper cartons, plastic bottles or jugs, pouches, plastic cups, tubs, etc. Anomalous (substitute) milk or anomalous (substitute) milk products are manufactured or processed in whole or in part from milk or milk products. The state health officer may, utilizing the aforesaid criteria, specify that a food is an anomalous (substitute) milk or milk product. Foods that have been retort processed after packaging or which have been dried shall not be included in this definition. Anomalous (substitute) milk and anomalous (substitute) milk products shall conform with the requirements contained in 21 CFR §101.13 (nutrient content claims-general principles). Anomalous (substitute) milk and anomalous (substitute) milk products shall be labeled with a descriptive name which shall be suggestive enough to reveal the basic composition of the product and alleviate any questions regarding the product's identity (some names commonly used are "dairy blend," "dairy beverage," "shakes," "cultured dairy blends," etc).

a. These products may be reduced fat, lowfat, non fat or flavored. All dairy ingredients used in these products (milk, lower fat milks, condensed, evaporated or concentrated milks, dry milks, whey, protein concentrate, milk protein concentrate, filtered milk, etc.) shall be Grade A. The descriptive name (term) shall not selectively exaggerate the presence of one or more ingredients over all other ingredients present in the product as to be misleading or deceptive. Labels for anomalous (substitute) milk or milk products shall be approved by the state health officer prior to the product being offered for sale in the state. In cases in which there is a difference in performance characteristics that materially limit the use of the product, the label shall include a disclaimer, adjacent to the most prominent claim, informing the consumer of such difference (e.g., "not recommended for melting"). Anomalous (substitute) milk and anomalous (substitute) milk products shall conform to the Grade A bacteriological standards/specifications contained in this Part. Plants that manufacture or process anomalous (substitute) milk or anomalous (substitute) milk products for sale in the state shall conform with the requirements for Grade A dairy plants contained in this Part.

Anomalous (Substitute) Dairy Products—any food that is not in conformity with the standards of identity contained in this Part, 21CFR Part 131, 21 CFR Part 133, 21 CFR Part 135, 21 United States Code (USC) Part 321a, but is made in semblance of and resembles a dairy product that is in conformity with the aforesaid standards of identity in physical characteristics, sensory properties, manner in which it is manufactured or processed, functional attributes, propensity to support the growth of pathogenic microorganisms of human significance and being of such nature that it is not nutritionally inferior to, and may be used interchangeably with, the dairy product it resembles. Anomalous (substitute) dairy products are manufactured in whole or in part from butter, cheese (whether natural or processed), milk, lower fat milks, nonfat (fat free, skim) milk, cream, whey, buttermilk (whether dry, evaporated, concentrated, stabilized or frozen) and any other food which the state health officer may, utilizing the above criteria, specify that a food is anomalous (substitute) dairy product. Anomalous (substitute) dairy products shall conform with the bacteriological standards/specifications contained in this part, determined by the state health officer to be applicable to such products. Anomalous (substitute) dairy products that have been retort processed after packaging or which have been concentrated, condensed and dried shall be included in this definition. Plants that manufacture or process anomalous (substitute) dairy products shall conform with the requirements for dairy plants contained in this Part, determined by the state health officer to be applicable to such plants.

Approved by the FDA or With the Concurrence of the FDA—the equipment, processes, policies, decisions or any other items referenced are consistent with published requirements, policies, standards and recommendations contained in publications in the Pasteurized Milk Ordinance (PMO), Procedures Governing the State-Public Health Service/Food and Drug Administration Program of the National Conference on Interstate Milk Shipments, Methods of Making Sanitation Ratings of Milk Shippers, Memoranda, etc., acceptable to the FDA Milk Safety Branch (HFS-626)

(FDA/CFSAN/OC/DCP/MST) or concurrence has been obtained by the state health officer from the Milk Safety Branch/Team.

Aseptic Processing—the filling of a commercially sterilized, cooled dairy product into presterilized containers, followed by aseptic hermetical sealing with presterilized closure in an atmosphere free of microorganisms in such a manner that conforms with the requirements of 21 Code of Federal Regulations (CFR) 113 and the provisions of §7, Item 16p of the PMO. The product must maintain commercial sterility under normal non-refrigerated conditions.

Audit—an evaluation made by the state health officer of a dairy facility, the operations conducted therein, the facility's Hazard Analysis Critical Control Points (HACCP) plan and records documenting the implementation of the HACCP system, to determine whether or not all food safety hazards, reasonably likely to occur in each product produced or processed by the facility are being effectively controlled on a continual basis and to determine whether or not the plant is in compliance with the requirements contained in this Part. Personnel conducting such audits shall have been trained in accordance with the requirements for such regulatory auditors contained in the PMO, Appendix K, § IV (3).

Automatic Milking Installation (AMI)—an automated milking system, used to milk cows and other hooved mammals, that conforms with the requirements contained in Appendix Q of the PMO.

Bacterial Plate Count, Direct Microscopic Count, Coliform Determinations, Mastitis Tests—the results of laboratory analysis of milk or dairy products samples taken upon separate days, irrespective of the date of grading or regrading. Laboratory tests shall conform to the procedures in the "Standard Methods for the Examination of Dairy Products" (17th Edition, 2004, as amended) American Public Health Association.

Bacteriological Analytical Manual (BAM)—the bacteriological analytical manual found on the FDA/CFSAN (FDA/Center for Food Safety and Applied Nutrition) internet site and is designated the BAM online; (Internet URL address: <http://www.cfsan.fda.gov/~ebam/bam-mm.html#updates>).

Boiled Custard—see *Egg Nog*.

Blended Dry Dairy Products and Dry Blended Dairy Products—products in which the predominant ingredient is a dry dairy product and results from the blending of dry dairy products or the blending of dry dairy products with other safe and suitable dry non-milk derived ingredients approved by the state health officer. These foods may be blended before or after drying.

Broke and Trim—paper and paperboard that have been discarded anywhere in the process of manufacture, such as on paper-making machines in the form of trim. This may also include unprinted trim from the converting process, provided the trim has been handled, treated and transported in a clean, sanitary manner.

BTU—interstate milk shippers bulk tank unit identification number (for groups of dairy farms that pool part or all of their milk produced for sale to a dairy plant).

Bulk Milk Tank Truck Operator/Sampler—a person who collects official samples of raw milk and may transport raw

milk from a farm to a milk plant, receiving station or transfer station and has in his/her possession a permit to sample such products issued by a state regulatory agency.

Bulk Milk Pickup Tanker—a milk tank truck and its appurtenances used by a bulk milk tank truck operator/sampler to transport bulk raw milk for pasteurization from dairy farms to a milk plant, receiving station or transfer station.

Butter—the dairy product resulting from the churning of the pasteurized, ultra-pasteurized or aseptically processed milk fat of milk or cream, or both, with or without common salt, with or without additional coloring matter, and containing not less than 80 percent, by weight of milk fat for all tolerances having been allowed. Butter shall be manufactured only in dairy plants that conform to each of the requirements for butter plants contained in Chapter 23 of this Part.

Buttermilk—the fluid dairy product resulting from the manufacture of butter from milk, cream or from the souring, or treatment by a lactic acid or other culture approved by the state health officer, of pasteurized, ultra-pasteurized or aseptically processed milk or lower fat milks. It shall contain not less than 8.25 percent of milk solids-non-fat. It may contain concentrated milk or lower fat milks, dry milk, whey, lactose, lactalbumins, lactoglobulins or modified whey.

Butter Plants—dairy plants that manufacture, process or package butter or butter related products.

Butter Products (Butter Related Products)—dairy products that contain butter as the predominant ingredient. They may contain other safe and suitable ingredients Generally Recognized As Safe (GRAS) by the FDA and the state health officer. The products may contain less than 80 percent by weight of milk fat and may be whipped or otherwise modified in texture. These products shall conform to the bacteriological requirements for butter contained in this Part and shall be manufactured in a dairy plant that conforms to each requirement for butter plants contained in Chapter 23 of this Part.

CFU—colony-forming units.

Certified by the FDA—the person certified has successfully completed the certification process administered by PHS/FDA and possesses a current, valid, certificate of certification issued by the PHS/FDA.

Cheese—the product resulting from the drained curd (coagulated mass) obtained by the coagulation of milk, lower fat milks (whether concentrated, condensed or reconstituted) which may be enriched with milk fat or other derived ingredients GRAS by the FDA. The coagulation may be accomplished by:

a. inoculating with lactic acid and producing microorganisms, with or without rennet and with or without other safe and suitable coagulating enzymes GRAS by the FDA and the state health officer;

b. rennet or other coagulating enzymes that are GRAS; and

c. the addition of lactic acid, citric acid, phosphoric acid, hydrochloric acid, D-glucono-delta-lactone or other coagulating substances that are GRAS. The curd may be modified by cutting, warming, stirring, pressing, draining, molding, ripening, fermenting, blending, seasoning with ingredients that are GRAS, colored with colorings that are

GRAS. Functional ingredients that are GRAS may be used. The manner in which cheese is processed, the milk or dairy product from which it is processed, the specific lactic acid producing and in some cases gas forming microorganisms, coagulating enzymes, functional and optional ingredients vary according the type or variety of cheese or related cheese product. There are numerous types and varieties of cheese, including American Cheese, Asiago Cheese, Blue Cheese, Brick Cheese, Camembert Cheese, Cheddar Cheese, Colby Cheese, Cream Cheese, Edam Cheese, Feta Cheese, Gouda Cheese, Limburger Cheese, Mozzarella Cheese, Muenster Cheese, Neufchatel Cheese, Parmesan Cheese, Process Cheese, Provolone Cheese, Ricotta Cheese, Romano Cheese, Roquefort Cheese, Swiss Cheese and many other types and varieties. Each type and variety of cheese shall conform with the standard of identity for such cheese contained in this Part or the PMO, 21 CFR or 7 CFR. These regulations shall apply to all cheese made from the milk of any hooved mammal, provided that where the milk or part of the milk used in the manufacture of cheese is the milk of hooved mammals other than cows, the cheese shall be so labeled.

Cheese Manufacturing Plants—dairy plants that manufacture, process, cut, slice or package cheese and cheese related products.

Cheese Products, Cheese Foods (Cheese Related Products)—foods that contain cheese as the predominant ingredient. They may contain other safe and suitable ingredients GRAS by the FDA and the state health officer. These products may be modified in texture, taste and color. These products shall conform to the bacteriological requirements for cheese contained in this Part and shall be manufactured in a dairy plant that conforms to the requirements for cheese manufacturing plants contained in Chapter 25 of this Part.

Clean—surfaces that have had the effective and thorough removal of product and contaminants.

Cleaned-In-Place (CIP)—the procedure by which sanitary pipelines or other pieces of dairy equipment are mechanically cleaned-in-place by circulation of cleaning and sanitizing solutions.

Cleaned-Out-of-Place (COP)—the procedure by which pieces of dairy equipment are placed in a vat equipped with a system that cleans by circulation of cleaning and sanitizing solutions.

Cleaning and Sanitizing Tag (Wash Tag)—tag affixed to the outlet valve or in the near vicinity of the outlet valve of the milk tank truck, which verifies proper cleaning and sanitizing.

Closure—a cap, lid, seal, tube, valve, lidding material or other device in or on a container used for the purpose of enclosing or dispensing the contents.

Coatings—any layer or covering which is applied to the product contact surface.

Code of Federal Regulations (CFR)— the April 1, 2010 edition, as amended, of Title 21 (21 CFR = Food and Drugs) and the January 1, 2010 edition, as amended, of Title 7 (7 CFR = Agriculture) of the document, so titled and published by the United States Office of the Federal Register, National Archives and Records Administration.

Component Part—any item that by itself, does not perform any function, but when assembled with one or more

component parts or closures, becomes a part of the single service container or closure. These may include, but are not limited to, blanks, sheeting, filling valve parts, tubes, dispensing devices and sampling containers. All material used for fabrication of a component part must meet the requirements of the *Federal Food, Drug and Cosmetic Act*, as amended.

Concentrated or Condensed Milk—a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from the milk, which when combined with potable water in accordance with instructions printed on the container label, results in a product conforming with the milk fat and milk solids not fat levels of milk as defined in this Part.

Cooling Pond—a man-made structure that conforms with the requirements of this Part and the PMO designed for the specific purpose of cooling cows.

*Cottage Cheese**—the soft uncured cheese prepared from the curd obtained by adding harmless lactic acid-producing bacteria, with or without rennet, to pasteurized nonfat (fat free, skim) milk. It contains not more than 80 percent moisture content to not less than 0.5 percent or not more than 2 percent. All cottage cheese sold in the State shall be Grade A.

Cream—liquid milk product high in fat separated from milk which may have been adjusted by adding thereto: milk, concentrated milk and lower fat milks or dry milk or lower fat dry milks and may be modified by whipping, acidifying or culturing. Cream contains not less than 18 percent milk fat.

Creamed Cottage Cheese—the soft uncured cheese prepared by mixing cottage cheese with pasteurized cream or a pasteurized mixture of cream with milk or nonfat (fat free, skim) milk, which contains not less than 4 percent of milk fat by weight, nor more than 80 percent of moisture.

Creole Cream Cheese or Creole Cheese—the soft uncured cheese prepared by culturing pasteurized, ultra-pasteurized or aseptically processed milk, nonfat milk or lowfat milk with harmless lactic acid bacteria and coagulating milk with this culture or rennet or other safe and suitable milk clotting enzymes. The curd is drained in molds prior to packaging. Prior to packaging a creaming mixture may or may not be added to the curd. All dairy ingredients used in Creole Cream Cheese and Creole Cheese shall be Grade A. Dairy plants in which these cheeses are manufactured shall conform with the requirements for Grade A milk and milk products contained in this Part.

Cultured Milk and Cultured Milk Products, Cultured Anomalous Milk and Cultured Anomalous Milk Products and Cultured Filled Milk and Cultured Filled Milk Products—foods produced by culturing pasteurized, ultra-pasteurized or aseptically processed milk or milk products, anomalous milk or anomalous milk products or filled milk or filled milk products with characterizing microorganisms. Sweeteners, flavor and aroma producing ingredients, salt, citric acid or sodium citrate may be added. All ingredients shall have been declared safe and suitable for use in the products by FDA and the state health officer. The cultured products shall contain a titratable acidity of not less than 0.5 percent by weight calculated as lactic acid. The name of these cultured products shall be accompanied by a declaration indicating the presence of any characterizing

flavoring and by a declaration such as a traditional name of the microorganisms used thereby indicating the presence of the microbial organisms used as ingredients, e.g., “Kefir Cultured Milk”, “Kefir Milk with Vegetable Fat”, “Kefir Cultured Dairy Beverage”, “Acidophilis Cultured Milk”, etc. When lactic acid producing microorganisms are used, the food may be named “Cultured Buttermilk”.

Dairy Facility—includes dairy farms, milk tank trucks, milk tank truck cleaning facilities, receiving stations, transfer stations, dairy plants, finished product depots, finished product transfer points, single service containers and closures for milk and milk products manufacturing plants and vehicles used to transport dairy products.

Dairy Farm—any place or premises where one or more cows, goats, sheep, water buffaloes or other hooved mammals are kept for milking and from which a part or all of the milk produced is provided, sold, or offered for sale to a dairy plant, transfer station, or receiving station possessing a permit from the state milk regulatory agency.

Dairy Plant—any place, premises or establishment where milk, milk products (including frozen desserts, frozen dessert mixes, filled milk or filled milk products, anomalous milk, anomalous milk products or anomalous dairy products) and dairy products are collected, handled, processed, stored, pasteurized, ultra-pasteurized, aseptically processed, churned, frozen, dried, blended, concentrated, condensed, packaged or prepared for distribution and where milk tank trucks are cleaned and sanitized when received.

Dairy Plant Receiver/Sampler—a person who collects official milk and milk product samples from milk transport tank trucks and other types of containers of milk and milk products being received by a dairy plant or receiving station and may also unload such milk transport tank trucks and containers.

Dairy Product Condensing, Concentrating, Drying or Blending Plants—dairy plants that condense, concentrate, dry or blend dry dairy products.

Dairy Product Distributor—any person who offers for sale or sells to another any processed milk or dairy products for human consumption as such.

Dairy Products—include but are not limited to milk and milk products, anomalous milk and anomalous milk products, filled milk and filled milk products, whey and whey products, imitation milk and imitation milk products (whether the aforesaid products have been acidified, condensed, concentrated, cultured, dried, flavored, frozen or stabilized), frozen desserts, frozen dessert mixes, butter, butter products, cheese (whether natural or processed), cheese products and any food which is prepared or manufactured in whole or in part from any of the aforesaid products which the state health officer may hereafter so designate. All dairy products produced, manufactured or sold in the state shall comply with the chemical and bacteriological standards and specifications contained in this Part, determined by the state health officer to be applicable to each product. Dairy products processed, manufactured or sold in the state shall be processed or manufactured in plants that are in conformity with the requirements for dairy plants contained in this Part as determined by the state health officer to be applicable to each plant.

Dry Cream—product obtained by removal of water only, from pasteurized milk or cream or a mixture thereof,

which may have been homogenized. Alternatively, dry cream may be obtained by blending dry milks and dry cream, provided, that the resulting product is equivalent in composition to that obtained by the method described in the first sentence of this paragraph, it contains not less than 40 percent but less than 75 percent by weight of milk fat on an as is basis and it contains not more than 5 percent by weight of moisture on a milk solids not-fat basis. Safe and suitable sweeteners, fruit and fruit juices, characterizing flavoring ingredients, colorings and artificial flavorings as approved by the state health officer may be added.

Dry Milk (Powdered Milk)—the product resulting from the removal of water from milk or lower fat milks and contains the milk fat, lactose, milk proteins and milk minerals in the same relative proportions as in the milk from which it is made. It contains not more than 2.5 percent by weight of moisture. Said product has been processed in compliance with Chapter 21 of this Part.

Dry Dairy Products—include dry milk (powdered milk), nonfat dry milk [powdered nonfat (fat free, skim) milk], instant nonfat dry milk, dry whey, dry buttermilk and any other products resulting from the combination of dry milk products with other wholesome dry ingredients, and which comply with and have been processed in compliance with the applicable provisions of Chapter 21 of this Part.

Egg Nog or Boiled Custard—food consisting of a mixture of milk, nonfat (fat free, skim) milk, nonfat dry milk, buttermilk, whey, lactose, lactalbumins, lactoglobulins or modified whey. It shall contain not less than 1.0 percent by weight of egg yolk solids in the finished food and nutritive carbohydrate sweeteners. Egg nog or boiled custard shall contain not less than 6 percent milk fat and not less than 8.25 percent milk solids not fat. The food shall be pasteurized, ultra-pasteurized or aseptically processed.

EPA—United States Environmental Protection Agency.

Evaluation of Milk Laboratories—2007 Revision, published by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration.

Extra Grade and Standard Grade Dry Dairy Products—products resulting from the drying of pasteurized milk or milk products in dairy plants that are in substantial compliance with all of the requirements of this Part for dairy products condensing, dairy products drying or dairy products blending plants.

FDA—United States Department of Health and Human Services, Food and Drug Administration.

FDD—flow diversion device.

Filled Dairy Products—any food product made by combining, blending or compounding milk or derivatives of milk with any fat or oil other than milk fat so that the resulting product resembles in sensory properties and physical characteristics (taste, appearance, texture or consistency) a dairy product. The above definition shall not include any distinctive proprietary food compound not readily mistaken for a dairy product in taste or appearance. Filled dairy products shall conform with the microbiological requirements of this Part determined by the state health officer to be applicable to the product and shall be processed in plants that conform with the requirements of this Part, determined by the state health officer to be applicable to such plant facility.

Filled Milk and Filled Milk Products—any milk, lower fat milks, cream (whether or not condensed, evaporated, concentrated, powdered, dried or desiccated) to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, so that the resulting product is in imitation of, or is in semblance of, and resembles, milk, lower fat milks or cream (whether or not condensed, concentrated, powdered, dried or desiccated) in physical characteristics, sensory properties, functional attributes and being of such nature that it may be used interchangeably with the milk or milk product it resembles (whether condensed, concentrated, powdered, dried or desiccated). Filled milk or filled milk products shall be labeled with a descriptive name, which is suggestive enough to identify the milk or milk product it resembles, followed by a qualifier that accurately describes what the product is (examples: “Filled Milk - Non Fat Milk with Vegetable Fat”, “Filled Cream - Non Fat Dry Milk with Vegetable Fat”, etc.). This definition shall not include any distinctive proprietary food compound readily mistaken in physical characteristics, sensory properties, and functional attributes such that it resembles milk or milk products (whether or not condensed, concentrated, powdered, dried or desiccated) but is of such a nature that it is not reasonably likely to be used interchangeably for a milk or milk product. Nothing in this definition shall be used to prevent the use, blending or compounding of chocolate as a flavor to milk, lower fat milks or cream to which no other fats or oils have been added, blended or compounded. Filled milk and filled milk products shall conform with the microbiological standards for Grade A milk and milk products contained in this Part. Plants that process or manufacture filled milk or filled milk products shall conform with the requirements for Grade A dairy plants contained in this Part.

Finished Dairy Products Depots—establishments in which dairy products contained in their final packages are unloaded from refrigerated transport trucks, stored and reloaded onto refrigerated delivery trucks for transport to retail sales outlets or to other finished dairy products depots or transfer points.

Finished Dairy Product Transfer Points—premises upon which dairy products in their final containers are unloaded from refrigerated transport trucks and loaded into delivery trucks or other refrigerated transport trucks.

Federal Information Processing Standards (FIPS) Number—a voluntary national uniform coding system number that is used to identify the milk plant at which the pasteurizing, ultra-pasteurizing, aseptic processing, condensing, concentrating or drying has been accomplished.

Flavored Dairy Products—such products to which have been added flavoring ingredients that are generally recognized as safe by the FDA and the state health officer and may contain nutritive sweeteners or stabilizers that are generally recognized as safe by the state health officer.

Food Allergens—proteins in foods that are capable of inducing an allergic reaction or response in some individuals. There is scientific consensus that the following foods account for more than 90 percent of all food allergies: peanuts, soybeans, milk, eggs, fish, crustacea, tree nuts, and wheat.

Frozen Dessert Manufacturing Plants—dairy plants that manufacture, process, freeze or partially freeze frozen

desserts and provide or sell those products to institutional food service programs, restaurants, groceries, supermarkets, soda fountains, delicatessens and other retail outlets located on premises other than the premises on which they were frozen or partially frozen. Frozen dessert manufacturing plants are also dairy plants that manufacture or process mixes from which frozen desserts are produced.

Frozen Dessert Mixes—foods made with ingredients in such proportions that the mix when frozen will meet the definitions and standards of identity prescribed for the frozen products.

Frozen Desserts—any food produced by freezing or partially freezing, with or without stirring, any combination of two or more of the following: milk or milk products, vegetable fat, animal fat, eggs or egg products and other food products approved by the state health officer, nutritive sweetening ingredients, artificial sweetening ingredients, nut meats, fruit or fruit juices, citric or other organic food acid, other wholesome flavoring agents and colors, and harmless stabilizer; and shall be deemed to include ice cream, fruit ice cream, nut ice cream, sherbets, frozen yogurt, water ices, goat ice cream, sheep ice cream, water buffalo ice cream or any other food product deemed by the state health officer to be a frozen dessert and shall conform with the standards of identity contained in this Part.

Fruit Sherbet—a frozen dessert made from one or more milk or milk products determined to be safe and suitable by the FDA and the state health officer, water, and one or more sweetening ingredients determined to be safe and suitable by the state health officer with not more than 0.5 percent of stabilizer or binder with fruit or fruit juice ingredients in such an amount that the finished product shall contain not less than 20 percent by weight of such fruit ingredient, with or without addition of organic food acid. The finished product shall contain not less than 0.35 percent of organic acid calculated as lactic acid. The quantity of milk or milk products used shall be such that the finished product shall contain not less than 1 percent of milk fat and not more than 10 percent of total milk solids. The finished product shall weigh not less than 6 pounds per gallon.

Frozen Lowfat Yogurt—a frozen dessert prepared with one or more of the optional milk or milk products sweetened with one or more of the optional sweetening agents, with or without eggs or egg products, fruit or fruit juices, confection or other optional flavoring ingredients, with or without harmless coloring, which is cultured after pasteurization by one or more strains of *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. The standard plate count requirement for the product shall apply only to the mix prior to culturing. The finished product shall weigh not less than 5 pounds per gallon. For the purpose of this regulation, the strains of bacteria may be collectively referred to as yogurt culture. It shall contain not less than 0.5 percent and not more than 2.0 percent by weight of milk fat.

Frozen Nonfat Yogurt—a frozen dessert prepared with one or more of the optional milk or milk products sweetened with one or more of the optional sweetening agents with or without eggs or egg products, fruit or fruit juices, confection or other optional flavoring ingredients, with or without harmless coloring, which is cultured after pasteurization by one or more strains of *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. The standard plate count

requirement for the product shall apply only to the mix prior to culturing. The finished product shall weigh not less than 5 pounds per gallon. For the purpose of this regulation, the strains of bacteria may be collectively referred to as yogurt culture. It shall contain less than 0.5 percent by weight of milk fat.

Frozen Yogurt—a frozen dessert prepared with one or more of the optional milk or milk products of this Part, sweetened with one or more of the optional sweetening agents, with or without eggs or egg products, fruit or fruit juices, confection or other optional flavoring ingredients, with or without harmless coloring, which is cultured after pasteurization by one or more strains of *Lactobacillus bulgaricus* and *Streptococcus thermophilus*. The standard plate count requirement for the product shall apply only to the mix prior to culturing. The finished yogurt shall weigh not less than 5 pounds per gallon. For the purpose of this regulation, the strains of bacteria may be collectively referred to as yogurt culture. It shall contain not less than 3.25 percent by weight of milk fat.

Generally Recognized as Safe (GRAS)—a food or ingredient used in a food, that is generally recognized as safe and suitable for a specific use by the FDA.

GMP—see *Good Manufacturing Practices*.

Goat Milk—the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats. Goat milk sold in retail packages shall contain not less than 2.2 percent milk fat and not less than 7.5 percent milk solids non fat. Goat milk shall be produced according to the sanitary standards of this Part. The word “milk” shall be interpreted to include goat milk.

Good Manufacturing Practices (GMP)—practices used in the manufacturing, packing or holding of dairy products that comply with the requirements contained in this Part and in 21 CFR 110.

Grade A Concentrated Milk and Concentrated Milk Products—the unsterilized and unsweetened dairy products resulting from the removal of a considerable portion of the water from Grade A raw milk for pasteurization in a dairy plant that is in substantial compliance for all of the sanitation requirements for Grade A in this Part.

Grade A Dry Buttermilk and Dry Buttermilk Products—the products resulting from the drying of pasteurized liquid buttermilk that was derived from the churning of Grade A pasteurized-cream in a dairy plant that is in substantial compliance with the Grade A requirements of this Part.

Grade A Dry Whey or Dry Whey Products—the products obtained by the drying of Grade A whey for condensing or concentrating or by the drying of Grade A pasteurized condensed whey, while leaving all other constituents in the same relative proportions as in the Grade A whey for condensing or concentrating.

Grade A Nonfat Dry Milk—the product resulting from the drying of Grade A raw milk for pasteurization from which the milk fat has been removed in a dairy plant that is in substantial compliance with all of the sanitation requirements for Grade A of this Part.

Grade A Pasteurized Condensed Whey—the liquid substance obtained by partial removal of water from Grade A whey for condensing or concentrating, while leaving all other constituents in the same relative proportions as in the Grade A whey for condensing or concentrating.

Grade A Whey for Condensing or Concentrating—whey from cheese made from Grade A raw milk for pasteurization which has been pasteurized or heat-treated to a temperature of at least 64EC (147EF) and held continuously at that temperature for at least 21 seconds or to at least 67EC (153EF) and held continuously at that temperature for at least 15 seconds in equipment meeting the pasteurization requirements of this Part.

GRAS—see *Generally Recognized as Safe*.

HACCP—hazard analysis critical control point.

Half and Half—food consisting of a mixture of milk and cream which contains not less than 10.5 percent but less than 18 percent milk fat. It shall be pasteurized, ultra-pasteurized or aseptically processed and may be homogenized. Half and Half may contain flavoring and nutritive sweeteners GRAS by the state health officer and added prior to pasteurization, ultra-pasteurization or aseptic processing.

Heavy Cream—cream that contains not less than 36 percent milk fat. It is pasteurized, ultra-pasteurized or aseptically processed, may be homogenized and may contain other ingredients approved by the state health officer.

HHST—high heat-short time pasteurization.

HTST—high temperature-short time pasteurization.

Homogenized—dairy products that have been treated to insure break-up of the fat globules to such an extent that after 48 hours of quiescent storage at 4.4EC (40EF), no visible cream separation occurs in the dairy product; and the fat percentage of the top 100 milliliters of dairy product in a quart, or proportionate volumes in containers of other sizes, does not differ by more than 10 percent from the fat percentage of the remaining milk as determined after thorough mixing.

Hooved Mammals Milk—the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy hooved mammals. This product shall be produced according to the sanitary standards of this Part.

Ice Cream—a frozen dessert produced by freezing, while stirring, a pasteurized, ultra-pasteurized or aseptically processed frozen dessert mix consisting of one or more dairy products, other than cheese, filled milk or filled milk products, determined by the FDA, to be safe and suitable for use in ice cream, and may contain caseinates and hydrolyzed milk proteins of a type and in amounts determined to be appropriate by the FDA, sweetened with safe and suitable sweeteners approved by the FDA and may also contain eggs, egg products, fruit, fruit flavoring, nuts, natural or artificial flavors, coloring and other food products, each of which have been determined by the FDA to be safe and suitable for use in ice cream. Ice cream shall contain not less than 10 percent of milk fat, 10 percent of non fat milk solids, by weight, provided that the non fat milk solids level may be reduced as the milk fat level increases per the following chart:

Percent Milk Fat	Minimum Percent Non Fat Solids
10	10
11	9
12	8
13	7
14	6

a. In ice cream which contains bulky flavors (fruit, nuts, etc.) the weights of milk fat and total milk solids shall be not less than 10 percent and 20 percent, respectively, of the remainder obtained by subtracting the weight of the bulky flavors from the weight of the finished product; but, in no case shall the weight of milk fat or total milk solids be less than 8 percent and 16 percent, respectively, of the total weight of the finished product. Ice cream may contain safe and suitable stabilizers in amounts not more than 0.5 percent by weight of the total weight of the product. Ice cream shall contain not less than 1.6 pounds of total solids per gallon and shall weigh not less than 4.5 pounds per gallon. The term "ice cream" includes goat ice cream, sheep ice cream, water buffalo ice cream and ice cream made from the milk of other hooved mammals, fruit ice cream, nut ice cream, provided the labeling of such products comply with the labeling requirements contained in §121 of this Part.

Imitation Milk or Imitation Milk Products—foods that are made in semblance of and resemble a milk or milk product in physical characteristics, sensory properties, functional attributes and being of such nature that they may be used, interchangeably with the milk or milk product they are in semblance of and resemble, but are nutritionally inferior to said milk or milk product. If, by this definition, a food is an imitation of a milk or milk product, the label shall bear the term "imitation" in a uniform type and size and prominence immediately before the name of the imitated milk or milk product. Imitation milk or milk products shall conform with the microbiological requirements for the milk or milk product which they are an imitation, contained in this Part. Plants that manufacture or process imitation milk or milk products shall conform with the requirements for dairy plants that manufacture or process the milk or milk product of which they are an imitation, contained in this Part.

IMS—interstate milk shipper.

IMS List Sanitation Compliance and Enforcement Rating of Interstate Milk Shippers—a list published quarterly by the U.S. Department of Health and Human Services, Public Health Service, Food and Drug Administration, Center for Food Safety and Applied Nutrition. The list consists of interstate milk shippers certified by State Milk sanitation authorities as having attained required milk sanitation compliance ratings; (to subscribe online, see <http://www.cfsan.fda.gov/~ear/imsl-1.html>).

Inspection—a series of observations, made by the state health officer, to determine whether or not a dairy facility, the operations conducted therein, and the products being produced, processed or handled are in compliance with the requirements of this Part.

Lactase Enzyme Preparation—derived from the nonpathogenic, nontoxicogenic yeast *Kluyveromyces lactis*. It is used to convert lactose to glucose and galactose. The current GMPs require the use of lactase enzyme in milk to produce "lactase-treated" milk, which contains less lactose than regular milk, or "lactose-reduced" milk, which contains at least 70 percent less lactose than regular milk (21 CFR §184.1388 Lactase enzyme preparation from *Kluyveromyces lactis*).

Lactose Reduced Milk, Lactose Reduced Lowfat Milk or Lactose Reduced Nonfat (Fat free, skim) Milk—the product

resulting from the treatment of milk, lowfat milk or nonfat (fat free, skim) milk with safe and suitable enzymes to convert sufficient amounts of the lactose to glucose and/or galactose so that the remaining lactose is less than 30 percent of the lactose in milk, lowfat milk or nonfat (fat free, skim) milk.

Lower Fat—a general term related to any type of dairy product which contains less milk fat than that required by the definition and/or standard of identity for the primary (or traditional) dairy product. Such dairy products are to be labeled as "reduced fat", "low fat", "non fat (fat free, skim)" or "light", the term being determined by the content of or the absence of milk fat in the finished product and the type of product.

Low Fat Cottage Cheese—the same as Cottage Cheese except that it contains 0.5 percent to 2.0 percent butterfat by weight and a maximum of 82.5 percent moisture. The label must bear the phrase "contains not more than 2.0 percent butterfat."

Low Fat Milk—milk from which a sufficient portion of milk fat has been removed to reduce its milk fat content to not less than 0.5 percent nor more than 1.5 percent.

Low Fat Yogurt—the same as Yogurt, except that it contains a lower butterfat content. It must contain at least 0.5 percent but not more than 2.0 percent butterfat.

Manufacture—when used contextually with frozen desserts shall include all other similar terms, such as produce, process, convert, freeze and partially freeze.

Manufacturer—any person or company in the business of manufacturing a single service container or closure product which is to be used by a milk plant for the packaging or sampling of a finished Grade A milk or milk product.

Manufacturing Grade Milk—milk for manufacturing purposes that conforms with the requirements of this Part.

Manufacturing Line—a manufacturing process such as extrusion, blow mold, etc.

Manufacturing/Processing—making of a food from one or more ingredients and synthesizing, preparing, treating, modifying or manipulating food, including food crops or ingredients such as cutting, peeling, trimming, washing, waxing, bottling, labeling, packaging, etc.

Metals—metals which are nontoxic, nonabsorbent and corrosion-resistant under conditions of intended use.

Methods of Making Sanitation Ratings of Milk Shippers—2007 Revision, as amended, published by the U. S. Department of Health and Human Services, Public Health Service, FDA; (Internet URL address: <http://www.cfsan.fda.gov/~ear/mmmethods.html>).

Milk—the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows. Milk that is in its final packaged form for beverage use shall have been pasteurized, ultra-pasteurized or aseptically processed and shall contain not less than 8.25 percent milk solids not fat and not less than 3.25 percent milk fat. Milk may have been adjusted by separating part of the milk fat therefrom or by adding thereto cream, concentrated milk, concentrated low fat milks, dry milk or dry low fat milks. Milk may be homogenized. Water shall not be added to milk or any ingredient used in milk. Milk may be flavored with safe and suitable flavoring ingredients approved by the state health officer. The word "milk" shall

be interpreted to include goat, sheep, water buffalo, camel milk and the milk of other hooved mammals.

Milk Fat—the fat of milk.

Milk Plant—any place, premises or establishment where milk or milk products are collected, handled, processed, stored, pasteurized, ultra-pasteurized, aseptically processed, condensed, dried, packaged or prepared for distribution and where milk tank trucks are cleaned or sanitized when received.

Milk Producer—any person who operates a dairy farm and provides, sells, or offers milk for sale to a dairy plant, receiving station, or transfer station.

Milk Products—cream, light cream, light whipping cream, heavy cream, heavy whipping cream, whipped cream, whipped light cream, sour cream, acidified sour cream, cultured sour cream, half-and-half, sour half-and-half, acidified sour half-and-half, cultured sour half-and-half, reconstituted or recombined milk products, concentrated or condensed milk and low fat milk, nonfat (fat free, skim) milk or nonfat (fat free, skim) milk products, dry milk, reduced fat milk, lower fat milk products, dry milk products, frozen milk and concentrated low fat milk, egg nog or boiled custard, buttermilk and low fat buttermilk, cultured milk and cultured reduced fat, cultured low fat milk [including kefir cultured milk, acidophilis cultured milk, cultured buttermilk, yogurt and low fat yogurts (whether spoonable or drinkable)], cultured nonfat (fat free, skim) milk, nonfat yogurt, acidified milk and acidified reduced fat or low fat milk, acidified nonfat (fat free, skim) milk, low-sodium milk and low-sodium reduced fat or low fat milk, low-sodium nonfat (fat free, skim) milk, lactose-reduced milk and lactose-reduced reduced fat or low fat milk, lactose-reduced nonfat (fat free, skim) milk, aseptically processed and packaged milk and aseptically processed and packaged milk products, milk, reduced fat, low fat milk, or nonfat (fat free, skim) milk with or without added safe and suitable microbial organisms and any other milk product made by the addition or subtraction of milk fat or the addition of safe and suitable optional ingredients approved by the FDA, for protein, vitamin or mineral fortification of the milk products contained herein. Milk products also include those dairy foods made by modifying the federally standardized products listed in this Part in accordance with the 21 Code of Federal Regulation (CFR) 130.10 *Requirements for foods named by the use of a nutrient content claim and a standardized term*. This definition shall include imitation milk and imitation milk products, anomalous milk and anomalous milk products, filled milk and filled milk products. Milk and milk products which have been retort processed after packaging or which have been concentrated, condensed or dried shall be included in this definition. Dried blends of milk products and blends of dried products, which have milk or a derivative of milk as their predominant ingredient and are used for human consumption, shall be included in this definition. This definition is not intended to include dietary products (except as defined herein), infant formula, ice cream or other frozen desserts, butter or cheese.

Milk Sanitation Rating Officer—a state employee who has been standardized by the *Public Health Service/Food and Drug Administration* to perform required milk sanitation ratings of farms, plants, or HACCP listing of dairy plants or a combination thereof, has a valid certificate of qualification

issued by the *Public Health Service/Food and Drug Administration* and who does not have responsibility for the routine inspections/audits or enforcement action for the plants or farms he/she rates. State program directors, administrators, etc., may be certified.

Milk Shake—a pasteurized, ultra-pasteurized or aseptically processed dairy product consisting of one or more milk or milk products, determined by the FDA to be safe and suitable flavoring and sweetening ingredients, stabilizers and may contain fruits, nuts, and other bulky flavors determined by the FDA to be safe and suitable. Milk shakes shall contain not less than 4.5 percent milk fat and 8.8 percent solids non fat by weight.

Milk Tank Truck—a bulk milk pickup tanker or a milk transport tank truck.

Milk Tank Truck Cleaning Facility—any place, premise or establishment, separate from a milk plant or receiving station, where milk tank trucks are cleaned and sanitized.

Milk Tank Truck Operator—any person who operates a milk tank truck, bulk milk pickup tanker or a milk transport tank truck and may or may not be a bulk milk tank truck operator/sampler.

a. milk tank truck and milk tank transport operators who are not licensed as bulk milk tank truck operator/samplers shall not perform any of the duties of a bulk milk tank truck operator/sampler that directly involve the collection or measuring of milk for official records; and

b. milk tank truck operators who are not bulk milk tank truck operator/samplers and perform any of the duties of a bulk milk tank truck operator/sampler other than duties involved in the sampling and measuring of the raw milk shall conform with the requirements for such duties contained in this Part related to those non sampling, non measuring duties of the bulk milk tank truck operator/sampler.

Milk Transport Tank Truck—a vehicle, including the truck and tank, used to transport bulk shipments of milk from a milk plant, receiving station or transfer station to another milk plant, receiving station or transfer station.

Misbranded Milk, Milk Products and Other Dairy Products—products which are not labeled in accordance with the requirements of §121 of this Part.

NACMCF—U.S. National Advisory Committee on Microbiological Criteria for Foods.

NCIMS—the cooperative State-Federal program of the National Conference on Interstate Milk Shipments.

Non-Dairy Frozen Desserts—

a. food which is prepared by freezing, while stirring, a non-dairy frozen dessert mix composed of one or more optional characterizing ingredients specified in Subparagraph b of this Paragraph, sweetened with one or more of the optional sweetening ingredients specified in Subparagraph c of this Paragraph. The non-dairy product, with or without water added, may be seasoned with salt. One or more of the ingredients specified in Subparagraph d may be used. Pasteurization is not required. The optional caseinates specified in Clause i of Subparagraph d are deemed not to be dairy products.

b. the optional flavoring ingredients referred to in Subparagraph a of this Paragraph are natural and artificial flavoring and characterizing food ingredients.

c. the optional sweetening ingredients referred to in Subparagraph a of this Paragraph: Sugar (sucrose), dextrose, invert sugar (paste or syrup), glucose syrup, dried glucose syrup, corn sweetener, dried corn sweetener, malt syrup, malt extract, dried malt extract, maltose syrup and dried maltose syrup.

d. other optional ingredients referred to in Subparagraph a of this Paragraph are:

i. Casein prepared by precipitation with gums, ammonium caseinate, caseinate, calcium caseinate, potassium caseinate or sodium caseinate.

ii. hydrogenated and partially hydrogenated vegetable oil.

iii. dipotassium phosphate.

iv. coloring, including artificial coloring.

v. monoglycerides, diglycerides or polysorbates.

vi. thickening ingredients such as agar-agar, algin (sodium alginate), egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl, methyl cellulose, carrageenan, salts of carrageenan, furcelleran, propylene glycol alginate, pectin, psyllium seed husk, sodium carboxymethylcellulose.

e. such non-dairy frozen desserts are deemed "processed" when manufactured as a dry powdered mix.

f. dry non-dairy frozen dessert mixes shall be reconstituted with potable water in a sanitary manner and shall be rapidly cooled to a temperature of 45°F or below within four hours of reconstitution.

g. the product shall meet the bacterial standards prescribed in §2705.A.18 of this Part.

h. the name of the food is "non-dairy frozen dessert".

i. the fact that the product offered for sale is a non-dairy frozen dessert shall be conspicuously displayed on or near the dispensing freezer in a manner and print that is easily readable by the consumer.

Nonfat (Fat Free, Skim) Milk—milk from which a sufficient portion of milk fat has been removed to reduce its milk fat percentage to less than 0.5 percent.

Nontoxic Materials—materials which are free of substances which may render the milk injurious to health or which may adversely affect the flavor, odor, composition or bacteriological quality of the product and which meet the requirements of the *Federal Food, Drug and Cosmetic Act*, as amended.

Nutritionally Inferior—foods that contain a reduction of 2.0 percent or more of the daily recommended value (DRV) of protein and potassium and 2.0 percent or more of the U.S. recommended daily intake (RDI) of any vitamin or mineral of the food that they resemble or may be used as a substitute for that food. Foods that are nutritionally inferior to the food which they resemble shall be labeled "imitation". Foods that are not nutritionally inferior to the food which they resemble shall be considered nutritionally equivalent to the food which they resemble.

Official Laboratory—a biological, chemical, radiological, or physical laboratory which is under the direct supervision of the state health officer or which is under the direct supervision of a duly authorized regulatory official which has been approved by the state health officer.

Official Methods of Analysis—18th Edition, Revision 2, 2007, as amended, published by the AOAC International.

NOTE: AOAC International was formally called the Association of Official Analytical Chemists.

Officially Designated Laboratory—a commercial laboratory authorized to analyze official samples by the state health officer or the milk regulatory official of the state in which it is domiciled or a milk industry laboratory officially designated by the state health officer or the milk regulatory official of the state in which it is domiciled.

Overflow Milk or Milk Product—a milk or milk product which has either:

a. been collected in containers from leaking valves, leaking joints in sanitary milk pipelines, spillage at coolers and bottling machines, or broken bottles; or

b. been exposed to contamination by contact with the surfaces of equipment which have not been treated with a bactericide.

PHS—United States Public Health Services.

PHS/FDA—United States Public Health Service/Food and Drug Administration.

PMO—the 2009 Edition, as amended, of the *Grade "A" Pasteurized Milk Ordinance*, Public Health Service/Food and Drug Administration.

Packing or Packaging—placing, putting or repacking food into different containers without making any change to the form of the food. Facilities that pack dairy products shall be considered to be dairy plants.

Paper Stock—any paper made from the following materials:

a. paper and paperboard manufactured from clean, sanitary virgin chemical or mechanical processed pulp or from broke and trim of such paper and paperboard, provided they have been handled, treated and stored in a clean, sanitary manner or reclaimed fiber using acceptable or approved protocol in compliance with Title 21 CFR 176.260; and

b. components meeting the requirements of the *Federal Food, Drug and Cosmetic Act*, as amended.

Pasteurization—the process of heating every particle of a dairy product to the appropriate temperature, contained in the chart below, and held continuously at or above the temperature for at least the corresponding time contained in the chart. The pasteurization process shall be performed in equipment designed, manufactured and operated in accordance with the requirements contained in the PMO. The required recording charts for perishable or refrigerated products shall be retained at the dairy plant for a period of one year after the products were prepared. The required recording charts for frozen, preserved or shelf-stable products shall be retained at the plant for a period of two years.

Temperature	Time
63°C (145°F)*	30 minutes
72°C (161°F)*	15 seconds
89°C (191°F)	1.0 second
90°C (194°F)	0.5 seconds
94°C (201°F)	0.1 seconds
96°C (204°F)	0.05 seconds
100°C (212°F)	0.01 seconds

*If the fat content of the milk product is 10 percent or more, or if it contains added sweeteners, the specified temperature shall be increased by 3°C (5°F).

a. Eggnog shall be heated to at least the following temperature and time specifications.

Temperature	Time
69°C (155°F)	30 minutes
80°C (175°F)	25 seconds
83°C (180°F)	15 seconds

b. Provided further, that should scientific evidence indicate that the above temperatures or times are not adequate to destroy pathogenic microorganisms of human significance or for any other reason, may not be adequate to protect the public's health, the state health officer may, with the concurrence of the FDA, immediately require that all pasteurized or ultra-pasteurized dairy products sold in the state are pasteurized or ultra-pasteurized at temperatures or times recommended to be adequate by the FDA. Provided further that should the FDA hereafter determine that any of the requirements for pasteurization or ultra-pasteurization contained in the PMO are not adequate to protect the public's health and require a change in any of the aforesaid requirements, the state health officer shall immediately require that all pasteurization or ultra-pasteurized products sold in the State conform with the new FDA requirements for pasteurization or ultra-pasteurization. Provided further, that nothing shall be construed as barring any other pasteurization process, which has been recognized by the FDA to be equally efficient and which is approved by the state health officer.

Pasteurized Process Cheese—food prepared by comminuting and mixing, with the aid of heat, one or more cheeses of the same or two or more varieties, except Cream Cheese, Neufchatel Cheese, Cottage Cheese, Lowfat Cottage Cheese, Cottage Cheese Dry Curd, Cook Cheese, Hard Grating Cheese, Semisoft part Skim Cheese, part Skim Spiced Cheese and Skim Milk Cheese for manufacturing with a suitable emulsifying agent approved by the FDA and the state health officer into a homogeneous plastic mass. One or more of the optional suitable ingredients approved by the FDA and the state health officer may be used. During its preparation, pasteurized process cheese is heated for not less than 30 seconds at a temperature of not less than 66EC (150EF). Pasteurized process cheese shall conform with the standard of identity contained in this Part and 21 CFR 133.169. Pasteurized process cheese related products are foods that contain pasteurized process cheese as the predominant ingredient. They may contain suitable fruits, vegetables, nuts or meats that have been GRAS by the FDA and the state health officer. These products shall conform with the microbiological requirements for cheese contained in this Part and shall be manufactured in dairy plants that conform with the requirements for cheese manufacturing plants contained in Chapter 25 of this Part. These products shall conform with the standard of identity contained in §107.

Pasteurized Process Cheese Manufacturing Plants—dairy plants that manufacture, process or package pasteurized process cheese or pasteurized process cheese related products.

Phosphatase Test—an index of the efficiency of the pasteurization process.

Plant or Facility—an establishment or structure(s) under one management at one general physical location (or in case of a mobile facility, traveling to multiple locations) that manufactures/processes, packs or holds food for human consumption. A “plant or facility” may be one food processing plant with multiple buildings in one location. A building that has multiple companies at the same address would be considered to be multiple plants or facilities.

Plastic Molding—

a. forming, extrusion, and laminating resins:

i. resins or an intimate admixture of resins with other ingredients which meet the requirements of the Federal Food, Drug, and Cosmetic Act, as amended; and

ii. plastic composed solely of clean cuttings or re-grind, provided they have been handled and maintained in a sanitary manner.

b. This definition shall not preclude the use of recycled plastic material when it complies with a protocol which has been reviewed and accepted by the FDA.

Powdered or Dry Frozen Dessert Mixes—frozen dessert mixes that have been dried in dairy products drying plants that are in substantial compliance with the provisions for such plants contained in this Part.

Preformed Container—a container in completed form ready for filling.

Product Contact Surface—surfaces of the container or closure with which the product comes in contact.

Production Scrap—material which remains from the manufacture of single service containers or closures which has been handled or treated in such a manner that it does not comply with the definition for broke and trim or re-grind, but may be collected for recycling. It may contain material such as containers or trim that have fallen on the floor.

Quiescently Frozen Confections—a clean and wholesome frozen, sweetened, flavored dessert in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). This confection may be acidulated with food grade acid, may contain milk solids, water, may be made with or without added harmless pure or imitation flavoring, with or without harmless coloring. The finished product shall contain not more than 0.5 of 1 percent by weight of stabilizer composed of wholesome edible material. The finished product shall contain not less than 17.0 percent by weight of total food solids. In the producing of this confection, no processing or mixing prior to quiescent freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10 percent.

Quiescently Frozen Dairy Confections—a clean and wholesome frozen dessert made from water, milk products and sugar, with added harmless pure or imitation flavoring, with or without added harmless coloring, with or without added stabilizer and with or without added emulsifier; and in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). It contains not less than 13.0 percent by weight of total milk solids, not less than 33.0 percent by weight of total food solids, not more than 0.5 percent by

weight of stabilizer and not more than 1/5 of 1 percent by weight of emulsifier. Stabilizer and emulsifier must be composed of wholesome, edible material. In the production of quiescently frozen dairy confections, no processing or mixing prior to quiescently freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10.0 percent.

Quiescently Frozen Ice Creams or Sherbets—frozen desserts which conform with the standards of identity contained in §107 of this Part and in the manufacture of which freezing has not been accompanied by stirring or agitation (generally known as quiescent freezing). These products may be produced in various forms and figurations such as “stick novelties”, bars, loaves, molded into various shapes and sizes, etc.

Receiving Station—any place, premise, or establishment where raw milk is received, collected, handled, stored or cooled and prepared for shipment to other facilities.

Reclaimed Water (dairy farm) or Reclaimed Water_{df}—potable water which has been used for heat exchange purposes in plate or other type heat exchangers or compressors on a Grade A dairy farm and which is later re-used for certain limited purposes as is specified in §525 of this Part.

Reclaimed Water (dairy plant) or Reclaimed Water_{dp}—water obtained from the processing of Grade A milk and milk products (for example, condensing water from dairy product evaporators complying with this Part and water reclaimed from milk or dairy products during the evaporation or condensing process) at a dairy plant and which is later re-used for certain limited purposes as is specified in §2117 of this Part.

Reconstituted or Recombined Milk, Reconstituted or Recombined Milk Products, Reconstituted or Recombined Anomalous (Substitute) Milk, or Reconstituted or Recombined Anomalous (Substitute) Milk Products—milk and milk products defined in this Part that result from reconstituting or recombining milk constituents with potable water. The sale of reconstituted or recombined milk or milk products and reconstituted or recombined anomalous (substitute) milk or milk products in the state shall be prohibited.

Reduced Fat Milk—milk which has a milk fat content of 2.0 percent.

Re-Grind—clean plastic material which is trimmed from the container or closure, and imperfectly formed containers or closures which result from the manufacture of single service containers and closures, provided it is handled in a clean, sanitary manner. This may be in its trimmed or molded form and ground in a grinder, approved by the FDA, within the plant. It shall not include any material, container or closure which comes from an unapproved source or whose source, chemical content and treatment is unknown, or which may have poisonous or deleterious material retained in the plastic which migrates to the food at levels exceeding regulatory levels. Re-grind, when transported from one approved plant to another, shall be shipped in clean, sealed, properly labeled containers approved by the FDA. This definition shall not preclude the use of re-grind plastic material when it complies with a protocol which has been reviewed and accepted by the FDA.

Ripened or Aged Cheese—cheese that has been purposely exposed to warm temperatures or held for long periods at colder temperatures to permit bacteria and enzymes to transform the fresh curd into cheese of a specific flavor, texture and appearance. Cheese shall be ripened by placing it in a temperature controlled room at temperatures no lower than 2EC (35EF) and at a selective optimum relative humidity for a minimum of 60 days.

Sample Set—a minimum of four containers shall be tested. For the swab test a minimum of four 50-square centimeter areas of surface from separate containers shall be tested. In the case of containers or closures with a product-contact surface area smaller than 50-square centimeters, more than four containers or closures to equal at least 50-square centimeters times four will be required to be swabbed. Sample set from each manufacturing line shall:

a. for the rinse test, a minimum of four containers shall be tested; and,

b. for the swab test, a minimum of four 50-square centimeter areas of surface from separate containers shall be tested. In the case of containers or closures with a product contact surface area smaller than 50-square centimeters, more than four containers or closures to equal at least 50-square centimeters times four will be required to be swabbed.

Sanitization—is the application of any effective method or substance to a clean surface for the destruction of pathogens and of other microorganisms as far as is practicable. Such treatment shall not adversely affect the equipment, the milk or milk product, or the health of consumers and shall be acceptable to the FDA and the state health officer. Chemical sanitizers shall meet the requirements contained in Part I of Appendix F of the *PMO*.

SCC—somatic cell count.

Sensitivity Producing Ingredient—ingredients that cause individualistic adverse reactions other than those that result in immunoglobulin Epsilon (IgE) mediated allergies.

Sheep Milk—the lacteal secretion practically free from colostrum, obtained by the complete milking of one or more healthy sheep, and shall comply with all the requirements of this Part. The word milk shall be interpreted to include sheep milk.

Sherbet—a frozen dessert which complies with the definition and standard of identity of sherbet (see 21 CFR 135.140), with the exceptions that artificial flavoring may be substituted in whole or in part for the true fruit ingredient, and the butterfat content shall not be less than 1 percent.

Skim Milk—see *Nonfat (Fat Free, Skim) Milk*.

Single Service Articles—articles which are constructed wholly, in part, or in combination from paper, paperboard, molded pulp, plastic, metals, coatings or similar materials which are intended by the manufacturer for one usage only.

Single Service Milk Container—any container having a milk or dairy product contact surface and is to be used in the packaging, handling, wrapping or storage of Grade A milk and milk products and which is intended for one use only.

Single Service Milk and Milk Product Container or Closure Manufacturing Plants—fabricators, converters, printers, closure manufacturers, plastic laminators, sheet formers, blow molders, vacuum formers, plastic extruders, injection molders, preformers, manufacturers of valves,

valve parts, tubes, dispensing devices and sample containers for use with milk or milk products.

Sour Cream, Acidified Sour Cream—food resulting from the souring by lactic acid producing microorganisms of pasteurized, ultra-pasteurized or aseptically processed cream. Sour cream may contain rennet, flavoring ingredients, salt, sodium citrate and safe and suitable natural and artificial food flavoring. Acidified sour cream also includes cream in which the souring was accomplished with safe and suitable acidifiers with or without addition of lactic acid producing microorganisms.

SPC—standard plate count.

SRO—a milk sanitation rating officer operating under the authority of the state health officer (see *milk sanitation rating officer*).

Standard Methods for the Examination of Dairy Products—the 17th Edition, 2004, as amended, published by the American Public Health Association.

Standard Methods for the Examination of Water and Wastewater—the 21st Edition, 2005, as amended, published by the American Public Health Association.

State Health Officer—the legally appointed or acting State Health Officer of the Department of Health and Hospitals having jurisdiction over the entire state of Louisiana, and includes his/her duly authorized representatives in accordance with R.S. 40:4 and 40:5.

State Food, Drug and Cosmetic Act—R.S. 40:601, et seq., as amended.

Transfer Station—any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.

UHT—Ultra High Temperature.

USDA—United States Department of Agriculture.

Ultra-Pasteurized—when used to describe a dairy product, shall mean that such product shall have been thermally processed at or above 138°C (280°F) for at least two seconds, either before or after packaging, so as to produce a product which has an extended shelf life under refrigerated conditions.

Unripened Cheese—cheese that has not been ripened or aged. Such cheese includes: Alemtejo, Alpinianari, Asadero, Asiago, Bokers, Banburg, Bondon, Cambridge, Cottage, Cream, Creole Cream, Farmers, Ferme Feta, Formagelle, Gournug, Liverot, Malgre, Mignot, Mont d'Or, Mozzarella, Neufchatel, Queso Blanco, Queso de Hoja, Queso del Pais, Queso de Puna, Queso Fresco, Provutura, Ricotta, Scamorze, Villiers and others designated by the state health officer.

Vitamin A Fortification—the addition of vitamin A (retinol), vitamin A acetate (retinyl acetate) or vitamin A palmitate (retinyl palmitate) is mandatory in low fat milk and low fat milk products (except yogurt). In fluid milk, vitamin A is required at levels to achieve nutritional equivalency [300 International Units (IU) per cup, 1200 IU per quart]. However, the FDA and the state health officer would prefer that dairy processors continue to fortify vitamin A to levels of 2000 IU/qt. Other modified fat milk products must be fortified with vitamin A to achieve nutritional equivalency. Vitamin A may be added to other products within the limits of GMP. There is no specified GMP level for vitamin A in milk and milk products. Vitamin A may be required to be added to new low fat products to

achieve nutritional equivalency with their full fat counterparts.

Vitamin D Fortification—the addition of vitamin D (vitamin D2 or D3 in crystalline, resin or crystal form) to all milk and milk products is optional. Many standards of identity prescribe the minimum level of vitamin D that must be present when it is added to a product. For example, if vitamin D is added to milk, it must be added at a level so that each quart contains 400 IU of vitamin D. If the standard of identity does not indicate a specific level or the product does not have a standard of identity then, the level at which vitamin D may be added must be in accordance with GMP. The maximum GMP level for vitamin D set for milk is (42 IU/100g)² and milk products (89 IU/100g)³.

Water Buffalo or other Hooved Mammal Milk—the lacteal secretion practically free from colostrum, obtained by the complete milking of one or more healthy water buffalo or other hooved mammals and shall comply with all of the requirements of this Part. The word milk shall be interpreted to include water buffalo and other hooved mammal milk.

Water Ices—a frozen dessert produced by freezing with or without stirring, does not contain any milk or milk derived ingredients, does not contain any egg ingredient other than egg white and does not contain any food fats, except such as are added in small amounts to accomplish specific functions or, are natural components of flavoring ingredients used in the water ice. Water ice is sweetened with safe and suitable nutritive carbohydrate sweeteners and is characterized by the addition of one or more characterizing fruit ingredients (including fruit juices, concentrated fruit juices) or one or more non fruit characterizing ingredients. Other safe and suitable ingredients such as ground spice, infusions of coffee or tea, natural or artificial food flavoring (except any having a characteristic fruit or fruit like flavor) may be added. Each ingredient used in water ice shall have been determined by the FDA to be safe and suitable for use in the product.

Whey—the fluid obtained by separating the coagulum from milk, cream, lowfat or nonfat (fat free, skim) milk in the cheese making process.

Whey Products—any fluid product removed from whey or made by the removal of any constituent from whey or by addition of any wholesome substance to whey or parts thereof. Whey products may be condensed, concentrated or dried.

Yogurt (Yogourt, Yoghurt), Spoonable or Drinkable—food produced by culturing of cream, milk, partially skimmed milk or nonfat (fat free, skim) milk used alone or in combination, with characterizing and lactic acid producing microorganisms. Concentrated nonfat (fat free, skim) milk and non fat dry milk may be added. Ingredients, other than flavoring ingredients shall be pasteurized, ultra-pasteurized or aseptically processed prior to the addition of the microorganism culture. Yogurt may be heat treated after culturing is completed. The finished product shall contain not less than 0.9 percent titratable acidity expressed as lactic acid. The word “yogurt” shall include drinkable and spoonable yogurt. All yogurts sold in the state shall conform to the Grade A bacteriological standards/specifications contained in this Part. Plants that manufacture or process yogurts shall conform with the requirements for Grade A dairy plants contained in this Part.

B. Standards of identity listed in §107 of this Part are also herein incorporated as definitions of milk and dairy products. In case of conflicts, the more stringent definition shall apply.

AUTHORITY NOTE: The first source of authority for promulgation of the Sanitary Code is R.S. 36:258(B), with more particular provisions found in Chapters 1 and 4 of Title 40. This Part is promulgated in accordance with specific provisions of R.S. 40: 4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1258 (June 2002), amended LR 37:2633 (September 2011).

§103. Local Ordinances

A. Parishes and municipalities may adopt local milk ordinances provided that such ordinances do not conflict with and are not less restrictive than the PMO, this Code, or state statutes pertaining to milk and further provided that such ordinances have been reviewed and approved by the state health officer prior to adoption.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17), R.S. 40:922, and R.S. 40:925.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1262 (June 2002), amended LR 37:2646 (September 2011).

§105. Severability Clause

A. If any provision of this Part, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1262 (June 2002), amended LR 37:2646 (September 2011).

§107. Standard of Identity

A. All dairy products sold in the state shall conform with the standards of identity (definitions, specifications and requirements) contained in this Section, 21 USC §321a, 21 CFR Part 130, 21 CFR Part 131, 21 CFR Part 133, 21 CFR Part 135 or 21 CFR Part 184, determined by the state health officer, to be applicable to the specific product. A product shall not be in compliance with a standard of identity when :

1. the product contains ingredients that are not provided for in the standard, unless the ingredient is an incidental additive;
2. the product fails to contain one or more ingredients required by the definition and standard; or
3. the product contains an ingredient or component not within the limitation of the definition or standard.

B. The following dairy products which may not be identified under Subsection A of this Section, shall have the standards of identity as defined in §101.A. If there is a conflict between a standard of identity listed in Subsection A of this Section and the same standard of identity is also listed (by reference to its definition in §101.A) in Subsection B of this Section, the standard of identity in Subsection A of this Section shall govern. These products must conform to the standards of identity prescribed by this Section in order to be sold in this state:

1. anomalous (substitute) dairy products;
2. anomalous (substitute) milk and anomalous (substitute) milk products;
3. acidified milk and acidified milk products;
4. butter;
5. buttermilk;
6. cheese;
7. concentrated or condensed milk;
8. cottage cheese;
9. cream;
10. creamed cottage cheese;
11. creole cream cheese or creole cheese;
12. cultured milk and cultured milk products;
13. cultured anomalous milk and cultured anomalous milk products;
14. cultured filled milk and cultured filled milk products;
15. dry cream;
16. dry milk (powdered milk);
17. dry milk products;
18. egg nog or boiled custard;
19. filled dairy products;
20. filled milk and filled milk products;
21. frozen low fat yogurt
22. frozen nonfat yogurt
23. frozen yogurt
24. fruit sherbet;
25. goat milk;
26. half and half;
27. heavy cream;
28. ice cream;
29. imitation milk or imitation milk products;
30. lactose reduced milk;
31. lactose reduced low fat milk
32. lactose reduced nonfat (fat free, skim) milk;
33. low fat cottage cheese;
34. low fat milk;
35. low fat yogurt
36. milk;
37. milk shake;
38. non-dairy frozen desserts;
39. nonfat (fat free, skim) milk;
40. pasteurized processed cheese;
41. quiescently frozen confections;
42. quiescently frozen dairy confections;
43. quiescently frozen ice creams or sherbets;
44. reduced fat milk;
45. ripened or aged cheese
46. sheep milk;
47. sherbet;
48. sour cream or acidified sour cream;
49. water buffalo or other hooved mammal milk;
50. water ices; and
51. yogurt (yogourt, yoghurt), spoonable or drinkable.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S.40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1262 (June 2002), amended LR 37:2646 (September 2011).

Subchapter A. Required Permits

§109. Permits

A. Operators of dairy farms, receiving stations, transfer stations, dairy plants (including frozen dessert manufacturing plants, filled dairy products processing plants, anomalous milk and milk products processing plants, imitation milk and milk products processing plants, single-service containers and closures for milk and milk products manufacturing plants, milk tank truck cleaning facilities, finished dairy product depots/transfer points and milk tank trucks) that are domiciled within the state shall obtain a permit to operate from the state health officer prior to beginning operation. Bulk milk tank truck operators/samplers and dairy plant receivers/samplers shall obtain a permit from the state health officer prior to performing the duties associated with those positions. Only a person who complies with the requirements of this Part shall be entitled to receive or retain a permit from the state health officer.

B. Persons applying for permits shall complete and sign all forms for permit application and pay any and all fees required by the state health officer.

C. Such a permit may be temporarily suspended by the state health officer upon violation by the holder of any of the terms of these regulations, or for interference with the state health officer in the performance of his duties, or may be revoked after an opportunity for a hearing by the state health officer upon serious or repeated violations.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1262 (June 2002), amended LR 37:2647 (September 2011).

§111. Permits Required for Imported Milk, Milk Products and Frozen Desserts

A. It shall be unlawful for any person, firm or corporation to ship or receive into the state any milk or milk products (except extra grade and standard grade dry milk and milk products), filled milk and filled milk products, anomalous milk and milk products, imitation milk and imitation milk products and frozen desserts from outside of the state that were processed or packaged by a dairy plant that does not possess a current valid permit from the state health officer. Only a person, firm or corporation who complies with the requirements of this Part shall be entitled to receive or retain such permit.

B. All imported Grade A milk and milk products shall be processed and packaged only by dairy plants currently listed in the *IMS List Sanitation Compliance and Enforcement Rating of Interstate Milk Shippers*.

C. In the event a person requests a permit for a dairy plant domiciled outside the State of Louisiana, the person shall:

1. Complete and sign all forms for permit application required by the state health officer.
2. Pay any and all fees required by the state health officer.
3. Have the regulatory authority, responsible for permitting and inspecting/auditing of dairy plants in the state in which the plant is domiciled, send the following

information directly to the state health officer if they are not currently in the IMS list:

a. a statement indicating whether or not the plant is in substantial compliance with all applicable laws and regulations of the locality, state, province or country in which the plant is domiciled;

b. a copy of the most recent inspection/audit report completed by the regulatory authority; and

c. copies of the last three results of bacteriological and chemical analyses performed on the plant's products by the regulatory authority.

4. Provide copies of labels of each product the plant intends selling in Louisiana.

5. Provide a copy of the laws and regulations of the regulatory authority responsible for permitting and inspecting/auditing of the plant when requested by the state health officer.

6. Provide any other information, data or records required by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S.40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1262 (June 2002), amended LR 37:2647 (September 2011).

§113. Requirements for Imported Dairy Products

A. All dairy products (including frozen desserts, filled dairy products, anomalous milk and milk products, anomalous dairy products and imitation milk and imitation milk products) brought into Louisiana from outside of the state shall comply with the standards (specifications) contained in this Part determined to be applicable by the state health officer. These products shall be produced, processed and handled by facilities that comply with, the requirements of this Part. The production and processing facilities may be inspected by the state health officer; the cost of such inspections shall be borne by the person or firm producing or processing such dairy products or in lieu thereof, the state health officer may accept a certificate of compliance/inspection of a duly authorized agent of the dairy regulatory agency in the state or country wherein the products are produced or processed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1262 (June 2002), amended LR 37:2647 (September 2011).

Subchapter B. Records

§115. Milk Records

A. Each dairy plant, and others receiving milk or dairy products, including frozen desserts, from one or more sources shall keep records of the sources and the amounts of such products received. They shall also keep records showing utilization and disposition of all such products they receive. These records shall include names and amounts of each such product used or disposed of. Such records shall be open to inspection by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1263 (June 2002), amended LR 37:2647 (September 2011).

§117. Falsification of Records

A. Falsification of any records, logs or recording charts shall constitute grounds for the suspension of permit.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2648 (September 2011).

Subchapter C. Registration and Labeling

§119. Registration

A. Each processed dairy product final manufacturer shall register each separate and distinct processed dairy product, in storage, offered for sale or being sold in the state, annually with the state health officer in accordance with the provisions contained in Chapter 4, Part 1, §627 of the State Food, Drug and Cosmetic Law (R.S. 40:601, et seq.). The state health officer shall not register any processed milk or milk product, anomalous milk or anomalous milk product, filled milk or filled milk products, imitation milk or imitation milk products, frozen dessert mixes or mix products processed or packaged by a dairy plant that does not have a current, valid permit for such products issued by the state health officer. The labels for the aforesaid products shall have been reviewed and approved by persons, operating under the authority of the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17), R.S. 40:604, and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2648 (September 2011).

§121. Labeling

A. All dairy products (including but not limited to, milk, milk products, anomalous milk, anomalous milk products, anomalous dairy products, filled milk, filled milk products, filled dairy products, imitation milk, imitation milk products, imitation dairy products and frozen desserts) being offered for sale, distribution or held in storage within the state shall be labeled in accordance with the requirements of this Code determined to be applicable to such products by the state health officer, the State Food, Drug and Cosmetic Law (R.S. 40:601 et seq.), the *Federal Food, Drug and Cosmetic Act, as amended, the Nutrition Labeling and Education Act of 1990*, as amended, and regulations developed thereunder, the *Code of Federal Regulations* and the *Pasteurized Milk Ordinance (PMO)*.

B. Dairy plants which offer milk, milk products and condensed, concentrated or dry dairy products for sale in the state shall use labels which prominently display the grade of the product when grades for such products have been established by the state health officer.

C. All bottles, containers, wrappers and packages of a capacity of six gallons or less which enclose milk and milk products, shall be conspicuously marked with:

1. the name and address of the plant or Federal Information Processing Standards (FIPS) number [in indelible ink (or equivalent)] of the plant where the contents were pasteurized, ultra-pasteurized or aseptically processed. The name and address of the plant or the FIPS number shall be printed on the container or label in such a manner that it cannot be removed, changed or defaced;

2. a date, code or lot number that identifies the date, run or batch from which the contents originated, shall be prominently displayed on each final container (container that will reach the final consumer) of dairy product in indelible ink (or equivalent). The date, code or batch shall be printed on the container or label in such a manner that it cannot be removed, changed or defaced;

3. the words, "keep refrigerated after opening", in the case of aseptically processed dairy products;

4. the name of the dairy product followed by the words "with vegetable fat" conspicuously displayed on the principal display panel in cases in which the product is a filled milk, filled milk product or filled dairy product. The letters in the words "with vegetable fat" shall be at least as large and as prominent as the letters in the name of the dairy product. Examples of this requirement include: "low fat milk with vegetable fat", "cultured cream with vegetable fat", "evaporated non fat milk with vegetable fat";

5. the word, "goat", "sheep", "water buffalo" or the common name of any other hooved mammals shall precede the name of the milk and milk product when the product is made from the milk of animals other than cows;

6. the words "grade a", "grade b", "extra grade" or "standard grade" whichever is appropriate on the exterior surface when grades for the product have been established by the state health officer. Acceptable locations shall include the principal display panel, the secondary or informational panel or the cap/cover;

7. the words, "a product of", followed by the name of the country in which the product was processed, except in cases in which the product was processed in the United States or Puerto Rico.

8. the word "reconstituted" or "recombined" if the product was made by reconstitution or recombination; and,

9. the words "made from unpasteurized milk" shall be prominently displayed on the principal display panel of each container of dairy product made from milk, milk products, anomalous milk or anomalous milk products, filled milk or filled milk products, imitation milk or imitation milk products in which each particle has not been pasteurized, ultra-pasteurized or aseptically processed except ripened (aged) cheeses.

D. Approval of the state health officer shall be obtained for all labels used on dairy products prior to the product being offered for sale in Louisiana.

E. All labeling of dairy products shall not be false or misleading in any particular in accord with the requirements of R.S. 40:608 (misbranded food).

F. Containers of dairy products, for which a grading protocol has been established shall be labeled with the appropriate grade of the product.

G. Containers labeled with a grade that contain products that do not conform with the requirements of this Part for that grade shall not be sold or offered for sale in this state.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17), R.S. 40:604, and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2648 (September 2011).

Chapter 3. Sampling, Examination, Inspections, Grading, Enforcement Procedures and Standards of Dairy Products Including Frozen Desserts

§301. General Requirements

A. Each dairy facility (dairy farm, receiving station, transfer station, dairy plant, single service containers and closures for milk and milk products manufacturing plant, milk tank truck, milk tank truck cleaning facility, finished product depot, final product transfer point) domiciled in the state shall conform with each requirement contained in this Part that is determined to be applicable to such facilities by the state health officer. Each dairy product brought into Louisiana from outside of the state for consumption within the state shall comply with each standard and specification determined by the state health officer to be applicable to each type of product and shall be produced, processed, stored, handled and distributed by dairy facilities that comply with each requirement determined by the state health officer to be applicable to each type of dairy facility involved with the products. The state health officer shall enforce each requirement for dairy facilities, contained in this Part, in a manner that is equal, impartial and equitable regardless of facility size, type, state or country in which they are domiciled. Dairy products regulated under the provisions of this Part shall be enforced in the aforesaid manner.

B. Registered sanitarians operating under the authority of the state health officer who meet the training and certification requirements for the inspection and auditing of dairy farms, milk tank trucks, dairy plants and milk and milk product containers and closure manufacturing plants shall perform all inspections and audits required of the state health officer.

C. Registered sanitarians who have extensive knowledge of dairy farm operations, milking operations, farm milk handling operations, construction, cleanliness, sanitation and operation of dairy farms and dairy farm waste facilities may apply for certification as dairy farm inspectors.

D. A certified milk Sanitation Rating Officer (SRO) certified for rating dairy farms by the PHS/FDA shall be the certification authority for dairy farm inspectors. The registered sanitarians applying for certification shall independently inspect, without prompting or any other type assistance, five dairy farms selected at random by the SRO. The SRO shall independently inspect the same five dairy farms. In order to be certified, the applicant shall agree with the SRO 80 percent on individual items of sanitation found to be violative at each of the five dairy farms inspected. After discussion with the SRO the applicant shall demonstrate, to the SRO's satisfaction, that he/she understands the items of sanitation which he/she failed to properly identify during each inspection/audit.

E. Registered sanitarians who have extensive knowledge of dairy plant and single service milk and milk products container manufacturing plant operations, equipment construction, operation, cleaning and sanitation, product processing requirements, CIP systems, pasteurizer operation, testing of pasteurization equipment and controls, butter manufacturing, cheese manufacturing and condensing and drying plant operations and sanitation requirements may apply for certification as dairy plant and single service milk

and milk products containers and closures manufacturing plants inspectors. Registered sanitarians who perform Hazard Analysis Critical Control Point (HACCP) audits of dairy plants shall have successfully completed the NCIMS training requirements for state regulatory personnel conducting HACCP audits on dairy plants. SRO's who audit dairy plants shall have successfully completed the NCIMS training requirements for SRO's that perform HACCP listing audits and shall have been standardized by the PHS/FDA.

F. A certified milk Sanitation Rating Officer (SRO) certified for performing NCIMS required milk sanitation rating of milk and milk products receiving stations, transfer stations, milk and milk product plants, milk tank truck cleaning facilities and single service milk and milk products container manufacturing plants by the PHS/FDA shall be the certification authority for dairy plant and single service milk and milk products containers plant inspectors. The registered sanitarians applying for certification shall inspect at least two milk and milk products processing plants, one single service milk and milk products container and closure manufacturing plant, one condensing and drying plant (provided such plant exist within the state) and one cheese manufacturing plant without prompting or assistance of any type. The SRO shall independently inspect the same plants that were inspected by the applicant. In order to be certified, the applicant shall agree with the SRO 80 percent on individual items of sanitation found to be violative at each of the plants inspected. After discussion with the SRO, the applicant shall demonstrate to the SRO's satisfaction, that he/she understands the items of sanitation which he/she failed to properly identify during each inspection.

G. Registered sanitarians who have extensive knowledge of milk tank truck operations, construction, cleaning and sanitation and of all equipment used in the loading, unloading, cleaning and sanitation of milk tank trucks, requirements for bulk milk tank truck operators/samplers, milk plant receivers/samplers may apply for certification as milk tank truck inspectors.

H. A certified milk SRO certified by PHS/FDA for performing NCIMS required milk sanitation ratings on milk and milk products, receiving stations, transfer stations, milk and milk products plants, milk tank truck cleaning facilities and single service milk and milk products containers and closure manufacturer plants shall be the certification authority for milk tank truck inspectors. The registered sanitarian applying for certification or re-certification shall inspect at least five milk tank trucks selected at random by the SRO without prompting or assistance of any type. The SRO shall independently inspect the same milk tank trucks that were inspected by the applicant. In order to be certified, the applicant shall agree with the SRO 80 percent on individual items of sanitation found to be violative on each of the five milk tank trucks inspected. After discussion with the SRO, the applicant shall demonstrate to the SRO's satisfaction, that he/she understands the items of sanitation which he/she failed to identify during each inspection.

I. Personnel operating under the authority of the state health officer, including farm bulk milk tank truck operators/samplers licensed by the state health officer shall meet all requirements for personnel who collect official samples contained in this Part and the PMO and any NCIMS requirements for such personnel.

J. Personnel operating under the authority of the state health officer who programmatically supervise registered sanitarians who inspect or audit dairy facilities shall meet all certification requirements contained in this part for the certified inspectors whom they supervise. Certification of registered sanitarians who inspect dairy farms and milk tank trucks and inspect or audit dairy plants and single service milk and milk products containers and closure manufacturing plants shall be for a period not to exceed two years and may be revoked by the state health officer for cause.

K. All registered sanitarians operating under the authority of the state health officer who are certified to inspect/audit dairy facilities shall be physically capable of inspecting/auditing all areas of the type of dairy facility and equipment therein, for which they are certified.

L. All registered sanitarians operating under the authority of the state health officer shall conform with the safety, dress, speed limit and other such regulations of the facility pertaining to the employees of that specific facility, while they are on the premises of the facility. They shall also comply with all such requirements of the Milk and Dairy Program.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17)(19)(21) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1263 (June 2002), amended LR 37:2649 (September 2011).

Subchapter A. Sampling and Examination of Dairy Products Including Frozen Desserts

§303. Delivery of Samples

A. All persons engaged in the production, processing, handling or selling of milk, milk products or other dairy products shall deliver to the state health officer, upon request, samples of the dairy products in his possession. The state health officer shall not be required to pay for these samples. Any refusal to deliver such samples in his possession shall be deemed a violation of these regulations. All samples so collected shall be sealed, when possible, in the presence of the person from whom taken.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S.40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1263 (June 2002), amended LR 37:2650 (September 2011).

§305. Samples and Examinations

A. Samples of milk, milk products or other dairy products from stores, soda fountains, restaurants, finished product depots and other places where dairy products are handled, stored or sold shall be examined to determine compliance with the product standards contained in this Part as often as the state health officer may require.

B. The state health officer shall collect samples of milk, milk products or other dairy products being sold within the state that were processed by each dairy plant domiciled in other states or countries and test them for compliance with the standards for such products contained in this Part as required by the state health officer.

C. Samples of milk, milk products or other dairy products shall be taken prior to sale to the final consumer. Samples of dairy products collected from containers other

than dairy product storage, processing or bulk transportation tanks or totes that have been opened/uncapped shall not be considered official.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S.40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1263 (June 2002), amended LR 37:2650 (September 2011).

§307. The Official Sampling of Dairy Plant Environments and Dairy Products Including Frozen Desserts

A. Each bulk milk tank truck operator/sampler shall collect a representative sample of raw milk from each farm bulk tank prior to transferring the milk from the farm bulk tank to a milk tank truck each time raw milk is removed from the farm bulk tank. All samples shall be collected as directed by the state health officer and at least one set of samples collected from each farm bulk tank of each dairy farm supply represented in the load shall accompany the load of milk to the dairy plant, receiving station or transfer station at which it is unloaded.

B. Each dairy plant receiver/sampler shall collect a representative sample of raw milk from each tanker of raw milk that unloads at the plant each day. The dairy plant receiver/sampler shall obtain one set of the samples, collected by the bulk milk tank truck operator sampler, from each farm bulk tank of raw milk represented on the loads of raw milk from which the tanker samples were obtained. The dairy plant receiver/sampler shall store all of the samples in a manner consistent with the requirements of this Part and deliver them to the state health officer when requested.

C. The state health officer may sample the environments of each dairy plant using approved methodology for the sampling of plant environments for contamination with pathogenic microorganisms of human significance as often as he deems necessary. Controlling the environments of dairy plants to prevent contamination with pathogenic microorganisms is of utmost public health importance.

D. During each consecutive six months, at least four samples of raw milk for pasteurization, ultra-pasteurization and aseptic processing shall be collected in at least four separate months, except when three months show a month in which two of the sampling dates were separated by at least 20 days, and delivered in accordance with the requirements of this section from each farm bulk tank of each producer. These samples shall be obtained under the direction of the state health officer or shall be collected from each producer by the state health officer.

E. During each consecutive six months, at least four samples of commingled raw milk for pasteurization, ultra-pasteurization or aseptic processing, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days, shall be taken from each dairy plant after receipt of the milk by the plant and prior to pasteurization, ultra-pasteurization or aseptic processing by the state health officer.

F. During each consecutive six months, at least four samples of heat-treated milk and milk products, from each plant offering such products for sale, shall be collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days, by the state health officer.

G. During each consecutive six months, at least four samples of each type of dairy product being processed by each dairy plant domiciled within the state shall be collected by the state health officer. Each fat level of product, each flavor of flavored products, and each type of cultured product shall be sampled by the state health officer. The state health officer shall attempt to collect these samples of product in each size and type of container packaged by each plant.

H. During each consecutive 12-month period the state health officer shall collect from each dairy plant domiciled in Louisiana at least one sample of each dairy product to which vitamins have been added.

I. If production of any dairy product, for which a grading system is prescribed by this Part, is not on a yearly basis at least five samples shall be taken within a continuous production period.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1263 (June 2002), amended LR 37:2650 (September 2011).

§309. Laboratory Examination of Dairy Products Including Frozen Desserts and Tests for Environmental Pathogens

A. The following laboratory examinations shall be performed on milk and dairy products, including frozen desserts:

1. Standard plate counts, drug residue tests, somatic cell counts and cooling temperature checks shall be performed on raw milk for pasteurization, ultra-pasteurization and aseptic processing from each producer's milk supply domiciled in the state at a frequency required in §307.D on samples collected by the state health officer or under the direction of the state health officer.

2. Standard plate counts, drug residue tests and cooling temperature checks shall be performed on commingled raw milk for pasteurization, ultra-pasteurization and aseptic processing from the supply of each dairy plant domiciled in Louisiana at a frequency required in §305.E on samples collected by the state health officer.

3. Sediment tests, tests for aflatoxins, beta lactams, tetracyclines, sulfonamides, tests for added water and other tests determined to be necessary by the state health officer shall be performed on raw milk samples collected from each farm bulk milk tank truck load of raw milk that unloaded at each dairy plant, transfer station and receiving station on two consecutive days during each consecutive six month period. These tests shall be performed at the Milk and Dairy Residue Monitoring Facility.

4. All raw milk samples collected from each farm bulk milk tank represented on each load of raw milk that was found to have a USDA sediment standard that exceed number three or was found to be positive for any of the other tests listed in §309.A.3 above shall be tested using the same test from which the sediment result that exceed three or the positive result on the other tests were obtained on the sample from the load of raw milk. These tests shall be performed at the Milk and Dairy Residue Monitoring Facility.

5. Standard plate counts, drug residue tests and temperature checks, which are determined to be necessary by the state health officer, shall be performed on each type

of heat treated dairy product processed by each dairy plant domiciled in the state at a frequency required in §307.F on samples collected by the state health officer.

6. Standard plate counts, coliform counts, drug residue tests, phosphatase tests and cooling temperature checks, which are determined to be necessary by the state health officer shall be performed on each type of dairy product, including frozen desserts, processed by each dairy plant domiciled in the state at a frequency required in §307.G on samples collected by the state health officer or under the direction of the state health officer,

7. Standard plate counts, drug residue tests, coliform counts and cooling temperature checks shall be performed on condensed and concentrated dairy products produced by each dairy plant domiciled in the state at a frequency required in §307.G on samples collected by the state health officer or under the direction of the state health officer,

8. Standard plate counts and coliform counts shall be performed on each type of dry dairy product processed or blended by each dairy product drying or dairy product blending plant domiciled in the state at a frequency required in §307.G on samples collected by the state health officer or under the direction of the state health officer,

9. Drug residue tests determined to be appropriate by the state health officer shall be performed on each type of aseptically processed dairy product produced by each dairy plant domiciled in the state at a frequency required in §307.G on samples collected by the state health officer or under the direction of the state health officer.

10. Tests for contamination of finished products with pesticides, herbicides, PCB's, etc., shall be performed at intervals determined by the state health officer, on all finished products being sold or produced in Louisiana.

B. All sampling procedures and required laboratory examinations shall be conducted in laboratories approved by the state health officer and shall be in substantial compliance with the requirements of the *PMO*, the *Standard Methods for the Examination of Dairy Products*, the *Official Methods of Analysis*. Such procedures, including the certification of sample collectors and examinations shall be evaluated by the state health officer in accordance with the *Evaluation of Milk Laboratories*. Aseptically processed milk and milk products packaged in hermetically sealed containers shall be tested in accordance with the *Bacteriological Analytical Manual*. Examinations and tests to detect adulterants, including pesticides, shall be conducted as the state health officer requires. Assays of dairy products to which vitamin A, vitamin D or vitamins A and D have been added, shall be made at least annually in a laboratory which has been accredited by the U. S. Food and Drug Administration and which is acceptable to the state health officer, using test methods acceptable to the FDA and other official methodologies which give results statistically equivalent to the FDA methods.

C. All facilities fortifying products with vitamins shall keep volume control records. These volume control records shall cross reference the form and amount of vitamin D, vitamin A or vitamins A and D used with the amount of product produced and indicate a percent (plus or minus) of expected use.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1263 (June 2002), amended LR 37:2651 (September 2011).

Subchapter B. Inspections/Audits

§311. Frequency of Inspections/Audits

A. Each dairy farm, dairy plant including frozen desserts manufacturing plant, filled dairy products manufacturing plant, anomalous milk and milk products and other anomalous dairy product manufacturing plant, receiving station, milk tank truck cleaning facility, transfer station, single-service containers and closures for milk and milk products manufacturing plant, finished product depot/transfer point and dairy plant receiver/sampler, bulk milk tank truck operator/sampler and milk tank truck domiciled or operating in the state shall be inspected/audited by the state health officer prior to the issuance of a permit.

B. Following the issuance of a permit the state health officer shall:

1. Inspect the receiving, processing/packaging, cleaning, pre-operation and start-up procedures of each dairy plant including frozen dessert manufacturing plants at least once each month. (For the purposes of this Paragraph, the term "dairy plant" used herein shall not include receiving stations, transfer stations, single-service containers and closures for milk and milk products manufacturing plants, milk tank truck cleaning facilities and finished product depot/transfer points.)

2. Inspect receiving stations, transfer stations, single-service containers and closures for milk and milk products manufacturing plants, milk tank truck cleaning facilities and finished product depot/transfer point at least once each three months.

3. Inspect/audit each dairy plant, including frozen dessert manufacturing plants, that are required by the state health officer to implement HACCP systems or have been authorized by the state health officer to be regulated under the HACCP requirements contained in Chapter 11 of this Part with a frequency goal of at least once each month.

4. Inspect each milk tank truck and its appurtenances at least once each 12 months.

5. Observe and evaluate the receiving and sampling procedures of each dairy plant receiver/sampler at least once each three months to determine compliance with applicable requirements.

6. Observe and evaluate the milk pickup and sampling procedures of each bulk milk tank truck operator/sampler at least once each 24 months to determine compliance with applicable requirements.

7. Inspect each dairy farm with a frequency at least as that required by the Performance-Based Inspection Program.

C. Performance-Based Inspection Program requirements:

1. A risk assessment shall be performed on each dairy farm once each month by evaluating the performance of the farm using the last standard plate count, somatic cell count, sanitation compliance score, sediment score, drug residue test, coliform count of the water supply and other areas of the operation related to product safety as the criteria for establishing the Inspectional Frequency Category for the dairy farm.

2. The state health officer shall inspect dairy farms in each category at a frequency not less than the following intervals:

- a. category I: at least once each three months;
- b. category II: at least once each two months;
- c. category III: at least once each month; and,
- d. category IV: within 21 days of the last inspection but not before the lapse of three days.

3. The following criteria shall be used to categorize farms into the Inspection/Frequency Categories as defined below:

a. Category I (minimum of one inspection each three months):

i. standard plate count (SPC) not exceeding 10,000 cfu/milliliter (ml.);

ii. somatic cell count (SCC) not exceeding 250,000/ml;

iii. sanitation compliance score 97 percent - 100 percent;

iv. sediment not exceeding four;

v. no drug residue violations;

vi. no violation which may reasonably likely result in adulteration of the milk supply or an imminent hazard to the public's health; and,

vii. bacteriologically safe water supply.

b. Category II (minimum of one inspection each two months):

i. SPC 11,000 cfu/ml. - 50,000 cfu/ml;

ii. SCC 251,000/ml. - 500,000/ml;

iii. sanitation compliance score 93 percent - 96 percent;

iv. sediment not exceeding four;

v. no drug residue violations;

vi. no violation which may reasonably likely result in adulteration of the milk supply or an imminent hazard to the public's health; and,

vii. bacteriologically safe water supply.

c. Category III (minimum of one inspection each month):

i. SPC 51,000 cfu/ml.—100,000 cfu/ml;

ii. SCC 501,000/ml.—750,000/ml;

iii. sanitation compliance score 90 percent—92 percent;

iv. sediment not exceeding four;

v. no drug residue violations;

vi. no violation which may reasonably likely result in adulteration of the milk supply or an imminent hazard to the public's health; and,

vii. bacteriologically safe water supply.

d. Category IV (inspect within 21 days of the last inspection, but not before the lapse of three days):

i. SPC not exceeding 100,000 cfu/ml.;

ii. SCC not exceeding 750,000/ml.;

iii. sanitation compliance score less than 90 percent;

iv. sediment four;

v. one or more drug residue violation(s);

vi. one or more violation(s) that may reasonably likely result in adulteration of the milk supply or an imminent hazard to the public's health;

vii. unsafe water supply.

viii. one or more warning letters issued due to non-compliance of two out of four previous sample results for SPC or SCC during last two months; and,

ix. farm conditions which caused the state health officer to take official regulatory action (i.e.; warning letter, intent to suspend, reinspection, etc).

4. When the risk assessment of a dairy farm indicates a category IV in one or more criteria the next inspection of the dairy farm should include:

a. an evaluation of the cleaning equipment and procedures when the SPC category is IV;

b. an evaluation of milking procedures and the environment of the areas of the farm in which the milking herd is kept when the SCC category is IV;

c. a conference with the owner/operator when the sanitation compliance score category is IV; and,

d. an evaluation of the milking procedures, milking equipment and the environment of the areas of the farm in which the milking herd is kept when the sediment category is IV.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1264 (June 2002), amended LR 37:2652 (September 2011).

§313. Pasteurization Equipment Tests, Examinations and Sealing

A. The state health officer shall perform the tests using the methodology prescribed in the *PMO* on the instruments and devices of each pasteurizer in each dairy plant and frozen dessert manufacturing plant indicated in the table below initially upon installation; and at least once each three months, including the remaining days of the month in which the equipment tests are due and whenever any alteration or replacement is made which may affect the proper operation of the instrument or device. Provided, that the holding time test shall be conducted at least once each six months, including the remaining days of the month in which the equipment test is due. A copy of the test report shall be retained by the plant.

Test No.	Equipment/Device/ Instrument	Test Type
1	Vat, HTST, HHST, aseptic indicating and airspace thermometers	Temperature accuracy
2	Vat, HTST, HHST, aseptic recording thermometer	Temperature accuracy
3	Vat, HTST, HHST, aseptic recording thermometer	Time accuracy
4	Vat, HTST, HHST, aseptic indicating and recording thermometer	Recording vs Indicating thermometer
5.1	HTST, HHST FDD	Leakage pass FDD
5.2	HTST, HHST FDD	FDD freedom of movement
5.3	HTST, HHST FDD	Device assembly (single stem)
5.4	HTST, HHST FDD	Device assembly (dual stem)
5.5	HTST FDD	Manual diversion
5.6	HTST, HHST FDD	Response time
5.7	HTST, HHST FDD	Time delay (inspect)

Test No.	Equipment/Device/ Instrument	Test Type
5.8	HTST, HHST FDD	Time delay (CIP)
5.9	HTST FDD	Time delay (leak detect flush)
6	Vat leak protector valve(s)	Leakage
7	HTST indicating thermometers	Response time
8	HTST recording thermometers	Response time
9.1	HTST pressure switches	Regenerator pressures
9.2.1	HTST, HHST, aseptic differential pressure controllers	Calibration
9.2.2	HTST differential pressure controllers	Regenerator pressure
9.2.3	HHST and aseptic differential pressure controllers	Regenerator pressure
9.3.1	HTST booster pump/FDD	Inter-wiring check
9.3.2	HTST booster pump/metering pump	Inter-wiring check
10.1	HTST FDD	Temperature cut-in/cut-out
10.2	HHST FDD, aseptic divert system (indirect heat)	Temperature cut-in/cut-out
10.3	HHST FDD, aseptic divert system (direct heat)	Temperature cut-in/cut-out
11.1	HTST holding tubes/timing pumps (except meter based)	Holding time
11.2.a	HTST holding tubes/magnetic flow meter based timing systems	Holding time
11.2.b	HTST, HHST, aseptic magnetic flow meter based timing systems	Flow alarm
11.2.c	HTST, HHST, aseptic magnetic flow meter based timing systems	Loss of signal/low flow
11.2.d	HTST magnetic flow meter based timing systems	Flow rate cut-in/cut-out
11.2.e	HTST magnetic flow meter based timing systems	Time delay
11.3	HHST holding tubes indirect heat	Holding time
11.4	HHST holding tubes direct injection heat	Holding time
11.5	HHST holding tubes direct infusion heat	Holding time
12.1	HHST, aseptic systems indirect heating	Sequence logic
12.2	HHST, aseptic systems direct heating	Sequence logic
13	HHST, aseptic systems	Pressure in the holding tubes
14	HHST, aseptic systems using direct injection heating	Pressure differential across injector
15	Vat, HTST, HHST, Aseptic (all electronic controls)	Electro-Magnetic Interference

B. Plants being regulated under the provisions of Chapter 11 (Dairy Plant HACCP System) shall be responsible for the performance for all above required tests should the state health officer fail to perform them at the required frequency.

C. The state health officer shall affix regulatory seals to all pasteurization equipment, as prescribed by the *PMO*, after testing the equipment.

D. The state health officer shall provide the plant a copy of the pasteurization equipment test report.

E. The plant shall notify the state health officer immediately if the regulatory seals are broken.

F. The pasteurization equipment shall not be operated without authorization from the state health officer when any of the required regulatory seals are broken.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1264 (June 2002), amended LR 37:2653 (September 2011).

§315. Milk Sanitation Rating/HACCP Listing Audit

A. Except for those dairy facilities which require a HACCP Listing audit, a milk sanitation rating shall be conducted on each bulk milk tank unit (BTU), single service container and closure manufacturer plant, milk tank truck cleaning facility, receiving station, transfer station, milk and milk products plant, and Grade A condensing and drying plant at least once each year by a certified milk sanitation rating officer using the methodology prescribed in the *Methods of Making Sanitation Rating of Milk Shippers*. Except for those dairy facilities which require a HACCP Listing audit, an inspection of all other dairy plants shall be conducted by a certified milk sanitation rating officer at least once each year using the requirements for that specific type of plant contained in this Part.

B. A HACCP listing audit shall be conducted on each dairy facility being regulated under the HACCP requirements of this Part at least once each year by a certified milk sanitation rating officer that has been standardized and certified as a HACCP listing officer by the FDA.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1264 (June 2002), amended LR 37:2654 (September 2011).

§317. Posting Inspection Reports

A. One copy of each inspection/audit report shall be handed to the operator or posted by the state health officer in a conspicuous place upon an inside wall of one of the dairy farm or dairy plant buildings, and said inspection report shall not be defaced and shall be made available to the state health officer upon request. The original of the inspection report shall be filed with the records of the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1264 (June 2002), amended LR 37:2654 (September 2011).

§319. Field Supervision

A. Each Bulk Tank Unit (BTU) or others receiving milk from one or more dairy farms shall provide qualified field persons for the purpose of inspecting and testing sources of supply and assisting producers.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1264 (June 2002), amended LR 37:2654 (September 2011).

Subchapter C. Grading, Enforcement Procedures and Standards

§321. Grading

A. The state health officer shall establish grades and grading protocols for milk, milk products, condensed, concentrated and dried milk products.

B. The state health officer shall grade all milk, milk products, condensed, concentrated and dried milk and milk products produced or processed in the state.

C. The grade of the products shall be based upon:

1. compliance with the regulations governing milk production, milk and milk products and condensed, concentrated or dried dairy products processing and handling contained in this Part; and

2. compliance with the standards for milk and milk products contained in this Part as determined by the examination of at least four samples of milk or milk products and condensed, concentrated or dried dairy products during the current six month period, collected from each supply on separate days production by the state health officer.

D. All cartons, jugs, packages, wrappers, bottles or other containers enclosing graded milk, milk products and condensed, concentrated or dried dairy products shall be conspicuously marked with the grade of the contents on the principal display panel, secondary or informational panel or the cap/cover.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1264 (June 2002), amended LR 37:2654 (September 2011).

§323. Grades of Milk and Milk Products to be Sold

A. All milk and milk products sold to the final consumer or to restaurants, delicatessens, grocery stores and any other establishments that provide milk or milk products for human consumption shall be Grade A pasteurized, Grade A ultra-pasteurized or Grade A aseptic processed (UHT), provided that dry milk products sold or provided for human consumption may be Extra Grade, provided further that all milk and milk products (except Extra Grade dry milk products) provided to institutions who receive funds from the United States Government or the State of Louisiana for the purchase of milk and milk products shall be Grade A pasteurized, ultra-pasteurized or aseptically processed milk and milk products certified for interstate shipment.

B. Provided, that when the grade of a Grade A product has been lowered to Grade B, the state health officer may authorize the sale of the Grade B milk or milk product for a temporary period, not to exceed 30 days, provided further that the words Grade B shall prominently appear on the principal display panel of all containers of such product.

C. Provided further that extra grade and standard grade dry milk and milk products and ungraded evaporated milk or

sweetened condensed milk in containers that have been retort processed after packaging may be sold to the final consumer, restaurants, institutions, grocery stores or other establishments that provide dry milk or milk products or evaporated, concentrated or condensed milk.

D. All raw milk from cows, goats, sheep, water buffaloes and other hooved mammals produced by dairy farms for sale to dairy plants domiciled in Louisiana shall be Grade A raw milk for pasteurization, provided that when the grade of a raw milk supply has been lowered to manufacturing grade raw milk for pasteurization, the state health officer may authorize the sale of manufacturing grade raw milk for pasteurization from the degraded supply for a temporary period, not to exceed 30 days, provided further it is sold for non-Grade A use.

E. The sale, exchange or otherwise providing [including bartering, selling stock in dairy cows in exchange for raw milk, exchanging raw milk in return of animal feed or the cost of animal feed and any other such type arrangement (regardless if there is an actual sale)] of raw milk or dairy products made from raw milk (other than aged/ripened cheese processed in a plant that conforms with the requirements contained in Chapter 25 of this Part) for human or animal consumption is prohibited.

EXCEPTION: This shall not be interpreted to prohibit a farmer from providing raw milk for his/her own animals on his/her own farm.

F. Filled milk, filled milk products, imitation milk products and anomalous milk and milk products shall conform with the bacteriological requirements for Grade A pasteurized, ultra-pasteurized milk, or aseptically processed milk and milk products contained in §355 of this Part and shall be processed and packaged in plants that conform with all of the requirements for dairy plants that process Grade A pasteurized, ultra-pasteurized or aseptically processed milk and milk products contained in §901 (General Requirements for Dairy Plants) of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1264 (June 2002), amended LR 37:2654 (September 2011).

§325. Procedure in Emergency

A. During emergency periods, the state health officer may temporarily permit the sale of ungraded milk.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2655 (September 2011).

§327. Continuous Grading

A. If at any time the lowering of the grade of a raw milk supply or dairy product becomes justified in accordance with §329 or §333 of this Part, the state health officer shall lower the grade of such milk or milk product and shall enforce proper labeling thereof.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2655 (September 2011).

Subchapter D. Degrading or Suspension of Permit

§329. Degrading or Suspension of Permit Based upon Physical Violations

A. If during an inspection or audit the state health officer finds a violation(s) of this Part, he shall record the violation(s) on an inspection/audit report. A copy of the inspection/audit report shall be handed to the operator or posted in a prominent place on the premises.

B. In cases in which the state health officer finds conditions or violations of this Part that he deems to be of serious nature, violations that have not been corrected since the last inspection or reoccurring violations, he shall notify the operator, in writing, of the conditions or violations and specify a reasonable time, but not before the lapse of three days, in which the conditions or violations shall be corrected. The requirement of giving written notice shall be deemed to have been satisfied by handing it to the operator or posting it in a prominent place on the premises. The operator shall be allowed to request an extension of the time allowed for correction. The state health officer may authorize an extension of time for correction when warranted by the circumstances.

C. When the state health officer has specified a time in which conditions or violations shall be corrected, as in §329.B above, he shall conduct a second inspection after the time specified. In cases in which the second inspection reveals that the conditions or violations have not been corrected to the satisfaction of the state health officer, he may lower the grade of the milk supply or dairy product. In cases in which grades and grading criteria have not been established for a supply or a product and the second inspection reveals that any of the conditions or violations have not been corrected to the satisfaction of the state health officer, he may suspend the permit of the operator.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2655 (September 2011).

§331. Notification of Laboratory Analyses

A. When two of the last four standard plate counts or temperature checks, sediment tests or somatic cell counts of a raw milk supply fail to meet the requirements contained in this Part, the state health officer shall send written notice thereof by certified or return receipt request mail to the permittee concerned and shall take an additional sample, within 21 days but not before the lapse of three days from the date of receipt of such notice.

B. When two of the last four standard plate counts or temperature checks from a heat treated dairy product supply fail to meet the requirements contained in this Part, the state health officer shall send written notice thereof by certified or return receipt request mail to the permittee concerned and shall take an additional sample, within 21 days but not before the lapse of three days from the date of receipt of such notice.

C. When two of the last four standard plate counts or coliform counts or temperature checks from a pasteurized dairy product, including frozen desserts, filled dairy products and anomalous dairy products fail to meet the requirements contained in this Part, the state health officer shall send

written notice thereof by certified or return receipt request mail to the permittee concerned and shall take additional sample, within 21 days but not before the lapse of three days from the date of receipt of such notice.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2655 (September 2011).

§333. Degrading or Suspension of Permit or Removal of Product from the Market Based upon Laboratory Analyses

A. In cases in which the written notice required in §331 of this Part has been received by the operator and whenever three of the last five samples fail to meet the standard plate count, coliform count, sediment score, temperature check or somatic cell count requirements of this code unless the last individual sample result meets the requirements, the state health officer shall:

1. Degrade the raw milk supply or dairy product to the appropriate grade, in cases in where grades and grading protocol have been established.

2. Suspend the operator's permit in cases where grades and grading protocol have not been established, provided that the state health officer may allow the operator to discontinue the sale of the violative product(s) rather than suspend the permit.

B. Whenever a phosphatase test result is positive, suspend the permit for the product, place all product that is reasonably likely to have not been properly pasteurized under official seizure and require that any such product that has entered commerce be recalled by the processor and disposed of as directed by the state health officer.

C. Whenever pathogenic microorganisms of human significance are found in a dairy plant environment, require the plant operator to submit a written corrective action plan for eliminating and preventing the reoccurrence of the contamination to the state health officer for approval. The state health officer shall, during each inspection/audit determine whether or not the plant is in conformity with the written corrective action plan. Failure to conform with the approved corrective action plan shall be grounds for suspension of permit.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2656 (September 2011).

§335. Suspension of Permit Based on Laboratory Analyses - Adulteration or Contamination with Pathogenic Microorganisms of Human Significance

A. Should any raw milk supply or dairy product including frozen desserts, anomalous milk and milk products and filled dairy products be found to be adulterated (water, drug residues, pesticide/herbicides, etc.), the state health officer shall immediately suspend the permit and place all product that may reasonably likely be adulterated, under official seizure. The state health officer shall require that the

owner of the adulterated product, expeditiously remove any of the product that had entered commerce and to comply with instructions from the state health officer for the disposition of such product.

B. Should any pasteurized dairy product, including frozen desserts, anomalous milk and milk products and filled dairy products be found to contain one or more pathogenic microorganisms of human significance, the state health officer shall immediately suspend the permit and place all contaminated product and all product reasonably likely to be contaminated under official seizure. The state health officer shall require the owner of the product to expeditiously remove any of the product that had entered commerce and to comply with instructions from the state health officer for the disposition of such product. Provided, further, that raw and heat treated dairy products are excluded from this requirement.

C. Whenever the pasteurization recording charts for products requiring pasteurization are not available for review, the state health officer shall suspend the permit for the product and place under official seizure and require that any product involved that has entered commerce be recalled by the processor and disposed of as directed by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2656 (September 2011).

§337. Suspension of Permit for Reasons Other than Laboratory Analyses

A. The state health officer shall immediately suspend the permit to operate when:

1. the state health officer finds a condition(s) existing on a dairy farm, in a dairy product manufacturing plant (including frozen desserts manufacturing plant and filled dairy products manufacturing), single service milk container or closure manufacturing plant or at a finished product depot/transfer point that he determines is reasonably likely to constitute an imminent hazard to the public's health;

2. a series of observations made during an inspection or audit is determined by the state health officer to indicate that a plant does not have sufficient control of its operations to prevent a compromise to food safety;

3. the holder of the permit or his employees or agents interfere with the state health officer in the performance of his duties; or,

4. the holder of the permit or his employees have falsified documents, charts or other records pertaining to the safety of dairy products.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2656 (September 2011).

§339. Seizure and Condemnation of Milk, Dairy Products, Ingredients of Milk and Ingredients of Dairy Products

A. Any milk, milk product or other dairy product, ingredient or component of such products that the state

health officer determines to be adulterated, misbranded or not registered or which has been manufactured, processed or packaged in an establishment, which did not, at the time of manufacture, processing or packing, hold a valid permit issued by the state health officer is subject to seizure and condemnation by the state health officer as provided in §§632, 633, 634 and 635 of the State of Louisiana Food, Drug and Cosmetic Law, which is found in Part I, Chapter 4, Title 40 of the Louisiana Revised Statutes, as well as any applicable regulations which implement this law.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2656 (September 2011).

Subchapter E. Regrading and Reinstatement of Permit

§341. Application for Regrading, Reinstatement of Permit and Permission to Resume Sale of Product

A. Any producer or processor, the grade of whose milk supply or dairy products has been lowered or whose permit has been suspended by the state health officer, and who is properly labeling his dairy products, or who has removed the product from the market and has corrected the condition(s) that resulted in the suspension of the permit or degrade, may at any time make application for the regrading of his product or reinstatement of his permit or for being allowed to resume the sale of a product that has been removed from the market.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2657 (September 2011).

§343. Regrading or Reinstatement of Permit when Degrade or Suspension was Based on Laboratory Analyses

A. Upon receipt of a satisfactory application from the operator, when the lowered grade or suspension of permit is the result of violative standard plate counts, violative coliform counts, violative temperatures, violative somatic cell counts, or violative sediment scores the state health officer shall take additional samples of the applicant's output at a rate of one sample from a single day's production and not more than two samples per week. The state health officer may:

1. regrade the milk supply or dairy product upward, whenever a minimum of two successive samples meet the grade requirements of a higher grade provided they are the last two samples collected; or

2. reinstate the permit of the manufacturer or allow the sale of a non-grade product that has been removed from the market whenever a minimum of two successive samples meet the bacteriological or chemical standards for such non-graded products, provided they are the last two samples collected.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1265 (June 2002), amended LR 37:2657 (September 2011).

§345. Regrading and Reinstatement of Permit when Degrade or Suspension was Based on Physical Violations

A. Whenever a suspension of a permit or the lowering of grade of a product or supply was the result of a violation of an item of these regulations other than laboratory results, the application referenced in §341 of this Part must be accompanied by a statement signed by the applicant stating that the violative item(s) of the regulations has been corrected. Within one week of receipt of such an application and statement, the state health officer shall make a re-inspection of the applicant's establishment, and thereafter as many additional re-inspections as may be deemed necessary, to verify that the applicant is again complying with the requirements. When the findings justify, he may reinstate the permit and re-grade the milk supply or dairy product upward.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2657 (September 2011).

§347. Reinstatement of Permit when Suspension was Based upon Adulteration of Product or Contamination of Pasteurized Product or Cheeses with Pathogenic Microorganisms of Human Significance

A. Upon receipt of a satisfactory application and a statement, signed by the applicant, certifying that the cause of the adulteration has been corrected and all product that was involved has been recalled, from an operator whose permit was suspended based upon adulteration of product, the state health officer shall take additional samples of the applicants milk supply or dairy product. The state health officer may reinstate the permit when a sample result indicates the supply or product is in compliance, provided that it is the last sample collected. Provided further that in cases in which the suspension of permit was due to a dairy farm's drug residue violations of *Appendix N* of the *PMO* the state health officer shall make an inspection of the applicant's dairy farm and as many additional inspections as deemed necessary by the state health officer to assure that the applicant is again in substantial compliance with all applicable requirements. Said application shall be accompanied by a statement, signed by the applicant, to the effect that the cause of the violation has been corrected.

B. Upon receipt of a satisfactory application from an operator whose permit was suspended based upon contamination with pathogenic microorganisms of human significance and a written corrective action plan for eliminating and preventing a reoccurrence of the contamination the state health officer shall:

1. Review the corrective action plan and determine whether or not it is satisfactory. The state health officer may reject the plan when, in the state health officer's opinion, it is not satisfactory.

2. Upon concurring with the corrective action plan; inspect the dairy plant to determine whether the corrective action plan has been implemented to the state health officer's satisfaction. In cases in which the plant is not

domiciled in Louisiana, the state health officer may accept certification that the plan has been implemented from the dairy regulatory agency of that state or country. In cases in which the state health officer deems that the regulatory agency of a state or country is not technically capable of providing acceptable assurance that the corrective action plan is being properly implemented, the state health officer shall perform such inspections. The dairy plant shall be required to pay all expenses the state health officer incurs in making the inspections. Failure to adhere to the corrective action plan at any time may constitute grounds for suspension of permit.

3. Take additional samples of the applicant's product(s).

4. The state health officer may reinstate the permit when the samples indicate the product no longer contains pathogenic microorganisms of human significance and the corrective action plan to prevent a reoccurrence of the problem has been implemented to the state health officer's satisfaction.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2657 (September 2011).

Subchapter F. Standards and Specification for Grades of Milk and Milk Products

§349. Grade A Raw Milk for Pasteurization

A. Grade A raw milk for pasteurization is raw milk produced on dairy farms which are in substantial compliance with all of the requirements of this Part for dairy farms and is in conformity with the following bacteriological, chemical and temperature standards:

1. temperature: cooled to 7°C (45°F) or less within two hours after milking, provided that the blend temperature after the first and subsequent milkings does not exceed 10°C (50°F);

2. standard plate count: individual producer milk shall not exceed 100,000 cfu per ml. prior to commingling with other producer milk;

3. standard plate count: commingled raw milk shall not exceed 300,000 cfu per ml. prior to pasteurization;

4. sediment score of less than four;

5. drug residue: no positive results from any drug residue detection test which has been determined to be appropriate by the state health officer;

6. somatic cell count: individual producer milk shall not exceed 750,000 per ml., provided that goat milk shall not exceed 1,500,000 per ml.; and

7. cryoscope reading: not higher than -0.525°Hortvet.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2658 (September 2011).

§351. Grade A Raw Milk for Pasteurization (Certified for Interstate Milk Shipment)

A. Grade A raw milk for pasteurization (certified for interstate milk shipment) is raw milk, produced on dairy farms in Louisiana, that meet all requirements of this Part, as well as all the requirements of the National Conference on

Interstate Milk Shipments (NCIMS) for Grade A and the requirements for inclusion in the U.S. Food and Drug Administration Interstate Milk Shippers List. In cases of conflicting provisions, the stricter codal requirement, as determined by the state health officer, shall be met.

1. Raw milk produced in Louisiana that is in substantial compliance with the provisions contained in §349.A above may be certified by the state health officer for inclusion in the U.S. Food and Drug Administration Interstate Milk Shippers List.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2658 (September 2011).

§353. Manufacturing Grade Raw Milk for Pasteurization/Milk for Manufacturing Purpose/Grade B Raw Milk for Pasteurization

A. Manufacturing grade raw milk for pasteurization/milk for manufacturing purpose/Grade B raw milk for pasteurization is raw milk that may not meet bacteriological, somatic cell, chemical, sediment or temperature requirements for Grade A or is produced on dairy farms which may violate one or more of the requirements of this Part provided, that the violation thereof does not reasonably likely constitute an imminent hazard to the public's health, as determined by the state health officer.

B. Manufacturing grade raw milk for pasteurization shall conform to the following bacteriological, chemical or temperature standards.

1. Individual producer raw milk standard plate count shall not exceed 500,000 cfu per ml., prior to commingling with other producer raw milk.

2. Individual producer raw milk shall have sediment score of less than number four.

3. Commingled raw milk standard plate count shall not exceed 3,000,000 cfu per ml. prior to pasteurization.

4. Drug residue: no positive results from drug residue detection test methods contained in §349.A.5 of this Part.

5. Milk temperature shall not exceed 7°C (45°F) upon delivery to the dairy plant unless it is delivered to the dairy plant in less than two hours after milking, provided cans of manufacturing grade milk shall be cooled to 7°C (45°F) or less within four hours after each can has been filled and shall remain at that temperature or less unless delivered to a receiving station or pasteurization plant within two hours after milking.

C. Manufacturing grade raw milk for pasteurization from degraded Grade A supplies shall be sold for non-Grade A use only and only for a period not to exceed 30 consecutive days and only when authorized by the state health officer.

D. When the state health officer finds a condition or conditions that he determines are reasonably likely to constitute an imminent hazard to the public's health he shall take immediate action to suspend the permit.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2658 (September 2011).

§355. Grade A Pasteurized, Ultra-pasteurized and Aseptically Processed Milk and Milk Products, Bulk Shipped Grade A Pasteurized or Ultra-pasteurized Milk and Milk Products and Pasteurized Filled Milk and Filled Milk Products

A. Grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products are the products resulting from Grade A raw milk for pasteurization that has been pasteurized, ultra-pasteurized or aseptically processed and placed in the final container in a dairy plant that is in substantial compliance with all of the requirements for Grade A dairy plants contained in this Part. Bottling/filling/packaging of the milk or milk products shall be done in the plant in which they were pasteurized or ultra-pasteurized.

B. The milk and milk products shall conform to the standards of identity prescribed by this Part.

C. The milk and milk products, and anomalous milk and milk products and filled milk and filled milk products shall conform with the following requirements:

1. temperature: cooled to 7°C (45°F) or less and maintained thereat;
2. standard plate count: not to exceed 20,000 cfu per ml. or gram (g);
3. coliform count: not to exceed 10 per ml. or g. Provided, that in case of bulk milk transport tank shipments, shall not exceed 100 per ml.;
4. drug residue: no positive results from drug residue detection test methods as performed in accord with Appendix G, Part V, Detection of Drug Residues in Milk of the PMO which have been found to be acceptable for use with pasteurized and heat-treated milk and milk products;
5. phosphatase: less than 350 milliunits/L for fluid products and other milk products by the Fluorophos ALP (Alkaline Phosphatase) system or equivalent;
6. cryoscope reading: not higher than -0.525 EHortvet; and,
7. pathogens: no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2659 (September 2011).

§357. Grade A Bulk Shipped, Heat-Treated Milk and Milk Products

A. Grade A bulk shipped, heat-treated milk and milk products are the products resulting from Grade A raw milk for pasteurization that have been heat-treated in a dairy plant that is in substantial compliance with all of the requirements for Grade A dairy plants contained in this Code and is bulk shipped in bulk milk transport tanks or totes to other food product plants. The raw milk shall have been heated, one time, to temperatures greater than 52°C (125°F) but less than 72°C (161°F) for separation purposes when the resulting shipment(s) of cream, nonfat, reduced fat, low-fat milk are labeled heat-treated. In the case of heat-treated cream, the cream may be heated to less than 75°C (166°F) in a continuing heating process and immediately cooled to 7°C

(45°F) or less when enzyme deactivation (such as lipase reduction) for functional purposes is required.

B. The resulting products shall conform with the standards of identity prescribed in this Part.

C. Heat-treated milk and milk products shall conform to the following temperature, bacteriological and chemical standards:

1. temperature: cooled to 7°C (45°F) or less and maintained thereat;
2. standard plate count: not to exceed 20,000 cfu per ml. or g.;
3. drug residue: no positive results from drug residue detection test methods which have been determined to be appropriate by the state health officer; and,
4. cryoscope reading: not higher than -0.525° Hortvet.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2659 (September 2011).

§359. Grade A Aseptically Processed Milk and Milk Products/ Ultra High Temperature (UHT)

A. Grade A aseptically processed milk and milk products are the products resulting from Grade A raw milk for pasteurization that has been commercially sterilized, cooled, then placed into pre-sterilized containers, followed by aseptic hermetical sealing with a pre-sterilized closure in an atmosphere free of microorganisms. Grade A aseptically processed milk and milk products shall conform with the requirements of *Title 21, Code of Federal Regulations (CFR), Part 113*, the requirements of the PMO and the requirements of this Part. In addition they shall conform with the following standards:

1. standards of identity prescribed in this Part;
2. drug residue: no positive results from drug residue detection test methods which have been determined to be appropriate by the state health officer;
3. phosphatase: less than 350 milliunits/L for fluid products and other milk products by the Fluorophos ALP system or Charm ALP or equivalent;
4. cryoscope reading: not higher than -0.525EHortvet; and
5. pathogens: no pathogenic microorganisms of human concern.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S.

40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2659 (September 2011).

§361. Grade A Pasteurized, Ultra-pasteurized and Aseptically Processed Milk and Milk Products Certified for Interstate Shipment

A. Grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products (certified for interstate milk shipment) are pasteurized milk and milk products, obtained from sources included in the NCIMS List of certified sources processed in Louisiana dairy plants, that meet all requirements of this Part as well as all the requirements of the National Conference on Interstate Milk

Shipments (NCIMS) for Grade A and the requirements for inclusion in the *U.S. Food and Drug Administration Interstate Milk Shippers List*. In cases of conflicting provisions, the stricter codal requirement as determined by the state health officer shall be met.

B. Pasteurized milk and milk products processed in Louisiana that are in substantial compliance with the provisions contained §359.A above may be certified by the state health officer for inclusion in the *U.S. Food and Drug Administration Interstate Milk Shippers List*.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2659 (September 2011).

§363. Grade B Pasteurized Milk and Milk Products

A. Grade B pasteurized milk or milk products are products resulting from Grade A raw milk for pasteurization and may not meet the requirements for Grade A pasteurized milk and milk products or have been pasteurized or ultra-pasteurized and placed in the final container in a dairy plant that may violate one or more of the requirements contained in this Part for Grade A dairy plants provided, further that any violation thereof does not constitute an imminent hazard to the public's health as determined by the state health officer.

B. The milk or milk products shall conform to the standards of identity prescribed by this Part.

C. The milk or milk products shall conform with the following bacteriological, chemical and temperature standards:

1. standard plate count not to exceed 50,000 cfu per ml.;
2. coliform count not to exceed 10 per ml.;
3. phosphatase less than 350 milliunits/L., for fluid products and other milk products by the Fluorophos ALP system or equivalent;
4. cryoscope reading not higher than -0.525° Hortvet;
5. no positive results from drug residue detection test method as performed in accord with Appendix G, Part V, Detection of Drug Residues in Milk of the PMO; and
6. no pathogenic microorganisms of human significance.

D. Grade B pasteurized milk or milk products may be sold only from supplies that were Grade A and have been degraded to Grade B for a period not to exceed 30 days and only upon authorization from the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2660 (September 2011).

Chapter 5. Requirements for Grade A Dairy Farms

§501. Approval of Plans

A. All milking barns or parlors used on dairy farms from which Grade A raw milk is offered for sale and which are hereafter constructed, reconstructed, or altered shall conform with the requirements of this Part and the PMO. All equipment with which milk comes in contact and automated cleaning equipment shall comply with applicable 3-A Sanitary Standards in design, construction, employment and

use. Plans for the construction, reconstruction or alteration of dairy farm facilities domiciled within the state shall be approved by the state health officer prior to construction, reconstruction or alteration.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2660 (September 2011).

Subchapter A. Health of Dairy Animals

§503. Health of Dairy Animals

A. Tuberculosis. All milk for pasteurization shall be from herds which are located in a modified accredited tuberculosis-free area, as determined by the Animal Health Program, Veterinary Services, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, or the Louisiana State Livestock Sanitary Board and which have been tested for tuberculosis at least once in every six year period. Note that herds located in an area that fails to maintain such accredited status, or that has an incidence of bovine tuberculosis in excess of 0.2 percent shall have been accredited by said the Animal Health Program, Veterinary Services, the Animal and Plant Health Inspection Service (APHIS), U.S. Department of Agriculture, or the Louisiana State Livestock Sanitary Board, for tuberculosis-free, accredited herds, in effect at the time of the adoption of this ordinance. A certificate identifying each animal signed by the veterinarian and filed as directed by the state health officer shall be evidence of the above tests. All milk for pasteurization shall be from herds in areas which have a Modified Accredited Advanced Tuberculosis status, any herd shall have established a tuberculosis testing protocol for livestock that assures tuberculosis protection and surveillance of the dairy industry within the areas and that it is approved by the Food and Drug Administration, the U. S. Department of Agriculture and the state health officer.

B. Brucellosis. All milk for pasteurization shall be from herds under a brucellosis eradication program which meets one of the following conditions:

1. is located in a certified brucellosis-free area as defined by the U. S. Department of Agriculture and enrolled in the testing program for such areas;
2. meets the U.S. Department of Agriculture requirements for an individually certified herd;
3. participates in a milk ring testing program at least two times per year at approximately 180-day intervals and all herds with positive milk ring results shall have the entire herd blood tested within 30 days from the date of the laboratory ring test; or
4. has an individual blood agglutination test performed annually with an allowable maximum grace period not exceeding two months.

C. Goat milk, sheep milk, water buffalo or other hooved mammal milk for pasteurization, ultra-pasteurization or aseptic processing shall be from a herd or flock which:

1. has passed an annual whole herd or flock brucellosis test as recommended by the state veterinarian or USDA Area Veterinarian in Charge (AVIC) followed by testing replacement animals or any animals entering the milking group or sold as dairy animals;

2. has passed an annual random blood-testing program sufficient to provide a statistical confidence level of 99 percent with a probability value (P-value) of 0.05. Any herd or flock with one or more confirmed positive animals shall go to 100 percent testing until the whole herd tests show no positive animals are found. Random sampling size shall be derived from *Table 1 Regulatory Statistics, 5th. Edition (June 1975) by Victor C. Beal, Jr., Program Development and Application, Veterinary Services, APHIS: Animal Health Programs*; or

3. has passed a USDA approved bulk milk test at the USDA recommended frequency.

D. Lactating animals which show evidence of the secretion of milk with abnormalities in one or more quarters, based upon bacteriological, chemical or physical examination, shall be milked last or with separate equipment and the milk shall be discarded. Lactating animals producing contaminated milk, that is, lactating animals which have been treated with, or have consumed chemical, medicinal or radioactive agents, which are capable of being secreted in the milk and which, in the judgment of the state health officer, may be deleterious to human health, shall be milked last or with separate equipment and the milk disposed of as the state health officer may direct. The state health officer may require the use of the strip cup, a mastitis screening test or bacteriological examination of the milk or any other tests he may determine to be necessary to protect the public's health.

E. For other diseases and residues of toxic substances, such tests and examinations as the state health officer may require, shall be made at intervals and by methods prescribed by him, and any diseased animal or reactors shall be disposed of as he may require.

F. Records supporting the tests required in this section shall be available to the state health officer and be validated with the signature of a licensed and accredited veterinarian or an accredited veterinarian in the employ of an official agency.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2660 (September 2011).

Subchapter B. Construction and Maintenance of Grade

A Dairy Farm Facilities

§505. Surroundings of Dairy Barns

A. The immediate surroundings of the dairy barn shall be kept in a neat and clean condition.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2661 (September 2011).

§507. Cow Yard

A. All cow yards shall be effectively graded and drained and have no standing pools of water or accumulations of organic waste. A slab of concrete or other impervious material shall be provided, sufficient in size to hold the milking herd. Swine and poultry shall not be allowed in the cow yard.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1266 (June 2002), amended LR 37:2661 (September 2011).

§509. Manure, Sewage and Liquid Waste Disposal

A. All manure shall be removed and stored or disposed of in accordance with Part XXVII in such a manner as best to prevent the breeding of flies therein or the access of cows to piles thereof. Note that in loafing free stall or pen type stables manure droppings shall be removed or clean bedding added at sufficiently frequent intervals to prevent the accumulation of manure on cows' udders and flanks and the breeding of flies.

B. Sewage shall be disposed of in a manner approved by the state health officer.

C. Liquid wastes resulting from the cleaning of cows, cleaning and rinsing of the barn and equipment, shall be properly disposed of so as not to contaminate the milk or milk equipment or milking barn or parlor, or to create a nuisance or a public health hazard.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1267 (June 2002), amended LR 37:2661 (September 2011).

§511. Dairy Barn Required

A. A dairy barn or milking parlor shall be required. The barn or parlor shall be constructed in a manner approved by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1267 (June 2002), amended LR 37:2661 (September 2011).

§513. Milking Barn or Parlor Cleanliness

A. The interior shall be kept clean. Floors, walls, windows, pipelines, and equipment shall be free of filth or litter, and shall be clean. Swine and fowl shall be kept out of the milking barn. All pens, calf stalls, etc., shall be located and maintained so as not to have a deleterious effect upon the conditions in the milking area(s) and the milk house/room.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1267 (June 2002), amended LR 37:2661 (September 2011).

§515. Lighting

A. The areas of the milking barn where cows are milked shall be provided with a minimum of 10-foot candles of well distributed light.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1267 (June 2002), amended LR 37:2661 (September 2011).

§517. Ventilation

A. Sections of all dairy barns where cows are kept or milked shall be well ventilated to minimize odor and to prevent condensation upon walls and ceilings.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S.

40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1267 (June 2002), amended LR 37:2662 (September 2011).

§519. Floors

A. The floors and gutters of such parts of all dairy barns in which cows are milked shall be constructed of concrete or other impervious and easily cleaned material which has been approved by the state health officer. It shall be graded to drain and shall be in good repair.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1267 (June 2002), amended LR 37:2662 (September 2011).

§521. Walls and Ceilings

A. The walls and ceilings of all dairy barns shall be smooth, painted or finished in a manner approved by the state health officer and shall be kept clean and in good repair. In case there is a second story above that part of the barn in which cows are milked, the ceiling shall be dust-tight. If the feed room adjoins the milking space it shall be separated therefrom by a dust-tight partition and door. Feed may be stored in the milking portion of the barn only in such a manner as will not increase the dust content of the air, attract flies, or interfere with cleaning of the floor (as in covered, dust-tight boxes, or bins). Open feed dollies may be used for distributing the feed, but not for storing feed in the milking barn. Feed troughs shall be constructed of concrete or other approved impervious and easily cleanable material. A minimum of eight feet ceiling height shall be required in all dairies. When elevated stanchions are used, this height shall be measured from the floor of the elevated portion of the barn.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1267 (June 2002), amended LR 37:2662 (September 2011).

§523. Milk House or Room

A. There shall be provided a milk house or milk room of sufficient size for the cooling, handling, storing of milk and the washing, sanitizing and storing of milk containers and utensils. The milk house or milk room shall conform to the following requirements.

1. It shall be provided with a tight floor constructed of concrete or other impervious easily cleanable material, in good repair, graded to drain through trapped floor drains.

2. It shall have walls and ceilings of such construction as to permit easy cleaning and shall be painted or finished in a manner approved by the state health officer.

3. The milk house shall be provided with a minimum of 20-foot candles of well distributed light.

4. It shall be provided with windows and solid doors. All outside openings shall be effectively protected against

entry of insects, dust and airborne contamination. All outside doors shall be self-closing and open outward.

5. It shall be used for no other purpose than those specified above, except as may be approved by the state health officer.

6. It shall not open directly into a stable or into any room used for domestic purposes.

7. The water supply for the milk room and milking operations shall be from a supply easily accessible, constructed and operated according to Part XII of this Code.

8. It shall have water piped into it and protected against normal freezing conditions.

9. It shall be provided with hot and cold running water under pressure. Water volume and temperature shall be adequate for the cleaning of utensils and operation of automated cleaning systems.

10. It shall be equipped with two-compartment stationary wash and rinse vats, large enough to submerge the largest piece of equipment or container.

11. A conveniently located hand washing facility with hot and cold running water under pressure, soap, air dryer or single service towel shall be provided.

12. The floors, walls, ceilings, windows, tables, shelves, cabinets and any equipment located in the milk house shall be clean. Only articles directly related to milk house activities shall be permitted in the milk house. The milk house shall be free of trash, animals and fowl.

13. Incidental articles may be kept in the milk house provided they are kept clean and ample space is available to conduct normal operations in the milk house and they will not contaminate milk.

14. The milk house shall be adequately ventilated to minimize condensation on floors, walls, ceilings and cleaned utensils.

15. Vents and artificial lighting fixtures shall be installed in a manner to preclude the contamination of bulk milk tank interiors or clean utensil storage areas. They shall not be located over bulk milk tank openings.

16. The state health officer may allow the use of a milk tank truck that is constructed, equipped, located and operated in a manner approved by the state health officer for the storage of raw milk.

17. Milk houses or rooms at dairy farms where the raw milk is transferred from the farm bulk milk tank to milk tank trucks for shipment shall be provided with a hose port in the exterior wall through which the hose used to transfer milk from the bulk tank to the milk tank truck shall be placed during the transfer. The port shall be fitted with a tight fitting door that shall be in good repair and kept closed except when the port is in use. A concrete or equally impervious slab shall be provided under the hose port, sufficiently large to protect the hose from contamination during the transfer of milk. A water hose shall be conveniently located to allow the rinsing of the slab. The area around the slab shall be clean and free of insect harborage or attractants.

18. Milk houses or rooms in which raw milk is shipped in milk cans shall be equipped with mechanical cooling devices, constructed in a manner that meets the 3-A standards or requirements of the PMO, that cool the milk to 7°C (45°F) or less within four hours or less after each can is filled and maintained at that temperature or less until shipped.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1267 (June 2002), amended LR 37:2662 (September 2011).

§525. Reclaimed Water_{df}

A. Potable water utilized for heat exchangers or compressors on a Grade A dairy farm may be salvaged and used for certain limited applications in the milking operation on the dairy farm if the following criteria are met:

1. The reclaimed water_{df} piping system shall meet the requirements of Parts XII and XIV of this Code.

2. Any re-circulated cold reclaimed water_{df} which is used in exchangers, including systems in which a freezing point depressant is used, shall be from a safe source and protected from contamination. Such reclaimed water_{df} shall be tested at the minimum frequencies specified in this Section and shall otherwise comply with any other requirements of this Section. Freezing point depressants shall be non-toxic.

3. The reclaimed water_{df} shall be stored in a storage vessel properly constructed of such material that will not contaminate the reclaimed water_{df} system and will protect the system from possible contamination.

4. The storage vessel shall be equipped with a drain and access point to allow for cleaning.

5. No cross-connection shall exist between the reclaimed water_{df} supply and any unsafe or questionable water supply or any other source of pollution. No cross connection shall exist between any potable water supply or potable water distribution system and the reclaimed water_{df} system.

6. There are no submerged inlets through which the reclaimed water_{df} system may be contaminated.

7. The reclaimed water_{df} shall be of satisfactory organoleptic quality and shall have no off flavors or odors.

8. The reclaimed water_{df} shall comply with the bacteriological standards of Appendix G, Section I of the PMO.

9. Samples of the reclaimed water_{df} shall be collected and analyzed prior to initial approval and semi-annually thereafter.

10. Approved chemicals, such as chlorine, with a suitable retention period, may be used to suppress the development of bacterial growth and prevent the development of tastes and odors in the reclaimed water_{df}.

11. When chemicals are added to the reclaimed water_{df}, a monitoring program for such added chemicals shall be in effect and such chemicals shall not add substances that will prove deleterious to the use of the reclaimed water_{df} or contribute to product contamination.

12. If the reclaimed water_{df} is to be used for the sanitizing of teats or equipment (back-flush systems), approved sanitizers, such as iodine may be added by an automatic proportioning device located downstream from the storage vessel but prior to its end-use application. An approved backflow prevention device shall be installed immediately upstream of the point of chemical addition.

B. Reclaimed water_{df} from the current milking, obtained directly from the discharge of a raw milk heat exchanger or compressor into the wash vat or utensil sink, may be used in the following applications:

1. the one time pre-rinsing of milking equipment, including milk lines, milking claw assembly, milk receiver, etc., and then discharged to waste; or,

2. for non-potable purposes approved by the state health officer, e.g., use as a non-potable water source when the intended use does not require the use of potable water.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2663 (September 2011).

§527. Toilets

A. Every dairy farm shall be provided with one or more sanitary toilets, conveniently located, constructed according to Parts XIII and XIV of this Code, and operated in a sanitary manner. A covered trash container shall be provided in the toilet room. Materials, equipment or utensils used in milk production shall not be stored in the toilet room.

B. Toilet rooms and appurtenances shall be kept clean.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2663 (September 2011).

§529. Construction of Containers and Equipment

A. All multi-use containers, utensils and equipment used in the handling, storage or transportation of milk or milk products shall be constructed of smooth, non-absorbent, non-oxidizable and non-toxic material located as to be easily cleaned, shall be free of exposed copper or brass, and shall be kept in good repair. Joints and seams shall be smooth and easily cleanable. Woven wire cloth shall not be used for straining milk. All milk pails shall be of heavy-gauge material and of small mouth design. The design, construction and manner of employment of all milk equipment shall conform with 3-A Standards and the requirements of the PMO, and be approved by the state health officer in writing prior to installation.

B. Systems are acceptable if they are designed, installed and operated in accordance with the following parameters for reverse flush systems:

1. All product contact surfaces shall conform to the construction criteria of §529.A of this Part.

2. An intervening break to the atmosphere shall be provided between the water and/or chemical solution and the product and/or product contact surfaces at all times.

3. If a pre-rinse cycle is used it shall be with potable water.

4. The system shall provide for:

a. A chemical solution cycle with a chemical solution complying with provisions of Appendix F of the PMO.

b. The chemical solution strength shall be limited to that strength necessary to accomplish its intended effect and shall not leave a significant residual in the milk.

c. A post-rinse cycle with safe water. The use of treated water to prevent psychrophilic microorganisms contamination should be considered.

d. A drain cycle with sufficient time to drain or remove all moisture from the product contact surfaces of the reverse flush system.

5. When air under pressure is used in contact with product or solution contact surfaces, it shall comply with the requirements for air under pressure contained in §929(I) of this Part, provided that an exception to the piping downstream from the terminal filter may be granted when:

- a. the piping is used only for filtered air;
- b. at least one access point is available to determine cleanliness of the air piping; and
- c. the piping is of a smooth, non-absorbent, corrosion-resistant, non-toxic material, including any adhesives used in joints. In some installations, a check valve may be required to prevent water and/or chemical solution from entering these air lines.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2663 (September 2011).

§531. Sanitary Piping

A. All piping used to conduct milk or automated cleaning solutions shall comply with applicable 3-A Sanitary Standards. The installation and use thereof shall be approved, in writing, by the state health officer prior to installation. Detailed plans for mechanically cleaned pipeline systems shall be submitted to the state health officer for written approval prior to installation. No alteration or addition shall be made to any milk pipeline system without prior written approval of the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2664 (September 2011).

Subchapter C. Sanitation

§533. Cleaning of Containers and Equipment

A. All multi-use containers, equipment, and other utensils used in the handling, storage, transportation of milk shall be properly cleaned between each usage, provided that farm bulk tanks shall be emptied and cleaned at least once each 72 hours.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2664 (September 2011).

§535. Sanitizing Treatment of Containers and Equipment

A. All multi-use containers, equipment, and other utensils used in the handling, storage and transportation of milk shall be properly cleaned then sanitized before each usage. When empty and before being returned to a producer by a dairy plant, each container shall be properly cleaned and sanitized.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2664 (September 2011).

§537. Storage

A. All containers and other utensils used in the handling, storage, or transportation of milk shall, unless stored in sanitizing solutions, be stored so as to drain and dry, and so as not to become contaminated before use.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2664 (September 2011).

§539. Handling

A. After sanitizing treatment, the handling of milk containers, utensils or equipment shall be done in such a manner as to preclude the contamination of the milk contact surface.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2664 (September 2011).

§541. Milk Stools, Surcingles, and Anti-Kickers

A. Milk stools, surcingles and anti-kickers shall be clean and stored above the floor.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1268 (June 2002), amended LR 37:2664 (September 2011).

§543. Flanks, Udders and Teats

A. The flanks, bellies, tails and udders shall be clipped as necessary. Udders and teats shall be free from visible dirt or liquids at the time of milking.

B. The udders and teats of all milk cows, goats, sheep, water buffaloes or other hooved mammals shall be cleaned, rinsed with a bactericidal solution and dried prior to milking.

C. The use of a common towel, sponge or similar device for cleaning udders is prohibited.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2664 (September 2011).

§545. Handling of Milk with Abnormalities

A. Milk from lactating animals being treated with medicinal agents, which are capable of being secreted in the milk, shall not be offered for sale for such a period as is recommended by the attending veterinarian or as indicated on the package label of the medicinal agent.

B. Milk with abnormalities shall not be offered for sale and shall be so handled to preclude the infection of other lactating animals or the contamination of milk utensils.

C. Lactating animals secreting milk with abnormalities shall be milked last or in separate equipment which effectively prevents the contamination of the milk to be offered for sale.

D. Equipment, utensils and containers used for the milking or handling of milk with abnormalities shall be

properly cleaned and sanitized after use and prior to being used for the handling of milk to be offered for sale.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2664 (September 2011).

§547. Protection from Contamination

A. No milk shall be strained or poured in the dairy barn.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2665 (September 2011).

§549. Cooling

A. Raw milk for pasteurization shall be cooled to 10EC (50EF) or less within four hours of the commencement of the first milking and to 7EC (45EF) or less within two hours after the completion of milking. Provided, that the blend temperature after the first milking and subsequent milkings does not exceed 10EC (50EF). Provided, further, that Grade A raw milk for pasteurization, that is shipped in milk cans, shall be cooled to 7EC (45EF) or less within four hours after each can has been filled.

B. The construction and operation of all raw milk cooling equipment shall comply with 3-A Standards or §2113(H) of this Part as appropriate.

C. All farm bulk milk tanks manufactured after January 1, 2000 shall be equipped with a temperature recording device approved by the state health officer with concurrence of the FDA.

1. The recording device shall be operated continuously and be maintained in a properly functioning manner. Circular charts shall not overlap.

2. The recording device shall be calibrated with a traceable standard thermometer at least once in each six month period in a manner acceptable to the state health officer. The calibration shall be documented on records available for review by the state health officer.

3. Recording thermometer charts shall be maintained on the premises for a period of a minimum of six months and available to the state health officer.

4. The recording thermometer should be installed in an area convenient to the milk storage tank and acceptable to the state health officer.

5. The recording thermometer sensor shall be located to permit the registering of the temperature of the contents when the tank contains no more than 10 percent of its calibrated capacity.

6. The recording thermometers shall comply with the requirements for such thermometers contained in the *PMO*.

7. A recording thermometer or any other device that meets the specifications of the *PMO* and is acceptable to the state health officer can be used to monitor and record the bulk tank temperature.

8. The recording thermometer charts shall properly identify the producer, date and signature of the person removing the chart.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2665 (September 2011).

§551. Cow Feed

A. No cows shall be fed any substance in a state of putrefaction or any swill or unwholesome feed. This regulation shall not be construed to prohibit the use of properly prepared ensilage.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2665 (September 2011).

§553. Insect and Rodent Control

A. Effective measures shall be taken to prevent the contamination of milk, containers, equipment, and utensils by insects, rodents, and by chemicals used to control such vermin. Milk houses shall be free of insects and rodents. Surroundings shall be kept neat, clean, and free of conditions which might harbor or be conducive to the breeding of insects and rodents. Feed shall be stored in such a manner that it does not attract birds, rodents or insects.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2665 (September 2011).

§555. Personal Cleanliness

A. All persons coming in contact with milk, containers or equipment shall wear clean outer garments and shall keep their hands clean at all times while thus engaged.

B. Milkers' hands shall be clean and dried with a clean towel immediately before milking and following any interruption in the milking operation. A faucet dedicated to the rinsing of milkers hands shall be conveniently located in the milking area. Wet-hand milking is prohibited.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2665 (September 2011).

§557. Clarifiers in the Milk House

A. It shall be unlawful for a milk producer to use any clarifiers, equipment or device in the milk house or dairy barn that would remove or alter a portion or all of the constituents of the milk, provided that this would not prohibit the use of single service filters in the milk house to remove hair or foreign particles that may accidentally gain access to the milk.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2665 (September 2011).

§559. Drug and Chemical Control

A. Cleaners and sanitizers shall be stored in properly identified, dedicated end-use containers.

B. Animal drugs, medications and their administration equipment shall be stored in such a manner that milk, milking equipment and cleaning equipment are not subject to contamination.

C. Animal drugs and medications shall be properly labeled and segregated (lactating from non-lactating).

D. Unapproved drugs shall not be used.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2665 (September 2011).

§561. Personal Cleanliness

[formerly paragraph 7:075]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), repealed LR 37:2666 (September 2011).

Chapter 7. Sampling, Hauling and Transporting of Milk

§701. Milk Tank Trucks

A. The construction of all milk tank trucks shall comply with applicable 3-A Standards and the requirements of the PMO.

B. Permitting. Each tank truck that loads or unloads milk or other dairy products in the State of Louisiana shall bear a current, valid milk tank truck permit issued by the state health officer, provided that milk tank trucks bearing a permit issued by a milk or dairy regulatory agency from another state whose milk tank truck regulations and inspectional procedures have been determined, by the state health officer, to be equivalent to those contained in this Part may be loaded or unloaded for an indefinite period until such milk tank trucks have been inspected and permitted by the state health officer. Milk tank trucks bearing a permit issued by a milk or dairy regulatory agency from another state whose permitting regulations or inspectional procedures for milk tank trucks have been determined, by the state health officer, not to be equivalent to those contained in this Part, may be loaded or unloaded for a period not to exceed five times in a one month period, provided further that each dairy plant maintain a log showing the dates and times each milk tank truck is loaded or unloaded and such log is made available to the state health officer for review. When such milk tank trucks have been loaded or unloaded more than five times in a one month period at a dairy plant in Louisiana, the plant shall contact the state health officer expeditiously and make necessary arrangements to have such milk tank trucks inspected and permitted. After the plant has done this, they may continue to load or unload such milk tank trucks until they have been inspected by the state health officer. Upon inspecting the milk tank truck, should the state health officer determine that it is not in substantial compliance with this Part and deny the issuance of a permit for the milk tank truck, it shall not load or unload dairy products in the state until all violations have been corrected and verified in a manner approved by the state health officer.

1. Under no circumstances or situations shall milk or other dairy products be loaded onto or unloaded from a tank truck that does not bear a current, valid permit issued by an official milk or dairy regulatory agency without prior authorization from the state health officer.

2. Owners of milk tank trucks that bear a current, valid permit issued by other state official milk or dairy regulatory agencies shall not be required to pay any inspection or permit fees of any kind or type.

3. The state health officer shall perform an inspection of the milk tank truck and its appurtenances prior to the issuance of the permit. This inspection shall be comprehensive and shall include a visual inspection of all of the product contact surfaces of the interior of the tank (interior surfaces of the tank, CIP equipment and any other product contact surfaces). This may be done by the inspector entering the interior of the tank or by using instruments that enable the inspector to visually observe all product contact surfaces in the interior of the tank. All other product surfaces (including pumps, valves, hoses, sampling equipment, etc.) shall be inspected.

4. Milk tank trucks that are found to be in compliance with §701.A above and are in substantial compliance with all other requirements of this Code, but are not equipped with an internal CIP system which complies with 3-A Standards shall be issued a restricted permit. This restricted permit shall authorize them to be unloaded only at plants that have cleaning systems (including manual cleaning and sanitizing programs), approved by the state health officer, capable of properly cleaning and sanitizing the vehicle. Provided, that arrangements may be made to have the milk tank truck properly cleaned and sanitized at a permitted dairy plant or milk tank truck cleaning facility that is capable of properly cleaning and sanitizing such trucks, as determined by the state health officer, within four hours after the milk tank truck is unloaded and prior to next use. Milk tank trucks that haul multiple loads within a 24 hours period, and are not empty for periods exceeding four hours each, during that time period, are excluded from this requirement, provided that they are cleaned and sanitized at a dairy plant or cleaning station that can accommodate such milk tank trucks.

5. Permits shall be valid for a period of one year unless suspended or revoked by the state health officer for cause.

6. A decal indicating the permit number and date of expiration shall be affixed to the milk tank truck trailer, in an area near the rear of the milk tank, where it can easily be seen.

7. Dairy plants that do not have facilities for properly cleaning and sanitizing milk tank trucks shall not unload milk tank truck loads of milk or dairy products. Provided, that the milk tank truck may be unloaded when arrangements are made by the dairy plant for the milk tank truck to be properly cleaned and sanitized at a permitted dairy plant or milk tank truck cleaning facility capable of properly cleaning and sanitizing the milk tank truck within four hours after being unloaded and prior to next use.

8. Milk tank trucks shall transport milk products only, provided that the state health officer may authorize the transporting of other food grade products. Milk tank trucks that have transported egg products shall not be used for transportation of milk products.

9. Milk tank trucks that have transported unpasteurized products shall not be used to transport pasteurized products that will not be re-pasteurized.

C. The following applies to the suspension of permit, removal from service, and/or inspection reports relative to milk tank trucks:

1. When the state health officer determines that a milk tank truck has significant cleaning, construction or repair defects he shall:

a. in cases in which the milk tank truck has been issued a Louisiana permit, suspend the permit immediately until such time as the discrepancies are corrected and verified by an inspection by the state health officer; or

b. in cases in which the milk tank truck has been issued a permit by a state other than Louisiana:

i. Refuse to issue a permit for the milk tank truck.

ii. Notify the operator that the milk tank truck shall not be authorized to

transport milk products in the State of Louisiana until such time as the discrepancies have been corrected and verified by the milk regulatory agency that issued the permit in a manner acceptable to the state health officer.

iii. Include, on the inspection report, a statement indicating that the milk tank truck shall not be authorized to transport milk products in Louisiana until the discrepancies have been corrected and verified by the milk regulatory agency that issued the permit.

iv. Expediently contact the milk regulatory agency that issued the permit, give notification of the problem and make necessary arrangements to have that regulatory agency notify the state health officer when the discrepancies have been corrected and verified.

2. Each time a milk tank truck permitted by a state other than Louisiana has been inspected by the state health officer, he shall send a copy of the inspection report to the state milk regulatory agency that issued the permit.

D. The following cleaning and sanitizing requirements apply to milk tank trucks.

1. Each milk tank truck shall be properly cleaned and sanitized at a dairy plant or milk tank truck cleaning facility possessing a valid permit, issued by the state health officer or the official state agency having regulatory authority over the plant or facility, prior to first use. When time elapsed after cleaning and sanitizing and before first use exceeds 96 hours, the tank shall be re-sanitized. Provided, when the time elapsed between cleaning and sanitizing and before first use exceeds seven days, the milk tank truck shall be properly cleaned and sanitized prior to use.

2. It shall be the responsibility of the dairy plant or milk tank truck cleaning facility that cleans and sanitizes the milk tank truck to properly clean and sanitize the interior of the tank, the outlet valve(s), dome dust cover, dome cover, tank cover gasket and tank cover vent.

3. It shall be the responsibility of the operator of the milk tank truck to properly clean and sanitize milk hose(s), pumps, sampling equipment and pump compartments of bulk milk pickup tank trucks. These appurtenances shall be properly cleaned and sanitized by the milk tank truck operator each time the milk tank truck is cleaned and sanitized, regardless of whether they were used or not used in the loading of the milk tank truck. Removable fittings on the hoses shall be disassembled and properly cleaned at least once each week.

4. It is allowable to pickup multiple loads within a 24-hour period provided that the milk tank is washed and sanitized after each day used, provided further that the time interval between any unloading and loading during that 24-hour period does not exceed four hours.

5. It is allowable for a milk tank truck to be unloaded at one facility and proceed to a permitted facility to be washed and sanitized, provided that the time interval between unloading and washing does not exceed four hours.

6. Milk tank trucks shall be cleaned and sanitized only at facilities possessing a valid permit for such activities issued by the state health officer or by the milk regulatory agency in the state in which the facility is located.

7. The following cleaning and sanitization tag/record requirements are applicable to milk tank trucks:

a. The operator of the milk tank truck shall be responsible for assuring that the milk tank truck has been properly cleaned, sanitized and has a cleaning and sanitization tag placed on the tank truck by the facility that last cleaned and sanitized the tank truck. A milk tank truck that does not have a valid cleaning and sanitization tag shall not be loaded or unloaded until the proper cleaning and sanitization can be verified and approval is received from the state health officer.

b. A cleaning and sanitization tag shall be affixed to the outlet valve or in an area in the vicinity of the outlet valve of the milk tank truck by the plant or cleaning facility that cleaned and sanitized the truck. The tag shall remain in place and intact until the tank truck is next cleaned and sanitized. When the milk tank truck is cleaned and sanitized, the cleaning and sanitization tag shall be removed and stored at that location for a period of not less than 15 days. In cases in which the tank truck is only sanitized and not cleaned and sanitized, the date, time, facility's name and location, and initials of the person that sanitized the truck shall be annotated on the existing tag. This tag shall remain in place and intact until the tank truck receives a complete cleaning and sanitization.

c. The following information shall be recorded on the cleaning and sanitization tag:

i. identification of the milk tank truck;

ii. date, time, facility's name and location where the milk tank truck was cleaned and sanitized;

iii. signature or initial of person who cleaned and sanitized the milk tank truck;

iv. the numbers of the numbered seals placed on the tank truck; and

v. date, time, facility name and location where product was unloaded from the truck.

d. The maintenance of all information on the cleaning and sanitization tag shall be the responsibility of bulk milk hauler/sampler or the milk tank truck operator until the tank truck is cleaned and sanitized.

8. The date, time, facility's name and location of the last cleaning and sanitization of the milk tank truck shall be provided to the State Health Officer during any milk tank truck inspection and such information shall be recorded on the milk tank truck's inspection report.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1269 (June 2002), amended LR 37:2666 (September 2011).

§703. Sealing and Protection of Milk Tank Trucks

A. Tamper evident, numbered seals shall be placed on all outer openings of the tank (C.I.P. fittings, valves, vents, hatches, dust covers and doors of the valve, pump and sample compartment) by the milk receiver/sampler immediately upon completion of washing and sanitizing of the milk tank truck, provided that the operator of the milk tank truck may lock the doors of the valve, pump and sample compartments with padlocks instead of being sealed.

B. The tank truck shall be constructed in such a manner as to preclude the opening of any sealed portion of the tank truck without breaking the seals (hinges on dust cover, doors, etc.).

C. In cases in which a milk tank truck is unloaded at a dairy plant, is not washed and sanitized and will be used to haul milk or milk products, it shall be sealed and protected as prescribed in §703.A above and the date, time, location the milk tank truck was unloaded shall be recorded on the cleaning and sanitizing tag by the milk receiver/sampler.

D. The seal numbers shall be annotated on the cleaning and sanitization tag.

E. It shall be the responsibility of the milk tank truck operator to insure that the milk tank truck has been properly cleaned and sanitized.

F. It shall be the responsibility of the milk tank truck operator to insure that the milk tank truck has been properly sealed and compartments are locked or sealed and maintained in such manner at all times that the milk tank truck is not being loaded, unloaded or under immediate control of the operator.

G. The milk tank truck operator shall check the integrity of all seals and locks upon arrival at the first farm or other facility from which milk or milk products are to be loaded.

H. When seals must be broken in order to load the truck, the operator shall store the seals in a secure location on the truck and record the seal numbers and reason for breaking the seals on the cleaning and sanitization tag or on the manifest.

I. If at any time the operator discovers that a seal has been broken or removed without his/her knowledge, he/she shall immediately notify the state health officer and ensure that the milk tank truck is not unloaded without permission from the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), amended LR 37:2668 (September 2011).

§705. Manifest for Bulk Milk Tank Trucks

A. Bulk milk tank trucks that pick up milk from dairy farms and haul it to dairy plants shall have a shipping statement (manifest) containing:

1. name and address of tank truck owner;
2. tank truck permit number and state issuing permit;
3. bulk milk tank truck operator/sampler(s) name(s) and permit number(s) and state issuing permit(s); and,
4. the bulk milk tank truck operator/sampler signature.

B. The following information concerning each individual dairy farm having milk represented on the load shall be

annotated on the manifest by the bulk milk tank truck operator/sampler:

1. name and permit number of dairy farm;
2. date and time milk was picked up;
3. identity of bulk tank on farms where milk was picked up from two or more farm bulk tanks;
4. temperature of the milk in each bulk tank;
5. milk gauge reading of each bulk tank;
6. pounds of milk collected from each bulk tank;
7. the initials of the bulk milk tank truck operator/sampler who picked up the milk; and,
8. the BTU permit number of the BTU to which the farm belonged.

C. The following information shall be annotated on manifest at point and time of unloading of bulk milk tank truck by the receiver/sampler:

1. the name and permit number of the plant or receiving station at which the tank truck was unloaded;
2. the date and time the tank truck was unloaded (this shall also be recorded on the cleaning and sanitizing tag);
3. the temperature of the load of milk;
4. the numbers of the numbered seals on the milk tank truck;
5. the date and time of the last cleaning and sanitization of the tank truck as annotated on the cleaning and sanitization tag; and,
6. the dairy plant receiver/sampler's permit number and signature.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), amended LR 37:2668 (September 2011).

§707. Bulk Milk Tank Truck Operator/Sampler

A. A bulk milk tank truck operator/sampler is a person who collects official raw milk samples and may transport raw milk from dairy farms to milk plants, receiving stations, transfer stations or other food processing plants.

B. Milk tank truck and milk tank transport operators who are not licensed as bulk milk tank truck operator/samplers shall not perform any of the duties of a bulk milk tank truck operator/sampler that directly involves the collection of official samples or measuring of milk for official records.

C. Milk tank truck operators who are not bulk milk tank truck operator/samplers and perform any of the duties of a bulk milk tank truck operator/sampler that do not involve the collection of samples or measuring of milk shall conform with the requirements for such duties contained in this Part.

D. Bulk milk tank truck operator/samplers shall obtain a permit to operate a bulk milk pickup tank truck and collect official samples of raw milk prior to the performance of these duties.

E. The bulk milk tank truck operator/sampler must be instructed in proper procedures of milk pick up and sample collection prior to permit application.

F. The bulk milk tank truck operator/sampler shall obtain a passing score on a test administered by the state health officer and demonstrate his ability to perform the required milk pick up and sampling duties to the state health officer prior to being issued a permit.

G. Each bulk milk tank truck operator/sampler shall attend one of the bulk milk pickup tanker operator/sampler

seminars conducted biannually by the state health officer and receive a passing score on the test administered as part of the seminar. Failure to attend the required seminar or failure to achieve a passing score on the test shall result in suspension of his/her permit.

H. The examination shall be composed of a minimum of 20 questions broken down into the following areas:

1. six questions relating to sanitation and personal cleanliness;
2. six questions relating to sampling and weighing procedures;
3. four questions relating to equipment (including proper use, care, cleaning, etc); and
4. four questions relating to proper record keeping requirements.

I. Candidates failing the exam (a score of less than 70 percent) shall be denied permits or licenses until such time as they achieve a passing score.

J. The bulk milk hauler/sampler shall insure that he/she has the following equipment at all times while engaged in picking up and hauling milk:

1. sample rack and compartment to hold all samples collected;
2. refrigerant to hold temperature of milk samples between 0° - 4.4°C (32° - 40°F);
3. sample dipper or other sampling devices of sanitary design approved by the state health officer;
4. sterile sample bags, tubes or bottles; stored properly;
5. calibrated pocket thermometer; certified for accuracy every six months; accuracy K 1°C (2°F);
6. approved sanitizing agent and sample dipper container;
7. watch for timing milk agitation; and
8. appropriate sanitizer test kit.

K. Specific procedures that shall be performed by each milk tank truck operator/sampler:

1. The bulk milk hauler/sampler shall insure that all outer openings of the milk tank truck are properly sealed with numbered seals at all times the milk tank truck is not being loaded, unloaded or under his/her immediate supervision; padlocks may be used on the valve, pump and sample compartments.

2. The bulk milk hauler/sampler shall check the integrity of all seals and padlocks upon arrival at the first point at which the milk tank truck is to be loaded.

3. If any seal must be broken in order to load the truck, the bulk milk tank truck operator/sampler shall record the number of the seal(s) broken on the cleaning and sanitizing tag or manifest, this record may be referred to as a "broken seal record". The broken seal shall be placed in a secure place in the milk tank truck so that it can be presented to the milk receiver/sampler at the unloading point.

4. If at any time should the bulk milk tank truck operator/sampler find that any numbered seal or padlock securing the outer openings of the milk tank truck has been removed without his/her permission, he/she shall immediately notify the state health officer and then follow instructions given by the state health officer.

L. The specific procedures used by an individual bulk milk tank truck operator must be such that they preclude contamination of the milk and milk contact surfaces. The

individual bulk milk tank truck operator shall insure the accuracy of all measurements taken, that samples collected are representative of the product sampled and that records and reports are accurate and complete.

M. The following are examples of acceptable procedures used in the measurement, sampling and pick up of milk from farm bulk tanks by the bulk milk tank truck operator/sampler:

1. he/she shall practice good hygiene, shall maintain a neat and clean appearance and not use tobacco in the milk house;

2. wash hands thoroughly and dry with a clean single service towel or acceptable air dryer immediately prior to measuring and sampling the milk;

3. examine the milk by sight and smell for any off odor or any other abnormalities that would classify the milk as not being acceptable. Reject if necessary;

4. measure the milk prior to agitation. If the agitator is running upon arrival at the milk house, the measurement shall be taken only after the surface of the milk has become quiescent;

5. carefully insert the measuring rod, after it has been wiped dry with a single service towel, into the tank. Repeat this procedure until two identical measurements are taken. Record measurements on the farm weight ticket;

6. do not contaminate the milk during measurement;

7. agitate the milk a sufficient time to obtain a homogeneous blend. Tanks with a capacity of less than 1,500 gallons, five minutes, and more than 1,500 gallons, 10 minutes;

8. while the milk is being agitated, insert thermometer into milk and determine temperature of the milk. Rinse thermometer and place it into holder. Record temperature;

9. while the tank is being agitated, bring the sample container, dipper, dipper container or single service sampling tubes and sanitizing agent for the outlet valve into the milk house. Remove the cap from the tank outlet valve and examine for milk deposits or foreign matter and then sanitize if necessary. Protect the hose cap from contamination when removing it from the transfer hose and during storage;

10. collect samples only after the milk has been properly agitated. Remove the dipper or sampling device from the sanitizing solution or sterile container and rinse at least twice in the milk;

11. collect a representative sample or samples from the bulk tank. When transferring milk from the sampling equipment, caution should be used to assure that no milk is spilled into the tank. Do not fill the sampling container more than $\frac{3}{4}$ full. Close the cover on the sample container;

12. rinse the dipper and place in its carrying container;

13. close the cover or lid of the bulk tank;

14. identify samples at the point of collection with the producer's number annotated on the sample container;

15. take a temperature control sample at the first stop of each load. This sample must be labeled with time, date, temperature, producer and bulk milk tank truck operator/sampler identification;

16. place the sample or samples immediately into the sample storage case;

17. record milk temperature, time, date of pick up and bulk milk tank truck operator/sampler identification on the farm weight ticket. He/she shall check the accuracy of the

thermometer on each bulk tank monthly and record results on document that remains in the farm. Pocket thermometer must be sanitized before use;

18. once the measurement and sampling procedures are completed, with the agitator still running, open the outlet valve and start the pump. Turn off the agitator when the level of milk is below the level that will cause over agitation;

19. when the milk has been removed from the tank, disconnect the transfer hose from the outlet valve and cap the hose;

20. observe the inside surfaces of the bulk tank for foreign matter or extraneous material and record any objectionable observations on the farm weight ticket;

21. with the outlet valve open, thoroughly rinse the entire inside surface of the tank with warm water;

22. samples shall be cooled to and held between 0EC (32EF) and 4.4EC (40EF) during transit to the laboratory;

23. means shall be provided to properly protect the samples in the sample case. Keep refrigerant at an acceptable level;

24. racks must be provided so that the samples are properly cooled in an ice bath and are not submerged in the coolant; and,

25. adequate insulation of the sample container box or ice chest shall be provided to maintain the proper temperature of the samples.

N. At least one sample of raw milk collected by the bulk milk tank operator/sampler from each farm bulk milk tank represented on each load shall accompany the load to the dairy plant at which it will be unloaded.

O. The bulk milk tank truck operator/sampler shall follow the practices and procedures described in *Appendix B*, Milk Sampling, Hauling and Transportation of the *PMO* as well as those contained in this Part.

P. An on-site evaluation of the bulk milk tank truck operator/sampler's techniques should be made by the state health officer at least once each 24 months.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), amended LR 37:2668 (September 2011).

§709. Posting Inspection Reports
[formerly paragraph 7:080]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), repealed LR 37:2670 (September 2011).

§711. Field Supervision
[formerly paragraph 7:081]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), repealed LR 37:2670 (September 2011).

§713. Degrading on Physical Violation
[formerly paragraph 7:082]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), repealed LR 37:2670 (September 2011).

§715. Notification of Laboratory Analysis
[formerly paragraph 7:083]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), repealed LR 37:2670 (September 2011).

§717. Degrading on Laboratory Analysis
[formerly paragraph 7:084]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), repealed LR 37:2670 (September 2011).

§719. Insanitary Conditions
[formerly paragraph 7:085]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1270 (June 2002), repealed LR 37:2670 (September 2011).

§721. Continuous Grading
[formerly paragraph 7:086]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1271 (June 2002), repealed LR 37:2670 (September 2011).

§723. Adulterated Milk
[formerly paragraph 7:087]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1271 (June 2002), repealed LR 37:2670 (September 2011).

§725. Application for Regrading
[formerly paragraph 7:088]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1271 (June 2002), repealed LR 37:2670 (September 2011).

§727. Regrading on Laboratory Results
[formerly paragraph 7:089]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1271 (June 2002), repealed LR 37:2670 (September 2011).

§729. Regrading on Physical Violations
[formerly paragraph 7:090]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5 (15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1271 (June 2002), repealed LR 37:2670 (September 2011).

Chapter 9. General Requirements for Dairy Plants

§901. General Requirements

A. The requirements contained within this chapter pertain to Grade A dairy plants and dairy plants in general. Some types of dairy plants are not required to conform with each of these requirements. Those requirements to which specific types of dairy plants shall be required to conform shall be listed in the chapter of this Part that pertains to that specific type of plant.

B. The state health officer has the authority to require an individual dairy plant to implement any additional requirements he/she determines necessary to prevent a compromise to food safety in that individual dairy plant. Failure to comply with such requirements may constitute grounds for suspension or denial of permit.

C. Dairy plants that produce Grade A pasteurized, ultra-pasteurized or aseptically processed milk and milk products shall conform with each of the requirements contained in this Chapter, provided that dairy plants that produce Grade A pasteurized, ultra-pasteurized or aseptically processed milk and milk products which have been required or authorized by the state health officer to be regulated under the provisions of Chapter 11 of this Part [Hazard Analysis Critical Control (HACCP) systems] shall conform with the requirements contained in Chapter 11 of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1271 (June 2002), amended LR 37:2671 (September 2011).

§903. Approval of Plans

A. All milk, milk products plants and other dairy plants domiciled in the State from which dairy products are processed, packaged or offered for sale in the state and which are hereafter constructed, reconstructed, or renovated shall conform with the requirements of this Part. Prior to construction, reconstruction or alterations, written approval of plans and specifications shall be obtained from the state health officer.

B. Prior to installation or modification, written approval shall be obtained from the state health officer of plans and specifications for the design, construction and manner of employment for all equipment used in dairy plants.

C. Written, detailed plans describing the processing of each product shall be submitted to the state health officer for approval prior to manufacture of product and prior to any process or product changes.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1271 (June 2002), amended LR 37:2671 (September 2011).

Subchapter A. Milk, Milk Products and Non Milk Derived Ingredients Receiving

§905. Raw Milk Receiving

A. All milk and other dairy products received by each dairy plant, including receiving stations and transfer stations,

shall be from sources which possess a current valid permit issued by the state health officer.

B. Milk or dairy products shall not be loaded onto or unloaded from tank trucks that do not bear a current, valid permit issued by an official milk or dairy regulatory agency.

C. For any milk tank truck that bears a permit of an official state milk or dairy regulatory agency from another state whose milk tank truck regulations have been determined by the state health officer not to be equivalent to those contained in this Part, each dairy facility shall maintain a log showing the dates and times that each and every such truck has been loaded or unloaded. Such logs shall be made available for review by the state health officer. When such milk tank trucks have been loaded or unloaded by a dairy facility more than five times in a one month period, the dairy facility shall expeditiously notify the state health officer and make necessary arrangements for the state health officer to inspect and permit such milk tank trucks. The facility may continue to load and unload such milk tank trucks until the state health officer has inspected and permitted them.

D. Each dairy facility (including dairy plants, receiving stations, transfer stations and milk tank truck cleaning facilities) that cleans and sanitizes milk tank trucks or other confined spaces which hold dairy products, such as tanks, shall be equipped with approved, functional equipment, devices, etc., and provide all services and programs necessary to satisfy the confined space entry safety requirements of the Occupational Safety and Health Administration (OSHA) thereby permitting personnel to safely enter the interior of the milk tank trucks and other confined spaces. The dairy facility shall allow the state health officer to use all such equipment, devices, services and programs, etc., and shall provide the state health officer with any assistance necessary to enable the state health officer (or his authorized representative) to safely enter and inspect the interior of the milk tank trucks or other confined spaces. Dairy facilities, as identified above, which fail to provide the state health officer with any assistance necessary and required under OSHA regulations to safely enter and inspect the interior of milk tank trucks or other confined spaces may be held liable should the safety of the state health officer (or his authorized representative) be in peril while inside of milk tank trucks or any other confined space.

E. When the area in which milk tank trucks are unloaded is not totally enclosed or doors of the unloading area are open during unloading, a filter approved by the state health officer, shall be placed on the manhole or air inlet of the milk tank truck and a roof or ceiling must be provided over the area.

F. All milk or other dairy products received by each dairy plant, including receiving stations, shall be received by a dairy receiver/sampler possessing a current, valid dairy plant receiver/sampler permit issued by the state health officer.

G. Each dairy plant, including receiving stations receiving raw milk, shall be equipped with a drug residue screening laboratory approved by the state health officer.

H. The construction of the laboratory, the laboratory equipment, sampling procedures and laboratory examinations shall be in compliance with the *PMO*, the *Official Methods of Analysis* and the *Standards Methods for*

the Examination of Dairy Products and shall be approved by the state health officer.

I. All drug residue analyses shall be performed by approved analysts certified by the state health officer.

J. Each dairy plant and receiving station shall maintain all records of testing required by the state health officer.

K. A sample of raw milk shall be collected from each milk tank truckload of raw milk by a dairy plant receiver/sampler and tested for drug residues in the milk drug residue screening laboratory of the dairy plant prior to the milk tank truck being unloaded.

L. In cases where a dairy plant receives raw milk in cans, a composite sample composed of raw milk from each can of raw milk shipped from each individual dairy farm, shall be collected and tested for drug residues prior to the milk from that individual dairy farm being commingled with any other milk.

M. In cases where a dairy plant processes raw milk produced by a dairy farm located on the same premises, all raw milk produced by the dairy farm shall be tested for drug residues prior to processing.

N. When any sample referred to in §905(K),(L) or (M) above is found to be positive for drug residues, the dairy plant or receiving station shall:

1. refuse to unload the milk tank truck, not commingle any cans of milk from that farm with any other milk, not commingle any milk found to be positive for drug residues with any other milk and isolate the contaminated milk from any other milk;

2. immediately notify the state health officer;

3. insure that the contaminated milk remains on the premises of the dairy plant or receiving station and ensure that it is isolated from any other milk until the state health officer determines the disposition of the milk and authorizes it to be moved; and,

4. immediately cease processing of any product that has inadvertently become commingled with milk contaminated with drug residues, isolate the product, notify the state health officer and expeditiously remove all such product that has entered commerce.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1272 (June 2002), amended LR 37:2671 (September 2011).

§907. Dairy Plant Receivers/Samplers

A. Prior to performing the duties associated with same, dairy plant receivers/samplers shall obtain a permit from the state health officer for receiving tank truck or other type of container loads of milk and milk products as well as to collect and handle official samples of milk and milk products.

B. Prior to applying for a permit, the person desiring to become permitted as a dairy plant receiver/sampler shall be instructed in the proper procedures for loading and receiving loads of milk and milk products and for collecting/handling official samples of milk and milk products. These procedures shall be properly performed by each dairy plant receiver/sampler. The instructions of dairy plant receivers/samplers shall minimally include the following:

1. obtaining producer samples from the hauler;

2. checking temperature of the pilot sample;
3. immediately placing samples in an approved refrigerator;

4. checking the manifest for accuracy;

5. verifying that the bulk milk tank truck operator/sampler that picked up milk from the farm has a current, valid permit;

6. verifying that the milk tank truck has a current, valid permit issued by an official state milk or dairy products regulatory agency whose milk tank truck regulations are equivalent to those contained in this Part;

7. recording the permit number, the date and the time that milk tank trucks which bear current, valid permits issued by an official state milk or dairy products regulatory agency whose milk tank trucks regulations have been determined by the state health officer not to be equivalent to those contained in this Part, and notifying facility management when such milk tank trucks have been loaded or unloaded more than five times in any one month period;

8. verifying that the load is from an approved source;

9. checking the cleaning and sanitization tag;

10. recording the date and time the product was unloaded on the cleaning and sanitizing tag;

11. reporting any discrepancies in any of the above to his/her supervisor immediately and does not proceed any further without orders from supervisor;

12. verify the identity of each milk tank truck operator and that he/she is an authorized operator of the vehicle;

13. checking the seals to verify that they are present, intact and agree with the numbers recorded on the cleaning and sanitization tag and that any seals that have been broken are available and agree with the number of the broken seal numbers on the sanitization tag or manifest;

14. immediately notifying the state health officer if seals are missing or if the seal record does not match the intact seals or the operator is unable to produce broken seals for seal numbers recorded on "broken seal record" on the cleaning and sanitization tag. In any such case, the milk tank truck shall not be unloaded without authorization from the state health officer;

15. examining the load of milk or milk products for foreign matter;

16. collecting official samples of milk and milk products from the load;

17. checking and recording the temperature of the load;

18. testing or having a sample from each load of raw milk tested for drug residue;

19. placing dome filter over the dome;

20. unloading the tanker in the manner prescribed by the dairy plant;

21. cleaning and sanitizing the interior of the tank using the procedures prescribed by the plant. When an automated cleaning system is used, the milk tank truck permit number shall be recorded in the appropriate place on the CIP recording chart;

22. cleaning and sanitizing the dome cover, dust cover, gasket, vent and outlet valve(s);

23. inspecting the pump compartment, sample compartment, pump, hoses, sample chest, sample canister, sampling dipper and all other milk and handling appurtenances;

24. placing numbered seals on the dome dust cover, C.I.P. fittings and all other openings of the tank or ensuring that padlocks have been locked as provided in §703.A;

25. recording the cleaning and sanitizing date and time and seal numbers, on the cleaning and sanitization tag;

26. upon verifying that the requirement in §907.B.21.-25. above has been properly satisfied, affixing a cleaning and sanitization tag to the outlet valves; and,

27. cleaning, sanitizing and storing receiving equipment properly.

C. The dairy plant receiver/sampler shall obtain a passing score on a test administered by the state health officer prior to being issued a permit.

D. Bi-annually, each dairy plant receiver/sampler shall attend one of the bulk milk pickup tanker operator/sampler and dairy plant receiver/sampler seminars conducted by the state health officer and receive a passing score on the test administered as part of the seminar. Failure to attend the required seminar or failure to achieve a passing score on the test shall result in suspension of his/her permit.

E. The state health officer shall evaluate the performance of each dairy plant receiver/sampler at least once each three-month period.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1272 (June 2002), amended LR 37:2672 (September 2011).

§909. Receiving and Handling of Milk Derived and Non-Dairy Ingredients

A. Non-milk derived ingredients used in the manufacturing of dairy products shall have been determined by the FDA to be GRAS for use in dairy products.

B. All dairy ingredients used in the manufacture of dairy products shall be produced, packed, held and shipped in a manner consistent with the requirements of this Part.

C. All non-milk derived ingredients shall be purchased only from suppliers which certify or guarantee that their products have been produced and handled in a manner that will assure a safe and wholesome ingredient which will not adulterate the finished product. Records of such verification or guarantee shall be available for review by the state health officer.

D. A safety and quality inspection of all incoming milk derived and non-milk derived ingredients shall be performed. Records of the results of this inspection, corrective action taken when problems are identified and the date and initials of the person performing the inspection shall be maintained and made available to the state health officer. The inspection shall include an evaluation for conditions related to:

1. product identity and labeling;
2. package condition and integrity;
3. bulging;
4. leaking;
5. dirt/grime;
6. insect infestation;
7. rodent damage; and,
8. off-odors and non-food materials (especially toxic compounds) or residues of such materials in the truck or other conveyance.

E. All ingredients used in the manufacture of dairy products shall be stored and handled in such a manner as to preclude their contamination. Particular attention shall be given to closing or resealing of containers that have been opened and the contents of which have been partially used.

F. Dusty raw ingredient blending or liquification operations which create powdery conditions shall not be conducted in areas where pasteurized products are handled or stored.

G. Dairy products operations in which ingredients are exposed shall be conducted in processing areas. Except when ingredients are being added, all openings into vessels and lines containing product shall be covered. The outer box or wrapper of powdered ingredients shall be removed prior to dumping into mixing vessels.

H. All liquid ingredients which will support bacterial growth shall be kept or immediately cooled to 7EC (45EF) or below.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1272 (June 2002), amended LR 37:2673 (September 2011).

Subchapter B. Dairy Plant Construction, Sanitation and Operation

§911. Immediate Surroundings

A. The immediate surroundings of the dairy plant shall be well drained and kept neat, clean, and free from conditions which might attract flies, insects or rodents or otherwise constitute a nuisance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1272 (June 2002), amended LR 37:2673 (September 2011).

§913. Floors

A. The floors of all rooms in which milk or dairy products are received, handled or stored or in which utensils are cleaned shall be constructed of concrete or other equally impervious and easily cleanable material and shall be smooth, properly drained, provided with trapped drains, kept clean and in good repair.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1272 (June 2002), amended LR 37:2673 (September 2011).

§915. Walls and Ceilings

A. Walls and ceilings of rooms in which milk and dairy products are handled or stored or in which utensils are cleaned shall be constructed of concrete or other equally impervious and easily cleanable material and kept clean and in good repair.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1272 (June 2002), amended LR 37:2673 (September 2011).

§917. Doors and Windows

A. The dairy plant shall be provided with solid doors which shall be kept closed during the presence of dusty conditions, smoke or fumes. All outside openings shall be effectively protected against the entry of insects, rodents, dust and airborne contamination. Screen doors shall be self-closing and open outward.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S.

40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1272 (June 2002), amended LR 37:2674 (September 2011).

§919. Light and Ventilation

A. All rooms in which milk or dairy products are handled or processed and in which milk containers, equipment and utensils are cleaned shall be provided with a minimum of 40-foot candles of evenly distributed light. Dry and cold storage areas shall be provided with a minimum of 15-foot candles of evenly distributed light.

B. Ventilation shall be sufficient in all areas of the plant to prevent excessive odors and the formation of excessive water condensation. Vents or lighting fixtures shall be installed in a manner to preclude the contamination of product, ingredients, packaging material, packaged products or product contact surfaces of equipment.

C. All bulk dairy product storage tanks shall be vented into a room used for processing or packaging or in a storage tank alley. Vents located elsewhere shall be equipped with air filters approved for that use by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1272 (June 2002), amended LR 37:2674 (September 2011).

§921. Separate Rooms

A. There shall be separate rooms for:

1. the pasteurizing, ultra-pasteurizing and aseptically processing, cooling and packaging of milk and dairy products;

2. the cleaning of milk cans, bottles, totes, cases and other containers;

3. the fabrication of containers and closures for milk and dairy products;

4. cleaning and sanitizing facilities for milk tank trucks in plants receiving milk in such tanks;

5. receiving cans of milk and dairy products and cleaning and sanitizing such cans in milk plants that receive milk in cans;

6. the processing of cheese or any other dairy products in vats or other types of vessels that are uncovered while product is in them. Provided, that in dairy plants that currently have such open vats or other types of vessels in processing rooms, the state health officer may allow the use of these vats/vessels during periods in which there are no processing or cleaning activities being conducted while the vats/vessels are uncovered. Provided further, that such vats/vessels shall be equipped with properly constructed covers which are tight fitting and designed in such manner as to preclude contamination of product and shall be kept in place during the "setting operation"; and,

7. the boiler and other non-processing mechanical equipment, shop rooms and repair areas.

B. The state health officer shall have the authority to require individual plants to provide separate rooms for any purpose he determines to be necessary to prevent a compromise to food safety.

C. Rooms in which milk or dairy products are handled, processed or stored or in which dairy product containers, utensils and equipment are cleaned or stored, shall not open directly into any stable, farmstead or area in which meat, poultry or any other non-dairy foods of animal origin are handled or stored, any restaurant food preparation area or any room used for domestic purposes. All rooms shall be of sufficient size for their intended purposes.

D. Separate areas or rooms and equipment shall be provided for receiving, handling, storage and disposal of returned dairy products that have left direct control of the plant and shall be used for this purpose only. They shall be kept neat, clean and maintained in such a manner as to preclude contamination of other products and equipment or attraction of flies and rodents. Such products shall not be used for human consumption.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2674 (September 2011).

§923. Toilet Facilities

A. Every dairy plant shall be provided with flush toilet facilities conforming to the regulations of Part XIII and Part XIV of this Code. Toilet rooms shall not open directly into any room in which milk, milk products, equipment, or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in clean condition and in good repair. Toilet rooms shall be well ventilated by use of mechanical exhaust which discharges to the outside atmosphere. Hand washing facilities provided with hot and cold running water under pressure, soap, air dryer or single service towel shall be provided in the toilet room. Signs shall be posted in all toilet rooms informing employees that they are required to wash their hands before returning to work.

B. Toilets shall be conveniently located in or immediately adjacent to the plant and shall not be located in residences.

C. A covered trash container shall be provided in each toilet room.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2674 (September 2011).

§925. Water Supply

A. The water supply shall comply with Part XII of this Code.

B. Potable water supplies for dairy plants shall comply with the following:

1. Water for dairy plant purposes shall be from supplies approved by the state health officer and properly located, protected and operated. It shall be accessible and of a safe, sanitary quality.

2. There shall be no cross-connection between the safe water supply and any unsafe or questionable water supply, or any source of pollution through which the safe water supply might become contaminated. A connection between the water supply piping and a make-up tank (such as for cooling or condensing), unless protected by an air gap or effective back-flow preventer, constitutes a violation of this requirement.

3. New individual water supplies and water supply systems which have been installed, repaired or otherwise become contaminated shall be disinfected before being placed in use. The supply or water supply system shall be made free of the disinfectant (or lowered until the disinfectant residual is equal to the normal disinfectant residual coming from the existing water supply system) by pumping to waste before any sample for bacteriological testing shall be collected.

4. Samples for bacteriological testing of individual water supplies and water supply systems shall be taken by the state health officer upon the initial approval of the physical structure, each six months thereafter and when any repair or alteration of the individual water supply or water supply system has been made. Samples shall be taken by the state health officer and examinations shall be conducted in an official laboratory. To determine if water samples have been taken at the frequency established in this section, the interval shall include the designated six-month period plus the remaining days of the month in which the sample is due.

5. Besides meeting bacteriological standards of Appendix G, Section I of the PMO, of potable water supplied by individual water supplies shall also comply with applicable chemical, physical, and radiological standards. Samples for same shall be submitted by the milk or dairy facility to a certified chemical laboratory/drinking water (as defined in Part XII of this Code) every five years. The state health officer shall determine which chemical, physical, or radiological contaminants or parameters the water should be tested for. Copies of the laboratory results of samples shall be submitted to the state health officer by the milk or dairy facility.

6. The water samples shall be tested in a laboratory, approved by the state health officer using the methodology prescribed by *Appendix G* of the *PMO*. The state health officer shall take appropriate regulatory action on violative water samples in accordance with the requirements of the *PMO*.

7. Current records of water test results shall be retained on file by the state health officer and by the plant.

C. Any potable water system associated with a milk or dairy facility which has at least 15 service connections or regularly serves an average of 25 individuals daily for at least 60 days out of the year is considered a public water system and must also be regulated under provisions applicable to public water systems as required in Part XII of this Code. If a potable water system meets this criteria and the source of supply of such system is from a water well, such water well shall be constructed in accord with public water system standards. With the exception of achieving and maintaining potable water quality standards as specified in other Paragraphs of this Section, compliance with other provisions under Part XII of this Code which are applicable

only to public water systems shall not be required if the public water system meets all of the following conditions:

1. consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

2. obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

3. does not sell water to any person; and,

4. is not a carrier which conveys passengers in interstate commerce.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2674 (September 2011).

§927. Hand-washing Facilities

A. Hand-washing facilities provided with hot and cold running water under pressure through a mixing faucet, soap, air dryer or single service sanitary towels shall be conveniently located to all areas in which dairy products are handled and equipment is cleaned. The use of a common towel is prohibited.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2675 (September 2011).

§929. Protection from Contamination

A. Dairy plant operations shall be so conducted and equipment and facilities located in such manner as to prevent contamination of dairy products, ingredients, packaging materials, equipment, containers and utensils.

B. All milk products or ingredients which have been spilled, overflowed or leaked shall not be used for human consumption.

C. The storage, handling or use of poisonous or toxic materials shall be performed in such a manner as to preclude contamination of milk products, ingredients, packaging materials or product contact surfaces of equipment, containers or utensils. All containers containing poisonous or toxic materials, including cleaning and sanitizing compounds, shall be distinctly and prominently labeled.

D. All equipment and piping containing cleaning solutions/compounds shall be physically separated from equipment containing dairy products.

E. All equipment and piping containing pasteurized food products shall be physically separated from equipment and piping containing unpasteurized food products.

F. Pasteurized dairy products shall not be permitted to come in contact with equipment or piping with which unpasteurized dairy products or non-dairy products have been in contact, unless such equipment has first been properly cleaned and sanitized.

G. All water used to flush pasteurized product out of lines, vessels or equipment shall be pasteurized or treated by other treatment approved by the state health officer with the concurrence of the FDA. All lines, vessels or equipment that have contained water or product that was not pasteurized or treated, as afore provided, shall be cleaned and sanitized prior to use for pasteurized products.

H. The dairy plant shall be used for no other purpose than the processing of dairy products and the operations incident thereto, provided that the state health officer may authorize the processing or handling of products other than dairy products in such a manner as to preclude the contamination of dairy products, product contact surfaces of all equipment, piping or containers.

I. Air under pressure that comes in contact with dairy products or product contact surfaces shall be free from oil, dust, rust, excessive moisture, extraneous materials or odor and shall comply with the requirements for air under pressure contained in the *PMO*.

J. Steam that is used in contact with dairy products shall comply with the applicable standards of the *PMO* and be of culinary quality.

K. Equipment and operations shall be so located within the dairy plant as to prevent overcrowding and contamination of product, equipment, containers, packaging materials or ingredients by splash, condensation, manual contact or drippings, spillage or splash from overhead piping, cooling equipment, platforms, etc.

L. Effective insect and rodent control programs shall be conducted. Dogs, cats and other animals or fowl and birds shall not be allowed in the dairy plant.

M. Multi-use containers or equipment used for dairy products, such as milk crates, bossy carts, milk cans, etc., that have been on premises where swine or poultry are kept, or premises where raw poultry or pork products are processed or have been used to store raw poultry or pork products shall not be used in the processing or handling of dairy products.

N. Eggs and raw egg products shall be handled or stored in areas separated from dairy products in such a manner as to preclude contamination of floors, conveyors, cases, etc., used for dairy products handling or storage, provided, that delivery vehicles are exempt from this requirement when adequate steps are taken to preclude contamination of dairy products or containers/crates from broken eggs or leaking raw egg products.

O. Fork lifts, pallet jacks and other materials handling equipment that have been in contact with driveways, concrete/ground surfaces of the exterior of the dairy plant or have been used in areas where meat, poultry, pork and returned dairy products are handled shall not enter the areas of the dairy plant where dairy products are handled, processed or stored or areas in which containers and equipment are cleaned, sanitized or stored.

P. Entry into each specific area of the plant where dairy products are handled, processed, packaged or stored shall be restricted to personnel whose presence is necessary for conducting, supervising or inspecting operations in that specific area. Training activities may be allowed.

Q. Each entrance into each area where dairy products are handled, processed, packaged, stored or dairy equipment is cleaned shall be provided with footwear baths containing sanitizers that effectively sanitize footwear. These footwear baths shall be so located and maintained in such a manner as to effectively sanitize the footwear of all persons entering these areas. Spray type devices and other devices approved by the state health officer that adequately perform the same function as the footwear baths may be used.

R. Lighting fixtures shall be constructed and installed in such a manner as to preclude the contamination of products, ingredients, packaging material, packaged products or product contact surfaces of equipment.

S. Graded dairy products, not in the final package, shall not be permitted to come in contact with products of a lower grade or with ungraded products or with utensils, piping or equipment which has been in contact with lower grade or ungraded products unless such utensils, piping or equipment have been properly cleaned prior to use for higher graded product.

T. Returned dairy products (dairy products that have left the direct control of the plant that processed them) shall be handled in such a manner that they do not come in physical contact or contact through drippage or spillage with any area in which other products are stored or handled. They shall not come in such contact with any equipment used in the handling of other products. The returned dairy products shall be clearly identified and other prudent measures taken to preclude contamination or integration with wholesome products.

U. All floor drains in areas of the plant used for receiving, processing, handling dairy products and where containers, utensils and equipment are cleaned shall be kept in good repair, cleaned and sanitized at least once each week. Brushes used to clean floor drains should be color coded and said brushes shall not be used for any other purpose.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2675 (September 2011).

§931. Reclaim or Rework Operations

A. Reclaim or rework operations are all activities associated with the recovery, handling and storage of processed or partially processed products for use as an ingredient in products to be used for human consumption.

B. Product that has left the direct control of the plant or has been temperature-abused, tampered with or exposed to chemical or biological contamination shall not be reclaimed or reworked for use as an ingredient in other products for human consumption.

C. Reclaimed or reworked products and reclaim or rework operations shall conform with the following requirements.

1. Reclaim areas and equipment shall be constructed, maintained and protected in a manner that is in substantial compliance with the requirements for the production and processing equipment areas contained in this Part.

2. Product that has left the direct control of the plant in which it was packaged shall not be reclaimed or reworked.

3. All product to be reclaimed shall be maintained at 7°C (45°F) or below. Product salvaged from defoamers and tank or line rinsing shall be immediately cooled to 7°C (45°F) or below.

4. Packages of product to be reclaimed or reworked shall be clean and free of contamination. Product from open, leaking or badly damaged containers shall not be reclaimed or reworked.

5. Packaged product shall be opened in such a manner as to minimize the potential for contamination. Containers shall not be opened by slashing, smashing or breaking.

6. Woven wire strainers shall not be used in reclaim or rework operations.

7. Reclaim or rework dump stations and tanks shall be covered except when product is actually being dumped through the openings.

8. Reclaim or rework storage tanks shall be equipped with approved thermometers.

9. Cleaning and sanitization requirements shall be the same as those for raw dairy ingredient handling equipment.

10. Reclaimed or reworked product shall be handled as a raw dairy ingredient.

11. Reclaimed or reworked products when used as an ingredient shall be added to the final product prior to pasteurization.

12. It is recommended that higher than minimum temperatures and times be used in the pasteurization of product containing reclaimed or reworked ingredients.

13. The milk plant shall take appropriate steps to preclude the contamination of products or equipment with allergenic or sensitive producing ingredients, reclaimed or reworked ingredients or substances that will not be appropriately declared in the labeling of the final container of product.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2676 (September 2011).

§933. Dairy Plant Cleanliness

A. All rooms in which milk and dairy products are handled, processed or stored, or in which containers, utensils or equipment are cleaned or stored, shall be kept clean, neat and free of evidence of insects and rodents. Approved pesticides shall be stored, handled and used so as not to present a health hazard. Only equipment directly related to processing operations or to handling of containers, utensils and equipment shall be permitted in the receiving, pasteurizing, ultra-pasteurizing, aseptic processing, cooling, packaging and bulk milk and dairy products storage areas.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2677 (September 2011).

§935. Sanitary Piping

A. All sanitary piping, fittings, connections and automated cleaning systems shall comply with applicable 3-A Standards or the construction thereof shall be approved in writing by the state health officer, and shall consist of smooth, impervious, corrosion-resistant, non-toxic, easily cleanable material. All piping, fittings and connections shall be in good repair. Pasteurized milk and milk products shall be transferred from one piece of equipment to another only through sanitary piping.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2677 (September 2011).

§937. Construction and Repair of Containers and Equipment

A. All multi-use containers and equipment with which milk or dairy products come into contact and automated cleaning equipment shall comply with applicable 3-A Standards. They shall be of smooth, impervious, corrosion-resistant, non-toxic material; shall be constructed for ease of cleaning and be easily accessible or demountable for manual cleaning or be designed for mechanical cleaning. All product contact surfaces shall be readily accessible for inspection, shall be self-draining and shall be kept in good repair. All single-service milk containers and closures used for milk, milk products or other dairy products shall be manufactured by plants certified by FDA and listed in the latest publication of the *IMS List Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers* or shall comply with all requirements of this Part. Gaskets and other articles with which milk or dairy products come in contact shall be non-toxic, and shall have been manufactured, packaged, transported and handled in a sanitary manner. Articles intended for single-service use shall not be reused. The design, construction and method of employment of all dairy equipment shall be approved by the state health officer prior to installation.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1273 (June 2002), amended LR 37:2677 (September 2011).

§939. Thermometers

A. Unless the thermometers and other temperature monitoring instruments and recording devices used in dairy plants are accurate within known limits, there can be no assurance that proper temperatures for cooling, pasteurization, ultra-pasteurizing, aseptic processing, storage, cleaning, etc., are being applied.

B. All thermometers, temperature monitoring instruments, and recording devices used in dairy plants shall conform with the requirements for such thermometers, temperature monitoring instruments, and recording devices contained in the *PMO*.

C. The operator shall record the temperature, as shown by the indicating thermometer, on the recording chart each time a chart is placed in each recorder and at least once during each 24-hour period of operation.

D. The dairy plant shall test and calibrate all indicating and recording thermometers used in the dairy plant (including CIP system and dairy product storage tank and product storage rooms recording thermometers) at least once in each three-month period using a test thermometer approved by the state health officer. Provided that any thermometers tested and calibrated by the state health officer need not be tested and calibrated by the dairy plant until the lapse of three months from the date they were tested and calibrated by the state health officer.

E. During each inspection of each milk plant's processing operation, the state health officer shall examine

and initial a representative sample of each type of recording charts and logs to verify the calibration of monitoring devices and to verify that the operations were conducted in accordance with the requirements of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2677 (September 2011).

§941. Pasteurization, Ultra-pasteurization and Aseptic Processing

A. All dairy products (e.g., milk solids, whey, nonfat dry milk, condensed milk, cream, nonfat (fat free, skim) milk, etc.), eggs, egg products, cocoa, cocoa products, frozen dessert mixes, emulsifiers, stabilizers, vitamins, sweeteners and any other approved ingredients (with the exception of those ingredients listed in Subsection B of this Section shall be added prior to pasteurization, ultra pasteurization or aseptic processing.

B. The only ingredients which shall be added after pasteurization or ultra pasteurization are those flavoring ingredients which are:

1. fresh fruits or vegetables and only when they are added to cultured dairy products having a pH of less than 4.7 and only in a dairy plant having a quality assurance program which is considered adequate by the state health officer;
2. subjected to prior heat treatment sufficient to destroy all pathogenic microorganisms;
3. a water activity of 0.85 (Aw) or less;
4. high acid content products;
5. roasted nuts;
6. dry sugars;
7. flavor extracts containing high alcohol content; or
8. safe and suitable bacterial cultures.

C. Such additions shall be made only with approval of the state health officer with the concurrence of FDA and in a manner which prevents product contamination.

D. Pasteurization and ultra-pasteurization shall be performed in equipment and using procedures that conform with the requirements of *PMO* and current applicable 3-A Standards and are approved by the state health officer.

E. Aseptic processing shall be performed in accordance with *Title 21 CFR Parts 108 and 113* and the requirements of *PMO*.

F. Pasteurization, ultra-pasteurization and aseptic processing shall be controlled as a CCP in plants being regulated under HACCP.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2678 (September 2011).

§943. Cleaning and Sanitization of Containers and Equipment

A. All multi-use containers and equipment used in the processing, handling, storage or transportation of milk and dairy products shall be properly cleaned after each use and shall be cleaned at least once each 24 hours of use, provided:

1. storage tanks shall be cleaned each time they are emptied and shall be emptied at least every 72 hours;

2. storage tanks used to store raw milk or heat treated milk products longer than 24 hours and silo tanks used to store raw milk or heat treated milk products shall be equipped with a seven-day temperature recording device complying with the requirements for such devices contained in the *PMO* and shall be approved by the state health officer prior to installation;

3. upon review of information provided by the milk plant supporting the cleaning of multi-use containers and equipment at frequencies extending beyond the 24 hour requirement, the state health officer may with the concurrence of the FDA, on a case by case basis, authorize cleaning intervals greater than 24 hours;

4. records shall be available to the state health officer to verify that storage tanks have been properly cleaned at least once each 72 hours or at the frequency established by the state health officer in concurrence with the FDA.

B. Milk and milk product pipelines and equipment designed for mechanical CIP cleaning shall meet the following requirements.

1. An effective cleaning and sanitization regimen that shall be followed for each separate cleaning and sanitization operation shall be posted near the cleaned -in-place equipment controls.

2. A temperature recording device complying with the requirements for such recording device contained in the *PMO* and approved by the state health officer shall be installed in the cleaning and sanitizing solution return line or other area, approved by the state health officer with the concurrence of the FDA, to record the temperatures and times during which the line or equipment is exposed to cleaning and sanitizing solutions. The state health officer may require that pressure gauges, other instruments or logs be provided to verify that cleaning and sanitization was properly performed.

3. Charts/records/logs used to verify proper cleaning and sanitizing shall be retained for a minimum of three months.

4. During each inspection of the cleaning and sanitizing operations of each plant, the state health officer shall examine and initial a representative sample of each type of charts/records/logs to verify that the operations were conducted in accordance with the posted cleaning and sanitization regimens.

C. All multi-use containers and equipment shall be effectively sanitized before first use by means approved by the state health officer. Assembled equipment shall be sanitized prior to each first use.

D. Piping, equipment and containers used to process, conduct or package aseptically processed milk and dairy products beyond the final heat treatment process, shall be sterilized before any aseptically milk or milk product is packaged and shall be re-sterilized whenever any unsterile product has contaminated it.

E. Multi-use milk crates and bossy carts shall be properly cleaned and sanitized before each use and before being brought into any area of the plant where milk and dairy products are pasteurized, processed, cooled or packaged.

F. Cleaning procedures; including solution mixing directions, strengths, testing procedures, temperature

requirements, circulation times, etc., shall be posted adjacent to all equipment used to clean or sanitize dairy equipment.

G. The posted procedures shall be followed in the cleaning and sanitization of the equipment.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2678 (September 2011).

§945. Storage of Cleaned Containers and Equipment

A. After cleaning, all multi-use milk or dairy product containers, utensils and equipment shall be transported and stored to assure complete drainage, unless stored in sanitizing solutions, and shall be protected from contamination before use.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2679 (September 2011).

§947. Storage of Single-service Containers, Utensils and Materials

A. Single-service caps, cap stock, parchment paper, films, containers, gaskets and other single-service articles for use in contact with dairy products including frozen desserts products shall be purchased from sources approved by the state health officer and stored in the original container or in equipment designed for storage of single service articles and shall be kept therein in a clean, dry place until used; and shall be handled in a sanitary manner.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2679 (September 2011).

§949. Packing, Bottling and Wrapping

A. Bottling, packaging and wrapping of milk and dairy products shall be done at the place of pasteurization, ultra-pasteurization or aseptic processing in mechanical equipment that complies with applicable 3-A Standards and the *PMO, Item 18p*.

B. Upright open containers and container closures shall be protected from contamination by the use of overhead shields and drip deflectors.

C. Air directed at the contact surfaces of containers or closures shall comply with the requirements for such air, contained in the *PMO*.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2679 (September 2011).

§951. Capping

A. Capping or closing of milk and dairy product containers shall be done in a sanitary manner in mechanical equipment that complies with applicable 3-A Standards and the *PMO, Item 19p*. Single service containers and closures used for milk and milk products shall have been manufactured by plants that comply with the single service container and closure requirements of this Code. The cap or

closure shall protect the milk pouring lip to at least its largest diameter and, with regard to fluid product containers, removal cannot be made without detection.

B. Hand capping is prohibited.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2679 (September 2011).

§953. Delivery Containers

A. All pasteurized, ultra-pasteurized and aseptically processed milk and dairy products shall be placed in their final delivery containers in the plant in which they are pasteurized, ultra-pasteurized or aseptically processed. It shall be unlawful for hotels, soda fountains, restaurants, grocery stores, markets and similar establishments to sell or serve any milk or milk products except in the original containers received from the plant in which it was pasteurized, ultra-pasteurized or aseptically processed or from a bulk container dispensing device that conforms with 3-A Standards. Packaging of milk and milk products from such dispensers is prohibited. This requirement shall not apply to cream consumed on the premises or milk and milk products in portions less than 1/2 pint used in mixed drinks, cereals, desserts or other foods. In these instances, pouring from a commercially filled container of not more than one gallon capacity is acceptable. (see LAC 51:XXIII.1115.B)

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2679 (September 2011).

§955. Cooling of Dairy Products

A. All raw milk and milk products shall be received and maintained at 7°C (45°F) or less until processed, except that acid-type whey with a titratable acidity of 0.40% or above, or a pH of 4.6 or below, is exempted from these temperature requirements. Provided, that all balance or surge tanks (continuous flow with a retention time not to exceed one hour) for raw milk and milk products, pasteurized milk and milk products and whey and whey products may be maintained at any temperature for up to 24 hours.

B. All whey and whey products for condensing and/or drying are maintained at a temperature of 7°C (45°F) or less; or 57°C (135°F) or greater until processed. Storage tanks containing whey and whey product above 7°C (45°F) and below 57°C (135°F) shall be emptied, cleaned and sanitized after each 4 hours of use or less. (Nothing shall be construed as barring other time and temperature relationships, which have been recognized to be equally efficient and which are approved by the state health officer).

C. All pasteurized milk and milk products, except the following, are cooled immediately in approved equipment prior to filling or packaging to a temperature of 7°C (45°F) or less, unless drying is commenced immediately after condensing:

1. those to be cultured;
2. cultured sour cream at all milkfat levels with a pH of 4.70 or below. (Critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by

the state health officer. pH limit with a pH variance of +0.05 units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer);

3. acidified sour cream at all milkfat levels with a pH of 4.60 or below. (Critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by the state health officer. pH limit with a pH variance of +0.05 units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer);

4. all yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling. (Critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by the state health officer. pH limit with a pH variance of +0.05 units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer);

5. cultured buttermilk at all milkfat levels with a pH of 4.60 or below. (Critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by the state health officer. pH limit with a pH variance of +0.05 units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer); and

6. all condensed whey and whey products shall be cooled during the crystallization process to 10°C (50°F) or less within 72 hours of condensing, including the filling and emptying time, unless filling occurs above 57°C (135°F), in which case, the 72 hour time period begins when cooling is started. (Nothing shall be construed as barring other time and temperature relationships, which have been recognized to be equally efficient and which are approved by the state health officer).

D. All pasteurized milk and milk products, except the following, shall be stored at a temperature of 7°C (45°F) or less and be maintained thereat following filling or until further processed:

1. Cultured sour cream at all milkfat levels with a pH of 4.70 or below. (Critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by the state health officer. pH limit with a pH variance of +0.05 units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer) and cooled to 7°C (45°F) or less within 168 hours of filling. (Temperature monitored at the slowest cooling portion, i.e., middle of the container, of the slowest cooling container, i.e., in the middle of the pallet).

2. Acidified sour cream at all milkfat levels with a pH of 4.60 or below. (Critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by the state health officer. pH limit with a pH variance of +0.05

units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer) and cooled to 7°C (45°F) or less within 168 hours of filling (Temperature monitored at the slowest cooling portion, i.e., middle of the container, of the slowest cooling container, i.e., in the middle of the pallet).

3. All yogurt products at all milkfat levels with an initial pH of 4.80 or below. (Critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by the state health officer. pH limit with a pH variance of +0.05 units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer) at filling, with a pH of 4.60 or below within 24 hours of filling (critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by the state health officer. pH limit with a pH variance of +0.05 units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer) and cooled to 7°C (45°F) or less within 168 hours of filling (Temperature monitored at the slowest cooling portion, i.e., middle of the container, of the slowest cooling container, i.e., in the middle of the pallet).

4. Cultured buttermilk at all milkfat levels with a pH of 4.60 or below (Critical factors including, but not limited to, pH and cooling time and temperature shall be monitored and documented by the processing facility for verification by the state health officer. pH limit with a pH variance of +0.05 units to account for reproducibility and inaccuracies in pH measurements. Formulation or processing changes that affect critical factors shall be communicated to the state health officer) and cooled to 7°C (45°F) or less with 24 hours of filling (Temperature monitored at the slowest cooling portion, i.e., middle of the container, of the slowest cooling container, i.e., in the middle of the pallet).

E. All pasteurized milk and milk products to be condensed and/or dried, shall be stored at a temperature of 10°C (50°F) or less and be maintained thereat until further processed. If storage tanks are used between the condenser and dryer, any such storage tank(s) containing pasteurized milk or milk products stored above 10°C (50°F) and below 57°C (135°F) shall be completely emptied and cleaned after each six hours of operation or less (Nothing shall be construed as barring other time and temperature relationships, which have been recognized to be equally efficient and which are approved by the state health officer).

F. Each refrigerated room in which milk and milk products are stored, except aseptically processed milk and milk products, is equipped with an indicating thermometer that complies with the applicable specifications of Appendix H, Subsection IV (Indicating thermometers used in refrigerated rooms where milk and milk products are stored) of the PMO. Such thermometer shall be located in the warmest zone of the refrigerated room.

G. Each storage tank shall be equipped with an indicating thermometer, the sensor of which shall be located to permit the registering of the temperature of the contents when the tank contains no more than 20 percent of its

calibrated capacity. Such thermometer shall comply with the applicable specifications of Appendix H, Subsection IV (Indicating thermometer used in storage tanks) of the PMO. See §943.A.2 of this Part for recording device requirements in certain circumstances.

H. On delivery vehicles, the temperature of milk and milk products shall not exceed 7°C (45°F).

I. All surface coolers comply with the following specifications:

1. The sections of open-surface coolers shall be so installed as to leave a gap of at least 6.4 millimeters (0.25 inches) between the header sections to permit easy cleaning.

2. Where header ends are not completely enclosed within the cooler covers, condensation or leakage from the headers shall be prevented from entering the milk or milk product by so shaping the exposed header faces, above and below all gaps, that condensation is directed away from the tubes, and by using deflectors at the bottom of the headers, or by shortening the bottom trough, or by some other approved method.

3. The location of supports of cooler sections shall prevent condensation and leakage from entering the milk or milk product.

4. All open-surface coolers shall be provided with tight-fitting shields that protect the milk and milk product from contamination by insects, dust, drip, splash or manual contact.

J. Recirculated cooling water, which is used in coolers and heat exchangers, including those systems in which a freezing point depressant is used, is from a safe source and protected from contamination. Such water shall be tested semiannually and shall comply with the bacteriological standards of Appendix G, Section I of the PMO. Samples shall be taken by the state health officer and examination shall be conducted in an DHH-OPH Certified Bacteriological/Drinking Water Laboratory. Recirculated cooling water systems, which become contaminated through repair work or otherwise, shall be properly disinfected and tested before being returned to use. Freezing point depressants and other chemical additives, when used in recirculating systems, shall be non-toxic under conditions of use. Recirculated cooling water contained in corrosion resistant, continuous piping, with no joints or welds, which fail to meet applicable American Society of Mechanical Engineers (ASME) or equivalent standards in the non-potable water contact areas, may be considered to be protected from contamination, as required above, when cooled by non-potable water flowing over the exterior of the piping, within open evaporative type cooling tower. In these systems, the recirculated cooling water piping shall be properly maintained and shall be installed so that it is at least 2 pipe diameters above the flood rim of the cooling tower.

K. Water from an open, evaporative cooling tower may be used to cool water in an intermediate cooling media loop that will subsequently be used to cool product, provided that the water in the intermediate cooling media loop is effectively protected against infiltration and contamination by tower water at all times. If a plate type or double/triple tube type heat exchanger is used to exchange heat between the water from the open tower and the water in the intermediate cooling media loop it must be protected by an Isolation System to assure that there is no possibility of

contamination of the intermediate cooling media loop water by the tower water. The isolation system shall include:

1. tower water heat exchangers shall be constructed, installed and operated so that the intermediate cooling media water in the heat exchanger will automatically be under greater pressure than the open tower water in the heat exchanger at all times;

2. the tower water heat exchanger shall be effectively isolated from the tower water system and the tower water side of the heat exchanger shall drain during shut down;

3. the Isolation System shall be controlled with a pressure differential controller set to a minimum of 6.9 kPa (1 psi). Pressure sensors shall be installed at the tower water inlet to the heat exchanger and intermediate cooling water outlet of the heat exchanger. The differential pressure controller will be interwired with the related supply valves and/or pumps to automatically shut down all supply pumps and return valves in the Isolation System to a fail-safe position to isolate the heat exchanger from the open tower water system, as would occur in a shut down or power failure;

4. the intermediate cooling water shall rise to a vertical elevation of at least 30.5 centimeters (12 inches) above the highest tower water heat exchanger Isolation System, and shall be open to the atmosphere at this elevation. During a shut down the intermediate cooling water shall not drain from the tower water heat exchanger;

5. the Isolation System shall meet one of the following:

a. in a system with tower water supplied directly from the tower water distribution line without a balance tank, or with a balance tank higher than the lowest water level in the tower water heat exchanger, refer to Figures 8, 9, and 10 in Appendix D, Section VII of the PMO. In this application, the Isolation System shall begin at the normally closed tower water supply stop "block" valve and ends at the check-valve in the line returning to the open cooling tower. Isolation is accomplished by meeting all of the following:

i. closing the tower water supply valve. This tower water supply valve shall be a normally closed (spring-to-close) valve;

ii. opening a full port vent valve on the supply side of the tower water heat exchanger and a full port drain valve prior to a check-valve in the tower water return line. This drain valve shall be normally open (spring-to-open);

iii. the drain valve and any pipes or pumps located between the drain valve and the heat exchanger must be lower than the lowest liquid level in the heat exchanger;

iv. de-energize any dedicated tower water supply pump, if present, located between the tower water reservoir and the tower water heat exchanger; and

v. if a tower water return pump is used, a bypass line may be used to flood the dry pump at start up;

b. in a system with the overflow of an atmospheric balance tank lower than the lowest water level in the heat exchanger, refer to Figures 11 and 12 in Appendix D, Section VII of the PMO. In this application, the Isolation System shall begin at the tower water balance tank and end at the check-valve in the line returning to the open cooling tower. Isolation is accomplished by meeting all of the following:

i. de-energizing the “local tower water supply pump”, if present;

ii. opening a full port vent valve on the supply side of the tower water heat exchanger;

iii. open a full port drain valve prior to a check-valve in the tower water return line. This drain valve must be normally open (spring-to-open); and

iv. the drain valve and any pipes or pumps located between it and the heat exchanger must be lower than the lowest liquid level in the heat exchanger;

c. variations from the above isolation systems may be individually evaluated and found to also be acceptable by the state health officer, if the level of protection required by this Subsection is not compromised.

6. A means to test the response of this isolation system must be developed and available at the milk plant. The accuracy of the required differential pressure controller shall be checked by the state health officer on installation; every six months thereafter; and following repair or replacement.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2679 (September 2011).

§957. Use of Overflow, Leaked, Spilled or Mishandled Dairy Products

A. The use of overflow, leaked, spilled or mishandled dairy products for human consumption is prohibited.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2682 (September 2011).

§959. Sale of Reconstituted or Recombined Milk or Milk Products and Reconstituted or Recombined Anomalous (Substitute) Milk or Milk Products

A. The sale of reconstituted or recombined milk or milk products and reconstituted or recombined anomalous (substitute) milk or milk products shall be prohibited.

B. No reconstituted or recombined milk or milk products, (to include whole milk, reduced fat milk, lowfat milks, nonfat milk, flavored milks, creams, half-and-half) and reconstituted or recombined anomalous (substitute) milk and milk products shall be permitted to be held, kept, offered for sale, sold or delivered, provided in an emergency, the sale of reconstituted fluid milk products may be authorized by special permit from the state health officer and shall be labeled in accordance with the labeling requirements of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2682 (September 2011).

§961. Use of Inhibitors

A. The addition of any substance to dairy products for the purpose of preventing growth of bacteria is prohibited (see definition of adulterated milk, milk products, or dairy products, §101 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2682 (September 2011).

§963. Denaturing of Milk or Dairy Products

A. The state health officer may immediately denature, with rennet or some harmless coloring matter, dairy products found to be adulterated, misbranded with respect to grading or sold without a permit.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2682 (September 2011).

§965. Dipping or Transferring Dairy Products

A. Dairy products shall not be dipped or transferred from one container to another on the street or in any vehicle or store or in any place except in dairy plants possessing a permit for such activity issued by the state health officer, provided, that milk producers may transfer raw milk from milking pails or milking machines to milk cans or bulk tanks in the milk house/room on dairy farms in a sanitary manner.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2682 (September 2011).

§967. Apparatus, Containers, Equipment and Utensils

A. Apparatus, containers, equipment and utensils used in the production, handling, storage, processing or transporting of dairy products shall not be used for any other purpose without the authorization of the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2682 (September 2011).

§969. Personnel Health

A. No persons affected with any disease capable of being transmitted to others through the contamination of food shall work at a dairy plant in any capacity which brings them into direct contact with finished products, such as pasteurized, ultra-pasteurized or aseptically processed milk or dairy products or which brings them into direct contact with associated pasteurized, ultra-pasteurized or aseptically processed dairy product-contact surfaces.

B. Dairy plant employees, or applicants to whom a conditional offer of employment has been made, shall be responsible to report to the dairy plant management if he/she:

1. is diagnosed with an illness due to Hepatitis A virus, Salmonella typhi, Shigella species, Norwalk-like viruses, Staphylococcus aureus, Streptococcus pyogenes, Escherichia coli, Campylobacter jejuni, Entamoeba histolytica, Giardia lamblia, Non-typhoidal Salmonella, Rotavirus, Taenia solium, Yersinia enterocolitica, Vibrio cholerae O1, tuberculosis or other infectious or

communicable disease that has been declared by the state health officer to be transmissible to others through the handling of food, or has been clearly shown to be so based upon verifiable epidemiological data;

2. has been exposed to, or is suspected of causing, a confirmed foodborne disease outbreak of one of the diseases specified in §971, including an outbreak at an event such as a family meal, church supper or ethnic festival because the employee or applicant to whom a conditional offer of employment has been made:

- a. prepared food implicated in the outbreak;
- b. consumed food implicated in the outbreak; or
- c. consumed food at the event prepared by a person who is infected or ill.

3. lives in the same household as a person who attends or works in a day care center, school, or similar institution experiencing a confirmed outbreak of one of the diseases specified in §969.B.1 above.

C. Similarly, dairy plant employees shall be instructed by the dairy plant management to report to the dairy plant management if the employee, or applicant to whom a conditional offer of employment has been made if he/she;

1. has a symptom associated with acute gastrointestinal illness such as diarrhea, fever, loss of appetite for three or more days, vomiting, jaundice; or

2. has a pustular lesion such as a boil or infected wound that is:

a. on the hands, wrists or exposed portions of the arms, unless the lesion is covered by a durable, moisture proof, tight-fitting barrier; or

b. on other parts of the body if the lesion is open or draining, unless the lesion is covered by a durable, moisture proof, tight-fitting barrier.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2682 (September 2011).

§971. Notification of Disease

A. Dairy plant operators and dairy plant management who have received reports, under §969, from employees who have handled pasteurized, ultra-pasteurized or aseptically processed milk, pasteurized milk products or associated product-contact surfaces shall immediately report these facts to the state health officer.

B. When a person has been reported under §969, or is otherwise known to meet one or more of the conditions listed under §969, and it is found that such person may have handled pasteurized, ultra-pasteurized or aseptically processed milk, pasteurized milk products or associated product-contact surfaces, the state health officer is authorized to require any or all the following measures:

1. the immediate restricting of that person from duties which require handling finished product such as, but not limited to, pasteurized milk or dairy products, or the handling of related product-contact surfaces. This restriction may be lifted after an appropriate medical clearance or cessation of symptoms or both, according to the following criteria in the following table;

Removal of Restrictions When Infection or High Risk of Infection is Discovered	
Health Status	Removing Restrictions
Is diagnosed with an illness due to Hepatitis A virus, <i>Salmonella typhi</i> , Shigella species, Norwalk and Norwalk-like viruses, <i>Staphylococcus aureus</i> , <i>Streptococcus pyogenes</i> , <i>Escherichia coli</i> 0157:H7, enterohemorrhagic <i>Escherichia coli</i> , enterotoxigenic <i>Escherichia coli</i> , <i>Campylobacter jejuni</i> , <i>Entamoeba histolytica</i> , <i>Giardia lamblia</i> , Non-typhoidal Salmonella, Rotavirus, <i>Taenia solium</i> , <i>Yersinia enterocolitica</i> , <i>Vibrio cholerae</i> O1, tuberculosis or other infectious or communicable disease that has been declared by the state health officer to be transmissible to others through the handling of food or has been clearly shown to be so based upon verifiable epidemiological data.	Restrictions lifted by medical clearance.
Meeting a high risk scenario as specified in §969.B.2 or 3 and/or experiencing symptoms in §969.C.1 or 2.	Restrictions lifted when symptoms cease or medical documentation is provided that infection does not exist.
Asymptomatic, but stools positive for <i>Salmonella typhi</i> , <i>Shigella</i> or <i>Escherichia coli</i> 0157:H7.	Restrictions lifted by medical clearance.
Past illness from <i>Salmonella typhi</i> , <i>Shigella</i> , <i>Escherichia coli</i> 0157:H7 or other human pathogens for which humans have been determined to be carriers.	Restrictions lifted by medical clearance.
In the case of diagnosed or suspected Hepatitis A, onset of jaundice within the last seven days.	Restrictions lifted by medical clearance.
In the case of diagnosed or suspected Hepatitis A, onset of jaundice occurred more than seven days ago.	Restrictions lifted by medical clearance or jaundice ceases.

2. the immediate exclusion of the affected dairy products from distribution and use when medically appropriate; and

3. the immediate requesting of medical and microbiological examination of the person at risk.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2683 (September 2011).

§973. Procedure when Infection Suspected

A. When suspicion arises as to the possibility of transmission of infection from any person concerned with the handling of dairy products, the state health officer is authorized to require any or all of the following measures:

1. the immediate exclusion from dairy products handling;

2. the immediate exclusion of the dairy products which may have in some manner been handled by such person from distribution and use; and

3. adequate medical and microbiological examination of the person or his associates, and of his and their body discharges or body fluids.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2683 (September 2011).

§975. Personal Cleanliness

A. All persons while coming in contact with dairy products, dairy containers, or dairy equipment shall conform to the following.

1. Clean outer garments shall be worn. Shorts shall not be worn as outer garments.

2. Hands shall be kept clean at all times.

3. Other than wedding bands, no jewelry, watches, chains, artificial nails, etc., shall be worn on hands, arms, around the neck or exposed flesh.

4. Adequate hair and facial hair covering shall be worn at all times.

5. Pens, pencils, thermometers or any other objects that may fall into product or equipment shall not be carried/worn above the level of the person's waist.

6. The use of tobacco is prohibited except in designated areas in which the use of tobacco would not have a deleterious effect upon food safety.

7. Food or drink shall not be brought into or consumed in areas in which products are being processed or where equipment or containers are being cleaned or stored.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2684 (September 2011).

§977. Allergen and Sensitivity Producing Ingredient

A. Allergens of public health significance include: eggs and egg products, milk and dairy products, peanuts and peanut products, seafood/shellfish, seeds, soy and soy products, tree nuts, wheat and wheat products and sulfites.

B. Sensitivity producing ingredients are those ingredients that cause individualistic adverse reactions other than those which result in Immunoglobulin Epsilon (I-g-E) mediated allergies.

C. Allergens and sensitivity producing ingredients shall be appropriately declared in the labeling of all foods that contain allergens and sensitivity producing ingredients.

D. The dairy plant shall take appropriate steps to preclude the contamination of products that do not contain allergens or sensitivity producing ingredients with any allergenic materials or sensitivity producing ingredients. The plant shall also take appropriate steps to insure that only ingredients or substances that are listed in the labeling are in the final product. These steps shall include:

1. proper cleaning of all equipment used in the production of products containing allergens or sensitivity producing ingredients prior to the production of products that do not contain allergens or sensitivity producing ingredients (such as cleaning of equipment used to process egg nog prior to processing dairy products not containing egg products or cleaning equipment used to process dairy products prior to processing juices, flavoring non-dairy items, etc.); and

2. insuring that CIP systems and CIP solutions that have been used to clean equipment that was used to process products containing allergen or sensitivity producing ingredients does not contain allergen or sensitivity producing ingredients residues when used to clean or sanitize equipment to be used to process products that do not contain sensitivity producing ingredients.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2684 (September 2011).

§979. Storage of Bottled or Packaged Milk and Dairy Products

A. Bottled milk or packaged milk or dairy products, if stored in water or ice, shall be so stored that the tops of bottles or pouring spouts of cartons will not be submerged in the water or the ice, provided that milk or dairy products packaged in pouches shall not be stored in water or ice.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2684 (September 2011).

§981. Sale of Warm Milk

A. Any hotel, soda fountain, restaurant, grocery store, supermarket or similar establishment which sells or serves any milk or milk products may receive such milk or milk products at a temperature of 7°C (45°F) or less but, in any instance, shall be cooled and maintained at 5°C (41°F), provided that Ultra High Temperature (UHT) processed and packaged products are exempt from this requirement prior to being opened.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2684 (September 2011).

§983. Cleaning of Containers

A. When milk or dairy products are delivered, in multi use containers the person receiving such milk or dairy products shall thoroughly clean the containers before returning such containers.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2684 (September 2011).

§985. Rat Proofing

A. All buildings used in the production, processing and handling of dairy products shall be constructed and maintained in such a manner as to preclude rodents from entering such buildings. Effective measures shall be taken as to eliminate rodents on the outer premises of such buildings.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2684 (September 2011).

§987. Waste Disposal

A. All wastes shall be properly handled and disposed of as specified by the state health officer, in accordance with Part XXVII of the Sanitary Code.

B. Trash, solid waste and defiled dairy products shall be stored in covered, impervious, leak-proof containers in such a manner that it does not attract insects or rodents.

C. Liquid waste from stopped up or backed up drains in areas where dairy products are received, processed, handled or stored reasonably constitutes an imminent hazard to the public's health and shall be eliminated expeditiously. Dairy products in containers which have been in contact with such aforementioned wastes and trash shall not be used for human consumption.

D. The waste resulting from the cleaning, rinsing and sanitization of containers and equipment and the cleaning of floors, walls, and vehicles and any waste from flush toilet facilities shall be disposed of so as not to contaminate the products or equipment, or to create a nuisance or a public health hazard.

AUTHORITY NOTE Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2685 (September 2011).

§989. Vehicles

A. All vehicles used to transport dairy products in their final containers shall be constructed with permanent tops, sides, fronts and backs. Doors of a size necessary to allow the loading and unloading are permitted. The tops, sides, fronts, backs and doors or the interior of the compartment(s) in which the dairy products are transported shall be constructed of smooth, impervious and easily cleanable material. The floors of such compartments shall be constructed of metal or equally impervious materials and shall be easily cleanable and kept clean.

B. All vehicles used to transport dairy products in their final containers shall be provided with refrigeration equipment capable of cooling the ambient temperature of the compartments, in which dairy products are transported, to a temperature not to exceed 7°C (45°F).

C. The construction and operation of vehicles shall be such that dairy products are maintained at temperatures of 7°C (45°F) or less and protected from contamination.

D. Dairy products transported in vehicles with other products or materials shall be transported in a compartment(s) separated from other products or materials and maintained in such a manner as to preclude contamination of the dairy product. Provided, that the state health officer may authorize the transportation of items he may determine which are not reasonably likely to constitute a potential for contamination of the dairy products contained in the compartment.

E. The transportation of eggs or egg products, raw meat, raw poultry, raw fish or seafood in the same compartment(s) with dairy products shall be prohibited without written authorization from the state health officer. Such written authorization shall be predicated upon:

1. the state health officer's approval of a written plan, submitted by the operator, describing in detail the manner in which the dairy products will be protected from contamination;

2. the state health officer's approval of a written plan, submitted by the operator, describing, in detail, the procedures to be used by the operator to verify that the plan is being followed; and

3. failure of the operator to fulfill the requirements of the plan, shall be grounds for the seizure and condemnation of the product involved.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2685 (September 2011).

Chapter 11. Dairy Plant Hazard Analysis Critical Control Point (HACCP) Systems

§1101. Hazard Analysis Critical Control Point (HACCP) Systems

A. HACCP systems are science-based systems used to ensure that food safety hazards are controlled to prevent unsafe food from reaching the consumer.

B. HACCP Definitions

Centralized Deviation Log—a centralized log or file identifying data detailing any deviation from critical limits and the corrective actions taken as required by this document.

Control—to manage the conditions of an operation to maintain compliance with established criteria, control also means that correct procedures are being followed and criteria are being met.

Control Measure—any action or activity that can be used to prevent, eliminate, or reduce a significant hazard that is managed as a critical control point.

Control Point—any step at which biological, chemical or physical factors can be controlled.

Corrective Action—procedures followed when a deviation occurs.

Critical Control Point (CCP)—a step at which control can be applied and is essential to prevent or eliminate a food safety hazard or reduce it to an acceptable level.

Critical Limit—the value(s) to which a biological, chemical or physical parameter must be controlled at a CCP to prevent, eliminate or reduce to an acceptable level the occurrence of a food safety hazard.

Critical Listing Element—a condition that constitutes a major dysfunction likely to result in a potential compromise to food safety and shall be grounds for suspension of a permit.

Deficiency—an element inadequate or missing from the requirements of the HACCP system or of this document.

Deviation—a failure to meet a critical limit.

Hazard Analysis Critical Control Point (HACCP)—a systematic approach to the identification, evaluation and control of significant dairy products safety hazards.

HACCP Plan—the written document which is based upon the principles of HACCP and which delineates the procedures to be followed.

HACCP System—the implemented HACCP plan and pre-requisite programs including other applicable NCIMS requirements contained in the PMO.

HACCP Team—the group of people within, employed by a facility or assisting, who are responsible for developing, implementing and maintaining the HACCP system.

Hazard—a biological, chemical or physical agent that is reasonably likely to cause illness or injury in the absence of its control.

Hazard Analysis—the process of collecting and evaluating information on hazards associated with the food under consideration to decide which are significant and must be addressed in the HACCP plan.

Listing Audit—an evaluation conducted by a certified milk sanitation rating officer (that has been standardized and certified as a HACCP listing officer by FDA) using the methodology prescribed in the *Methods of Making Sanitation Rating of Milk Shippers* of the entire dairy facility to ensure compliance with Chapter 11 of this Part.

Monitor—to conduct a planned sequence of observations or measurements to assess whether a CCP is under control or to assess the conditions and practices of all required Pre-requisite Programs (PPs) and to produce an accurate record for future use in verification.

Non-Conformity—a failure to meet specified requirements of the HACCP system or of this document.

Pre-Requisite Program (PP)—procedures, including good manufacturing practices, that address operational conditions providing the foundation for the HACCP system.

Potential Hazard—any hazard to be evaluated by the hazard analyses.

Validation—the element of verification focused on collecting and evaluating scientific and technical information to determine whether the HACCP plan, when properly implemented, will effectively control the hazards.

Verification—those activities, other than monitoring, that determine the validity of the HACCP plan and that the system is operating according to the plan.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1274 (June 2002), amended LR 37:2685 (September 2011).

§1103. General Requirements

A. All dairy plants, including cheese manufacturing plants and frozen dessert manufacturing plants, that are required by this Part or have been required or authorized by the state health officer to implement HACCP systems shall develop and implement HACCP systems conforming with the requirements of this Chapter.

B. The state health officer shall require that dairy plants, including cheese manufacturing plants and frozen dessert manufacturing plants, implement a HACCP system that conforms with the requirements of this Part, when in his opinion, it is in the best interest of the public health. Each dairy plant's HACCP system, when implemented shall provide a level of product safety equivalent to the level provided by similar dairy plants that are being regulated under the provisions of other Chapters of this Part.

C. Dairy plants being regulated under the provisions of this Chapter shall comply with the following provisions of the requirements contained in this Part:

1. permits (in accordance with §109 of this Part);
2. permits required for imported milk, milk products and frozen desserts (in accordance with 111 of this Part);

3. requirements for imported dairy products (in accordance with §113 of this Part);

4. milk records (in accordance with §115 of this Part);

5. falsification of records (in accordance with §117 of this Part);

6. registration (in accordance with §119 of this Part);

7. labeling (in accordance with §121 of this Part);

8. delivery of samples (in accordance with §303 of this Part);

9. pasteurization equipment tests, examination and sealing (in accordance with §313 of this Part);

10. grades of milk and milk products to be sold (in accordance with §323 of this Part);

11. procedures in emergency (in accordance with §325 of this Part);

12. continuous grading (in accordance with §327 of this Part);

13. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);

14. Grade A raw milk for pasteurization (in accordance with §349 of this Part);

15. Grade A raw milk for pasteurization (certified for interstate milk shipment) (in accordance with §351 of this Part);

16. manufacturing grade raw milk for pasteurization (milk for manufacturing purpose) (in accordance with §353 of this Part);

17. Grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products, bulk shipped Grade A pasteurized or ultra-pasteurized milk and milk products and pasteurized filled milk and filled milk products (in accordance with §355 of this Part);

18. Grade A bulk shipped, heat-treated milk and milk products (in accordance with §357 of this Part);

19. Grade A aseptically processed milk and milk products (in accordance with §359 of this Part);

20. Grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products certified for interstate shipment (in accordance with §361 of this Part);

21. milk tank trucks (in accordance with §701 of this Part);

22. sealing and protection of milk tank trucks (in accordance with §703 of this Part);

23. labeling (in accordance with §705 of this Part);

24. bulk milk tank truck operator/sampler (in accordance with §707 of this Part);

25. general requirements (in accordance with §901 of this Part);

26. approval of plans (in accordance with §903 of this Part);

27. dairy plant receivers/samplers (in accordance with §907 of this Part);

28. sale of reconstituted or recombined milk or milk products and anomalous (substitute) milk or milk products (in accordance with §959 of this Part);

29. use of inhibitors (in accordance with §961 of this Part);

30. dipping or transferring dairy products (in accordance with §965 of this Part); and

31. vehicles (in accordance with §989 of this Part).

D. The state health officer may authorize dairy plants that request permission to be regulated under the provisions of this Part to be regulated in such a manner.

E. Following are the seven HACCP principles to be included in a HACCP Plan:

1. conduct a hazard analysis for each product and process;
2. determine critical control points;
3. establish critical limits;
4. establish monitoring procedures;
5. establish corrective actions;
6. establish verification procedures; and,
7. establish record-keeping and documentation procedures.

F. Dairy plants regulated under the provisions of this Part shall perform the following HACCP Preliminary Steps:

1. Assemble a multi-disciplinary HACCP team of plant/consultant personnel.

- a. Team responsibilities:
 - i. develop and update all written documentation;
 - ii. implement HACCP program;
 - iii. periodically verify and validate HACCP system;
 - iv. provide opportunities for necessary training;
 - v. maintain effective communication with plant management; and,
 - vi. interact with regulatory personnel during audits/inspections.

2. Describe the product and its distribution.

- a. product description to include composition, safety characteristics, water activity, pH, and temperature requirements;
- b. list of ingredients and packaging materials;
- c. processing methods;
- d. method of distribution; and,
- e. distribution condition including frozen, refrigerated, shelf-stable.

3. Identify the intended use and consumers.

- a. intended use-ingredient, retail, institutional;
- b. intended and likely consumers—children, adults, elderly, healthy, sick, teenagers; and,
- c. distribution area—local, regional, nationwide, international.

4. Construct a flow diagram for each product/like product and each type of process, raw materials, packaging, sequence of all processing steps including addition of rework, use of air or gases, filters, screens, clarifiers, metal detectors, storage and distribution.

5. Conduct on-site verification of each flow diagram to (each product type and process shall have a different flow diagram) ensure that the intended flow diagram is accurate, complete and is the actual flow of products through the processing flow.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1276 (June 2002), amended LR 37:2686 (September 2011).

§1105. Pre-requisite Programs (PPs)

A. HACCP is not a stand-alone program but is part of a larger control system. PPs are the universal procedures used

to control the conditions of the plant environment that contribute to the overall safety of the product. They represent the sum of programs, practices and procedures that must be applied to produce and distribute safe products in a clean, sanitary environment. They differ from CCPs in that they are background programs that reduce the potential for the occurrence of a food safety hazard. Frequently, both HACCP plan CCPs and PPs control measures are necessary to control a food safety hazard.

B. HACCP may be implemented only in a facility that is constructed and operated in a manner that provides a sanitary environment. Dairy plant premises, building construction, maintenance and housekeeping shall be maintained in a manner sufficient to provide such an environment.

C. Dairy plants that are required to develop and implement HACCP systems by this Part shall develop and implement the following pre-requisite programs that conform with the following requirements prior to the implementation of the HACCP Plan:

1. safety of the water, steam or ice that comes into contact with food or food contact surfaces;
2. condition and cleanliness of the food contact surfaces of equipment;
3. prevention of cross-contamination from insanitary objects and or practices to food products, packaging material and other food contact surfaces, including utensils, gloves, outer garments, etc., and from raw product to processed product (e.g., pasteurizer pressure differential);
4. maintenance of hand washing, hand sanitizing and toilet facilities;
5. protection of food, food packaging material and food contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning compounds, sanitizing agents, condensate and other chemical, physical and biological contaminants;
6. proper labeling, storage and use of toxic compounds;
7. control of employee health conditions that could result in the microbiological contamination of food, food packaging materials and food contact surfaces; and,
8. pest exclusion from the food plant.

D. Each dairy plant shall monitor the conditions and practices of all required PPs with sufficient frequency to ensure conformance with those conditions and that are appropriate both to the plant and to the safety of the food being processed. Each milk plant, receiving station or transfer station shall correct those conditions and practices that are not in conformance.

E. Each dairy plant shall maintain records that document the ongoing application of the PPs including a brief written description, monitoring and correction records.

F. In addition to the required prerequisite programs, any other prerequisite programs that are being relied upon in the hazard analysis to reduce the likelihood of hazards such that they are not reasonably likely to occur shall also be monitored and documented.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1276 (June 2002), amended LR 37:2687 (September 2011).

§1107. Hazard Analysis

A. Each dairy plant shall develop, or have developed for it, a written hazard analysis to determine whether there are food hazards that are reasonably likely to occur for each type of dairy product processed by that dairy plant, receiving station or transfer station and to identify the control measures that the dairy plant, receiving station or transfer station can apply to control those hazards.

B. The plant shall develop or have developed for it a hazard analysis each time a product, product ingredient or process is added or changed.

C. The hazard analysis shall include hazards that can be introduced both within and outside the processing plant environment, including hazards that can occur during production, transportation, processing and distribution.

D. The hazard analysis shall be submitted in writing to the state health officer for approval prior to processing of a product or change of process for which the hazard analysis was made.

E. A hazard that is reasonably likely to occur is one for which a prudent dairy plant operator would establish controls because experience, illness data, scientific reports or other information provide a basis to conclude that there is a reasonable possibility that, in the absence of these controls, the hazard will occur in the particular type of product being processed. The hazard analysis shall be developed by an individual(s) trained in accordance with this program and shall be subject to the record keeping requirement as described in this document.

1. In evaluating what food hazards are reasonably likely to occur, at a minimum, consideration should be given to the following:

- a. microbiological contamination;
- b. parasites;
- c. chemical contamination;
- d. unlawful drug and pesticide residues;
- e. natural toxins;
- f. unapproved use of food or color additives;
- g. presence of undeclared ingredients that may be allergens or sensitivity producing ingredients; and
- h. physical hazards.

2. Dairy plant operators shall evaluate product ingredients, processing procedures, packaging, storage and intended use; facility and equipment function and design; and plant sanitation including employee hygiene to determine the potential effect of each on the safety of the finished product for the intended consumer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1276 (June 2002), amended LR 37:2688 (September 2011).

§1109. HACCP Plan

A. Dairy plants that are required by the state health officer to implement a HACCP system or have authorization from the state health officer to be regulated under the provisions of this Chapter shall have and implement a written HACCP plan whenever a hazard analysis reveals one or more hazards that are reasonably likely to occur. The HACCP plan shall be developed by an individual(s) who meets the requirements contained in the PMO and shall be subject to record keeping requirements as described in this

Code. A HACCP plan shall be specific to each location and product. The plan may group types of products together, or group types of production methods together, if the hazards, critical control points, critical limits and procedures required for each are essentially identical and that any required features of the plan that are unique to a specific product or method are clearly delineated in the plan and are observed in practice.

B. Written HACCP plans shall be submitted to the state health officer for review and approval prior to processing a product addressed by the plan and prior to processing a new product or making changes in a product or the manner in which a product is processed. Such review and approval shall be performed by a registered sanitarian that meets the PMO requirements for auditing HACCP plants.

C. The HACCP plan shall, at a minimum:

1. include complete up-to-date process flow diagrams for all products manufactured. Flow diagrams may be combined when process, products and hazards are similar;

2. list all hazards that are reasonably likely to occur as identified in the hazard analysis specified above, and that must be controlled for each type of product;

3. list the critical control points for each of the identified hazards, including the appropriate:

a. critical control points designed to control hazards that could occur or could be introduced in the plant environment;

b. critical control points designed to control hazards introduced outside the plant environment, including hazards that occur before arriving at the dairy plant, receiving station or transfer station; and,

c. critical control points for pasteurization as described in *Appendix H*, Section VIII of the PMO (Milk and milk products HACCP CCP models for pasteurization equipment);

4. list the critical limits that shall be met at each of the critical control points;

5. list the procedures, and the frequency with which they are to be performed, that will be used to monitor each of the critical control points to ensure compliance with the critical limits;

6. include any corrective action plans that have been developed in accordance with the corrective action requirements as described in this document, and that are to be followed in response to deviations from critical limits at critical control points;

7. list the verification procedures and the frequency with which they are to be performed, that the dairy plant will use in accordance with verification and validation requirements as described in this Part;

8. provide for a record keeping system that documents the monitoring of the critical control points in accordance with the record requirements as described in this Part. The records shall contain the actual values and observations obtained during monitoring.

D. Sanitation. Sanitation controls may be included in the HACCP plan. However, to the extent that they are monitored in accordance with the pre-requisite programs, they need not be included in the HACCP plan.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1277 (June 2002), amended LR 37:2688 (September 2011).

§1111. Corrective Actions

A. Whenever a deviation from a critical limit occurs, a dairy plant shall take corrective action as follows.

1. Dairy plants may develop written corrective action plans, which become part of their Hazard Analysis and Critical Control Point (HACCP) plans, in accordance with this Part, by which dairy plants predetermine the corrective actions that they will take whenever there is a deviation from a critical limit. A corrective action plan that is appropriate for a particular deviation is one that describes the steps to be taken and assigns responsibility for taking those steps, to ensure that:

a. no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation.

b. if such product has entered commerce, it is expeditiously removed; and,

c. the cause of the deviation is corrected.

2. When a deviation from critical limit occurs, and the dairy plant does not have a corrective action plan that is appropriate for that deviation, the dairy plant shall:

a. segregate and hold the affected product.

b. perform or obtain a review to determine the acceptability of the affected product for distribution. The review shall be performed by an individual or individuals qualified by training or experience to perform such a review.

c. take corrective action, when necessary, with respect to the affected product to ensure that no product enters commerce that is either injurious to health or is otherwise adulterated as a result of the deviation.

d. take corrective action, when necessary, to correct the cause of the deviation; and,

e. perform or obtain timely validation as required in this document, by a qualified individual(s), to determine whether modification of the HACCP plan is required to reduce the risk of recurrence of the deviation, and modify the HACCP plan as necessary.

3. All corrective action taken in accordance with this Section shall be fully documented in records that are subject to verification.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1277 (June 2002), amended LR 37:2689 (September 2011).

§1113. Verification and Validation

A. Every dairy plant shall verify that the hazard analysis and critical control point (HACCP) system is being implemented according to design:

1. verification activities shall include:

a. the calibration of CCP process-monitoring instruments, (pasteurization tests, thermometers, etc.) and instruments/equipment used to monitor PPs;

b. a review, including signing and dating, by an individual who has been trained in accordance with the training requirements contained in this Part, of the records that document:

i. the monitoring of CCPs. The purpose of the monitoring of CCPs review shall be, at a minimum, to ensure that the records are complete and to verify that the records document values that are within the critical limits. This review shall occur at a frequency that is appropriate to the importance of the record and as specified in the HACCP plan;

ii. the taking of corrective actions. The purpose of corrective actions review shall be, at a minimum, to ensure that the records are complete and to verify that appropriate corrective actions were taken in accordance with the corrective action requirements of §1111 of this Part. This review shall occur at a frequency that is appropriate to the importance of the record. A centralized deviation log is required; and

iii. the calibrating of any process monitoring instruments used at CCPs and the performance of any periodic end-product or in-process testing that is part of the dairy plant, receiving station or transfer station's verification activities. The purpose of the calibrating of any process monitoring instruments used at CCPs and the performance of any periodic end-product or in-process testing that is part of the dairy plant reviews shall be, at a minimum, to ensure that the records are complete and that these activities occurred in accordance with the dairy plant written procedures. These reviews shall occur within a reasonable time after the records are made;

c. the taking of corrective action procedures whenever any verification procedure establishes the need to take a corrective action;

2. the calibration of CCP process-monitoring instruments, and the performance of any periodic end-product and in-process testing shall be documented in records that are subject to the record keeping requirements in this Part.

B. Validation of the HACCP Plan. Every dairy plant shall validate that the HACCP plan is adequate to control hazards that are reasonably likely to occur. This validation shall occur at least once within 12 months after implementation and at least annually thereafter or whenever any changes in the process occur that could affect the hazard analysis or alter the HACCP plan and prerequisite program.

1. Such changes may include raw materials or source of raw materials; product formulation; processing methods or systems, including computers and their software; packaging; finished product distribution systems; or the intended use or intended consumers of the finished product. Consumer complaints may also reveal a need for validation.

2. The validation shall be performed by a qualified individual(s) and shall be subject to the record keeping requirements of §1115 of this Part. The HACCP plan shall be modified immediately whenever a validation reveals that the plan is no longer adequate to fully meet the requirements of this Part.

C. Validation of the hazard analysis. Whenever a dairy plant has no HACCP plan because a hazard analysis has revealed no hazards that are reasonably likely to occur, the dairy plant shall reassess the adequacy of the hazard analysis whenever there are any changes in the process that could reasonably affect whether a hazard exists.

1. Such changes may include raw materials; product formulation; processing methods or systems, including computers and their software; packaging; finished product distribution systems; or the intended use or intended consumers of the finished product and consumer complaints.

2. The validation shall be performed by a qualified individual(s) trained in accordance with the training requirements of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1277 (June 2002), amended LR 37:2689 (September 2011).

§1115. Records

A. Dairy plants shall use consistent terminology to identify each piece of equipment, record, document or program throughout their written HACCP system. Dairy plants shall maintain the following records documenting the dairy plant, receiving station or transfer station's hazard analysis and critical control point (HACCP) system:

1. records documenting the ongoing application of the pre-requisite programs, including a brief written description monitoring and correction records;

2. the written hazard analysis;

3. the written HACCP plan;

4. records documenting the ongoing application of the HACCP plan that include:

a. monitoring of critical control points and their critical limits, including the recording of actual times, temperatures, or other measurements, as prescribed in the establishment's HACCP plan; and

b. corrective actions, including all actions taken in response to a deviation; and a centralized deviation log is required.

5. records documenting verification of the HACCP system and validation of the HACCP system including, HACCP plan, hazard analysis and pre-requisite programs; and

6. Records and documents shall be dated and each page of documents and forms marked with a new date or version number whenever updated.

B. General Requirements. All records required by this Part shall include:

1. the identity and location of the dairy plant, receiving station or transfer station;

2. the date and time of the activity that the record reflects;

3. the signature or initials of the person(s) performing the operation or creating the record; and,

4. where appropriate, the identity of the product and the production code, if any. Processing and other information shall be entered on records at the time that it is observed. The records shall contain the actual values and observations obtained during monitoring.

C. Documentation. The records in §1115.A.1-3 shall be signed and dated by the most responsible individual onsite at the dairy plant, receiving station or transfer station. These signatures shall signify that these records have been accepted by the firm.

1. The records in §1115.A.1-3 shall be signed and dated:

a. upon initial acceptance;

b. upon any modification; and

c. upon verification and validation in accordance with the requirements of §1113 of this Part.

D. Record Retention. In the case of perishable or refrigerated products, all records required by this Part shall be retained at the dairy plant facility for at least one year after the date that such products were prepared and, in the case of frozen, preserved, or shelf - stable products, two years or the shelf life of the product, whichever is greater, after the date that the products were prepared unless longer retention time is required by other regulations.

1. Records that relate to the adequacy of equipment or processes used, such as commissioning or process validation records, including the results of scientific studies and evaluations, shall be retained at the dairy plant facility for at least two years after the date that the dairy plant, receiving station or transfer station last used such equipment or process.

2. Off-site storage of processing records is permitted after six months following the date that the monitoring occurred, if such records can be retrieved and provided on-site within 24 hours of request for official review. Electronic records are considered to be on-site if they are accessible from an on-site location.

3. If the processing facility is closed for a prolonged period, the records may be transferred to some other reasonably accessible location but shall be immediately returned to the processing facility for official review upon request by the state health officer.

E. Official review. All records required by this Section shall be available for official review by the state health officer.

F. Records maintained on a computer. The maintenance of records on computer, in accordance with the above, is acceptable.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1277 (June 2002), amended LR 37:2690 (September 2011).

§1117. Training and Standardization

A. HACCP training for industry and state regulatory personnel shall be based on the August 14, 1997 "Hazard Analysis and Critical Control Points Principles and Application Guidelines" of the U.S. National Advisory Committee on Microbiological Criteria for Foods (NACMCF), current FDA and NCIMS HACCP requirements and the requirements of this Part. State regulatory personnel responsible for auditing dairy plants being regulated under this Part shall have the training required to inspect dairy plants and specialized training in conducting HACCP System Audits that is approved by the FDA.

B. Only industry personnel who have received the training requirements contained in §1117.A shall be responsible for the following functions:

1. developing the hazard analysis including delineating control measures as required;

2. developing a HACCP plan that is appropriate for each individual dairy plant;

3. validating and modifying the HACCP Plan in accordance with the corrective action procedures and the validation activities contained in this Part; and,

4. performing required HACCP plan record reviews.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1277 (June 2002), amended LR 37:2690 (September 2011).

§1119. Audit of Dairy Plants that Operate under the HACCP Systems Defined in this Part

A. Procedures that shall be used by the state health officer in the audit of dairy plants which are required to implement HACCP Systems:

1. conduct a pre-audit management interview during which he shall review and discuss the plant HACCP system including:

- a. changes in management structure;
- b. the hazard analysis—ensure that all food hazards are addressed;
- c. changes in the HACCP plan;
- d. changes in the prerequisite programs (PPs);
- e. changes in the flow diagrams; and
- f. changes in products or process;

2. review past audit reports and correction of deficiencies;

3. perform a comprehensive in-plant review of the facilities, equipment, operations and implementation of the HACCP system;

4. review records of the implementation of the plant's HACCP system;

5. review the plant's compliance with other applicable requirements of this Part including:

- a. raw milk supply source;
- b. labeling compliance;
- c. adulteration;
- d. permit requirements;
- e. drug residue testing;
- f. regulatory sample compliance; and
- g. pasteurization equipment design, construction and operation;

6. conduct an exit interview with plant management and the plant HACCP team, which includes:

- a. discussing the findings and observations;
- b. establishing time lines for the correction of all identified deficiencies and non conformities; and
- c. preparing and issuing the audit report;

7. take appropriate action to verify that all deficiencies have been corrected within the established time frame as soon as practical after the established time or date;

8. take immediate action when an imminent health hazard is observed to prevent further movement of products until such hazards have been eliminated;

9. initiate regulatory enforcement such as permit suspension, revocation or other equivalent measures when the dairy plant has failed to recognize or correct a deficiency or non conformity;

10. critical listing elements. It is essential that each regulatory audit includes a thorough review of each of the critical listing elements of the plant's HACCP System;

a. Deficiencies or non conformities related to Critical Listing Elements require immediate attention and constitute grounds for suspension of the permit;

b. The following are critical listing elements:

i. hazard analysis—flow diagram and a hazard analysis has been conducted and written for each kind or group of dairy products, including frozen desserts, which are processed;

ii. HACCP plan—a written HACCP plan prepared for each kind or group of dairy products, including frozen desserts, which are processed;

iii. HACCP plan—critical limits (CL) are adequate to control the hazard identified.

iv. HACCP plan—corrective action taken for products produced during a deviation from the critical limits defined in the plan;

v. HACCP plan—verification and validation—calibration of CCP process monitoring instruments and equipment was performed as required and at the frequency defined in the plan;

vi. HACCP system records—information on HACCP records were not falsified;

vii. Other NCIMS requirements—in coming milk supply from NCIMS listed source(s) with sanitation scores of 90 or better or acceptable HACCP Listing;

viii. other NCIMS requirements—drug residue control program implemented; and,

ix. HACCP system audit findings—follow up action—no major HACCP system dysfunction exists, but if a series of observations made during an audit indicate that a plant does not have sufficient control of its HACCP system or operations to prevent a compromise to food safety, this shall constitute grounds for immediate suspension of permit.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1277 (June 2002), amended LR 37:2691 (September 2011).

§1121. Manufactured Milk Products Plants, Manufactured Milk Concentration Plants and Cream Stations [formerly paragraph 7:130]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1277 (June 2002), repealed LR 37:2691 (September 2011).

§1123. Insanitary Handling of Butter, Cheese and Other Manufactured Milk Products [formerly paragraph 7:134]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1278 (June 2002), repealed LR 37:2691 (September 2011).

§1125. Rat Proofing [formerly paragraph 7:135]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1278 (June 2002), repealed LR 37:2691 (September 2011).

§1127. Future Butter Plants, Cheese Plants, Manufactured Milk Products, Plants and Cream Stations [formerly paragraph 7:136]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1278 (June 2002), repealed LR 37:2692 (September 2011).

§1129. Notification of Disease [formerly paragraph 7:137]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1278 (June 2002), repealed LR 37:2692 (September 2011).

§1131. Suspension and Reissuing of Permits [formerly paragraph 7:138]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, , LR 28:1278 (June 2002), repealed LR 37:2692 (September 2011).

Chapter 13. Receiving Stations

§1301. Receiving Station Requirements

A. Receiving stations that are required or have been authorized by the state health officer to be regulated under the HACCP requirements of this Part, shall conform with each of the HACCP requirements contained in Chapter 11 of this Part.

B. Receiving stations shall comply with the applicable provisions of the following general requirements for dairy plants:

1. permits (in accordance with §109 of this Part);
2. permits required for imported milk, milk products and frozen desserts (in accordance with §111 of this Part);
3. requirements for imported dairy products (in accordance with §113 of this Part);
4. milk records (in accordance with §115 of this Part);
5. falsification of records (in accordance with §117 of this Part);
6. delivery of samples (in accordance with §303 of this Part);
7. the official sampling, of dairy plant environments and dairy products including frozen desserts (in accordance with §307 of this Part);
8. posting inspection reports (in accordance with §317 of this Part);
9. field supervision (in accordance with §319 of this Part);
10. grades of milk and milk products to be sold (in accordance with §323 of this Part);
11. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);
12. grade A raw milk for pasteurization (in accordance with §349 of this Part);

13. manufacturing grade raw milk for pasteurization (milk for manufacturing purpose) (in accordance with §353 of this Part);

14. grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products, bulk shipped grade A pasteurized or ultra-pasteurized milk and milk products and pasteurized filled milk and filled milk products (in accordance with §355 of this Part);

15. grade A bulk shipped, heat-treated milk and milk products (in accordance with §357 of this Part);

16. milk tank trucks (in accordance with §701 of this Part);

17. sealing and protection of milk tank trucks (in accordance with §703 of this Part);

18. labeling (in accordance with §705 of this Part);

19. general requirements (in accordance with §901 of this Part);

20. raw milk receiving (in accordance with §905 of this Part);

21. dairy plant receivers/samplers (in accordance with §907 of this Part);

22. receiving and handling of milk derived and non-dairy ingredients (in accordance with §909 of this Part);

23. immediate surroundings (in accordance with §911 of this Part);

24. floors (in accordance with §913 of this Part);

25. walls and ceilings (in accordance with §915 of this Part);

26. doors and windows (in accordance with §917 of this Part);

27. light and ventilation (in accordance with §919 of this Part);

28. separate rooms (in accordance with §921 of this Part);

29. toilet facilities (in accordance with §923 of this Part);

30. water supply (in accordance with §925 of this Part);

31. protection from contamination (in accordance with §929 of this Part);

32. reclaim or rework operations (in accordance with §931 of this Part);

33. dairy plant cleanliness (in accordance with §933 of this Part);

34. sanitary piping (in accordance with §935 of this Part);

35. construction and repair of containers and equipment (in accordance with §937 of this Part);

36. thermometers (in accordance with §939 of this Part);

37. cleaning and sanitization of containers and equipment (in accordance with §943 of this Part);

38. storage of single-service containers, utensils and materials (in accordance with §947 of this Part);

39. cooling of milk and dairy products (in accordance with §955 of this Part);

40. use of inhibitors (in accordance with §961 of this Part);

41. apparatus, containers, equipment and utensils (in accordance with §967 of this Part);

42. personnel health (in accordance with §969 of this Part);

43. notification of disease (in accordance with §971 of this Part);

44. procedure when infection suspected (in accordance with §973 of this Part);

45. personal cleanliness (in accordance with §975 of this Part);

46. cleaning of containers (in accordance with §983 of this Part).

47. rat proofing (in accordance with §985 of this Part); and

48. waste disposal (in accordance with §987 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1278 (June 2002), amended LR 37:0000 (September 2011).

§1303. Permits [formerly paragraph 7:140]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5 (15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1278 (June 2002), repealed LR 37:2693 (September 2011).

§1305. Labeling [formerly paragraph 7:141]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5 (15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1278 (June 2002), repealed LR 37:2693 (September 2011).

§1307. The Examination of Dry Milk or Dry Milk Products [formerly paragraph 7:142]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5 (15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1279 (June 2002), repealed LR 37:0000 (September 2011).

§1309. Requirements for Grade A Dry Milk [formerly paragraph 7:143]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5 (15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1279 (June 2002), repealed LR 37:2693 (September 2011).

§1311. Requirements for Extra Grade Dry Milk Products [formerly paragraph 7:144]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5 (15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1279 (June 2002), repealed LR 37:0000 (September 2011).

§1313. Requirements for Standard Grade Dry Milk Products [formerly paragraph 7:145]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5 (15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1280 (June 2002), repealed LR 37:2693 (September 2011).

§1315. Suspension of Permit or Registration Certificate [formerly paragraph 7:146]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5 (15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1280 (June 2002), repealed LR 37:2693 (September 2011).

§1317. Floors [formerly paragraph 7:147]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1280 (June 2002), repealed LR 37:2693 (September 2011).

§1319. Walls and Ceilings [formerly paragraph 7:148]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1280 (June 2002), repealed LR 37:2693 (September 2011).

§1321. Doors and Windows [formerly paragraph 7:149]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1280 (June 2002), repealed LR 37:2693 (September 2011).

§1323. Lighting and Ventilation [formerly paragraph 7:150]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1280 (June 2002), repealed LR 37:2693 (September 2011).

§1325. Miscellaneous Protection from Contamination [formerly paragraph 7:151]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1280 (June 2002), repealed LR 37:2693 (September 2011).

§1327. Toilet Facilities [formerly paragraph 7:52]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1281 (June 2002), repealed LR 37:2693 (September 2011).

§1329. Water Supply [formerly paragraph 7:153]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1281 (June 2002), repealed LR 37:2693 (September 2011).

§1331. Hand-Washing Facilities [formerly paragraph 7:154]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1281 (June 2002), repealed LR 37:2693 (September 2011).

§1333. Sanitary Piping [formerly paragraph 7:155]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1281 (June 2002), repealed LR 37:2694 (September 2011).

§1335. Construction and Repair of Containers and Equipment [formerly paragraph 7:156]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1281 (June 2002), repealed LR 37:2694 (September 2011).

§1337. Disposal of Wastes [formerly paragraph 7:157]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1281 (June 2002), repealed LR 37:2694 (September 2011).

§1339. Cleaning and Bactericidal Treatment of Containers and Equipment [formerly paragraph 7:158]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1281 (June 2002), repealed LR 37:2694 (September 2011).

§1341. Storage of Containers and Equipment [formerly paragraph 7:159]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1281 (June 2002), repealed LR 37:2694 (September 2011).

§1343. Handling of Containers and Equipment [formerly paragraph 7:160]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

§1345. Storage of Single-Service Containers and Materials [formerly paragraph 7:161]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

§1347. Cooling [formerly paragraph 7:162]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

§1349. Package and Packaging [formerly paragraph 7:163]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

§1351. Employee Health [formerly paragraph 7:164]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

§1353. Cleanliness of personnel [formerly paragraph 7:165]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

§1355. Vehicles [formerly paragraph 7:166]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

§1357. Notification of Disease [formerly paragraph 7:167]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

§1359. Dry Milk or Dry Milk Products from Points beyond Limits of Routine Inspections [formerly paragraph 7:168]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1282 (June 2002), repealed LR 37:2694 (September 2011).

Chapter 15. Transfer Stations

§1501. Transfer Station Requirements

A. Transfer stations that are required or have been authorized by the state health officer to be regulated under the HACCP requirements of this Part, shall conform with each of the HACCP requirements contained in Chapter 11 of this Part.

B. Transfer stations shall comply with the applicable provisions of the following general requirements for dairy plants:

1. permits (in accordance with §109 of this Part);
2. permits required for imported milk, milk products and frozen desserts (in accordance with §111 of this Part);
3. requirements for imported dairy products (in accordance with §113 of this Part);
4. milk records (in accordance with §115 of this Part);

5. falsification of records (in accordance with §117 of this Part);
6. delivery of samples (in accordance with §303 of this Part);
7. the official sampling of dairy plant environments and dairy products including frozen desserts (in accordance with §307 of this Part);
8. posting inspection reports (in accordance with §317 of this Part);
9. field supervision (in accordance with §319 of this Part);
10. grades of milk and milk products to be sold (in accordance with §323 of this Part);
11. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);
12. grade A raw milk for pasteurization (in accordance with §349 of this Part);
13. manufacturing grade raw milk for pasteurization (milk for manufacturing purpose) (in accordance with §353 of this Part);
14. grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products, bulk shipped grade A pasteurized or ultra-pasteurized milk and milk products and pasteurized filled milk and filled milk products (in accordance with §355 of this Part);
15. grade A bulk shipped, heat-treated milk and milk products (in accordance with §357 of this Part);
16. milk tank trucks (in accordance with §701 of this Part);
17. sealing and protection of milk tank trucks (in accordance with §703 of this Part);
18. labeling (in accordance with §705 of this Part);
19. general requirements (in accordance with §901 of this Part);
20. approval of plans (in accordance with §903 of this Part);
21. raw milk receiving (in accordance with §905 of this Part);
22. confined space entry (in accordance with §905(D) of this Part);
23. dairy plant receivers/samplers (in accordance with §907 of this Part);
24. immediate surroundings (in accordance with §911 of this Part);
25. floors (in accordance with §913 of this Part);
26. light and ventilation (in accordance with §919 of this Part);
27. toilet facilities (in accordance with §923 of this Part);
28. water supply (in accordance with §925 of this Part);
29. hand washing facilities (in accordance with §927 of this Part);
30. protection from contamination (in accordance with §929 of this Part);
31. dairy plant cleanliness (in accordance with §933 of this Part);
32. sanitary piping (in accordance with §935 of this Part);
33. construction and repair of containers and equipment (in accordance with §937 of this Part);

34. thermometers (in accordance with §939 of this Part);
35. cleaning and sanitization of containers and equipment (in accordance with §943 of this Part);
36. storage of single-service containers, utensils and materials (in accordance with §947 of this Part);
37. cooling of milk and dairy products (in accordance with §955 of this Part);
38. notification of disease (in accordance with §971 of this Part);
39. personal cleanliness (in accordance with §975 of this Part);
40. rat proofing (in accordance with §985 of this Part);
41. waste disposal (in accordance with §987 of this Part); and
42. vehicles (in accordance with §989 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2694 (September 2011).

Chapter 17. Finished Dairy Products Depots and Transfer Points

§1701. Approval of Plans

A. All finished dairy product depots or finished dairy product transfer points that are domiciled within the state and which are hereafter constructed, reconstructed or altered shall conform to the requirements contained in this Chapter. Prior to construction, reconstruction or alteration of such facilities, written approval of plans and specifications shall be obtained from the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2695 (September 2011).

§1703. Basic Requirements for Finished Dairy Product Depots

A. Finished product depots shall conform with the following general requirements for dairy plants:

1. permits (in accordance with §109 of this Part);
2. permits required for imported milk, milk products and frozen desserts (in accordance with §111 of this Part);
3. requirements for imported dairy products (in accordance with §113 of this Part);
4. milk records (in accordance with §115 of this Part);
5. falsification of records (in accordance with §117 of this Part);
6. registration (in accordance with §119 of this Part);
7. labeling (in accordance with §121 of this Part);
8. delivery of samples (in accordance with §303 of this Part);
9. posting inspection reports (in accordance with §317 of this Part);
10. grades of milk and milk products to be sold (in accordance with §323 of this Part);
11. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);

12. regrading or reinstatement of permit when degrade or suspension was based on laboratory analyses (in accordance with §343 of this Part);

13. regrading and reinstatement of permit when degrade or suspension was based on physical violations (in accordance with §345 of this Part);

14. general requirements (in accordance with §901 of this Part);

15. approval of plans (in accordance with §903 of this Part);

16. receiving and handling of milk derived and non-dairy ingredients (in accordance with §909 of this Part);

17. immediate surroundings (in accordance with §911 of this Part);

18. floors (in accordance with §913 of this Part);

19. walls and ceilings (in accordance with §915 of this Part);

20. light and ventilation (in accordance with §919 of this Part);

21. toilet facilities (in accordance with §923 of this Part);

22. water supply (in accordance with §925 of this Part);

23. hand washing facilities (in accordance with §927 of this Part);

24. protection from contamination (in accordance with §929 of this Part);

25. reclaim or rework operations (in accordance with §931 of this Part);

26. dairy plant cleanliness (in accordance with §933 of this Part);

27. thermometers (in accordance with §939 of this Part);

28. cooling of milk and dairy products (in accordance with §955 of this Part);

29. use of overflow, leaked, spilled or mishandled dairy products (in accordance with §957 of this Part);

30. sale of reconstituted or recombined milk or milk products and anomalous (substitute) milk or milk products (in accordance with §959 of this Part);

31. dipping or transferring dairy products (in accordance with §965 of this Part);

32. personal health (in accordance with §969 of this Part);

33. notification of disease (in accordance with §971);

34. procedure when infection suspected (in accordance with §973 of this Part);

35. storage of bottled or packaged milk and dairy products (in accordance with §979 of this Part);

36. sale of warm milk (in accordance with §981 of this Part);

37. rat proofing (in accordance with §985 of this Part);

38. waste disposal (in accordance with §987 of this Part); and

39. vehicles (in accordance with §989 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2695 (September 2011).

§1705. Basic Requirements for Finished Dairy Product Transfer Points

A. Finished dairy product transfer points shall conform with the following general requirements for dairy plants:

1. permits (in accordance with §109 of this Part);

2. permits required for imported milk, milk products and frozen desserts (in accordance with §111 of this Part);

3. requirements for imported dairy products (in accordance with §113 of this Part);

4. milk records (in accordance with §115 of this Part);

5. falsification of records (in accordance with §117 of this Part);

6. labeling (in accordance with §121 of this Part);

7. delivery of samples (in accordance with §303 of this Part);

8. grades of milk and milk products to be sold (in accordance with §323 of this Part);

9. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);

10. immediate surroundings (in accordance with §911 of this Part);

11. toilet facilities (in accordance with §923 of this Part);

12. water supply (in accordance with §925 of this Part);

14. thermometers (in accordance with §939 of this Part);

15. sale of reconstituted or recombined milk or milk products and anomalous (substitute) milk or milk products (in accordance with §959 of this Part);

16. storage of bottled or packaged milk and dairy products (in accordance with §979 of this Part);

17. sale of warm milk (in accordance with §981 of this Part);

18. rat proofing (in accordance with §985 of this Part);

19. waste disposal (in accordance with §987 of this Part); and

20. vehicles (in accordance with §989 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2696 (September 2011).

Chapter 19. Milk Tank Truck Cleaning Facilities

§1901. Approval of Plans

A. All milk tank truck cleaning facilities that are hereafter constructed, reconstructed or altered in the state shall conform to the requirements of these regulations. Written approval shall be obtained from the state health officer of plans and specifications prior to construction, reconstruction or alteration.

B. Prior to installation or modification, written approval of plans and specifications for the design, construction and the employment of equipment shall be obtained from the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2696 (September 2011).

§1903. Basic Requirements for Milk Tank Truck Cleaning Facilities

A. All milk tank truck cleaning facilities shall conform with the following general requirements for dairy plants:

1. permits (in accordance with §109 of this Part);
2. falsification of records (in accordance with §117 of this Part);
3. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);
4. general requirements (in accordance with §901 of this Part);
5. immediate surroundings (in accordance with §911 of this Part);
6. floors (in accordance with §913 of this Part);
7. light and ventilation (in accordance with §919 of this Part);
8. toilet facilities (in accordance with §923 of this Part);
9. water supply (in accordance with §925 of this Part);
10. hand washing facilities (in accordance with §927 of this Part);
11. protection from contamination (in accordance with §929 of this Part);
12. dairy plant cleanliness (in accordance with §933 of this Part);
13. sanitary piping (in accordance with §935 of this Part);
14. construction and repair of containers and equipment (in accordance with §937 of this Part);
15. thermometers (in accordance with §939 of this Part);
16. cleaning and sanitization of containers and equipment (in accordance with §943 of this Part);
17. storage of cleaned containers and equipment (in accordance with §945 of this Part);
18. storage of single-service containers, utensils and materials (in accordance with §947 of this Part);
19. use of overflow, leaked, spilled or mishandled dairy products (in accordance with §957 of this Part);
20. apparatus, containers, equipment and utensils (in accordance with §967 of this Part);
21. personal cleanliness (in accordance with §975 of this Part);
22. allergen control and sensitivity producing ingredient (in accordance with §977 of this Part); and
23. waste disposal (in accordance with §987 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2697 (September 2011).

§1905. Supplemental Requirements for Milk Tank Truck Cleaning Facilities

A. Milk tank truck cleaning facilities shall conform with the following additional requirements.

1. Milk tank truck cleaning facilities shall clean or sanitize tank trucks that transport food grade products only. The cleaning or sanitization of any tank truck, tote or any type of container that has contained products that are not food grade is prohibited.

2. All equipment used in the cleaning and sanitization of milk tank trucks shall be dedicated to the cleaning and sanitization of milk tank trucks and shall not be used in the cleaning and sanitization of tank trucks that transport other food grade products without written approval of the state health officer.

3. Each dairy facility (including dairy plants, receiving stations, transfer stations and milk tank truck cleaning facilities) that cleans and sanitizes milk tank trucks shall be equipped with approved, functional equipment, devices, etc., and provide all services and programs necessary to satisfy the confined space entry safety requirements of the Occupational Safety and Health Administration (OSHA) thereby permitting personnel to safely enter the interior of the milk tank trucks. The dairy facility shall allow the state health officer to use all such equipment, devices, services, and programs, etc., and shall provide the state health officer with any assistance necessary to enable the state health officer (or his authorized representative) to safely enter and inspect the interior of the milk tank trucks. Dairy facilities, as identified above, which fail to provide the state health officer with any assistance necessary and required under OSHA regulations to safely enter and inspect the interior of milk tank trucks or other confined spaces may be held liable should the safety of the state health officer (or his authorized representative) be in peril while inside of milk tank trucks.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2697 (September 2011).

Chapter 21. Dairy Products Condensing, Dairy Products Concentrating, Dairy Products Drying or Dry Dairy Products Blending Plants

§2101. Approval of Plans

A. All dairy product condensing, concentrating, drying or blending plants that are domiciled within the State and in which condensed, concentrated or dry dairy products are condensed, concentrated, dried or blended and which are hereafter constructed, reconstructed or altered shall conform in their construction to the requirements contained in Chapter 9 of this Part. Prior to construction, reconstruction or alteration, written approval of plans and specifications shall be obtained from the state health officer.

B. Prior to installation or modification, written approval shall be obtained from the state health officer of plans and specifications for the design, construction and manner of employment for all equipment.

C. Written, detailed plans describing the processing of each product shall be submitted to the state health officer for approval prior to product manufacture and prior to any product or process change.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2697 (September 2011).

§2103. Basic Requirements for Condensed, Concentrated, Dry and Blended Dry Dairy Products and Dairy Plants that Condense, Concentrate, Dry or Blend Dry Dairy Products

A. Dairy plants which condense, concentrate, dry or blend dry dairy products which are required or have been authorized by the state health officer to be regulated under the HACCP requirements of this Part shall conform with each of the HACCP requirements contained in Chapter 11 of this Part.

B. Dairy plants that condense, concentrate, dry or blend dry dairy products shall conform with the following general requirements for dairy plants:

1. definitions (in accordance with §101 of this Part);
2. standards of identity (in accordance with , §107 of this Part);
3. permits (in accordance with §109 of this Part);
4. permit required for imported milk; milk products and frozen desserts (in accordance with , §111 of this Part);
5. requirements for imported dairy products (in accordance with §113 of this Part);
6. milk records (in accordance with §115 of this Part);
7. falsification of records (in accordance with §117 of this Part);
8. registration (in accordance with §119 of this Part);
9. labeling (in accordance with §§121 and 2121 of this Part);
10. delivery of samples (in accordance with §303 of this Part);
11. pasteurization equipment tests, examinations and sealing (in accordance with §313 of this Part);
12. posting inspection reports (in accordance with §317 of this Part);
13. grading (in accordance with §321 of this Part);
14. grades of milk and milk products to be sold (in accordance with §323 of this Part);
15. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);
16. regrading and reinstatement of permit when degrade or suspension was based on physical violations (in accordance with §345 of this Part);
17. reinstatement of permit when suspension was based upon adulteration of product or contamination of pasteurized product or cheeses with pathogenic microorganisms of human significance (in accordance with §347 of this Part);
18. grade A raw milk for pasteurization (in accordance with §349 of this Part);
19. grade A raw milk for pasteurization (certified for interstate milk shipment) (in accordance with §351 of this Part);
20. grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products, bulk shipped grade A pasteurized or ultra-pasteurized milk and milk products and pasteurized filled milk and filled milk products (in accordance with §355 of this Part);

21. grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products certified for interstate shipment (in accordance with §361 of this Part);
22. milk tank trucks (in accordance with §701 of this Part);
23. sealing and protection of milk tank trucks (in accordance with §703 of this Part);
24. general requirements (in accordance with §901 of this Part);
25. approval of plans (in accordance with §903 of this Part);
26. raw milk receiving (in accordance with §905 of this Part);
27. receiving and handling of milk derived and non-dairy ingredients (in accordance with §909 of this Part);
28. immediate surroundings (in accordance with §911 of this Part);
29. floors (in accordance with §913 of this Part);
30. walls and ceilings (in accordance with §915 of this Part);
31. doors and windows (in accordance with §917 of this Part);
32. light and ventilation (in accordance with §919 of this Part);
33. separate rooms (in accordance with §921 of this Part);
34. toilet facilities (in accordance with §923 of this Part);
35. water supply (in accordance with §925 of this Part);
36. hand washing facilities (in accordance with §927 of this Part);
37. protection from contamination (in accordance with §929 of this Part);
38. reclaim or rework operations (in accordance with §931 of this Part);
39. dairy plant cleanliness (in accordance with §933 of this Part);
40. sanitary piping (in accordance with §935 of this Part);
41. construction and repair of containers and equipment (in accordance with §937 of this Part);
42. thermometers (in accordance with §939 of this Part);
43. pasteurization, ultra-pasteurization and aseptic processing (in accordance with §941 of this Part);
44. cleaning and sanitization of containers and equipment (in accordance with §943 of this Part);
45. storage of cleaned containers and equipment (in accordance with §945 of this Part);
46. storage of single-service containers, utensils and materials (in accordance with §947 of this Part);
47. packing, bottling and wrapping (in accordance with §949 of this Part);
48. cooling of milk and dairy products (in accordance with §955 of this Part);
49. use of overflow, leaked, spilled or mishandled dairy products (in accordance with §957 of this Part);
50. sale of reconstituted or recombined milk or milk products and anomalous (substitute) milk or milk products (in accordance with §959 of this Part);
51. use of inhibitors (in accordance with §961 of this Part);

52. dipping or transferring dairy products (in accordance with §965 of this Part);
53. apparatus, containers, equipment and utensils (in accordance with §967 of this Part);
54. personnel health (in accordance with §969 of this Part);
55. notification of disease (in accordance with §971 of this Part);
56. procedure when infection suspected (in accordance with §973 of this Part);
57. personal cleanliness (in accordance with §975 of this Part);
58. allergen and sensitivity producing ingredient (in accordance with §977 of this Part);
59. cleaning of containers (in accordance with §983 of this Part);
60. rat proofing (in accordance with §985 of this Part);
61. waste disposal (in accordance with §987 of this Part); and
62. vehicles (in accordance with §989 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2698 (September 2011).

Subchapter A. Supplemental Requirements for Dairy Plants that Condense, Concentrate, Dry or Blend Dry Dairy Products

§2105. General Requirements

A. In addition to the requirements for dairy plants, all dairy plants that condense, concentrate, dry or blend dry dairy products shall conform with the additional requirements contained in this Subchapter.

B. Pasteurization, ultra-pasteurization or aseptic processing shall be performed in accordance with the requirements for pasteurization or ultra-pasteurization contained in the PMO.

C. In all cases, pasteurization, ultra-pasteurization or aseptic processing of raw milk, raw milk products, whey or whey products shall be performed before any raw milk, raw milk products, whey or whey products enter the evaporator, reverse-osmosis, ultra-filtration or condensing equipment and shall be performed in the plant in which the evaporation or condensing is done.

D. All condensed/concentrated milk transported to a dairy products drying plant shall be re-pasteurized at the plant at which it is dried. When condensed whey contains at least 40 percent total solids and has been partially crystallized by cooling, it may be transported to a separate drying plant for drying without re-pasteurization provided, the following conditions are complied with:

1. The condensed/concentrated, partially crystallized whey shall be cooled and maintained at 7°C (45°F) or less;
2. Milk transport tanks used to transport the condensed/concentrated, partially crystallized whey shall be cleaned and sanitized prior to filling and are sealed after filling until unloaded; and,
3. Separate unloading pumps and pipelines shall be provided and used only for the unloading of the condensed/concentrated, partially crystallized whey. Such pumps and pipelines shall be cleaned and sanitized as a separate cleaning circuit.

E. All monitoring devices, such as metal detectors, etc., shall be calibrated at the frequency recommended by the manufacturer with the concurrence of the FDA.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2699 (September 2011).

§2107. Cleaning and Sanitizing of Containers and Equipment

A. The product contact surfaces of all multi-use containers and equipment used in the processing, drying, storing, handling and transporting of milk, milk products, dairy products, whey, whey products, condensed or dry milk and buttermilk shall be properly cleaned and sanitized before each use. Each dairy plant that condenses, concentrates, dries or blends dry dairy products shall develop and implement effective cleaning and sanitizing programs based upon the recommendations of the manufacturer of the equipment and the recommendations contained in the PMO, Appendix F. Each dairy plant handling dry or blended dry dairy products shall be equipped with a heavy duty industrial type vacuum cleaner, so designed as not to recontaminate the atmosphere for cleaning areas in which powder accumulates.

B. Non-product contact surfaces of utensils and equipment shall be kept clean.

C. Effective cleaning and sanitizing regimen instructions, including solution mixing directions, solution strength requirements, testing and recording procedures, temperature requirements, circulation times and all other pertinent information necessary to properly clean and sanitize equipment, shall be posted adjacent to all equipment used in cleaning and sanitizing dairy equipment.

D. The posted procedures and instructions shall be followed in the cleaning and sanitization of dairy equipment.

E. Storage tanks shall be cleaned and sanitized when emptied and shall be emptied at least every 72 hours provided, that the state health officer may with the concurrence of FDA authorize an interval greater than 72 hours, determined on a case by case basis.

F. Drying equipment, blending equipment, cloth-collector systems, packaging equipment and multi-use dry dairy products and dry whey storage containers shall be cleaned at intervals and by methods recommended by the manufacturer or the PMO, Appendix F and approved by the state health officer. Such methods may include cleaning without water by use of vacuum cleaners, brushes or scrapers; such equipment and brushes shall be used exclusively for cleaning product contact surfaces. After cleaning, such equipment is sanitized by a method approved by the state health officer. Cloth collector systems and all dry product contact surfaces downstream from the dryer shall be sanitized or purged at intervals and by methods recommended by the manufacturer and approved by the state health officer. Sanitary single service outer clothing and shoe covers shall be provided for personnel and worn exclusively when it is necessary to enter the interior of the dryer to perform the cleaning operation.

G. Storage bins or totes used to transport dry products shall be dry cleaned after each usage and wet-cleaned and sanitized at regular intervals.

H. Pipelines and equipment designed for mechanical cleaning shall meet the following requirements:

1. operating instructions shall be posted near the cleaning equipment and shall be followed;

2. a temperature recording device, complying with the requirements contained in the *PMO* or a recording device which has been approved by the FDA and found to provide sufficient information to adequately evaluate the cleaning and sanitizing regimen and which is approved by the state health officer, shall be installed in the return solution line or other appropriate area to record the temperature and time during which the line or equipment is exposed to cleaning and sanitizing solutions;

3. pipelines and equipment designed for automated mechanical cleaning of evaporators shall have a pH recording device in the return lines to record the pH and time which the line or equipment is exposed during cleaning and sanitizing operations. These charts shall be identified, dated and initialed by the operator and maintained for three months;

4. temperature and pH recording charts shall be signed, dated and retained for three months;

5. during each inspection, the state health officer shall examine and initial a representative sample of each type of temperature recording charts to verify the time of exposure to solutions and their temperatures.

I. All multi-use containers, equipment, and utensils shall be sanitized before use, employing one or a combination of the following methods or any other method which has been demonstrated to be equally efficient and has been approved by the state health officer:

1. exposure to an enclosed jet of steam for not less than one minute;

2. complete immersion in hot water at a temperature of at least 77°C (170°F), for at least five minutes or exposure to a flow of hot water at a temperature of at least 77°C (170°F), as determined by use of a suitable accurate thermometer located at the outlet, for at least five minutes;

3. exposure to hot air at a temperature of at least 83°C (180°F) for at least 20 minutes as measured by an acceptable indicating thermometer located in the coldest zone;

4. complete immersion for at least one minute in, or exposure for at least one minute to a flow of a chemical sanitizer of acceptable strength. All product-contact surfaces must be wetted by the sanitizing solution, and piping so treated must be filled. Sanitizing sprays may be used. Chemical solutions, once used, shall not be reused for sanitizing but may be reused for other purposes approved by FDA. Assembled equipment shall be sanitized prior to each day's run;

5. All thermometers and temperature recorders shall be calibrated at least once every three-month period and a log identifying the thermometers calibrated, date and the initials of the person performing the calibration shall be maintained and made available to the state health officer; and

6. All other monitoring devices and equipment such as metal detectors, etc., shall be calibrated at the frequency recommended by the manufacturer and a log identifying the device or equipment calibrated, date calibrated, the name and initials of the person performing the calibration shall be maintained and made available to the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2699 (September 2011).

§2109. Packaging and Container Filling

A. The filling of condensed and dry dairy product containers shall be done only by mechanical equipment and by methods which preclude contamination.

B. Approval in writing by the state health officer, shall be obtained prior to the installation, operation or modification of any such equipment.

C. Dry dairy products shall be packaged in unused single service containers, which protect the contents from contamination. These containers shall be obtained from a source approved by the state health officer and after packaging shall be stored in a sanitary manner.

D. Condensed and dry dairy product containers shall be stored in a sanitary manner.

E. Condensed and dry dairy products may be transported from one plant to another for further processing or packaging, provided that the products are transported in sealed containers whose construction conforms with 3-A Standards.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2700 (September 2011).

§2111. Container Closure, Sealing and Storage

A. Closing or sealing of dry dairy products shall be done in a sanitary manner.

B. The closing and sealing of containers of sizes of 6 gallons (net contents) or less shall be done in mechanical equipment, approved by the state health officer, using methods which preclude product contamination.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2700 (September 2011).

§2113. Cooling of Milk, Milk Products, Whey, Whey Products, and Condensed Dairy Products

A. All raw milk and dairy products shall be maintained at 7°C (45°F) or less until processed except that acid-type whey with a titratable acidity of 0.40 percent or above, or a pH of 4.6 or below, is exempted from these temperature requirements.

B. All whey and whey products for condensing or drying shall be maintained at a temperature of 7°C (45°F) or less; or 57°C (135°F) or greater until processed. Storage tanks containing whey and whey products above 7°C (45°F) and below 57°C (135°F) shall be emptied, cleaned and sanitized after each four hours of use or less.

1. Whey and whey products in balance (constant level) tanks or hot wells may be allowed to remain at temperatures above 7°C (45°F) and below 57°C (135°F) for a period not to exceed four hours.

2. The balance tank or hot well shall be emptied, cleaned and sanitized at least once each four hours of operation.

3. Whey and whey products in balance tanks or hot wells that are maintained at temperatures of 57°C (135°F) or above are exempt from the four hour cleaning and sanitizing requirement as long as a continuous flow is maintained (with a retention time not to exceed one hour). All such balance tanks or hot wells shall be cleaned and sanitized at least once every 24 hours.

C. All pasteurized milk and dairy products (including pasteurized whey and condensed dairy products), except those to be dried immediately, shall be cooled immediately in approved equipment to a temperature of 7°C (45°F) or less. All pasteurized milk and dairy products (including pasteurized whey and condensed dairy products), shall be stored at a temperature of 7°C (45°F) or less and be maintained thereat until further processing. Whenever pasteurized milk and dairy products are to be condensed and/or dried and storage tanks are used between the condenser and dryer, any such storage tank(s) containing pasteurized milk or milk products (including pasteurized whey and condensed dairy products), stored above 7°C (45°F) and below 57°C (135°F) shall be completely emptied, cleaned, and sanitized after four hours of operation or less.

D. All indicating and recording thermometers shall be calibrated at least once each three-month period and a log indicating each thermometer and recorder calibrated and the initials of the person performing the calibration shall be maintained and made available to the state health officer.

E. All condensed whey and whey products shall be cooled during the crystallization process to 7°C (45°F) or less, within 72 hours of condensing including the filling and emptying time, unless filling occurs above 57°C (135°F), in which case, the 72 hour time period begins when the cooling is started.

F. Each refrigerated room in which milk, dairy products or whey are stored shall be equipped with an indicating thermometer approved by the state health officer. Such thermometer shall be located in the warmest zone of the refrigerator room.

G. Each storage tank shall be equipped with an indicating thermometer, the sensor of which shall be located to permit the registering of the temperature of the contents when the tank contains no more than 20 percent of its calibrated capacity.

H. All surface coolers shall comply with the following specifications:

1. The section of open-surface coolers shall be so installed as to leave a gap of at least 6.4 millimeters (0.25 inch) between the header sections to permit easy cleaning;

2. Where header ends are not completely enclosed within the cooler covers, condensation or leakage from the headers shall be prevented from entering the product by so shaping the exposed header faces, above and below all gaps, that condensation is directed away from the tubes, and by using deflectors at the bottom of the headers, or by shortening the bottom trough or by some other approved method;

3. The location of supports of cooler sections shall prevent drip from entering the milk or dairy products; and,

4. All open surface coolers shall be provided with tight-fitting shields which protect the product from contamination by flies, dust, drip, splash or manual contact.

I. Re-circulated cooling water which is used in coolers and exchangers, including those systems in which a freezing point depressant is used, shall be from a safe source and protected from contamination. Such water shall be tested at the minimum frequencies specified in §2117 of this Part and shall otherwise comply with the requirements of §2117 of this Part. Re-circulated water systems which become contaminated through repair work or otherwise shall be properly treated and tested before being returned to use. Freezing point depressants, when used in re-circulating systems, shall be non-toxic.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2700 (September 2011).

§2115. Separate Rooms

A. There shall be separate rooms for:

1. pasteurizing, processing, cooling, condensing, drying and blending of milk, dairy products, whey, whey products, buttermilk or condensed products;

2. packaging or filling of bulk bins, drums, bags or other bulk containers;

3. hopper or dump room for the transfer of bulk dry dairy products from bags or drums to the hoppers or conveyors which lead to the container fillers;

4. repackaging room for the filling of small packages with dry dairy products from bulk containers;

5. cleaning of milk cans and containers and dry product containers;

6. receiving cans of milk and dairy products in plants receiving cans of milk;

7. receiving milk, cleaning and sanitizing milk tank trucks in plants receiving milk or whey in tank trucks; and

8. boilers and other non-processing mechanical equipment and shop areas.

B. Rooms in which milk, dairy products, whey or whey products are handled, processed, stored, dried, condensed or in which containers, utensils and equipment are cleaned or stored, shall not open directly into any stable, farmstead or area in which meat, poultry or any non-dairy foods of animal origin are handled or stored or any room used for domestic purposes.

C. All rooms shall be of sufficient size for their intended purposes.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2701 (September 2011).

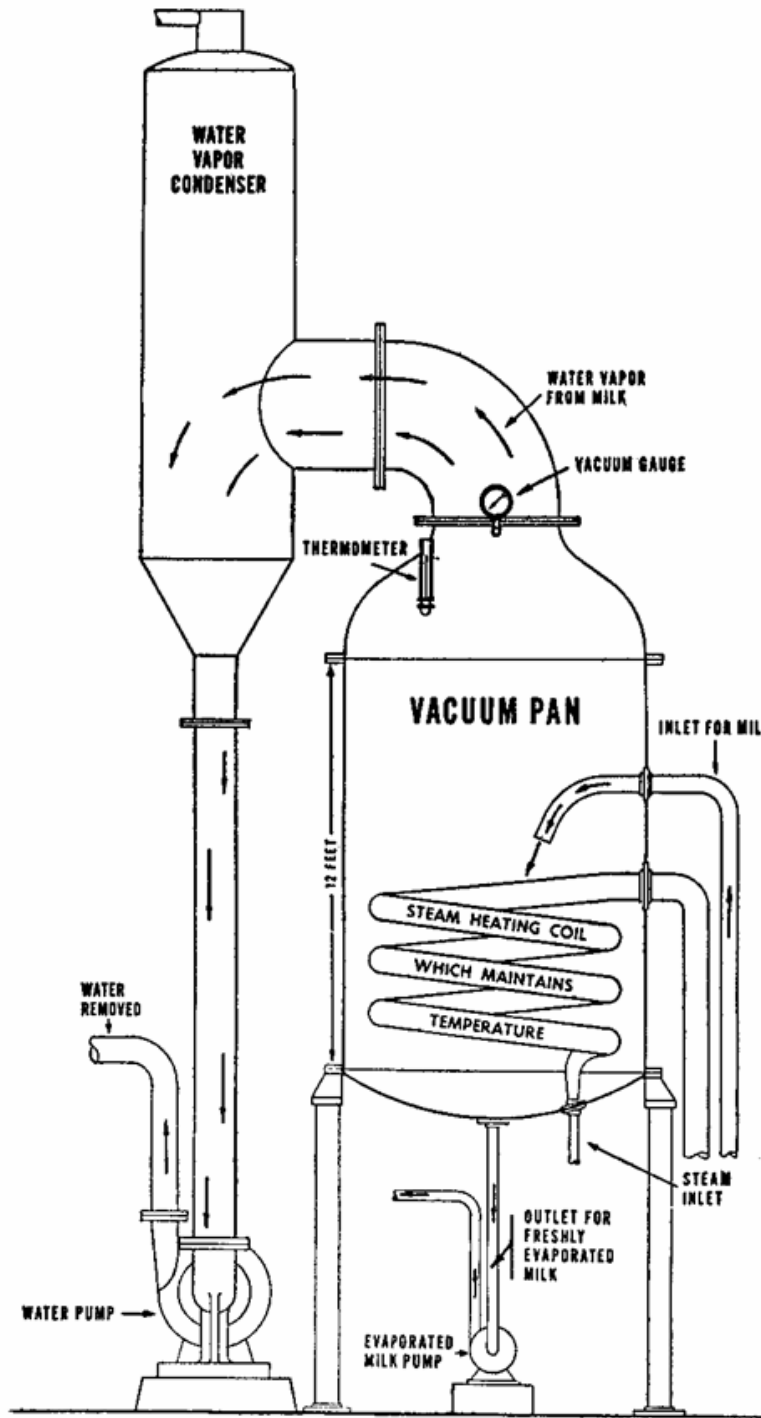
§2117. Reclaimed Water^{ap}

A. Condensing water for dairy product evaporators, and water used to produce vacuum or to condense vapors in vacuum heat processing equipment, shall be from a source complying with §925.B.1 of this Part. Provided, that when approved by the state health officer, water from sources not complying with §925.B.1 of this Part may be used when the condenser or vacuum heat equipment is constructed and operated to preclude contamination of such equipment, or its contents, by condensing water or by water used to produce vacuum. Means of preventing such contamination include:

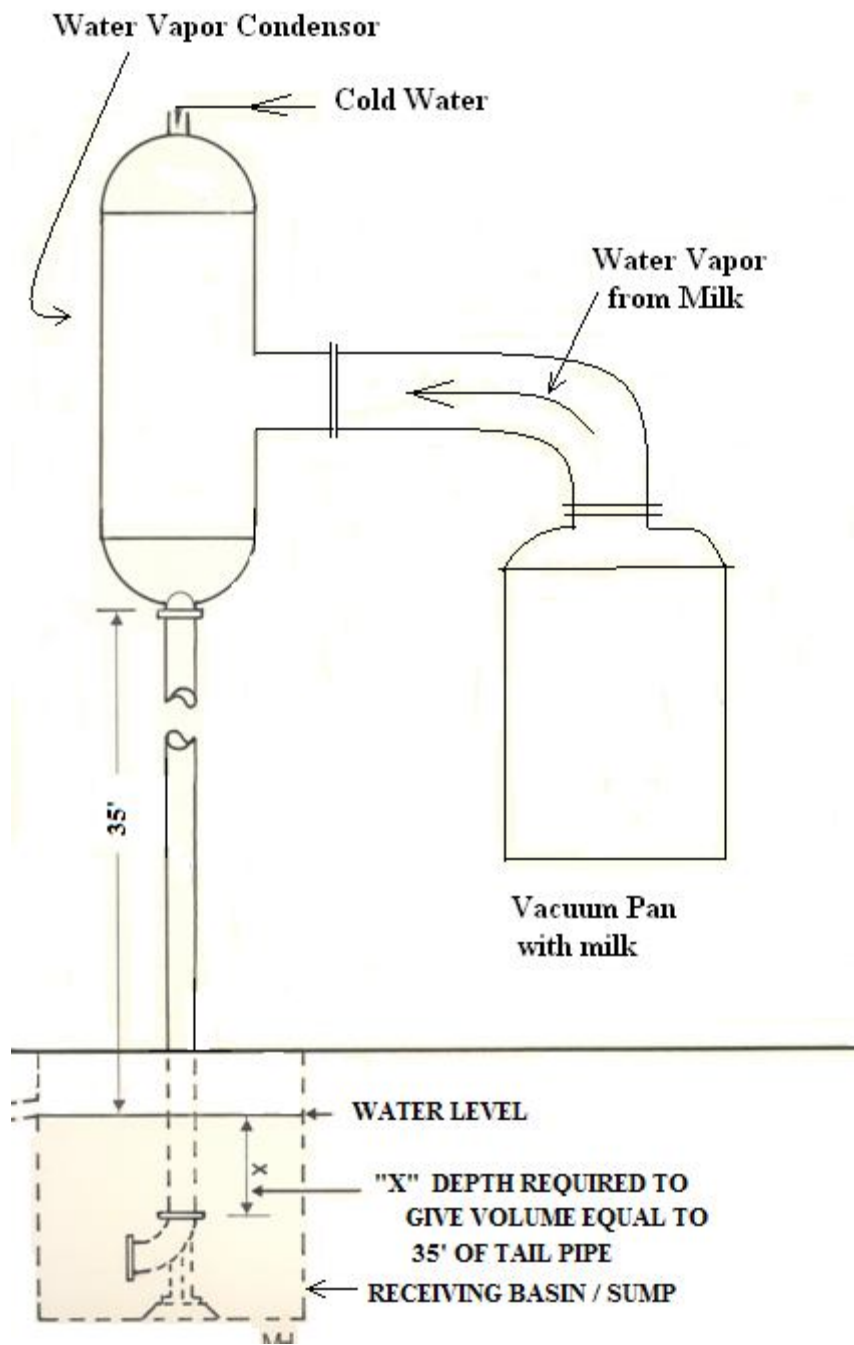
1. use of a surface type condenser in which the condensing water is physically separated from the vapors and condensate; or

2. use of reliable safeguards to prevent the overflow of condensing water from the condenser into the evaporator. Such safeguards include a barometric leg extending at least 35 feet vertically from the invert of the outgoing condensing water line to the free level at which the leg discharges,

and/or a safety shutoff valve, located on the water feed line to the condenser, automatically actuated by a control which will shutoff the in-flowing water when the water level rises above a predetermined point in the condenser. This valve may be actuated by water, air or electricity, and shall be designed so that failure of the primary motivating power will automatically stop the flow of water into the condenser.



VACUUM PAN DETAIL
 (For Informational Purposes Only)
 FIGURE 2117.A



BAROMETRIC LEG DETAIL (For Informational Purposes Only)
FIGURE 2117.A.2

B. Condensing water for dairy product evaporators complying with this Section and water reclaimed from milk or dairy products may be reused when all necessary means of protection are afforded and it complies with the procedures outlined in this Part and the PMO.

C. Reclaimed water_{dp} shall comply with the following requirements:

1. Reclaimed water_{dp} shall comply with the bacteriological standards of Appendix G, Section I of the PMO.

2. Samples of reclaimed water_{dp} shall be collected daily for two weeks following initial approval of the installation and semi-annually thereafter, provided, that daily tests shall be conducted for one week following any repairs or alterations to the system.

3. The organic content of reclaimed water_{dp} shall be less than 12.0 milligrams per liter as measured by the chemical oxygen demand or permanganate consumed test; or a standard turbidity of less than 5.0 units.

4. Automatic fail-safe monitoring devices shall be used to monitor and automatically divert to the sewer any reclaimed water_{dp} which exceeds the standards.

5. The reclaimed water_{dp} shall be of satisfactory organoleptic quality and shall have no off-flavors, odors or slime formations.

6. The reclaimed water_{dp} shall be sampled and tested organoleptically at weekly intervals.

7. Approved chemicals, such as chlorine, with suitable detention period may be used to suppress the development of bacterial growth and prevent the development of tastes and odors in reclaimed water_{dp}.

8. The addition of approved chemicals shall be by an automatic proportioning device prior to the reclaimed water_{dp} entering the storage tank to assure satisfactory quality reclaimed water_{dp} in the storage tank at all times.

9. When chemicals are added, a daily testing program for such added chemicals shall be in effect and shall not add substances that will prove deleterious to use of the reclaimed water_{dp} or contribute to product contamination.

10. The storage vessel shall be properly constructed of such material that it will not contaminate the reclaimed water_{dp} and can be satisfactorily cleaned.

11. The distribution system within a plant for such reclaimed water_{dp} shall be a separate system with no cross-connections to a municipal or private water system or any other potable water distribution system.

12. All physical, chemical, radiological and microbiological tests on the reclaimed water_{dp} shall be conducted in accordance with the latest edition of *Standard Methods for the Examination of Water and Wastewater*

D. When §2117.C.1 through §2117.C.12 of this Section are satisfied and documented, reclaimed water_{dp} may be used for the following limited applications:

1. pre-rinsing of the product contact surfaces where pre-rinses will not be used in food products; and,

2. cleaning solution make-up water; provided that for either of these uses, the following additional items are complied with:

a. there is no carry-over of reclaimed water_{dp} from one day to the next, and any reclaimed water_{dp} collected is used promptly or the temperature of all reclaimed water_{dp} in the storage and distribution system is maintained at 63EC

(145EF) or higher by automatic means; or, the reclaimed water_{dp} is treated with a suitable, approved chemical to suppress bacterial propagation by means of an automatic proportioning device, prior to the reclaimed water_{dp} entering the storage tank;

b. distribution lines and hose stations are clearly identified in accordance with §605 of the Louisiana State Plumbing Code, 2000 Edition, as limited use reclaimed water_{dp};

c. water handling practices and guidelines are clearly described and prominently displayed at appropriate locations within the plant; and

d. these water lines are not permanently connected to product vessels, without a break to the atmosphere and sufficient automatic controls, to prevent the inadvertent addition of this water to product streams.

E. Reclaimed water_{dp} may be used as boiler feed-water for boilers which are not used for generating culinary steam, or in a thick, double walled, enclosed heat exchanger.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2701 (September 2011).

§2119. Air for Dairy Product Drying Equipment and Air under Pressure-Direct Contact with Milk and Dairy Products or Milk and Dairy Product Contact Surfaces

A. Air for dairy product drying equipment shall conform with the following:

1. Air intake and pipeline filters shall consist of fiberglass with downstream backing dense enough to prevent fiberglass break off from passing through, cotton flannel, wool flannel, spun metal, electrostatic material, or other equally acceptable filtering media, which do not release to the air toxic volatiles or other contaminants or volatiles which may impart any flavor or odor to the product. Disposable media filters shall consist of cotton flannel, wool flannel, spun metal, non-woven fabric, United States Pharmacopeia (USP) absorbent cotton fiber, or suitable inorganic materials which, under conditions of use, are non-toxic and non-shedding. Chemical bonding material contained in the media shall be non-toxic, non-volatile, and insoluble under all conditions of use. Disposable media shall not be cleaned and reused.

2. The efficiency of the initial or primary supply air filters for air which will be heated before it comes in contact with non-food contact surfaces shall be designed, selected to operate at a face velocity, and installed in a manner which will allow the filter manufacturer's rating to be 90 percent or higher, when tested in accordance with the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Synthetic Dust Arrestance test (ASHRAE Standard 52.1-1992). The efficiency of the initial or primary supply air filters for air, which will not be heated before it comes in contact with non-food contact surfaces shall be of a design, selected to operate at a face velocity, and installed in a manner which will allow the filter manufacturer's rating to be 85 percent or higher when tested in accordance with the ASHRAE Atmospheric Dust Spot Method (ASHRAE Standard 52.1-1992).

3. Air-intakes for drying equipment shall be located so as to minimize atmospheric contamination and shall be equipped with suitable single-service filters or multi-use systems approved by the state health officer.

B. Air under pressure which comes into direct contact with milk or dairy products or milk or dairy product contact surfaces shall comply with §929.I of this Part and the following:

1. Air intake and pipeline filters shall consist of fiberglass with downstream backing dense enough to prevent fiberglass break off from passing through, cotton flannel, wool flannel, spun metal, electrostatic material, or other equally acceptable filtering media, which do not release to the air toxic volatiles or other contaminants or volatiles which may impart any flavor or odor to the product. Disposable media filters shall consist of cotton flannel, wool flannel, spun metal, non-woven fabric, USP absorbent cotton fiber, or suitable inorganic materials which, under conditions of use, are non-toxic and non-shedding. Chemical bonding material contained in the media shall be non-toxic, non-volatile, and insoluble under all conditions of use. Disposable media shall not be cleaned and reused.

2. The efficiency of the initial or primary supply air filters for air which will be heated before it comes in contact with milk or dairy products or milk or dairy product contact surfaces shall be designed, selected to operate at a face velocity, and installed in a manner which will allow the filter manufacturer's rating to be 90 percent or higher, when tested in accordance with the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Synthetic Dust Arrestance test (ASHRAE Standard 52.1 - 1992). The efficiency of the initial or primary supply air filters for air, which will not be heated before it comes in contact with milk or dairy products or milk or dairy product contact surfaces shall be of a design, selected to operate at a face velocity, and installed in a manner which will allow the filter manufacturer's rating to be 85 percent or higher when tested in accordance with the ASHRAE Atmospheric Dust Spot Method (ASHRAE Standard 52.1 - 1992).

3. Air which will come into direct contact with milk or dairy products or milk or dairy product contact surfaces shall first pass through the initial or primary supply air filters meeting the requirements of Paragraph 2 of this Subsection. The initially filtered air in the pipeline downstream from the initial or primary supply air filters shall be used as the supply air for downstream (secondary) air filters on the air pipeline. The efficiency of such secondary air filters shall be at least 98 percent in accord with the Society of Automotive Engineers (SAE) Standard J726 - June 1987 using the Air Cleaner (AC) coarse test dust. All air that comes into direct contact with milk or dairy products or milk or dairy product contact surfaces shall additionally pass through further downstream (tertiary) air filters on the air pipeline. The filter efficiency of the final filter before coming into direct contact with milk or dairy products or milk or dairy product contact surfaces shall be at least 99 percent as measured by the Dioctylphthalate Fog Method (DOP) test (with a mean particle diameter of 0.3 microns) per Military Standard 282 (MIL-STD-282: Method 102.9.1). When commercially sterile air is required, the final filter efficiency shall be at least 99.99 percent as measured by the DOP test.

C. Air exhausts from dryer systems shall be covered when dryers are not in operation.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2905 (September 2011).

§2121. Supplemental Labeling Requirements for Condensed, Concentrated, Dry or Blend Dry Dairy Products

A. All containers and packages enclosing condensed, concentrated, dry or blend dry dairy products defined in § 101 of this Code shall be labeled in accordance with the applicable requirements of the *Federal Food, Drug and Cosmetic Act*, as amended, *the State Food, Drug and Cosmetic Law (R.S. 40:601, et seq.)*, *the Nutrition Labeling and Education Act of 1990*, as amended, and the regulations developed thereunder; the requirements of this Part and in addition shall be conspicuously and permanently labeled or marked with:

1. the name of the contents as prescribed by this Part, and the common name of the ingredients;
2. the grade of the product when grades for the product have been established;
3. the identity of the plant in which the product was manufactured or processed by either name and address or by permit number and identity of the state issuing such permit or by FIPS number;
4. a code or lot number identifying the contents with a specific date, run, or batch of the product, and the quantity of the contents of the container;
5. the word "goat", "sheep", "water buffalo" or the common name of other hooved mammals shall precede the name of the milk or dairy product when the product is made from the milk of animals other than cows; and,
6. the words, "a product of", followed by the name of the country in which the product was processed in cases in which the product was not processed in the United States or Puerto Rico.

B. Required labeling information shall be in letters of an acceptable size, kind and color satisfactory to the state health officer and shall contain no marks or words which are misleading. Other information, such as a registered trademark design, which is not misleading and does not obscure any of the labeling requirements above may also be included.

C. Milk tank trucks transporting whey, condensed whey or concentrated/condensed dairy products to a drying plant from another dairy plant, receiving or transfer station are required to be marked with the name and address of the dairy plant or hauler and shall be sealed; in addition, for each shipment a shipping statement shall be prepared containing at least the following information:

1. shipper's name; address and permit number;
2. permit identification of hauler, if not employee of shipper;
3. point of origin of shipment;
4. tanker permit number;
5. name of product;
6. weight of product;
7. grade of product;

8. temperature of product when applicable;
9. date of shipment;
10. name of supervising regulatory agency at the point of origin;
11. whether the contents are raw, pasteurized, or in the case of cream, lowfat or nonfat milk, whether it has been heat-treated; and,
12. seal number on inlet and outlet.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2706 (September 2011).

SubChapter B. Specifications for Grade A Condensed and Dry Dairy Products and Blended Dry Dairy Products

§2123. Grade A Condensed Milk and Condensed Milk Products

A. Grade A condensed milk and condensed milk products shall conform to the standards of identity prescribed by this Part.

B. Grade A condensed milk and condensed milk products shall conform with the following microbiological, chemical and temperature requirements:

1. temperature—cooled to 7EC (45EF) or less immediately after processing and maintained thereat unless drying is commenced immediately after condensing;
2. standard plate count—not to exceed 30,000 cfu per gram;
3. coliform count—not to exceed 10 per gram, provided, that in the case of bulk milk transport tank shipments the coliform count shall not exceed 100 per gram;
4. phosphatase—less than 350 milliunits per liter for fluid products and less than 500 milliunits per liter for other milk products by the Fluorophos ALP system or equivalent;
5. drugs—no positive results from drug residue detection test methods which the state health officer has determined to be appropriate; and,
6. pathogens—no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2707 (September 2011).

§2125. Grade A Nonfat Dry Milk

A. Grade A nonfat dry milk shall conform with the standards of identity prescribed by this Part.

B. Grade A nonfat dry milk shall conform with the following microbiological, chemical and physical requirements not to exceed:

1. milk fat—1.25 percent;
2. moisture—4.00 percent;
3. titratable acidity—0.15 percent;
4. solubility index—1.25ml;
5. standard plate count—not to exceed 30,000 cfu per gram;
6. coliform count—not to exceed 10 per gram;
7. scorched particles—disc B - 15.0 per gram;

8. drugs—no positive results from drug residue detection test methods which the state health officer has determined to be appropriate; and,

9. pathogens—no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2707 (September 2011).

§2127. Grade A Whey for Condensing or Concentrating

A. The processes used in the production of Grade A whey for condensing and concentrating shall be performed in cheese manufacturing plants that are in substantial compliance with the sanitation requirements for Grade A dairy plants contained in this Part.

B. Grade A whey for condensing and concentrating shall conform to the following temperature and chemical standards:

1. temperature—maintained at a temperature of 7EC (45EF) or less, or 63EC (145EF) or greater, except for acid-type whey with a titratable acidity of 0.40 percent or above, or a pH of 4.6 or below.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2707 (September 2011).

§2129. Grade A Pasteurized Condensed Whey

A. Grade A pasteurized condensed whey shall conform with the following bacteriological, chemical and temperature standards:

1. temperature—cooled to 10°C (50°F) or less during crystallization, within 72 hours of condensing;
2. standard plate count—not to exceed 30,000 cfu per gram;
3. coliform count—not to exceed 10 per gram;
4. phosphatase—less than 350 milliunits per liter for fluid products and less than 500 milliunits per liter for other milk products by the Fluorophos ALP system or equivalent;
5. drugs—no positive results from drug residue detection test methods which the state health officer has determined to be appropriate for condensed whey; and,
6. pathogens - no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2707 (September 2011).

§2131. Grade A Dry Whey or Dry Whey Products

A. Grade A dry whey or dry whey products shall conform with the following bacteriological standards:

1. standard plate count—not to exceed 30,000 cfu per gram;
2. coliform count—not to exceed 10 per gram;
3. drugs—no positive results from drug residue detection test methods which the state health officer has

determined to be appropriate for use with dry whey and dry whey products; and,

4. pathogens—no pathogenic microorganisms of human significance.

B. The product shall conform with the standards of identity prescribed by this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2707 (September 2011).

§2133. Grade A Dry Buttermilk and Dry Buttermilk Products

A. Grade A Dry Buttermilk or Dry Buttermilk Products shall conform with the following bacteriological and chemical standards:

1. standard plate count—not to exceed 30,000 cfu per gram;

2. coliform count—not to exceed 10 per gram;

3. drugs—no positive results on drug residue detection test methods which the state health officer has determined to be appropriate for use with dry buttermilk and dry buttermilk products; and,

4. pathogens—no pathogenic microorganisms of human significance.

B. The product shall conform with the standards of identity prescribed by this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2708 (September 2011).

§2135. Other Grade A Condensed, Concentrated or Dry Dairy Products

A. Other condensed, concentrated or dry dairy products which are designated Grade A by the NCIMS shall be processed in dairy plants that are in substantial compliance with the requirements for Grade A dairy plants contained in this Part and shall conform with the following.

1. All such products shall conform with the standards of identity prescribed by this Part.

2. The products shall conform with the following bacteriological, chemical and temperature requirements:

a. standard plate count—not to exceed 30,000 cfu per gram;

b. coliform count—not to exceed 10 per gram;

c. drugs—no positive results from drug residue detection test methods which the state health officer has determined to be appropriate; and,

d. pathogens no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2708 (September 2011).

§2137. Blended Dry Dairy Products

A. The manufacture of blended dry dairy products shall be performed in a plant that is in substantial compliance with

the requirements of this Part for dairy products condensing, dairy products drying or dairy products blending plants.

B. Blended dry dairy products shall conform with the following bacteriological standards:

1. standard plate count—not to exceed 30,000 cfu per gram;

2. coliform count—not to exceed 10 per gram;

3. drugs—no positive results from drug residue detection test methods which the state health officer has determined to be appropriate; and,

4. pathogens—no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2708 (September 2011).

Subchapter C. Specifications for Extra Grade and Standard Grade Dry Dairy Products

§2139. Extra Grade and Standard Grade Dry Dairy Products

A. Extra grade and standard grade dry dairy products shall be manufactured from Grade A raw milk for pasteurization or manufacturing grade (milk for manufacturing purposes) for pasteurization.

B. Extra grade and standard grade dry dairy products shall conform with the standards of identity prescribed by this Part.

C. Extra grade and standard grade dry dairy products shall have no positive results from drug residue detection test methods which the state health officer has determined to be appropriate.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2708 (September 2011).

§2141. Bacteriological Requirements for Extra Grade Dry Dairy Products

A. Extra grade dry dairy products shall conform with the bacteriological requirements indicated below.

1. Dry whole milk:

a. standard plate count - not to exceed 10,000 cfu per gram;

b. coliform count - not to exceed 10 per gram; and

c. pathogens—no pathogenic microorganisms of human significance.

2. Instant nonfat dry milk:

a. standard plate count—not to exceed 10,000 cfu per gram;

b. coliform count—not to exceed 10 per gram; and,

c. pathogens—no pathogenic microorganisms of human significance.

3. Nonfat dry milk (spray process):

a. standard plate count—not to exceed 10,000 cfu per gram;

b. coliform count—not to exceed 10 per gram; and,

c. pathogens—no pathogenic microorganisms of human significance.

4. Nonfat dry milk (roller process):
 - a. standard plate count—not to exceed 50,000 cfu per gram;
 - b. coliform count—not to exceed 10 per gram; and,
 - c. pathogens—no pathogenic microorganisms of human significance.
5. Dry whey:
 - a. standard plate count—not to exceed 30,000 cfu per gram;
 - b. coliform count—not to exceed 10 per gram; and,
 - c. pathogens—no pathogenic microorganisms of human significance.
6. Dry buttermilk:
 - a. standard plate count—not to exceed 20,000 cfu per gram;
 - b. coliform count—not to exceed 10 per gram; and,
 - c. pathogens—no pathogenic microorganisms of human significance.
7. Edible dry casein (acid):
 - a. standard plate count—not to exceed 30,000 cfu per gram;
 - b. coliform count—negative (0 cfu) per 0.1 gram; and,
 - c. pathogens—no pathogenic microorganisms of human significance.

B. Instant nonfat dry milk and dry whey that does not meet the bacteriological requirements for Grade A or extra grade shall not be sold or otherwise provided for human consumption.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2708 (September 2011).

§2143. Bacteriological Requirements for Standard Grade Dry Dairy Products

A. Standard grade dry dairy products shall conform with the bacteriological requirements indicated below:

1. Dry whole milk:
 - a. standard plate count—not to exceed 50,000 cfu per gram;
 - b. coliform count—not to exceed 10 per gram; and,
 - c. pathogens—no pathogenic microorganisms of human significance.
2. Nonfat dry milk (spray process):
 - a. standard plate count—not to exceed 75,000 cfu per gram;
 - b. coliform count—not to exceed 10 per gram; and, pathogens—no pathogenic microorganisms of human significance.
3. Nonfat dry milk (roller process):

standard plate count—not to exceed 100,000 cfu per gram; coliform count—not to exceed 10 per gram; and,

 - c. pathogens—no pathogenic microorganisms of human significance.
4. Dry buttermilk:
 - a. standard plate count—not to exceed 75,000 cfu per gram;
 - b. coliform count—not to exceed 10 per gram; and,

- c. pathogens—no pathogenic microorganisms of human significance.

5. Edible dry casein (acid):
 - a. standard plate count—not to exceed 100,000 cfu per gram;
 - b. coliform count—not more than 2 cfu per 0.1 gram; and,
 - c. pathogens—no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2709 (September 2011).

Chapter 23. Butter Plants
§2301. Approval of Plans

A. All butter plants that are domiciled within the state and in which butter or butter related products are processed or packaged and which are hereafter constructed, reconstructed or altered shall conform in their construction to the requirements of these regulations. Prior to construction, reconstruction or alteration, written approval of plans and specifications shall be obtained from the state health officer.

B. Prior to installation or modification, written approval shall be obtained from the state health officer of plans and specifications for the design, construction and manner of employment for all equipment.

C. Written detailed plans describing the processing of each product shall be submitted to the state health officer for approval prior to manufacture of each product and prior to any product or process changes.

D. Butter plants that are required or have been authorized by the state health officer to be regulated under the HACCP requirements of this Part shall conform with each of the HACCP requirements contained in Chapter 11 of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2709 (September 2011).

§2303. Basic Requirements for Dairy Plants that Manufacture, Process or Package Butter and Butter Related Products

A. Dairy plants that manufacture, process or package butter or butter related products shall conform with the following general requirements for dairy plants:

1. definitions (in accordance with §101 of this Part);
2. standards of identity (in accordance with §107 of this Part);
3. permits (in accordance with §109 of this Part);
4. permits required for imported milk, milk products and frozen desserts (in accordance with §111 of this Part);
5. milk records (in accordance with §115 of this Part);
6. falsification of records (in accordance with §117 of this Part);
7. registration (in accordance with §119 of this Part);
8. labeling (in accordance with §121 of this Part);
9. delivery of samples (in accordance with §303 of this Part);

10. pasteurization equipment tests, examinations and sealing (in accordance with §313 of this Part);
11. field supervision (in accordance with §319 of this Part);
12. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);
13. reinstatement of permit when suspension was based upon adulteration of product or contamination of pasteurized product or cheeses with pathogenic microorganisms of human significance (in accordance with §347 of this Part);
14. manufacturing grade raw milk for pasteurization (milk for manufacturing purpose) (in accordance with §353 of this Part);
15. grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products, bulk shipped grade A pasteurized or ultra-pasteurized milk and milk products and pasteurized filled milk and filled milk products (in accordance with §355 of this Part);
16. grade A bulk shipped, heat-treated milk and milk products (in accordance with §357 of this Part);
17. grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products certified for interstate shipment (in accordance with §361 of this Part);
18. milk tank trucks (in accordance with §701 of this Part);
19. sealing and protection of milk tank trucks (in accordance with §703 of this Part);
20. labeling (in accordance with §705 of this Part);
21. general requirements (in accordance with §901 of this Part);
22. approval of plans (in accordance with §903 of this Part);
23. raw milk receiving (in accordance with §905 of this Part);
24. dairy plant receivers/samplers (in accordance with §907 of this Part);
25. receiving and handling of milk derived and non-dairy ingredients (in accordance with §909 of this Part);
26. immediate surroundings (in accordance with §911 of this Part);
27. floors (in accordance with §913 of this Part);
28. walls and ceilings (in accordance with §915 of this Part);
29. doors and windows (in accordance with §917 of this Part);
30. light and ventilation (in accordance with §919 of this Part);
31. separate rooms (in accordance with §921 of this Part);
32. toilet facilities (in accordance with §923 of this Part);
33. water supply (in accordance with §925 of this Part);
34. hand washing facilities (in accordance with §927 of this Part);
35. protection from contamination (in accordance with §929 of this Part);
36. reclaim or rework operations (in accordance with §931 of this Part);
37. sanitary piping (in accordance with §935 of this Part);
38. construction and repair of containers and equipment (in accordance with §937 of this Part);
39. thermometers (in accordance with §939 of this Part);
40. pasteurization, ultra-pasteurization and aseptic processing (in accordance with §941 of this Part);
41. cleaning and sanitizing of containers and equipment (in accordance with §943 of this Part);
42. storage of cleaned containers and equipment (in accordance with §945 of this Part);
43. storage of single service containers; utensils and materials (in accordance with §947 of this Part);
44. packing, bottling and wrapping (in accordance with §949 of this Part);
45. cooling of milk and dairy products (in accordance with §955 of this Part);
46. use of overflow, leaked, spilled or mishandled dairy products (in accordance with §957 of this Part);
47. apparatus, containers, equipment and utensils (in accordance with §967 of this Part);
48. personnel health (in accordance with §969 of this Part);
49. notification of disease (in accordance with §971 of this Part);
50. procedure when infection suspected (in accordance with §973 of this Part);
51. personal cleanliness (in accordance with §975 of this Part);
52. allergen and sensitivity producing ingredient (in accordance with §977 of this Part);
53. rat proofing (in accordance with §985 of this Part);
54. waste disposal (in accordance with §987 of this Part); and
55. vehicles (in accordance with §989 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2709 (September 2011).

Subchapter A. Supplemental Requirements for Butter Plants

§2305. General Information

A. In addition to the requirements for dairy plants, all plants manufacturing butter and related products shall conform with the following additional requirements:

1. churn rooms in addition to proper construction and sanitation as prescribed by this Part, shall be so equipped that the air is kept free from objectionable odors, vapors or extreme temperatures by means of adequate ventilation, exhaust systems or air conditioning and heating systems; and
2. print and bulk packaging rooms shall in addition to proper construction and sanitation, as prescribed by this Part, provide an atmosphere relatively free from mold (no more than 10 mold colonies per cubic foot of air), dust or other airborne contamination and be maintained at a reasonable room temperature.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2710 (September 2011).

§2307. Construction of Utensils and Equipment

A. All utensils and equipment used in the manufacture of butter and related products shall conform with the requirements contained in §937 of this Part. In addition, for certain other equipment, the following requirements shall be met.

1. Continuous Churns. All product contact surfaces shall be of non-corrosive materials. All non-metallic product contact surfaces shall comply with 3-A Standards for plastic, rubber, and rubber-like materials. All product contact surfaces shall be accessible for cleaning and inspection.

2. Conventional churns shall be constructed of aluminum, stainless steel or equally corrosion resistant metal, free from cracks and in good repair. All gasket material shall be non-toxic and durable. Seals around doors and covers shall be tight.

3. Bulk butter trucks, boats and packers shall be constructed of aluminum, stainless steel or equally corrosion resistant metal, free from cracks or seams and must have product contact surfaces that are smooth and easily cleanable.

4. Butter, frozen or plastic cream melting machines, shavers and shredders used for the rapid melting of butter or plastic cream shall be constructed of stainless steel or equally corrosion resistant metal and shall be of sanitary construction and easily cleanable.

5. Printing equipment shall be designed to be easily disassembled for cleaning of product contact surfaces. All product contact surfaces shall be of aluminum, stainless steel or equally corrosion resistant metal or plastic, rubber and rubber-like materials that meet 3-A Standards.

6. The product contact surfaces of all utensils and equipment used in the manufacture of butter and related products shall be smooth and easily cleanable. The use of wood or other fibrous or porous materials on product contact surfaces shall be prohibited.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2711 (September 2011).

§2309. Cream for the Manufacture of Butter and Butter Related Products

A. Cream for the manufacture of butter and butter related products shall be derived from Grade A raw milk for pasteurization or manufacturing grade raw milk for pasteurization from a source approved by the state health officer. The milk or cream shall be pasteurized, ultra-pasteurized or aseptically processed in the plant in which the butter or butter related products are manufactured.

B. Pasteurization or ultra-pasteurization shall be performed in accordance with the requirements contained in §941 of this Part provided that:

1. the temperature of pasteurization for cream to be processed for plastic or frozen cream shall be not less than 77°C (170°F) for not less than 30 minutes or not less than 88°C (190°F) for not less than 15 seconds;

2. The temperature of pasteurization for cream to be processed into butter and other butter related products shall be not less than 74°C (165°F) for not less than 30 minutes or not less than 85EC (185EF) for not less than 15 seconds.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2711 (September 2011).

§2311. Composition and Wholesomeness of Ingredients Used in the Manufacture of Butter and Butter Related Products

A. The composition and wholesomeness of all ingredients used in the manufacture of butter and butter related products shall be in conformance with the requirements of the *Federal Food, Drug and Cosmetic Act*, as amended.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2711 (September 2011).

§2313. Examination of Butter and Butter Related Products

A. Samples of butter and butter related products shall be collected and examined as often as the state health officer may require. The state health officer shall not be required to pay for such samples.

B. All sampling procedures and required laboratory examinations shall be in compliance with the *Standard Methods for the Examination of Dairy Products*.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2711 (September 2011).

§2315. Standards of Identity for Butter

A. All butter and butter related products shall conform with the standards of identity prescribed by this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2711 (September 2011).

§2317. Bacteriological Requirements

A. All butter and butter related products shall conform with the following microbial requirements:

1. standard plate count—not to exceed 1,000 cfu per gram;
2. coliform count—not to exceed 10 per gram; and,
3. pathogens—no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2711 (September 2011).

§2319. Seizure and Condemnation of Butter and Butter Related Products

A. Butter and butter related products that do not conform with the bacteriological requirements contained in §2317 of this Part shall be subject to seizure and condemnation by the state health officer as provided in §632 of the *State Food, Drug and Cosmetic Act*.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2711 (September 2011).

§2321. Containers

A. Containers used for the packaging of butter and butter related products shall be containers or packaging materials from sources approved by the state health officer and satisfactorily protect the safety and quality of the contents in regular channels of trade. Caps or covers which extend over the lip of the container shall be used on all cups or tubs containing two pounds or less to protect the product from contamination.

B. Liners, wrappers and other packaging materials shall be from sources approved by the state health officer and protect the products from dust, mold and other contaminants.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2712 (September 2011).

§2323. Printing and Packaging of Butter and Butter Related Products

A. Printing and packaging of butter and butter related products shall be performed using procedures that preclude the contamination of product and have been approved by the state health officer.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2712 (September 2011).

Chapter 25. Cheese Manufacturing Plants

§2501. Approval of Plans

A. All cheese manufacturing plants that are domiciled within the state and are hereafter constructed, reconstructed or altered shall conform in their construction and operation with the requirements of this Part. Prior to construction, reconstruction or alteration, written approval of plans and specifications shall be obtained from the state health officer.

B. Prior to installation or modification, written approval shall be obtained from the state health officer of plans and specifications for the design, construction and manner of employment for all equipment.

C. Written detailed plans describing the processing of each product shall be submitted to the state health officer for approval prior to manufacture of each product and prior to any product or process change.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2712 (September 2011).

§2503. Basic Requirements for Cheese Manufacturing Plants

A. All dairy plants that manufacture, process, cut, slice or package cheese or cheese related products shall conform with the following general requirements for dairy plants:

1. definitions (in accordance with §101 of this Part);

2. standards of identity (in accordance with §107 of this Part);

3. permits (in accordance with §109 of this Part);

4. permits required for imported milk, milk products and frozen desserts (in accordance with §111 of this Part);

5. requirements for imported dairy products (in accordance with §113 of this Part);

6. milk records (in accordance with §115 of this Part);

7. falsification of records (in accordance with §117 of this Part);

8. labeling (in accordance with §121 of this Part);

9. delivery of samples (in accordance with §303 of this Part);

10. pasteurization equipment tests, examinations and sealing (in accordance with §313 of this Part);

11. posting inspection reports (in accordance with §317 of this Part);

12. field supervision (in accordance with §319 of this Part);

13. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);

14. regrading and reinstatement of permit when degrade or suspension was based on physical violations (in accordance with §345 of this Part);

15. reinstatement of permit when suspension was based upon adulteration of product or contamination of pasteurized product or cheeses with pathogenic microorganisms of human significance (in accordance with §347 of this Part);

16. grade A raw milk for pasteurization (in accordance with §349 of this Part);

17. grade A raw milk for pasteurization (certified for interstate milk shipment) (in accordance with §351 of this Part);

18. manufacturing grade raw milk for pasteurization (milk for manufacturing purpose) (in accordance with §353 of this Part);

19. grade A aseptically processed milk and milk products (in accordance with §359 of this Part);

20. grade A pasteurized, ultra-pasteurized and aseptically processed milk and milk products certified for interstate shipment (in accordance with §361 of this Part);

21. milk tank trucks (in accordance with §701 of this Part);

22. sealing and protection of milk tank trucks (in accordance with §703 of this Part);

23. labeling (in accordance with §705 of this Part);

24. general requirements (in accordance with §901 of this Part);

25. approval of plans (in accordance with §903 of this Part);

26. raw milk receiving (in accordance with §905 of this Part);

27. dairy plant receivers/samplers (in accordance with §907 of this Part);

28. receiving and handling of milk derived and non-dairy ingredients (in accordance with §909 of this Part);

29. immediate surroundings (in accordance with §911 of this Part);

30. floors (in accordance with §913 of this Part);

31. walls and ceilings (in accordance with §915 of this Part);

32. doors and windows (in accordance with §917 of this Part);
33. light and ventilation (in accordance with §919 of this Part);
34. separate rooms (in accordance with §921 of this Part);
35. toilet facilities (in accordance with §923 of this Part);
36. water supply (in accordance with §925 of this Part);
37. hand washing facilities (in accordance with §927 of this Part);
38. protection from contamination (in accordance with §929 of this Part);
39. reclaim or rework operations (in accordance with §931 of this Part);
40. dairy plant cleanliness (in accordance with §933 of this Part);
41. sanitary piping (in accordance with §935 of this Part);
42. construction and repair of containers and equipment (in accordance with §937 of this Part);
43. thermometers (in accordance with §939 of this Part);
44. cleaning and sanitizing of containers and equipment (in accordance with §943 of this Part);
45. storage of cleaned containers and equipment (in accordance with §945 of this Part);
46. storage of single-service containers, utensils and materials (in accordance with §947 of this Part);
47. packing, bottling and wrapping (in accordance with §949 of this Part);
48. cooling of milk and dairy products (in accordance with §955 of this Part);
49. use of overflow, leaks, spilled or mishandled dairy products (in accordance with §957 of this Part);
50. dipping or transferring dairy products (in accordance with §965 of this Part);
51. apparatus, containers, equipment and utensils (in accordance with §967 of this Part);
52. personnel health (in accordance with §969 of this Part);
53. notification of disease (in accordance with §971 of this Part);
54. procedure when infection suspected (in accordance with §973 of this Part);
55. personal cleanliness (in accordance with §975 of this Part);
56. rat proofing (in accordance with §985 of this Part);
57. waste disposal (in accordance with §987 of this Part); and
58. vehicles (in accordance with §989 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2712 (September 2011).

Subchapter A. Supplemental Requirements for Cheese Manufacturing Plants

§2505. General Information

A. Cheese manufacturing plants that manufacture, process, cut, slice or package cheese shall conform with all of the basic requirements for cheese manufacturing plants

contained in this Part and with the following additional requirements.

1. All cheese and cheese related products shall conform to the standards of identity prescribed by this Part.

2. Written, detailed plans describing the processing of each product shall be submitted to the state health officer for approval prior to manufacture of each product and prior to any product process change.

3. The words “made from unpasteurized milk” shall be prominently displayed on the principal display panel of each container of cheese and cheese related products made from milk in which each particle has not been pasteurized, ultra-pasteurized or aseptically processed in a manner that conforms with the requirements for pasteurization contained in this Part.

4. All containers and packages enclosing cheese and cheese related products shall be labeled in accordance with the applicable requirements of the Federal Food, Drug and Cosmetic Act, as amended, the State Food, Drug, and Cosmetic Law (R.S. 40:601, et seq.), the Nutrition Labeling and Education Act of 1990, as amended, and the regulations developed thereunder and the requirements for labeling contained in this Part.

5. Whey disposal or use shall conform the following:

a. adequate sanitary facilities shall be provided for the handling and disposal of whey. Necessary precautions shall be taken to minimize flies, insects and objectionable odors;

b. whey or whey products to be used for human food shall be handled in accordance with the applicable provisions of this Part; and

c. whey or whey products to be used as or in Grade A products shall be produced in a cheese manufacturing plant that complies with all applicable requirements for dairy plants that produce Grade A pasteurized, ultra-pasteurized and aseptically processed products contained in Chapter 9. All such whey shall be derived from cheese produced from Grade A raw milk for pasteurization;

6. Cooling of milk and dairy products shall conform with the following:

a. all Grade A raw milk or heat treated products shall be received at 7°C (45°F) or less and maintained at or below that temperature until processed;

b. all manufacturing grade raw milk (milk for manufacturing purposes) shall not exceed 10°C (50°F) upon delivery to the dairy plant unless it is delivered to the dairy plant in less than four hours after milking. It shall be cooled immediately upon receipt to 7°C (45°F) or below and maintained at or below that temperature until processed;

c. whey and whey products in balance (constant level) tanks or hot wells may be allowed to remain at temperatures above 7°C (45°F) and below 66°C (150°F) for a period not to exceed four hours of operation provided:

i. when foam is present on the product, the temperature of the foam shall be considered the temperature of the product;

ii. the balance tank or hot well shall be emptied, cleaned and sanitized at least once each four hours of operation; and

iii. dairy products in balance tanks or hot wells at temperatures below 7°C (45°F) or above 66°C (150°F) or above are exempt from this requirement;

d. all pasteurized dairy products, except those to be cultured, shall be cooled immediately after pasteurization in approved equipment, to a temperature of 7°C (45°F) or less and stored at a temperature of 7°C (45°F) or less;

e. the temperature of milk or dairy products in delivery vehicles shall not exceed 7°C (45°F);

f. every room or tank in which dairy products are stored shall be equipped with an approved thermometer;

g. aseptically processed dairy products to be packaged in hermetically sealed containers shall be exempt from the cooling requirement for this item; and,

h. re-circulated water which is used in coolers and exchangers, including systems in which a freezing point depressant is used shall be from a safe source and protected from contamination. Such water shall be tested at the minimum frequencies specified in §2117 of this Part and shall otherwise comply with the requirements of §2117 of this Part. Freezing point depressants, when used, shall be non toxic.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2713 (September 2011).

§2507. Additional Requirements for Cheese Manufacturing Plants that Manufacture, Process, Package, Cut or Slice Ripened or Aged Cheese and Cheese Related Products

A. Cheese manufacturing plants that manufacture, process, package, cut or slice aged cheese and cheese related products shall conform with all of the requirements for cheese manufacturing plants contained in this Part and shall conform with the following additional requirements.

1. Milk for the manufacture of aged cheese shall be derived from Grade A raw milk for pasteurization or manufacturing grade raw milk for pasteurization from a source approved by the state health officer.

2. Milk used in the manufacture of aged cheese and cheese related products may be pasteurized, ultra-pasteurized, aseptically processed or clarified or both.

3. The pasteurization, ultra-pasteurization or aseptic processing of raw milk used in the manufacture of aged cheese and cheese related products shall be performed in accordance with the requirements for pasteurization, ultra-pasteurization or aseptic processing contained in this Part.

4. The following additional separate rooms shall be provided.

a. Starter Room. Starter rooms or areas shall be properly equipped and maintained for the propagation and handling of starter cultures. All necessary precautions shall be taken to prevent contamination of starter cultures, of the room, equipment, and the air therein.

b. Make Room. The room in which the cheese is manufactured in vats that are uncovered while product is in them. It shall be of adequate size, and the vats adequately spaced to permit movement around the vats and presses for proper cleaning and satisfactory working conditions. Adequate ventilation shall be provided. In existing installations in which the make room is an integral part of a processing room, the operation shall conform with the requirements contained in §921.A.6 of this Part.

c. Drying Room. If cheese is to be paraffined, a drying room of adequate size shall be provided to accommodate the maximum production of cheese during the flush period. Adequate sanitary shelving and air circulation shall be provided for proper drying. Suitable temperature and humidity control facilities shall be provided.

d. Paraffining Room. For rind cheese, a separate room or compartment shall be provided for paraffining and boxing the cheese. The room or compartment shall be of adequate size and the temperature maintained near the temperature of the drying room to avoid sweating of the cheese prior to paraffining.

e. Rindless Block Wrapping Area. For rindless blocks a suitable space shall be provided for proper wrapping and boxing of the cheese. The area shall be free from dust, condensation, mold or other conditions which may contaminate the surface of the cheese or contribute to an unsatisfactory packaging of the cheese.

f. Coolers or Curing Rooms. Coolers or curing rooms where cheese is held for curing or storage shall be clean and maintained at the proper uniform temperature and humidity to adequately protect the cheese. Proper circulation of air shall be maintained at all times. The rooms shall be free from rodents, insects, and pests. The shelves shall be kept clean and dry. All racks, shelves and other equipment used in this room shall conform with the requirements of equipment construction required in this Part.

g. Cutting and Packaging Rooms. When cheese is cut, sliced or wrapped, separate rooms shall be provided for the cleaning and preparation of the bulk cheese and a separate room shall be provided for the cutting, slicing or wrapping operation. The rooms shall be well lighted, ventilated, and provided with filtered air. Air movement shall be outward to minimize the entrance of unfiltered air into the cutting and packaging room.

5. Rooms in which dairy products are handled, processed or stored, or in which dairy product containers, utensils and equipment are cleaned or stored, shall not open directly into any stable, farm-stead, area in which meat, poultry or any other non-dairy foods of animal origin are handled or stored, any restaurant food preparation area or any room used for domestic purposes. All rooms shall be of sufficient size for their intended purposes.

6. Designated areas or rooms shall be provided to segregate the receiving, handling and storage of returned packaged dairy products. They shall be properly identified, kept neat, clean and maintained in such a manner as to preclude contamination of other products or equipment or the attraction of flies.

7. Construction and repair of containers and equipment:

a. The construction of all containers and equipment used in the manufacture of aged cheeses and related products shall conform with the requirements for containers and equipment contained in §937 of this Part.

b. In addition, for certain other equipment the following requirements shall be met.

i. Starter Vats. Bulk starter vats shall be of stainless steel or equally corrosion-resistant metal and shall be in good repair, equipped with tight-fitting lids and have adequate temperature controls, such as valves, indicating

and/or recording thermometers and shall conform with the applicable 3-A Standards.

ii. Cheese Vats, Tanks and Drain Tables. The vats used for making cheese shall be of metal construction with adequate jacket capacity for uniform heating. The inner liner shall be minimum 16-gage stainless steel or other equally corrosion-resistant metal, properly pitched from side to center and from rear to front for adequate drainage. The liner shall be smooth, free from excessive dents or creases and shall extend over the edge of the outer jacket. The outer jacket when metal, shall be constructed of stainless steel or other metal which can be kept clean and sanitary. The junction of the liner and outer jackets shall be constructed so as to prevent milk or cheese from entering the inner jacket. The vat, tank and drain table shall be equipped with a suitable sanitary outlet valve. Effective valves shall be provided and properly maintained to control the application of heat to the vat.

iii. Mechanical Agitators. The mechanical agitators shall be of sanitary construction. The carriage and track shall be so constructed as to prevent the dropping of dirt or grease into the vat. Metal blades, forks, or stirrers shall be constructed of stainless steel and of material approved in the 3-A Standards and shall be free from rough or sharp edges which might scratch the equipment or remove metal particles.

iv. Knives, hand rakes, shovels, scoops, paddles, strainers, and miscellaneous equipment shall be stainless steel or of material approved in the 3-A Standards. The product contact surfaces of the curd mill shall be of stainless steel. All pieces of equipment shall be so constructed that they can be kept clean and free from rough or sharp edges which might scratch the equipment or remove metal particles. The wires in the curd knives shall be stainless steel, kept tight, replaced when necessary and kept clean.

v. Hoops, Forms and Followers. The hoops, forms and followers shall be constructed of stainless steel or heavy tinned steel. If tinned, they shall be kept tinned and free from rust. All hoops, forms, and followers shall be kept in good repair. Drums or other special forms used to press and store cheese shall be clean and sanitary.

vi. Press. The cheese press shall be constructed of stainless steel and all joints welded and all surfaces, seams, and openings readily cleanable. The pressure device shall be the continuous type. Press cloths shall be maintained in good repair and in a sanitary condition. Single-service press cloths, starch circles, bandages, etc., shall be used only once.

vii. Rindless Cheese Press. The press used to heat seal the wrapper applied to rindless cheese shall have square interior corners, reasonably smooth interior surface and have controls that shall provide uniform pressure and heat equally to all surfaces.

viii. Paraffin Tanks. The metal tank shall be adequate in size, have heat controls and an indicating thermometer. The cheese wax contained in the paraffin tank shall be kept clean at all times.

ix. Automatic Curd Maker. The automatic curd making system shall be constructed of stainless steel or of material approved in the 3-A Standards. All areas shall be free from cracks and rough surfaces and constructed so that they can be easily cleaned.

x. Curd Conveying Systems. The curd conveying system, conveying lines and cyclone separator shall be constructed of stainless steel or other equally corrosion resistant metal in such manner that it can be satisfactorily cleaned. The system shall be of sufficient size to handle the volume of curd and be provided with filtered air of the quality satisfactory for the intended use. Air compressors or vacuum pumps shall not be located in the processing or packaging areas.

xi. Automatic Salter. The automatic salter shall be constructed of stainless steel or other equally corrosion resistant metal. This equipment shall be constructed to equally distribute the salt throughout the curd. It shall be designed to accurately weigh the amount of salt added. The automatic salter shall be constructed so that it can be satisfactorily cleaned. The salting system shall provide for adequate absorption of the salt in the curd. Water and steam used to moisten the curd prior to salting shall be potable water or culinary steam.

xii. Automatic Curd Filler. The automatic curd filler shall be constructed of stainless steel or other equally corrosion resistant metal. This equipment shall be of sufficient size to handle the volume of curd and constructed and controlled so as to accurately weigh the amount of curd as it fills. The curd filler shall be constructed so that it can be satisfactorily cleaned.

xiii. Hoop and Barrel Washer. The washer shall be constructed so that it can be satisfactorily cleaned. It shall also be equipped with temperature and pressure controls to ensure satisfactory cleaning of the hoops or barrels. It should be adequately vented to the outside.

xiv. Cheese Vacuumizing Chamber. The vacuum chamber shall be satisfactorily constructed and maintained so that the product is not contaminated with rust or flaking paint. An inner liner of stainless steel or other corrosion resistant material should be provided.

xv. Monorail. The monorail shall be constructed so as to prevent foreign material from falling on the cheese or cheese containers.

xvi. Conveyor for moving and draining block or barrel cheese. The conveyor shall be constructed so that it will be easily cleaned. It shall be installed so that the press drippings will not cause an environmental problem.

xvii. Rindless Cheese Wrapping Equipment. The equipment used to heat seal the wrapper applied to rindless cheese shall have square interior corners, reasonably smooth interior surfaces and have controls that shall provide uniform pressure and heat to all surfaces. The equipment used to apply shrinkable wrapping material to rindless cheese shall operate to maintain the natural intended shape of the cheese in an acceptable manner, reasonably smooth surfaces on the cheese, and tightly adhere the wrapper to the surface of the cheese.

xviii. Special Equipment. All product contact areas of speciality equipment shall be constructed of stainless steel or of material approved in the 3-A Standards and constructed following 3-A Standards principles.

xix. Washing Machine. When used, the washing machine for cheese cloths and bandages shall be of commercial quality and size; or of sufficient size to handle

the applicable load. It should be equipped with temperature and water level controls.

8. Packaging, cutting, slicing, repackaging of aged cheese.

a. The packaging, cutting, slicing or repackaging of aged cheese shall be conducted under rigid sanitary conditions that preclude contamination of the product.

b. The plant shall submit detailed plans of the equipment and procedures to be used in these operations to the state health officer for written approval prior to beginning such operations.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2714 (September 2011).

§2509. Additional Requirements for Pasteurized Process Cheese Manufacturing Plants

A. All pasteurized process cheese and cheese related products shall conform with the standards of identify contained in the Code of Federal Regulations.

B. Dairy plants that manufacture, process or package process cheese or cheese related products shall conform with all of the requirements for cheese manufacturing plants contained in this Part and shall conform with the following additional requirements:

1. Milk used in the manufacture of pasteurized process cheese and cheese related products shall be derived from Grade A raw milk for pasteurization or manufacturing grade raw milk for pasteurization from a source approved by the state health officer

2. Milk and milk products used in the manufacture of pasteurized process cheese or cheese related products shall be pasteurized, ultra-pasteurized or aseptically processed in accordance with the requirements for pasteurization or ultra-pasteurization contained in this Part.

3. Conveyors shall be constructed of material which can be properly cleaned, will not rust, or otherwise contaminate the cheese and shall be maintained in good repair.

4. The grinders or shredders used in the preparation of the trimmed and cleaned natural cheese for the cookers shall be adequate in size. Product contact surfaces shall be of corrosion resistant material, and of such construction as to prevent contamination of the cheese and to allow thorough cleaning of all parts and product contact surfaces.

5. The cookers shall be the steam jacketed or direct steam type. They shall be constructed of stainless steel or other equally corrosion-resistant material. All product contact surfaces shall be readily accessible for cleaning. Each cooker shall be equipped with an indicating thermometer, and shall be equipped with a temperature recording device. The recording thermometer stem may be placed in the cooker. Steam check valves on direct steam type cookers shall be mounted flush with cooker wall, be constructed of stainless steel and designed to prevent the backup of product into the steam line, or the steam line shall be constructed of stainless steel pipes and fittings which can be readily cleaned. If direct steam is applied to the product only culinary steam shall be used.

6. The hoppers of all fillers shall be covered but the cover may have sight ports. If necessary, the hopper may

have an agitator to prevent buildup on side walls. The filler valves and head shall be kept in good repair and capable of accurate measurements.

7. The natural cheese shall be cleaned free of all nonedible portions. Paraffin and bandages as well as rind surface, mold, or unclean areas or any other part which is unwholesome or unappetizing shall be removed.

8. Each batch of cheese within the cooker, including the optional ingredients shall be thoroughly commingled and the contents pasteurized at a temperature of at least 70°C (158°F) and held at that temperature for not less than 30 seconds. Care shall be taken to prevent the entrance of cheese particles or ingredients after the cooker batch of cheese has reached the final heating temperature. After holding for the required period of time, the hot cheese shall be emptied from the cooker as quickly as possible.

9. Containers, either lined or unlined, shall be assembled and stored in a sanitary manner to prevent contamination. The handling of containers by filler crews shall be done with extreme care and observance of personal cleanliness. Performing and assembling of pouch liners and containers shall be kept to a minimum and the supply rotated to limit the length of time exposed to possible contamination prior to filling.

10. Hot fluid cheese from the cookers may be held in hot wells or hoppers to assure a constant and even supply of processed cheese to the filler or slice former. Filler valves shall effectively measure the desired amount of product into the pouch of containers in a sanitary manner and shall cut off sharply without drip or drag of cheese across the opening. An effective system shall be used to maintain accurate and precise weight control. Damaged or unsatisfactory packages shall be removed from production, and the cheese may be salvaged into sanitary containers, added back to cookers and recooked prior to repackaging.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2716 (September 2011).

§2511. Additional Requirements for Cheese Manufacturing Plants that Manufacture, Process or Package Unripened Cheese

A. Dairy plants that manufacture, process or package unripened cheese shall conform with all of the requirements for cheese manufacturing plants contained in this Part and shall conform with the following additional requirements.

1. Milk and milk products used in the manufacture of unripened cheese and related products shall be from a Grade A raw milk for pasteurization source approved by the state health officer.

2. All milk and milk products used in the manufacture of unripened cheese and cheese related products shall be pasteurized, ultra-pasteurized or aseptically processed in accordance with the requirements for pasteurization, ultra-pasteurization or aseptic processing contained in this Part.

3. Milk and milk products including reconstituted milk or milk product shall be pasteurized, ultra-pasteurized or aseptically processed in the plant in which the unripened cheese or cheese related products are manufactured or processed, provided that the state health officer may authorize cheese manufacturing plants that comply with the

requirements of §2513 of this Part to manufacture or process unripened cheese or cheese related products from milk or milk products pasteurized, ultra-pasteurized or aseptically processed in other plants.

4. Rooms and compartments. Processing operations with open cheese vats in them shall be separated from other rooms or areas.

a. Processing and packaging rooms shall be adequately ventilated to maintain sanitary conditions, preclude the growth of mold and airborne contaminants, prevent condensation, and to minimize objectionable odors.

b. Starter rooms or areas shall be properly equipped and maintained for the propagation and handling of starter cultures.

c. Coolers shall be equipped with the facilities necessary for maintaining proper temperature and humidity, consistent with GMPs for the applicable product and to prevent contamination of the products.

5. Packaging. Packaging of unripened cheese and cheese related products shall be done in a sanitary manner with mechanical equipment that complies with applicable 3-A Sanitary Standards.

a. Packaging materials for unripened cheese or cheese related products shall provide sufficiently low permeability to air and moisture and shall be resistant to puncturing, tearing, cracking or fragmentation. Any materials used in the package or packaging that has contact with product shall conform with this requirement. Approval of the state health officer shall be obtained for all packaging materials prior to use.

b. Upright open containers and closures shall be protected from contamination by overhead shields.

c. Single service containers and closures and other single service articles for use in contact with dairy products shall be of sanitary design and construction and from sources approved by the state health officer. They shall be stored in their original containers or in equipment designed for storage of single service articles, shall be kept therein in a clean, dry place until used and shall be handled in a sanitary manner.

d. Caps or covers which extend over the lip of the container shall be used on all cups or tubs of two pounds or less.

e. Capping or closing of containers of two pounds or less shall be done in a sanitary manner using mechanical equipment that complies with applicable 3-A Sanitary Standards. Hand capping of such containers shall be prohibited.

f. A date, code or lot number that identifies the date, run or batch from which the contents originated, shall be prominently displayed on each final container (container that will reach the final consumer) of dairy product in indelible ink (or equivalent). The date, code or batch shall be printed on the container or label in such a manner that it cannot be removed, changed or defaced.

6. The cheese manufacturing plant shall:

a. obtain a representative sample of each batch or lot of cheese or related cheese product, manufactured or processed by the plant. Normally, this shall be done by collecting a closed final container of the cheese or the cheese

related product, randomly selected, and perform or have a coliform count performed on the sample;

b. perform the sampling procedures and laboratory examination in substantial compliance with the procedures contained in the *Standard Methods for the Examination of Dairy Products*;

c. record the results of each test and retain the record for a period of one year after the date that the product was produced. These records shall be made available for review by the state health officer;

d. immediately take steps to determine and eliminate the cause when the coliform count of a sample of product exceeds 10 per gm; and

e. maintain a record, for review by the state health officer, of action taken to correct the cause of each coliform count that exceeded 10 per gm. Such records that shall be retained for a period of one year after the date the product was produced.

B. Unripened cheese and cheese related products shall conform with the following bacteriological, chemical and temperature standards:

a. temperature—cooled to 7°C (45° F) or less prior to final storage and maintained thereat;

b. coliform count—not to exceed 10 per gram; and,

c. pathogens—no pathogenic microorganisms of human significance;

C. During any consecutive six months at least four samples of each type of cheese manufactured or processed by each plant shall be taken by the state health officer and tested for coliform count. The state health officer shall take appropriate regulatory action on violative sample results, as prescribed in §331 of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2716 (September 2011).

§2513. Additional Requirements for Cheese Manufacturing Plants that Manufacture or Process Unripened Cheese or Cheese Related Products from Milk or Milk Products that were Pasteurized, Ultra-pasteurized or Aseptically Processed at Other Plants without Repasteurization

A. Cheese manufacturing plants that manufacture or process unripened cheese or cheese related products from milk or milk products that were pasteurized, ultra-pasteurized or aseptically processed at another plant without being repasteurized shall conform with all of the requirements for unripened cheese contained in this Part and with the following additional requirements.

1. All milk or milk products used in the manufacture or processing of unripened cheese or cheese related products shall be Grade A pasteurized or Grade A ultra-pasteurized or aseptically processed and obtained from a plant possessing a valid permit from the state health officer.

2. All reconstituted milk or milk products shall be pasteurized, ultra-pasteurized or aseptically processed in the dairy plant in which it was reconstituted and shall be obtained from a plant possessing a valid permit from the state health officer.

3. All milk and milk products, including reconstituted milk and milk products shall be packaged and transported in sealed containers, approved by the state health officer.

4. Cheese manufacturing plants that manufacture or process unripened cheese made from milk or milk products pasteurized or ultra-pasteurized at another plant without being re-pasteurized or ultra-pasteurized shall develop and implement a HACCP system conforming with the requirements contained in Chapter 11 of this Part.

5. The cheese manufacturing plant shall:

a. obtain a representative sample of each batch or lot of cheese or related cheese product, manufactured or processed by the plant. Normally, this shall be done by collecting a closed final container of the cheese or the cheese related product, randomly selected, and perform or have a coliform count performed on the sample;

b. perform the sampling procedures and laboratory examination in substantial compliance with the procedures contained in the *Standard Methods for the Examination of Dairy Products*;

c. record the results of each test and retain the record for a period of one year after the date that the product was produced. These records shall be made available for review by the state health officer;

d. immediately take steps to determine and eliminate the cause when the coliform count of a sample of product exceeds 10 per gm; and,

e. maintain a record, for review by the state health officer, of action taken to correct the cause of each coliform count that exceeded 10 per gm. Such records shall be retained for a period of one year after the date the product was produced.

B. Unripened cheese and related products shall conform with the following bacteriological and temperature standards:

1. temperature—cooled to 7°C (45°F) prior to final storage and maintained thereat;

2. coliform count—not to exceed 10 per gram; and,

3. pathogens—no pathogenic microorganisms of human significance.

C. During any consecutive six months, at least four samples of pasteurized or ultra-pasteurized milk or milk products to be used in the manufacture or processing unripened cheese or cheese related products shall be taken by the state health officer at the cheese manufacturing plant after receipt of the milk by the plant and prior to being manufactured or processed and tested for standard plate count, coliform count, temperature. The state health officer shall take appropriate regulatory action, as prescribed in §331 of this Part, on violative sample results.

D. During any consecutive six months at least four samples of each type of cheese manufactured or processed by each plant shall be taken by the state health officer and tested for coliform count. The state health officer shall take appropriate regulatory action, as prescribed in §331 of this Part, on violative sample results.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2717 (September 2011).

Chapter 27. Frozen Desserts

§2701. Approval of Plans

A. All frozen dessert manufacturing plants that are domiciled within the state and are hereafter constructed, reconstructed or altered shall conform in their construction and operation with the requirements of this Part. Prior to construction, reconstruction or alteration, written approval of plans and specifications shall be obtained from the state health officer.

B. Prior to installation or modification, written approval shall be obtained from the state health officer of plans and specifications for the design, construction and manner of employment for all equipment.

C. Written detailed plans describing the processing of each product shall be submitted to the state health officer for approval prior to the manufacture of each product and prior to any product or process change.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2718 (September 2011).

§2703. Basic Requirements for Frozen Dessert Manufacturing Plants

A. All frozen dessert manufacturing plants that manufacture, process or freeze frozen desserts shall conform with the following general requirements for dairy plants:

1. definitions (in accordance with §101 of this Code);

2. standards of identity (in accordance with §107 of this Part);

3. permits (in accordance with §109 of this Part);

4. permits required for imported milk, milk products and frozen desserts (in accordance with , §111 of this Part);

5. requirements for imported dairy products (in accordance with §113 of this Part);

6. milk records (in accordance with §115 of this Part);

7. falsification of records (in accordance with §117 of this Part);

8. registration (in accordance with §119 of this Part);

9. labeling (in accordance with §121 of this Part);

10. delivery of samples (in accordance with §303 of this Part);

11. pasteurization equipment tests, examination and sealing (in accordance with §313 of this Part);

12. application for regrading, reinstatement of permit and permission to resume sale of product (in accordance with §341 of this Part);

13. regrading and reinstatement of permit when degrade or suspension was based on physical violations (in accordance with §345 of this Part);

14. reinstatement of permit when suspension was based upon adulteration of product or contamination of pasteurized product or cheeses with pathogenic microorganisms of human significance (in accordance with §347 of this Part);

15. milk tank trucks (in accordance with §701 of this Part);

16. sealing and protection of milk tank trucks (in accordance with §703 of this Part);

17. labeling (in accordance with §705 of this Part);

18. general requirements (in accordance with §901 of this Part);

19. approval of plans (in accordance with §903 of this Part);
20. raw milk receiving (in accordance with §905 of this Part);
21. dairy plant receivers/samplers (in accordance with §907 of this Part);
22. receiving and handling of milk derived and non-dairy ingredients (in accordance with §909 of this Part);
23. immediate surroundings (in accordance with §911 of this Part);
24. floors (in accordance with §913 of this Part);
25. walls and ceilings (in accordance with §915 of this Part);
26. doors and windows (in accordance with §917 of this Part);
27. light and ventilation (in accordance with §919 of this Part);
28. separate rooms (in accordance with §921 of this Part);
29. toilet facilities (in accordance with §923 of this Part);
30. water supply (in accordance with §925 of this Part);
31. hand washing facilities (in accordance with §927 of this Part);
32. protection from contamination (in accordance with §929 of this Part);
33. reclaim or rework operations (in accordance with §931 of this Part);
34. dairy plant cleanliness (in accordance with §933 of this Part);
35. sanitary piping (in accordance with §935 of this Part);
36. construction and repair of containers and equipment (in accordance with §937 of this Part);
37. thermometers (in accordance with §939 of this Part);
38. pasteurization, ultra pasteurization and aseptic processing (in accordance with §941 of this Part);
39. cleaning and sanitization of containers and equipment (in accordance with §943 of this Part);
40. storage of cleaned containers and equipment (in accordance with §945 of this Part);
41. storage of single-service containers, utensils and materials (in accordance with §947 of this Part);
42. packing, bottling and wrapping (in accordance with §949 of this Part);
43. capping (in accordance with §951 of this Part);
44. delivery containers (in accordance with §953 of this Part);
45. cooling of milk and dairy products (in accordance with §955 of this Part);
46. use of overflow, leaked, spilled or mishandled dairy products (in accordance with §957 of this Part);
47. dipping or transferring dairy products (in accordance with §965 of this Part);
48. apparatus, containers, equipment and utensils (in accordance with §967 of this Part);
49. personnel health (in accordance with §969 of this Part);
50. notification of disease (in accordance with §971 of this Part);

51. procedure when infection suspected (in accordance with §973 of this Part);

52. personal cleanliness (in accordance with §975 of this Part);

53. allergen and sensitivity producing ingredient (in accordance with §977 of this Part);

54. rat proofing (in accordance with §985 of this Part);

55. waste disposal (in accordance with §987 of this Part); and

56. vehicles (in accordance with §989 of this Part).

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2718 (September 2011).

Subchapter A. Supplemental Requirements for Dairy Plants that Manufacture Frozen Desserts

§2705. General Information

A. Dairy plants that manufacture frozen desserts including frozen dessert mixes shall conform with the basic requirements for frozen dessert manufacturing plants in §2703 of this Part and with the following additional requirements.

1. If the powdered or dry frozen dessert mix contains any dairy product, egg ingredient or other potentially hazardous food ingredient, the mix shall be pasteurized, ultra pasteurized or aseptically processed following reconstitution using pasteurization, ultra pasteurization or aseptic processing methods specified in this Part.

2. Optional dairy ingredients shall be derived from Grade A raw milk for pasteurization or manufacturing grade raw milk for pasteurization (milk for manufacturing purposes) obtained from sources that are in substantial compliance with the requirements of this Part and are approved by the state health officer.

3. Dry dairy products used in the manufacture of frozen desserts for which grades and grading criteria are specified in this Part shall be Grade A or extra grade. Products of a lower grade shall not be used.

4. Non-milk derived ingredients used in the manufacture of frozen desserts shall have been determined by the FDA to be GRAS for use in frozen desserts.

5. All dairy ingredients used in the manufacture of frozen desserts shall be produced, packed, held and shipped in a manner consistent with the requirements of this Part.

6. All non-milk derived ingredients shall be purchased only from suppliers which certify or guarantee that their product has been produced and handled in a manner that will assure a safe and wholesome ingredient which will not adulterate the finished product. Records of such verification or guarantee shall be available for review by the state health officer.

7. A safety and quality inspection of all incoming non-milk derived ingredients shall be performed. Records of the results of these inspections, corrective actions taken when problems are identified and the date and initials of the person performing the inspection shall be maintained and made available to the state health officer. The inspection shall include an evaluation for conditions related to:
 - a. product identity and labeling;
 - b. package condition and integrity;

- c. bulging;
- d. leaking;
- e. dirt/grime;
- f. insect infestation;
- g. rodent damage; and
- h. off-odors and non-food materials (especially toxic compounds) or residues of such materials in the truck or other conveyance.

8. All ingredients used in the manufacture of frozen desserts shall be stored and handled in such a manner as to preclude their contamination. Particular attention shall be given to closing or resealing of containers that have been opened and the contents of which have been partially used.

9. Dusty raw ingredient blending or liquification operations which create powdery conditions shall not be conducted in areas where pasteurized products are handled or stored.

10. Mix preparation operations in which ingredients are exposed shall be conducted in processing areas. Except when ingredients are being added, all openings into vessels and lines containing product shall be covered. The outer box or wrapper of powdered ingredients shall be removed prior to dumping into mixing vessels.

11. All liquid ingredients which will support bacterial growth shall be kept or immediately cooled to 7°C (45°F) or below.

12. Pasteurization, ultra-pasteurization and aseptic processing shall be performed on the following products.

a. All frozen dessert mixes, dairy and non-dairy shall be pasteurized, ultra-pasteurized or aseptically processed, provided that the state health officer may exempt some specific frozen dessert mixes that do not contain dairy ingredients and do not support the growth of pathogenic microorganisms of human significance from this requirement dependent upon their ingredients and manner of processing.

b. Pasteurization, ultra-pasteurization and aseptic processing of frozen dessert mixes shall be performed in equipment and using procedures that conform with the requirements of the *PMO* for pasteurization and with current applicable 3-A sanitary standards as approved by the state health officer.

c. Frozen desserts to be sold or distributed to retail outlets shall be frozen and packaged at the plant in which the frozen dessert mix was made and pasteurized provided that the state health officer may authorize dairy plants that have implemented HACCP systems that comply with the requirements of this Part to freeze, partially freeze or package frozen desserts from mixes that were pasteurized, ultra-pasteurized or aseptically processed in other plants.

i. The following minimum times and temperatures shall apply to pasteurization of frozen dessert mixes:

- (a). 68°C (155°F) for 30 minutes;
- (b). 79°C (175°F) for 25 seconds;
- (c). 82°C (180°F) for 15 seconds;
- (d). 88°C (191°F) for 1.0 second;
- (e). 90°C (194°F) for 0.5 second;
- (f). 93°C (201°F) for 0.1 second;
- (g). 95°C (204°F) for 0.05 second; and,
- (h). 100°C (212°F) for 0.01 second.

d. Should scientific evidence indicate that the above temperatures or times are not adequate to destroy pathogenic microorganisms of human significance or for any other reason, may not be adequate to protect the public's health, the state health officer may, with the concurrence of the FDA, immediately require that all pasteurized dairy products sold in the state be pasteurized at temperatures or times recommended to be adequate by the FDA. Should the FDA hereafter determine that any of the requirements for pasteurization or ultra-pasteurization contained in the *PMO* are not adequate to protect the public's health and require a change in any of the aforesaid requirements, the state health officer shall immediately require that all pasteurization or ultra-pasteurized products sold in the state conform with the new FDA requirements for pasteurization or ultra-pasteurization. Nothing shall be construed as barring any other pasteurization process, which has been recognized by the FDA to be equally efficient and which is approved by the state health officer.

13. The only ingredients that shall be added after pasteurization, ultra-pasteurization or aseptic processing are the following flavoring and coloring ingredients:

- a. those subjected to prior heat treatment sufficient to destroy pathogenic microorganisms;
- b. those of 0.85 percent water activity or less;
- c. those with a pH of less than 4.7;
- d. roasted nuts (added at freezer);
- e. those that contain high alcohol content;
- f. bacterial cultures; and
- g. those that have been subjected to any other process which will assure that the ingredient is free of pathogenic microorganisms of human significance.

14. Reclaim or Rework Operations. Reclaim or rework operations are all activities associated with the recovery, handling, and storage of processed or partially processed products for use as an ingredient in products to be used for human consumption.

a. Product that has entered the distribution channels or has been temperature-abused, tampered with or exposed to chemical or biological contamination shall not be reclaimed or reworked for use as an ingredient in other products for human consumption.

b. Reclaimed or reworked products and reclaim or rework operations shall conform with the following requirements.

i. Reclaim areas and equipment shall be constructed, maintained and protected in a manner that is in substantial compliance with the requirements for production and processing areas contained in this Part.

ii. Products that have left the premises of the plant in which it was packaged shall not be reclaimed or reworked.

iii. All products to be reclaimed shall be maintained at 7°C (45°F) or below. Product salvaged from defoamers and tank or line rinsing shall be immediately cooled to 7°C (45°F) or below.

iv. Packages of products to be reclaimed or reworked shall be clean and free of contamination. Products from leaking or badly damaged containers shall not be reclaimed or reworked.

v. Packaged products shall be opened in such a manner as to minimize the potential for contamination.

Containers shall not be opened by slashing, smashing or breaking.

vi. Woven wire strainers shall not be used in reclaim or rework operations.

vii. Reclaim or rework dump stations and tanks shall be covered except when products are actually being dumped through the openings.

viii. Reclaim or rework storage tanks shall be equipped with adequate thermometers.

ix. Reclaimed or reworked products shall be handled as a raw dairy ingredient.

x. Cleaning and sanitizing requirements shall be the same as those for other raw ingredient handling equipment.

xi. It is recommended that higher than minimum temperatures and times be used in the pasteurization of product containing reclaimed or reworked ingredients.

xii. The dairy plant shall take appropriate steps to preclude the contamination of products or equipment with allergenic and sensitivity producing reclaim or reworked ingredients or substances that will not be appropriately declared in the labeling of the final container of product.

15. Allergen and Sensitive Producing Ingredients Control

a. Due to the large number of allergens and sensitivity producing ingredients usually present in frozen dessert operations, each plant shall have a trained individual study each ingredient used in the plant and the processing steps and sequence used in the manufacture of each product. He shall determine where, how and when potentials exist for an allergen to inadvertently enter products.

b. The plant shall take appropriate steps to preclude the contamination of all products with allergens and sensitive producing ingredients that will not be declared in the labeling of the final container of each product.

16. Packaging of Frozen Desserts. Frozen dessert products shall be packaged in unused single service containers, obtained from a source approved by the state health officer, which protects the contents from contamination and after packaging shall be stored in a sanitary manner.

a. Packaging and closing or capping of all containers of half-gallon or less shall be performed in a sanitary manner in mechanical equipment that conforms with the applicable 3-A Sanitary Standards. Hand capping of such containers is prohibited.

b. Upright open containers and all closures shall be protected from contamination by overhead shields.

c. Caps or covers shall extend over the lip of the container on all cups, tubs or containers of can-type configuration.

d. A date, code or lot number that identifies the date, run or batch from which the contents originated, shall be prominently displayed on each final container (container that will reach the final consumer) of dairy product in indelible ink (or equivalent). The date, code or batch shall be printed on the container or label in such a manner that it cannot be removed, changed or defaced.

17. All frozen desserts including frozen dessert mixes shall conform with the standards of identity prescribed by this Part.

18. Frozen desserts, including frozen dessert mixes shall conform with the following temperature and bacteriological standards:

a. cooled to 7°C (45°F) or less and maintained thereat;

b. bacteriological limits—not to exceed 50,000 cfu per gm (Cultured products are exempt from this requirement);

c. coliform count limits—not to exceed 10 per gram, except that the coliform count of those frozen desserts which contain fruit, nuts, chocolate or other bulky flavors shall not exceed 20 per gram; and,

d. pathogens—no pathogenic microorganisms of human significance.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2719 (September 2011).

§2707. Additional Requirements for Frozen Dessert Manufacturing Plants that Have Been Authorized by the State Health Officer to Freeze or Partially Freeze and Package Frozen Desserts Made from Frozen Dessert Mixes that were Pasteurized, Ultra-pasteurized or Aseptically Processed at Another Plant

A. The plant shall implement a HACCP system, approved by the state health officer, that conform with the requirements contained in Chapter 11 of this Part.

B. Frozen dessert manufacturing plants that have been authorized by the state health officer to freeze or partially freeze and package frozen desserts made from frozen dessert mixes that were pasteurized, ultra-pasteurized or aseptically processed at another plant without being repasteurized or ultra-pasteurized again shall conform with all of the requirements for frozen dessert manufacturing plants contained in this Part and shall conform with the following additional requirements.

1. All frozen dessert mixes shall have been manufactured in dairy plants possessing a valid permit from the state health officer.

2. All reconstituted mixes shall be pasteurized, ultra-pasteurized or aseptically processed in the plant in which it was reconstituted.

3. All frozen dessert mixes shall be packaged and transported in sealed containers which have been approved by the state health officer.

4. Each plant shall develop and implement a HACCP system conforming with the HACCP requirements contained in this Part and shall be approved by the state health officer.

5. The frozen dessert manufacturing plant shall:

a. obtain a representative sample of each batch of frozen desserts packaged by the plant. Normally, this shall be done by collecting a closed final container of product, randomly selected, and perform or have a standard plate count and a coliform count performed on the sample;

b. perform the sampling procedures and laboratory examination in compliance with the procedures contained in the *Standard Methods for the Examination of Dairy Products*;

c. record the results of each test and retain the record for a period of one year after the date that the product, from which the sample was collected, was packaged. These records shall be made available for review by the state health officer;

d. immediately take steps to determine and eliminate the cause when the coliform count of a sample of product exceeds 10 per gram or the standard plate count exceeds 50,000 cfu per gram (unless a cultured product); and,

e. maintain a record, for review by the state health officer, of action taken to correct the cause of each elevated coliform count or elevated standard plate count. Such records that shall be retained for a period of one year after the date the product was packaged.

C. During any consecutive six months, at least four samples of pasteurized or ultra-pasteurized frozen dessert mix to be used in the manufacture of frozen desserts shall be taken by the state health officer at the frozen dessert manufacturing plant. The container in which it was packaged by the plant shall be opened and the frozen dessert mix tested for standard plate count and coliform count. The state health officer shall take appropriate regulatory action based on violative sample results as prescribed in §331 of this Part.

D. During any consecutive six months at least four samples of each flavor and fat level of product packaged by the plant shall be taken by the state health officer and tested for standard plate count and coliform count. The state health officer shall take appropriate regulatory action on violative sample results as prescribed in §331 of this Part.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2721 (September 2011).

Subchapter B. Frozen Dessert Retail Requirements

§2709. Counter Freezers

[formerly paragraph 8:013]

A. The processing, handling, and distribution of milk and milk products in the manufacture of frozen desserts shall conform to the minimum requirements for Grade A milk as prescribed in this Part. All milk and milk products shall be of quality approved by the state health officer. Counter freezer operations which freeze mixes and sell only at retail on the premises shall comply with the following requirements:

1. only mixes that have been processed and packaged in an approved plant shall be allowed;

2. counter freezers used for freezing mixes which contain milk solids, milk fat, or vegetable fat shall be located only in premises which meet the minimum requirements for retail food establishments as prescribed in Part XXIII of this Code;

3. the frozen dessert operator shall be a food handler other than the cashier of a grocery or convenience store;

4. ice cream, ice milk and other frozen desserts shall be offered to consumers who serve themselves only when dispensed from approved dispensing machines designed expressly for that purpose;

5. the dipping and/or packaging of firmly frozen frozen desserts by consumers who serve themselves is prohibited.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4.A.(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2722 (September 2011).

§2711. Mobile Frozen Dessert Units

[formerly paragraph 8:021]

A. All milk and milk products used in the manufacture of frozen desserts shall be of a quality approved by the state health officer. The processing, handling and distribution of milk and milk products as well as the building, equipment, and other entities used in the manufacture of frozen desserts shall conform to the requirements for Grade A milk in this Part. In addition, mobile frozen dessert units shall comply with the following requirements.

1. Each operator of a mobile frozen dessert unit shall obtain a permit to operate from the state health officer.

2. Truck interior shall be completely enclosed with the exception of serving windows and shall be of sufficient size with equipment and fixtures conveniently located so as to render efficient and sanitary operation.

3. Serving openings shall not be larger than 18 inches wide and 28 inches high, and there shall not be more than two serving openings to each mobile unit. The serving openings shall be closed at all times that the operator of the mobile unit is not actually dispensing frozen desserts.

4. A potable water supply tank, minimum capacity of 40 gallons, heated electrically or otherwise, and tilted toward a capped drain cock, shall be provided. Water inlet pipe shall be of removable flexible copper or other tubing approved by the state health officer, with nozzle for hose connection capped when not being used. The tank shall be provided with permanent vacuum breaker properly mounted (6 inches above top of tank). Tank shall be vented and screened with copper, brass or bronze screen. Hose and rack for connection to potable water supply shall be provided. An approved gauge shall be provided to determine content levels.

5. A three-compartment seamless sink supplied with running hot and cold water, equipped with a swivel faucet, shall be provided. Each compartment shall be large enough to accommodate the largest piece of equipment to be cleansed therein. Said sink shall be trapped and vented.

6. A hand sink, seamless, with running hot and cold water, soap and single service or individual towels, shall be provided. The sink shall be trapped and vented.

7. A suitable waste tank with capacity of at least 15 percent larger than the water supply tank, shall be provided, tilted toward a drain cock with an adequate method of gauging the contents. It shall be emptied and flushed as often as necessary in a sanitary manner. All connections on the vehicle for servicing the waste tank shall be of different size or shape than those used for supplying potable water. The waste connection shall be located lower than the water inlet connection to preclude contamination of the potable water system. An approved gauge shall be provided to determine content levels.

8. A refrigerator box, constructed of stainless steel or other noncorrosive material and equipped with an indicating thermometer shall be provided. Metal racks or platforms shall be provided to store all ingredients.

9. Floors of the mobile unit shall be of material approved by the state health officer. Junctures of floors, wall and adjoining fixtures shall be watertight and covered. The floors shall be kept clean and dry at all times during the operation of the mobile unit.

10. Only mixes that have been processed and packaged in a plant approved by the state health officer shall be allowed, and mixes which require reconstitution are not allowed.

11. A covered waste can or container of sufficient size shall be provided for daily needs, constructed, designed and placed for ready cleaning. An easily accessible covered waste can or container shall be provided for customer's use. It shall be readily cleanable and kept clean, so located as not to create a nuisance, and so labeled that the public will be informed.

12. The truck interior shall be provided with artificial light sufficient to provide 15 foot-candles of light in all areas.

13. Separation of partition (self-closing doors accepted) shall be made between driver's seat and manufacturing unit unless vehicle is air-conditioned.

14. Persons preparing and handling frozen desserts shall wear clean, washable clothing, and effective, clean hair restraints.

15. The original frozen dessert permit to operate shall be displayed on each vehicle with photostat posted in operator's depot.

16. Each mobile unit shall display a sign advising the public of the type of frozen dessert being sold (e.g., ice milk, ice cream, etc.). The sign shall be printed in letters at least 8 inches in height.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4.a.(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2722 (September 2011).

§2713. Depots for Mobile Frozen Dessert Units [formerly paragraph 8:022]

A. All mobile units shall operate from depots and shall report to their respective depot for cleaning and sanitizing at least once each day. All depots shall comply with the following requirements.

1. All plans and specifications for depots shall be approved by the state health officer prior to construction of same in accordance with §1701.A of this Part. Structurally the building shall comply with the provisions of §1703 of this Part.

2. For washing purposes there shall be at least three large sinks, each of which shall be large enough to accommodate the largest piece of equipment to be washed. Sinks are to be provided with drainboards of impervious material.

3. A metal pipe drying rack for utensils shall be provided.

4. Clothes lockers and garbage cans shall be provided.

5. Adequate storage for perishable materials shall be provided.

6. A separate room shall be provided for the storage of all non-perishable food and paper products.

7. Adequate facilities shall be provided for the washing of vehicles.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4.A(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2723 (September 2011).

Chapter 29. Standards for the Fabrication of Single Service Containers and Closures for Milk and Milk Products Including Fabricating Plants Producing Component Parts, Films and Closures

§2901. General Requirements

A. The following criteria pertains to manufactures of preforms and bottles preformed at one plant and molded at a second plant:

1. The preforming plant must be IMS listed, but sampling of the pre-form is not required at this plant.

2. If the first preforming plant is also molding the containers into their final form, this plant must be IMS listed and the containers must be sampled at this plant.

3. If the second plant, where containers are molded into their final form, is a single-service manufacturer, this plant must be IMS listed and the containers must be sampled at this plant.

4. If the second plant is a milk plant where containers are molded into their final form, for use only in that milk plant, the milk plant listing is sufficient, but the containers shall be sampled at this plant.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2723 (September 2011).

§2903. Approval of Plans

A. All plants domiciled within the state, in which single service milk containers or closures are manufactured, shall conform in their construction to the requirements of these regulations. Equipment and installation of all equipment used in single service milk container or closure manufacturing plants shall conform in design, construction and manner in which it is installed and used, to the requirements of these regulations. Written approval of plans for construction, reconstruction or alteration shall be obtained from the state health officer prior to construction, reconstruction or alteration. Written approval of plans for the design, construction, installation and employment for all equipment used in the single service milk container or closure manufacturing plant shall be obtained from the state health officer prior to the installation or modification of the equipment.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2723 (September 2011).

§2905. Bacterial Standards and Examination of Single Service Containers and Closures

A. Paper stock shall meet the bacteriological standard of not more than 250 cfu per gram as determined by the disintegration test. The supplier of the paper stock shall certify that his/her paper stock was manufactured in

compliance with this standard. This applies only to the paper stock prior to lamination.

B. Where a rinse test can be used, the residual microbial count shall not exceed 50 cfu per container, except that in containers less than 100 ml., the count shall not exceed 10 cfu, or not over 50 cfu per eight square inches (one cfu per square centimeter) of product contact surface when the swab test is used, in three out of four samples taken at random on a given day. All single service containers and closures shall be free of coliform bacteria.

C. During any consecutive six months, at least four sample sets shall be collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days, and analyzed at a laboratory approved by the state health officer.

D. When a single service container or closure is made from one or more component parts as defined in this document, only those final assembled products which may have product contact surface(s) must be sampled and tested for compliance.

E. All sampling procedures and required laboratory examinations shall be conducted in laboratories approved by the state health officer and shall be made in substantial compliance with the methods contained in the *Standard Methods for the Examination of Dairy Products*.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2723 (September 2011).

§2907. Single Service Milk Container or Closure Manufacturing Plant Standards

A. Floors. The floor of all fabricating areas shall be smooth, impervious and maintained in a state of good repair. The floor of storage rooms may be constructed of tightly joined wood.

1. The joints between the walls and floor shall be tight, impervious and shall have coved or sealed joints.

2. Where floor drains are provided, they shall be properly trapped and floors sloped to drain.

B. Walls and Ceilings. Walls and ceilings of fabricating areas shall have a smooth, cleanable, light colored surface.

1. Walls and ceilings in fabricating and storage areas shall be kept in good repair.

C. Doors and Windows. All outside openings shall be effectively protected against entry of insects, dust and airborne contamination.

1. All outer doors shall be tight and self closing.

D. Lighting and Ventilation. All rooms shall be adequately lighted by either natural light, artificial light or both. A minimum of 20-foot candles shall be maintained in fabricating areas and 5-foot candles should be maintained in storage areas. Packaging, sealing, wrapping, labeling and similar procedures are considered part of the fabricating area.

1. Ventilation shall be sufficient to prevent excessive odors and the formation of excessive water condensation.

2. The intake of all pressure ventilation systems in fabricating areas, whether they are positive or exhaust, shall be properly filtered.

E. Separate Rooms. All fabricating areas shall be separate from non fabricating areas to protect against contamination, provided, that if the entire plant meets all sanitation requirements and no source of cross contamination exists, separation between areas is not required.

1. All re-grinding of plastic and the shredding, packaging or baling of paper trim shall be conducted in rooms separate from the fabricating room except that they may be conducted within the fabricating room provided such operations are kept clean and free of dust.

F. Toilet Facilities-Sewage Disposal. Disposal of sewage and other wastes shall be in a public sewerage system, if available. If a public sewerage system is not available, the disposal of sewage and other wastes shall be done in a manner which is in compliance with Part XIII of this Code.

1. All plumbing shall comply with Part XIV of this Code and any stricter local plumbing regulations.

2. Toilet rooms shall have solid, tight-fitting doors that are self-closing.

3. The toilet room and fixtures shall be maintained in a clean and sanitary condition and in good repair.

4. Each toilet room shall be well lighted and adequately ventilated by mechanical means. Air ventilation ducts from toilet facilities shall directly vent to the outside atmosphere.

5. Proper hand washing facilities with hot and cold running water under pressure delivered through a mixing faucet shall be provided in toilet rooms.

6. All windows shall be effectively screened when open.

7. Signs shall be posted in all toilet rooms informing the employees that they shall wash their hands before returning to work.

8. Eating or storage of food is prohibited in toilet rooms.

9. A covered trash container shall be provided.

G. Water Supply. The water supply shall comply with Part XII of this Code.

1. There shall be no cross-connection between the potable water supply and any unsafe or questionable water supply or any source of pollution through which the potable water supply might become contaminated.

2. Samples for bacteriological testing of private water supplies are taken upon the initial approval of the physical structure, each 12 months thereafter, and when any repair or alteration of the water supply system has been made. The examination of the sample shall be conducted by a laboratory which has been certified by the state health officer for the examination of potable water for bacteriological contaminants.

H. Hand Washing Facilities. Hot and cold or warm running water delivered under pressure through a mixing faucet, soap, air dryer or individual sanitary towels shall be convenient to all fabricating areas, provided that solvent or soft soap dispensers containing sanitizers may be used if water is not available. When individual sanitary towels are used, covered trash containers shall be provided.

1. Hand washing facilities shall be kept clean.

I. Plant Cleanliness. The floors, walls, ceilings, overhead beams, fixtures, pipes and ducts of production,

storage, re-grind, baling and compacting rooms shall be clean.

1. All production areas, warehouse, toilet, lunch and locker rooms shall be free of evidence of insects, rodents and birds.

2. Machines and appurtenances shall be kept clean. Provided, that minor accumulations of paper, plastic or metal dust and other production soils incidental to normal fabricating operations do not violate this requirement.

J. Locker and Lunch Rooms. Locker and lunch rooms shall be separate from plant operations and be equipped with self closing doors.

1. Eating or storage of food is prohibited in fabricating and storage areas.

2. Locker and lunch rooms shall be kept in a clean and sanitary condition.

3. Cleanable refuse containers, properly labeled, shall be provided which are covered, impervious, leak-proof and readily accessible.

4. Proper hand washing facilities shall be convenient to locker and lunch rooms.

5. Signs shall be posted informing employees that they shall wash their hands before returning to work.

K. Storage and Disposal of Wastes. All waste disposal shall be handled in accordance with Part XXVII of this Code.

1. All refuse and garbage shall be stored in covered, impervious and leak-proof containers. This requirement does not pertain to production scrap.

2. All waste containers shall be clearly labeled for their intended purpose and contents.

3. Where possible, garbage and assorted rubbish should be stored outside the building in covered, impervious, cleanable containers. If stored inside the building, it must be contained in similar receptacles, but in an area separate from fabricating areas.

L. Personal Cleanliness. Hands shall be thoroughly washed before commencing plant functions and as often as may be required to remove soil and contamination, and before returning to work after visiting the toilet room or lunch room.

1. All personnel shall wear clean outer garments and shall wear effective hair restraints, hair nets or caps. Shorts shall not be worn as outer garments.

2. No person affected with any disease in a communicable form or while a carrier of such disease, and no person with an infected cut or lesion shall work in any processing area in any capacity where there is a likelihood of such person contaminating product or product contact surfaces with pathogenic microorganisms.

3. The use of tobacco products is prohibited in fabricating, re-grind and storage areas.

M. Protection from Contamination. All product-contact surfaces of containers, closures and all materials in process are covered or otherwise protected to prevent the access of insects, dust, condensation and other contamination.

1. The manufacture of single service containers and closures for milk and milk products shall be conducted in such a manner that there will be no cross contamination of raw material or re-grind with non-food grade materials.

2. Whenever air under pressure is directed at resin, regrind, colorants and similar materials, it shall be free of

oil, dust, rust, excessive moisture, extraneous materials and odor and shall otherwise comply with the applicable requirements of Appendix H of the *PMO*.

3. Air that is directed at product contact surfaces by fans or blowers shall be filtered and shall otherwise comply with the applicable requirements of Appendix H of the *PMO*.

4. Only pesticides approved for use in food plants and registered with the U.S. Environmental Protection Agency shall be used for insect and rodent control.

5. Pesticides shall be used in accordance with the manufacturer's directions and used so as to preclude the contamination of containers or closures.

N. Storage of Materials and Finished Product. Blanks, roll stock and all other single service containers, closures and articles shall be stored off the floor by use of pallets, slip sheets or other methods and away from any wall a sufficient distance to facilitate inspection, cleaning and pest control activities. Any roll stock having dirty or soiled outer turns or edges shall have sufficient turns discarded prior to use and edges trimmed to provide protection from contamination.

1. Single service articles in process shall be protected from contamination by use of single service cover sheet or other protective device. This includes chip board, dividers, separators, bags and other items that can become contact surfaces.

2. Appropriate clean, dry storage facilities shall be provided for single service containers, closures, paper for wrapping, adhesives, blanks and other production material to provide protection from splash, insects, dust and other contamination.

3. Where containers and closures are preformed in plants other than the original fabricating facility:

a. containers, blanks and closures shall be stored in the original cartons and sealed until used;

b. partially used cartons of containers, blanks and closures shall be resealed until used.

4. Containers used for storage of resin and other raw materials, re-grind, broke and trim, intended for use in the process, shall be covered, clean, impervious and properly identified. Reuse of storage containers, such as gaylords, is permitted provided single-use plastic liners are used.

5. In process storage bins that touch the product contact surface of containers or closures shall be constructed of cleanable, nonabsorbent material and kept clean.

O. Fabricating, Processing and Packaging Equipment. The requirements of this Subsection pertain to all equipment and processes used in the fabrication of containers and closures irrespective of the materials used and whether or not mentioned herein. Some of this equipment includes grinders, rollers, reamers and cutters, molders and fittings, extruders, silos, resin bins and hoppers, printing equipment, blanking equipment and sealing equipment.

1. Rolls, dies, belts, tables, mandrels, transfer tubing and all other contact surfaces shall be kept clean, sanitary and reasonably free of accumulation of paper, plastic or metal dust and other production soils. Equipment designed for dairy plant use which is utilized for preforming containers shall be clean and sanitized prior to operation.

2. All materials in process for containers and closures shall be protected from contamination by condensate or drippage from overhead pipes or equipment components.

3. Makeshift devices such as tape, rope, twine, paperboards, etc., shall not be used. All fasteners, guides, hangers, supports and baffles shall be constructed of impervious, cleanable materials and kept in good repair.

4. Take off tables and other container contact surfaces shall be constructed of cleanable material, kept clean and in good repair.

5. All grinders, shredders and similar equipment used for re-grinding shall be installed above the floor or installed in such a manner that they are protected, so that floor sweepings and other contaminants cannot enter the grinder or shredder.

6. Storage tanks, silos, gaylords or bins used for plastic resin shall be so constructed to protect the resin from contamination. All air vents shall be filtered to prevent the entrance of dust or insects. Air tubes used to conduct resin shall be supported above ground to prevent their becoming submerged in water. Air tubes used to convey resin shall have end caps, attached by a chain or cable that prevent contamination. This Paragraph also applies to all raw materials handled in like manner.

7. Storage tanks, silos, etc., located outside of buildings shall have all outer openings locked or sealed at all times when not being filled, repaired or cleaned.

P. Equipment and Materials for Construction of Containers and Closures. Single service containers and closures for milk and milk products shall not be fabricated on equipment used for the manufacture of products made of non-food grade materials unless such equipment has been thoroughly cleaned and purged of all non-food grade material by a process that will not contaminate the food grade material.

1. Only plastic sheeting and extrusions, plastic laminated paper, metal and paperboard blanks, or combination thereof from a manufacturing or fabricating plant conforming with these standards shall be used. Fabricating plants listed in the current IMS publication of *Certified Manufacturers of Single Service Containers and Closures for Milk and Milk Products* shall be considered in compliance with this item.

2. Only sanitary, nontoxic lubricants shall be used on container closure contact surfaces. Excess lubricant shall be removed from surfaces close to shafts, rollers bearing sleeves and mandrels. These lubricants shall be handled and stored in a manner that will prevent cross contamination with non food grade lubricants. Such storage areas shall be clean and adequately ventilated.

3. Containers, resin and flashing on the floor and floor sweepings of production materials are prohibited from being reused. This shall not preclude the use of these materials when it complies with a protocol which has been reviewed and accepted by the FDA.

Q. Waxes, Adhesives, Sealants and Inks. Waxes, adhesives, sealants and inks used for containers and closures shall be handled and stored in a manner that will prevent cross contamination with similar non-food grade materials. Such storage areas shall be clean and adequately ventilated.

1. Waxing shall be performed so as to assure that containers or closures are completely coated and the wax shall be kept at temperature of 60°C (140°F) or higher.

2. Unused materials shall be covered and properly stored.

3. Waxes, adhesives, sealants and inks shall not impart odor or taste to the milk or milk products and shall not contaminate the product with microorganisms or toxic or injurious substances. All materials that are applied to the product contact surface shall comply with the requirements of Parts 175 through 178 of Title 21 of the CFR.

4. Transfer containers shall be kept clean and shall be properly identified and covered.

R. Handling of Containers and Equipment. Handling of containers and closure contact surfaces shall be kept to a minimum.

S. Wrapping and Shipping. Blanks, closures, halves, nested or preformed containers and parts such as valves, hoses, tubes and other fittings shall be properly packaged or containerized prior to shipping.

1. The outer package or containerized units shall protect the contents from dust and other contamination.

2. Transportation vehicles used to ship finished materials from the single service container and closure plant or within the plant shall be clean and in good repair and shall not have been used for the transportation of garbage, waste or toxic materials.

3. Paperboard containers, wrappers and dividers that contact the surface of the container or closure shall not be reused for this purpose.

4. All packaging materials that contact the product contact surface of the container or closure shall comply with the requirements of *Parts 175 through 178 of Title 21 of the CFR* and the bacteriological standards of §2905, but the material does not have to be manufactured at a listed single service plant. Some outer packaging material such as corrugated cardboard boxes used for the packaging of milk carton flats, are exempt from this bacteriological standard. The edges of these flats are subject to heat during the forming and sealing of the container.

T. Identification and Records. Outer wrappings shall be identified with the name and city of the plant where the contents are fabricated, except those manufactured in, and which are only for use in the same facility. In the cases where several plants are operated by one firm, the common firm name may be utilized, provided that the location of the plant at which the contents were fabricated is also shown either directly or by the FIPS numerical code on the outer wrapper.

1. Records of all required bacteriological tests of containers and closures shall be maintained at the plant of manufacture for two years and results shall be in compliance with §2905.

2. The fabricating plant shall have on file information from suppliers of raw materials, waxes, adhesives, sealants, coating and inks indicating that the material complies with the requirements of Parts 175 through 178 of Title 21 of the *CFR*.

3. The fabricating plant shall have on file information from the suppliers of packaging materials specified in Paragraph 3 of this Subsection indicating that the material complies with the bacteriological standards of §2905. There are no specifications for sampling frequency. The state health officer may choose to collect samples of packaging materials to determine compliance with bacteriological standards of this Part.

4. Multi plant corporations may have all required information at a central location as long as it can be transmitted to the site upon request.

U. Surroundings. Exterior surroundings shall be neat and clean and free from conditions which might attract or harbor flies, other insects and rodents.

1. Driveways, lanes and areas serving the plant vehicular traffic are graded, drained and free from pools of standing water.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(2)(3)(5)(7) (15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2724 (September 2011).

Part VIII. Frozen Desserts

§101. Definitions and Standards of Identity

[formerly paragraph 8:001]

Repealed.

AUTHORITY NOTE: The first source of authority for promulgation of the sanitary code is R.S. 36:258.B, with more particular provisions found in Chapters 1 and 4 of Title 40. This part is promulgated in accordance with the specific provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1283 (June 2002), repealed LR 37:2727 (September 2011).

§103. Sweetening Ingredients Permitted

[formerly paragraph 8:002]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1285 (June 2002), repealed LR 37:2727 (September 2011).

§105. Use of Alcohol Prohibited

[formerly paragraph 8:003]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1285 (June 2002), repealed LR 37:2727 (September 2011).

§107. Milk and Milk Products Permitted

[formerly paragraph 8:004]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1285 (June 2002), repealed LR 37:2727 (September 2011).

§109. Flavoring Ingredients Permitted

[formerly paragraph 8:005]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1286 (June 2002), repealed LR 37:2727 (September 2011).

§111. Vegetable and Animal Fats Permitted

[formerly paragraph 8:006]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1286 (June 2002), repealed LR 37:2727 (September 2011).

§113. Filler Prohibited

[formerly paragraph 8:007]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1286 (June 2002), repealed LR 37:2727 (September 2011).

§115. Stabilizers Permitted

[formerly paragraph 8:008]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1286 (June 2002), repealed LR 37:2727 (September 2011).

§117. Ingredients Prohibited

[formerly paragraph 8:009]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1286 (June 2002), repealed LR 37:2727 (September 2011).

§119. Method of Analysis

[formerly paragraph 8:010]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1286 (June 2002), repealed LR 37:2727 (September 2011).

§121. Labeling of Frozen Desserts

[formerly paragraph 8:011]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1286 (June 2002), repealed LR 37:2727 (September 2011).

§123. Processing, Packing and Distribution

[formerly paragraph 8:012]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1286 (June 2002), repealed LR 37:2727 (September 2011).

§125. General Requirements

[formerly paragraph 8:013]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1287 (June 2002), repealed LR 37:2727 (September 2011).

§127. Plans [formerly paragraph 8:014]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1287 (June 2002), repealed LR 37:2727 (September 2011).

§129. Pasteurization [formerly paragraph 8:015]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1287 (June 2002), repealed LR 37:2728 (September 2011).

§131. Bacterial Count [formerly paragraph 8:016]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1287 (June 2002), repealed LR 37:2728 (September 2011).

§133. Permits [formerly paragraph 8:017]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1287 (June 2002), repealed LR 37:2728 (September 2011).

§135. Standards [formerly paragraph 8:019]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1287 (June 2002), repealed LR 37:2728 (September 2011).

§137. Records and Reports

[formerly paragraph 8:020]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1287 (June 2002), repealed LR 37:2728 (September 2011).

§139. Mobile Frozen Dessert Units

[formerly paragraph 8:021]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1287 (June 2002), repealed LR 37:2728 (September 2011).

§141. Depots for Mobile Frozen Dessert Units

[formerly paragraph 8:022]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a). Also see R.S. 40:5(15).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1288 (June 2002), repealed LR 37:2728 (September 2011).

Part XXI. Day Care Centers and Residential Facilities
Chapter 1. General Requirements

§105. General [formerly paragraph 21:002-1]

A. - I. ...

J. [Formerly paragraph 21:009] The serving and/or use of milk or milk products shall conform with the following.

1. Only Grade A pasteurized milk shall be served and dispensed at day care centers and residential facilities. The milk shall be dispensed from a bulk milk container

dispensing device that conforms with 3-A Standards. In lieu thereof, milk may be served by providing a commercially filled container of one pint capacity or less to each child, and/or client.

EXCEPTION: In facilities licensed for 30 or less children or clients, the state health officer may allow milk to be served from commercially filled containers with a capacity of not greater than one gallon.

2. The serving of reconstituted milk is prohibited except in making instant desserts, whipped products, or for cooking and baking purposes, as stated in Part XXIII, §1707.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a), R.S. 40:4(A)(10), R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:1399 (June 2002), amended LR 37:2728 (September 2011).

Part XXIII. Retail Food Establishments

Chapter 11. Food Supplies

§1115. Milk [formerly paragraph 22:08-7]

A. ...

B. All pasteurized, ultra-pasteurized and aseptically processed milk and dairy products shall be placed in their final delivery containers in the plant in which they are pasteurized, ultra-pasteurized or aseptically processed. It shall be unlawful for hotels, soda fountains, restaurants, grocery stores, markets and similar establishments to sell or serve any milk or milk products except in the original containers received from the plant in which it was pasteurized, ultra-pasteurized or aseptically processed or from a bulk container dispensing device that conforms with 3-A Standards. Packaging of milk and milk products from such dispensers is prohibited. This requirement shall not apply to cream consumed on the premises or milk and milk products in portions less than 1/2 pint used in mixed drinks, cereals, desserts or other foods. In these instances, pouring from a commercially filled container of not more than one gallon capacity is acceptable. (see LAC 51:VII.953.A)

C. Food establishments having counter freezers which freeze frozen dessert or non-dairy frozen dessert mixes shall comply with the requirements of Part VII of this code, as applicable, particularly LAC 51:VII.2709.A.1-4.

D. The dipping and/or packaging of firmly frozen frozen desserts by consumers who serve themselves is prohibited. Ice cream, ice milk and other frozen desserts shall be offered to consumers who serve themselves only when dispensed from approved dispensing machines designed expressly for that purpose.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 28:319 (February 2002), amended LR 28:1413 (June 2002), LR 37:2728 (September 2011).

Chapter 45. Mobile Food Establishments, Mobile Retail Food Stores/Markets and Pushcarts [formerly paragraph 22:34-3]

§4525. Mobile Frozen Dessert Units

A. Mobile frozen dessert units shall comply with LAC 51:VII.2711.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2728 (September 2011).

§4527. Depots for Mobile Frozen Dessert Units

A. Depots for mobile frozen dessert units shall comply with LAC 51:VII.2713.

AUTHORITY NOTE: Promulgated in accordance with the provisions of R.S. 40:4(A)(1)(a), R.S. 40:5(2)(3)(5)(7)(15)(17) and R.S. 40:922.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 37:2729 (September 2011).

Bruce D. Greenstein
Secretary

1109#023

RULE

**Department of Natural Resources
Office of Conservation**

Surface Mining—Statewide Order 29-O-1
(LAC 43:XV.Chapters 1, 23, 29, 31, 35, 54, 65, and 85)

Under the authority of the Louisiana Surface Mining and Reclamation Act, particularly R.S. 30:901 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Office of Conservation amends LAC 43:XV, (Statewide Order 29-O-1) the Louisiana Surface Mining Regulations, governing permit application information, ownership and control information for the permit applicant and the applicant’s operator, transfer, assignment or sale of permit rights, permit eligibility, and re-mining.

The Department of the Interior, Office of Surface Mining Reclamation and Enforcement, under the provisions of 30 CFR 732.17(d), has notified the Louisiana Office of Conservation, Injection and Mining Division of changes in Public Law 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended, (SMCRA) and the federal regulations promulgated pursuant to SMCRA which make it necessary for Louisiana to modify its Surface Mining Regulatory Program to remain consistent with all federal regulations. The director of the Office of Surface Mining Reclamation and Enforcement approved the rules in *Federal Register*, vol. 76, no. 46, March 9, 2011, pp. 12852-12857.

Title 43

NATURAL RESOURCES

Part XV. Office of Conservation—Surface Mining

Subpart 1. General Information

Chapter 1. General

§105. Definitions.

A. As used in these regulations, the following terms have the specified meaning, except where otherwise indicated.

Applicant/Violator System or *AVS*—an automated information system of applicant, permittee, operator, violation and related data the Office of Surface Mining maintains to assist in implementing the Surface Mining Control and Reclamation Act, as amended.

Control or *Controller* (when used in Chapters 23, 31 and 35)—

- a. a permittee of a surface coal mining operation;
- b. an operator of a surface coal mining operation; or
- c. any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

Knowing or *Knowingly*—a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or a failure to abate or correct a violation.

Own, Owner, or Ownership (as used in Chapters 23, 31 and 35) (except when used in the context of ownership of real property)—being a sole proprietor or owning of record in excess of 50 percent of the voting securities or other instruments of ownership of an entity.

Transfer, Assignment or Sale of Rights—a change of a permittee.

Violation (when used in the context of the permit application information or permit eligibility requirements of §§907 and 910.C of the Act and related regulations)—

- a. a failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection, as evidenced by a written notification from a governmental entity to the responsible person; or
- b. a noncompliance for which the Office of Surface Mining has provided one or more of the following types of notice or the office has provided equivalent notice under corresponding provisions of these regulations:
 - i. a notice of violation under §6503;
 - ii. a cessation order under §6501;
 - iii. a final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under Chapters 69 or 71;
 - iv. a bill or demand letter pertaining to delinquent reclamation fees owed under §906 of the Act; or
 - v. a notice of bond forfeiture under Chapter 47 when:

(a). one or more violations upon which the forfeiture was based have not been abated or corrected; or

(b). the amount forfeited and collected is insufficient for full reclamation under §4703.D.1, the office orders reimbursement for additional reclamation costs, and the person has not complied with the reimbursement order.

Willful or *Willfully*—a person who authorized, ordered or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

- a. intentionally, voluntarily, or consciously; and
- b. with intentional disregard or plain indifference to legal requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441, (July 1988), LR

20:447 (April 1994), LR 24:2283 (December 1998), LR 29:1492 (August 2003), LR 37:2729 (September 2011).

Subpart 3. Surface Coal Mining and Reclamation Operations Permits and Coal Exploration and Development Procedures Systems
Chapter 23. Surface Mining Permit Applications: Minimum Requirements for Legal, Financial, Compliance and Related Information

§2304. Certifying and Updating Existing Permit Application Information

A. If the applicant has previously applied for a permit and the required information is already in AVS, then the applicant may update the information as shown in the following table.

If...	then the applicant...
(1) all or part of the information already in AVS is accurate and complete	may certify to the office by swearing or affirming, under oath and in writing, that the relevant information in AVS is accurate, complete, and up to date.
(2) part of the information in AVS is missing or incorrect	must submit to the office the necessary information or corrections and swear or affirm, under oath and in writing, that the information submitted is accurate and complete.
(3) the applicant can neither certify that the data in AVS is accurate and complete nor make needed corrections	must include in the permit application the required information.

B. The applicant must swear or affirm, under oath and in writing, that all information provided in an application is accurate and complete.

C. The office may establish a central file to house identity information, rather than place duplicate information in each permit application file. The office will make the information available to the public upon request.

D. After the office approves an application, but before issuing a permit, the applicant must update, correct, or indicate that no change has occurred in the information previously submitted under this section and §§2305-2307.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2730 (September 2011).

§2305. Identification of Interests

A. ...
 1. a statement as to whether the applicant and the applicant's operator are corporations, partnerships, single proprietorships, associations or other business entities;
 2. - 2.a. ...
 b. applicant's resident agent;
 c. any operator, if different from the applicant;
 d. each business entity in the applicant's and operator's organizational structure, up to and including the ultimate parent entity of the applicant and operator. For every such business entity, the applicant must also provide the required information for every president, chief executive officer, and director (or persons in similar positions), and every person who owns, of record, 10 percent or more of the entity; and

e. for the applicant and applicant's operator, the information required by §2305.A.2.d must be provided for every officer, partner, member, director, person performing a function similar to a director and person who owns, of record, 10 percent or more of the applicant or operator;

3. for each person identified in §2305.A:

a. - e. ...

4. for any surface coal mining operation owned or controlled by either the applicant, the applicant's operator, or by any person who owns or controls the applicant under the definition of owned or controlled and owns or controls in §105, the operation's:

4.a. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 37:2730 (September 2011).

§2307. Compliance Information

A. ...

1. a statement of whether the applicant, applicant's operator, any subsidiary, affiliate or persons controlled by or under common control with the applicant or applicant's operator has had a federal or state mining permit suspended or revoked in the last five years; or forfeited a mining bond or similar security deposited in lieu of bond;

2. - 2.e. ...

3. for any violation of a provision of the Act, or of any law, rule or regulation of the United States, or of any state law, rule or regulation enacted pursuant to federal law, rule or regulation pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, a list of all violation notices received by the applicant or the applicant's operator during the three year period preceding the application date, and a list of all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by any surface coal mining and reclamation operation owned or controlled by either the applicant, the applicant's operator, or by any person who owns or controls the applicant. For each violation notice or cessation order reported, the lists shall include the following information, as applicable:

3.a - 4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 24:2283 (December 1998), LR37:2730 (September 2011).

Chapter 29. Requirements for Permits for Special Categories of Mining

§2913. Lands Eligible for Remining

A. This Section contains permitting requirements to implement §3113.H. Any person who submits a permit application to conduct a surface coal mining operation on lands eligible for remining must comply with this Section.

B. An application for a permit under this Section shall be made according to all requirements of Subpart 3 of the regulations applicable to surface coal mining and reclamation operations. In addition, the application shall:

1. to the extent not otherwise addressed in the permit application, identify potential environmental and safety

problems related to prior mining activity at the site and that could be reasonably anticipated to occur. This identification shall be based on a due diligence investigation which shall include visual observations at the site, a record review of past mining at the site, and environmental sampling tailored to current site conditions; and

2. with regard to potential environmental and safety problems referred to in §2913.B.1, describe the mitigative measures that will be taken to ensure that the applicable reclamation requirements of the regulatory program can be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2730 (September 2011).

Chapter 31. Public Participation, Approval of Permit Applications and Permit Terms and Conditions

§3113. Review of Permit Applications

A. - B. ...

C. Entry of Information Into AVS

1. Based on an administratively complete application, the office must undertake the reviews required under Subsections D-F of this Section.

2. The office will submit to the federal office, which will then enter into AVS:

- a. the information required under §2305; and
- b. the information submitted under §2307 pertaining to violations which are unabated or uncorrected after the abatement or correction period has expired.

3. The office will update the information referred to in Paragraph C.2 of this Section upon verification of any additional information submitted or discovered during permit application review.

D. Review of Applicant, Operator, and Ownership and Control Information. The office will rely upon the information required under §2305, information from AVS, and any other available information, to review the applicant's and operator's organizational structure and ownership or control relationships. This review will be conducted before making a permit eligibility determination under Subsection G of this Section.

E. Review of Permit History

1. The office will rely upon the permit history information submitted under §2305, information from AVS, and any other available information to review the applicant's and operator's permit histories. This review will be conducted before making a permit eligibility determination under Subsection G of this Section.

2. The office will determine whether the applicant or operator have previous mining experience.

3. If the applicant or operator do not have any previous mining experience, the office may conduct an additional review under §3521. The purpose of this review will be to determine if someone else with mining experience controls the surface coal mining and reclamation operation.

F. Review of Compliance History. The office will rely upon the violation information submitted under §2307, a report from AVS, and any other available information to review histories of compliance with the Act or these regulations, and any other applicable air or water quality

laws, for the applicant, the operator, and surface coal mining and reclamation operations which the applicant or operator own or control. This review will be conducted before making a permit eligibility determination under Subsection G of this Section.

G. Permit Eligibility Determination. Based on the reviews required under Subsections D-F of this Section, the office will determine whether the applicant is eligible for a permit under section 910.C of the Act.

1. Except as provided in §§3113 and 3114, the applicant is not eligible for a permit if the office finds that any surface coal mining and reclamation operation that:

- a. the applicant directly owns or controls has an unabated or uncorrected violation; or
- b. the applicant or operator indirectly control has an unabated or uncorrected violation and the control was established or the violation was cited after November 2, 1988.

2. The office will not issue a permit if the applicant or operator are permanently ineligible to receive a permit under §3521.C.

3. After permit approval under §3115, the office will not issue the permit until the applicant complies with the information update and certification requirement of §2304.D. After the applicant completes that requirement, the office will again request a compliance history report from AVS to determine if there are any unabated or uncorrected violations which affect the applicant's permit eligibility under Paragraphs G.1 and 2 of this Section. The office will request this report no more than five business days before permit issuance under §3119.

4. If the applicant is ineligible for a permit under this Section, the office will send written notification of the decision setting forth the reasons for this decision and including notice of appeal rights under Chapter 33.

H. Unanticipated Events or Conditions at Remining Sites

1. The applicant is eligible for a permit under Subsection G of this Section if an unabated violation:

- a. occurred after October 24, 1992; and
- b. resulted from an unanticipated event or condition at a surface coal mining and reclamation operation on lands that are eligible for remining under a permit that was held by the person applying for the new permit.

2. For permits issued under §2913, an event or condition is presumed to be unanticipated for the purpose of this Section if it:

- a. arose after permit issuance;
- b. was related to prior mining; and
- c. was not identified in the permit application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 37:2731 (September 2011).

§3114. Eligibility for Provisionally Issued Permits

A. This Section applies to an applicant who owns or controls a surface coal mining and reclamation operation with:

1. a notice of violation issued under §6503 for which the abatement period has not yet expired; or
2. a violation that is unabated or uncorrected beyond the abatement or correction period.

B. The office will find an applicant eligible for a provisionally issued permit under this Section if he or she demonstrates that one or more of the following circumstances exists with respect to all violations listed in Subsection A of this Section:

1. for violations meeting the criteria of Subsection A of this Section, the applicant certifies that the violation is being abated to the satisfaction of the office, and there is no evidence to the contrary;

2. as applicable, the applicant, the applicant's operator, and operations that the applicant or the applicant's operator own or control are in compliance with the terms of any abatement plan (or, for delinquent fees or penalties, a payment schedule) approved by the agency with jurisdiction over the violation;

3. the applicant is pursuing a good faith:

a. challenge to all pertinent ownership or control listings or findings under §§3131-3135; or

b. administrative or judicial appeal of all pertinent ownership or control listings or findings, unless there is an initial judicial decision affirming the listing or finding and that decision remains in force.

4. the violation is the subject of a good faith administrative or judicial appeal contesting the validity of the violation, unless there is an initial judicial decision affirming the violation and that decision remains in force.

C. The office will consider a provisionally issued permit to be improvidently issued, and must immediately initiate procedures under §§3127 and 3129 to suspend or rescind that permit, if:

1. violations included in Paragraph B.1 of this Section are not abated within the specified abatement period;

2. the applicant, the applicant's operator, or operations that the applicant or the applicant's operator own or control do not comply with the terms of an abatement plan or payment schedule mentioned in Paragraph B.2 of this Section;

3. in the absence of a request for judicial review, the disposition of a challenge and any subsequent administrative review referenced in Paragraphs B.3 or 4 affirms the validity of the violation or the ownership or control listing or finding; or

4. the initial judicial review decision referenced in Subparagraphs B.3.b or B.4 affirms the validity of the violation or the ownership or control listing or finding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2731 (September 2011).

§3115. Criteria for Permit Approval or Denial

A. - A.16. ...

17. for a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of §5414, the site of the operation is a previously mined area as defined in §105;

18. for permits to be issued under §2913, the permit application must contain:

a. lands eligible for remining;

b. an identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

c. mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of the regulatory program can be accomplished;

19. the applicant is eligible to receive a permit, based on the reviews under §§3113-3114.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 6:177 (May 1980), LR 14:441 (July 1988), LR 20:447 (April 1994), LR 29:1497 (August 2003), LR 37:2732 (September 2011).

§3127. Improvidently Issued Permits: General Procedures

A. When the office has reason to believe that it improvidently issued a surface coal mining and reclamation permit, it shall review the circumstances under which the permit was issued. The office will make a preliminary finding that the permit was improvidently issued if, under the permit eligibility criteria section 910.C of the Act in effect at the time of permit issuance, the permit should not have been issued because the applicant or the applicant's operator owned or controlled a surface coal mining and reclamation operation with an unabated or uncorrected violation.

B. The office will make a finding under §3127.A only if the applicant or the applicant's operator:

1. continue to own or control the operation with the unabated or uncorrected violation;

2. the violation remains unabated or uncorrected; and

3. the violation would cause the applicant to be ineligible under the permit eligibility criteria in the current regulations.

C. When the office makes a preliminary finding under §3127.A, it must serve the applicant with a written notice of the preliminary finding, which must be based on evidence sufficient to establish a prima facie case that the permit was improvidently issued.

D. Within 30 days of receiving a notice under §3127.C, the applicant may challenge the preliminary finding by providing the office with evidence as to why the permit was not improvidently issued under the criteria in §3127.A and B.

E. The provisions of §§3131-3135 apply when a challenge under §3127.D concerns a preliminary finding under §3127.A and B.1 that the applicant or the applicant's operator currently own or control, or owned or controlled, a surface coal mining operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994), amended LR 37:2732 (September 2011).

§3129. Improvidently Issued Permits: Suspension or Rescission Procedures

A. The office must suspend or rescind the permit upon expiration of the time specified in §3129.A.1.

1. Automatic Suspension and Rescission. After a specified period of time not to exceed 90 days the permit automatically will become suspended, and not to exceed 90 days thereafter rescinded, unless within those periods the applicant submits proof, and the office finds, that:

a. the finding of the office under §3127.B was erroneous;

b. the applicant or the applicant's operator has abated the violation on which the finding was based, or paid the penalty or fee, to the satisfaction of the responsible agency;

c. the violation, penalty or fee is the subject of a good faith appeal, or of an abatement plan or payment schedule with which the applicant or applicant's operator is complying to the satisfaction of the responsible agency; or

d. since the finding was made, the applicant or applicant's operator has severed any ownership or control link with the person responsible for, and does not continue to be responsible for, the violation, penalty or fee.

2. Cessation of Operations. After permit suspension or rescission, the office shall issue written notice that the applicant shall cease all surface coal mining and reclamation operations under the permit, except for violation abatement and for reclamation and other environmental protection measures as required by the office.

3. The office shall post the notice at the conservation office closest to the permit area.

4. Right to Appeal. The applicant may obtain administrative and judicial review of the notice under §§3301 and 3303.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 20:447 (April 1994), amended LR 37:2732 (September 2011).

§3131. Challenges to Ownership or Control Listings and Findings

A. The applicant may challenge a listing or finding of ownership or control using the provisions under §§3133 and 3135 if he or she is:

1. listed in a permit application or AVS as an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof;

2. found to be an owner or controller of an entire surface coal mining operation, or any portion or aspect thereof, under §§3127 or 3521.G; or

3. an applicant or permittee affected by an ownership or control listing or finding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2733 (September 2011).

§3133. Challenging an Ownership or Control Listing or Finding

A. To challenge an ownership or control listing or finding, the applicant must submit a written explanation of the basis for the challenge, along with any evidence or explanatory materials he or she wishes to provide under §3135.B, to the regulatory authority, as identified in the following table.

If the challenge concerns...	Then submit a written explanation to...
(1) a pending state or federal permit application	the regulatory authority with jurisdiction over the application.

If the challenge concerns...	Then submit a written explanation to...
(2) applicant's ownership or control of a surface coal mining operation, and he or she is not currently seeking a permit	the regulatory authority with jurisdiction over the surface coal mining operation.

B. The provisions of this Section and of §§3135 and 3137 apply only to challenges to ownership or control listings or findings. The applicant may not use these provisions to challenge liability or responsibility under any other provision of the Act or these regulations.

C. When the challenge concerns a violation under the jurisdiction of a different regulatory authority, the regulatory authority with jurisdiction over the permit application or permit must consult the regulatory authority with jurisdiction over the violation and the AVS office to obtain additional information.

D. A regulatory authority responsible for deciding a challenge under §3133.A may request an investigation by the AVS Office.

E. At any time, the applicant, a person listed in AVS as an owner or controller of a surface coal mining operation, may request an informal explanation from the AVS office as to the reason he or she is shown in AVS in an ownership or control capacity. Within 14 days of the request, the AVS Office will provide a response describing why the applicant is listed in AVS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2733 (September 2011).

§3135. Burden of Proof for Ownership or Control Challenges

A. When the applicant challenges a listing of ownership or control, or a finding of ownership or control made under §3521.G, the applicant must prove by a preponderance of the evidence that he or she either:

1. does not own or control the entire surface coal mining operation or relevant portion or aspect thereof; or

2. did not own or control the entire surface coal mining operation or relevant portion or aspect thereof during the relevant time period.

B. In meeting the burden of proof, the applicant must present reliable, credible, and substantial evidence and any explanatory materials to the office. The materials presented in connection with the challenge will become part of the permit file, an investigation file, or another public file. If the applicant requests, the office will hold as confidential any information submitted under this paragraph which is not required to be made available to the public under §6311.

C. Materials the applicant may submit in response to the requirements of §3135.B include, but are not limited to:

1. notarized affidavits containing specific facts concerning the duties that the applicant performed for the relevant operation, the beginning and ending dates of ownership or control of the operation, and the nature and details of any transaction creating or severing ownership or control of the operation;

2. certified copies of corporate minutes, stock ledgers, contracts, purchase and sale agreements, leases, correspondence, or other relevant company records;
3. certified copies of documents filed with or issued by any state, municipal, or federal governmental agency;
4. an opinion of counsel, when supported by:
 - a. evidentiary materials;
 - b. a statement by counsel that he or she is qualified to render the opinion; and
 - c. a statement that counsel has personally and diligently investigated the facts of the matter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2733 (September 2011).

§3137. Written Decision on Challenges to Ownership or Control Listings or Findings

A. Within 60 days of receipt of the challenge under §3133.A, the regulatory authority identified under §3133.A, will review and investigate the evidence and explanatory materials submitted and any other reasonably available information bearing on the challenge and issue a written decision. The decision must state whether the applicant owns or controls the relevant surface coal mining operation, or owned or controlled the operation, during the relevant time period.

B. The office will promptly provide the applicant with a copy of this decision by either:

1. certified mail, return receipt requested; or
2. any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, or its state regulatory program counterparts.

C. Service of the decision on the applicant is complete upon delivery and is not incomplete if delivery is refused.

D. The office will post all decisions made under this Section on AVS.

E. Any person who receives a written decision under this Section, and who wishes to appeal that decision, must exhaust administrative remedies under Chapter 33 before seeking judicial review.

F. Following the written decision or any decision by a reviewing administrative or judicial tribunal, the office must review the information in AVS to determine if it is consistent with the decision. If it is not, the office must promptly revise the information in AVS to reflect the decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2734 (September 2011).

Chapter 35. Permit Reviews and Renewals; Transfer, Sale and Assignment of Rights Granted under Permits; Post-Permit Issuance Requirements; and Other Actions Based on Ownership, Control and Violation Information

§3517. Transfer, Assignment or Sale of Permit Rights: Obtaining Approval

A. - C. ...

1. the applicant is eligible to receive a permit in accordance with §§3113.G and 3115;

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 37:2734 (September 2011).

§3521. Post-Permit Issuance Requirements for Regulatory Authorities and Other Actions Based on Ownership, Control, and Violation Information

A. For the purposes of future permit eligibility determinations and enforcement actions, the office must enter into AVS the data shown in the following table.

Enter into AVS all...	Within 30 days after...
(1) permit records	the permit issued or subsequent changes made.
(2) unabated or uncorrected violations	the abatement or correction period for a violation expires.
(3) changes to information initially required to be provided by an applicant under 30 CFR 778.11	receiving notice of a change.
(4) changes in violation status	abatement, correction, or termination of a violation, or a decision from an administrative or judicial tribunal.

B. If, at any time, the office discovers that any person owns or controls an operation with an unabated or uncorrected violation, the office will determine whether enforcement action is appropriate under §§6501 or 6503. The office must enter the results of each enforcement action, including administrative and judicial decisions, into AVS.

C. The office must serve a preliminary finding of permanent permit ineligibility under section 910.C of the Act on the applicant or operator if the criteria in §3521.C.1 and C.2 are met. In making a finding under this Paragraph, the office will only consider control relationships and violations which would make, or would have made, the applicant ineligible for a permit under §3113.G.1 and G.2. The office must make a preliminary finding of permanent permit ineligibility if it finds that:

1. the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations under section 910.C of the Act; and

2. the violations are of such nature and duration with such resulting irreparable damage to the environment as to indicate the applicant's intent not to comply with the Act, these regulations, the regulatory program, or the permit.

D. The applicant may request a hearing on a preliminary finding of permanent permit ineligibility under Chapter 33.

E. Entry into AVS

1. If the applicant does not request a hearing, and the time for seeking a hearing has expired, the office will enter our finding into AVS.

2. If the applicant requests a hearing, the office will enter its finding into AVS only if that finding is upheld on administrative appeal.

F. At any time, the office may identify any person who owns or controls an entire surface coal mining operation or any relevant portion or aspect thereof. If such a person is identified, the office must issue a written preliminary finding to the person and the applicant or permittee describing the nature and extent of ownership or control. The written preliminary finding must be based on evidence sufficient to establish a prima facie case of ownership or control.

G. After the office issues a written preliminary finding under §3521.F, the office will allow the person subject to the preliminary finding, 30 days in which to submit any information tending to demonstrate his or her lack of ownership or control. If, after reviewing any information submitted, the office is persuaded that the person is not an owner or controller, the will serve the person a written notice to that effect. If, after reviewing any information submitted, the office still finds that the person is an owner or controller, or if no information is submitted within the 30-day period, we will issue a written finding and enter our finding into AVS.

H. If we identify the applicant as an owner or controller under Paragraph G of this Section, the applicant may challenge the finding using the provisions of §§3131-3137.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2734 (September 2011).

§3523. Post-Permit Issuance Information Requirements for Permittees

A. Within 30 days after the issuance of a cessation order under §6501, the permittee must provide or update all the information required under §2305.

B. The permittee does not have to submit information under §3523.A if a court of competent jurisdiction grants a stay of the cessation order and the stay remains in effect.

C. Within 60 days of any addition, departure, or change in position of any person identified in §2305.C, the permittee must provide:

1. the information required under §2305.D; and
2. the date of any departure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2735 (September 2011).

Subpart 5. Permanent Program Performance Standards Chapter 53. Permanent Program Performance Standards: Surface Mining Activities

§5414. Backfilling and Grading: Previously Mined Areas

A. Remining operations on previously mined areas that contain a preexisting highwall shall comply with the requirements of §§5405-5413 and 5703, except as provided in this Section.

B. The requirements of §5405.B.1 requiring the elimination of highwalls shall not apply to remining operations where the volume of all reasonably available spoil is demonstrated in writing to the office to be insufficient to completely backfill the reaffected or enlarged

highwall. The highwall shall be eliminated to the maximum extent technically practical in accordance with the following criteria:

1. all spoil generated by the remining operation and any other reasonably available spoil shall be used to backfill the area. Reasonably available spoil in the immediate vicinity of the remining operation shall be included within the permit area;

2. the backfill shall be graded to a slope which is compatible with the approved postmining land use and which provides adequate drainage and long-term stability;

3. any highwall remnant shall be stable and not pose a hazard to the public health and safety or to the environment. The operator shall demonstrate, to the satisfaction of the office, that the highwall remnant is stable; and

4. spoil placed on the outslope during previous mining operations shall not be disturbed if such disturbances will cause instability of the remaining spoil or otherwise increase the hazard to the public health and safety or to the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2735 (September 2011).

Chapter 65. Enforcement

§6501. Cessation Orders

A.1. - F. ...

G. Within 60 days after issuing a cessation order, the office shall notify in writing the permittee, the operator, and any person who has been identified under §§3123.A.6 and 2305.A.3-4 as an owner or controller of the surface coal mining and reclamation operation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 5:395 (December 1979), amended LR 14:441 (July 1988), LR 20:447 (April 1994), LR 37:2735 (September 2011).

Subpart 6. Abandoned Mine Lands

Chapter 85. General Reclamation Requirements

§8509. Contractor Eligibility

A. To receive moneys from the Fund or Treasury funds provided to uncertified States and Indian tribes under 30 CFR §872.29 or to certified states or Indian tribes for coal AML reclamation as required to maintain certification under §411(a) of the federal Act, every successful bidder for an AML contract must be eligible under §§3113.G, 3113.H and 3114 at the time of contract award to receive a permit or be provisionally issued a permit to conduct surface coal mining operations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:901-932.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 37:2735 (September 2011).

James H. Welsh
Commissioner

1109#018

RULE

**Department of Public Safety and Corrections
State Uniform Construction Code Council**

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

Editor's Note: This Rule is being repromulgated to correct citation errors. The original Rule was promulgated in the February 20, 2011 *Louisiana Register* on pages 601-602.

In accordance with the provisions of R.S. 40:1730.26, relative to the authority of the Louisiana State Uniform Construction Code Council (LSUCCCC) to promulgate and enforce rules, the Office of State Fire Marshal hereby proposes to adopt the following Rule regarding the establishment of minimum standards.

Title 55

PUBLIC SAFETY

Part VI. Uniform Construction Code

Chapter 3. Adoption of the Louisiana State Uniform Construction Code

§301. Louisiana State Uniform Construction Code

A. - A.3.b. ...

c. Additionally, IRC shall be amended as follows and shall only apply to the International Residential Code.

i. Substitute Chapter 3, Section R317 Dwelling Unit Separation of the 2006 IRC, in lieu of the Section 313 Automatic Fire Sprinkler Systems of the 2009 IRC. In addition Chapter 3, Section R 302.2 Townhouses, of the 2009 IRC, is amended as follows: Exception: a common 2-hour fire-resistance-rated wall is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. Electrical installations shall be installed in accordance with Chapters 34 through 43. Penetrations of electrical outlet boxes shall be in accordance with Section R302.4. Furthermore Chapter 3 Section R302.2.4 Structural independence, of the 2009 IRC, is amended as follows: Exceptions: Number 5 *Townhouses* separated by a common 2-hour fire-resistance-rated wall as provided in Section R302.2

ii. Amend Chapter 3, Section R315.2 Where Required in Existing Dwellings: When Alterations, repairs or additions occur or where one or more sleeping rooms are added or created in existing dwellings that have attached garages or in existing dwellings within which fuel fired appliances exist, carbon monoxide alarms shall be provided in accordance with Section R315.1.

3.c.iii - 7. ...

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

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, State Uniform Construction Code Council, LR 33:291 (February 2007), amended LR 34:93 (January 2008), LR 34: 883 (May 2008), LR 34:2205 (October 2008), LR 35:1904 (September 2009), LR 37:601 (February 2011), repromulgated LR 37:2736 (September 2011).

Jill Boudreaux
Undersecretary

1109#048

RULE

**Department of Public Safety and Corrections
Office of the State Fire Marshal**

Property Protection Licensing (LAC 55:V.Chapter 32)

In accordance with the provisions of R.S. 49:950 et seq. and R.S. 40:1484.3, relative to the authority of the state fire marshal to promulgate and enforce rules, relative to the regulation of Life Safety and Property Protection, in particular, Security, Household Fire Warning, Locksmiths, Stand Alone Electro/Mechanical, Door Hardware, Door Hardware Consultation, Bank Locking, Detention Locking, Gate Systems, Special Locking and Closed Circuit Television Equipment and/or Systems, the Office of the State Fire Marshal adopts the following Rule.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 32. Property Protection Licensing

§3201. Purpose

A. The purpose of these Rules is to regulate the activity of certifying, designing, inspecting, installing, integrating, maintaining, selling and servicing of security, household fire warning, stand alone electro/mechanical locking, door hardware, door hardware consultation, bank locking, bank auxiliary, detention locking, gate systems, special locking and closed circuit television equipment and/or systems in the interest of protecting and preserving lives and property pursuant to authority of R.S. 40:1664.1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2736 (September 2011).

§3203. Applicability of Rules

A. These Rules shall apply to all firms and persons engaged in property protection activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2736 (September 2011).

§3205. Exceptions

A. These Rules shall not apply to the following:

1. firms and/or persons engaging in the activity of certifying, inspecting, installing, integrating, or servicing fire detection and alarm equipment and/or systems in commercial businesses;

2. the certifying, inspecting, installing, integrating, or servicing of security or CCTV equipment and/or systems by building owners or their direct employees;

3. public agencies and their direct employees engaging in the activity of certifying, inspecting, installing, integrating, or servicing camera systems in public vehicles;

4. law enforcement agencies or private investigation firms currently licensed by the Louisiana Board of Private Investigators installing camera systems in conjunction with an active investigation. Individual private investigators must

be licensed through a private investigation firm with the Louisiana Board of Private Investigators to be exempt from this Subpart;

5. firms and/or persons who sell security, locking and/or camera systems and equipment at wholesale to contractors licensed per R.S. 40:1664.1 et seq.;

6. general contractors and their employees who are properly licensed through the Louisiana State Board of Contractors or a building owner that installs or removes complete stand alone electro-mechanical locks when doing so in the course of residential or commercial new construction or remodeling. Additionally, the general contractor can install all associated hardware specified to be installed on the door. This exemption only applies to the firm which is acting as the general contractor on the project. It does not apply to other firms which hold a General contractor's license but are only acting as a sub-contractor on the project;

7. any merchant or retail store that is in the business of recoding new locks on the retail premises. Locks must be purchased at the same location and recoded at the time of purchase;

8. firms and/or persons who only install bank locking equipment, including but not limited to, vaults, safes, automatic teller machines, and/or safety deposit boxes, while doing so in conjunction with a licensed locksmith or bank locking contractor. The licensed locksmith or bank locking contractor shall certify the installation;

9. any manufacturer, and his employee or representative, who acts as a consultant to a certified firm in the certifying, inspecting, installing, integrating, or servicing of property protection systems and/or equipment while under the direct supervision of the certified firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2736 (September 2011).

§3207. Notices by the Fire Marshal

A. Any notice required to be given by the state fire marshal by any provision of R.S. 40:1664.1 et seq., or these rules must be given by personal or domiciliary service or mailed, postage prepaid, to the person's residence or firm address as it appears on the records in the Office of State Fire Marshal. It is the responsibility of the person or firm involved to ensure that the Office of the State Fire Marshal has a correct address for the person or firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2737 (September 2011).

§3209. Certificate, License Required

A. Each firm engaged in property protection activity shall apply for a certificate of registration in the endorsements of certification desired in accordance with these Rules prior to conducting any such activity in this state.

B. Each person or employee, including apprentices, engaged in property protection activity shall apply for a license in the endorsements of licensure desired in accordance with these Rules prior to conducting any such activity in this state.

C. Any firm and/or person described in A or B of this section, which has not applied for and received a current and valid certificate of registration or license, shall immediately cease such activities. The Office of State Fire Marshal shall take all steps necessary to enforce an order to cease and desist and pursue administrative penalties against violators of this Subpart.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2737 (September 2011).

§3211. Definitions

A. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

Access Control Systems—those locking systems and equipment as outlined in NFPA 101 designed to restrict entry into an area, room, building or space. These systems require an annual certification.

Apprentice—a person who is licensed to work under the direct supervision and accompaniment of a technician who is licensed to the same firm and holding a valid license to perform the same acts.

Apprentice Endorsement—that document issued by the state fire marshal to an employee to engage in property protection activity while under the direct supervision of a technician who is licensed to the same firm and holding a valid license to perform the same acts.

Bank Auxiliary Systems—systems and equipment which are found in financial institutions but are not directly associated with locking systems. Such systems, include but are not limited to, after hour depositories, tube systems, teller audio/video systems, and automatic teller machines, excluding the safe.

Bank Auxiliary Systems Endorsement—that document issued by the state fire marshal to an employee of a certified property protection firm to engage in property protection activity of bank auxiliary systems.

Bank Locking Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in property protection activity of bank locking systems and equipment.

Bank Locking Systems—locking systems and equipment found in financial institutions or designed for protection of financial transactions in other commercial businesses. Such systems and equipment include, but is not limited to, vaults, safes, automatic teller machines, cash dispenser, safe deposit boxes, tube systems, closed circuit television and depository systems and/or equipment. The term includes stand alone electro/mechanical locks but does not include security or special locking systems.

Certificate of Registration—that document issued by the state fire marshal to a firm authorizing it to engage in such activities as defined in these rules.

Certify—to attest to the proper functionality, inspection, installation, integration, maintenance, or service of property protection equipment and systems in accordance with all applicable engineered specifications, manufacturer's specifications, the applicable NFPA codes and standards and the reviewed fire marshal plans.

Closed Circuit Television Endorsement—that document issued by the state fire marshal to a firm or employee

authorizing either to engage in property protection activity of closed circuit television systems and equipment. This includes the connection of closed circuit television systems and equipment to computer systems or equipment.

Closed Circuit Television System—a system and its components which transmits video and/or audio signals or images via cameras, computer or other means. Transmissions may be done via hard wire, including, but not limited to, coaxial cable, fiber optic cable, network cable, internet protocol (IP), or wireless devices and means. The term includes security camera and/or surveillance camera systems.

Commercial Businesses—all buildings including, but not limited to, public, private and industrial structures. The term does not include one and two family dwellings.

Contact Person—that individual designated by a firm to act as liaison with the Office of the State Fire Marshal.

Delayed Egress Systems—those locking systems and equipment as outlined in NFPA 101 designed to impeded egress for a specified limited time from an area, room, building or space. These systems require an annual certification.

Design—to create a specific layout for a property protection system for the purpose of protecting persons and/or property. The term “layout of the system” only refers to those persons who physically create such layout after visiting the location. Design and/or layout of the system’s devices shall follow manufacturer’s recommendations and application limitations.

Detention Locking Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in property protection activity of detention locks and locking systems and equipment as related to cell areas in penal institutions and cell areas in other occupancies such as health care or business.

Detention Locking Systems—locking systems and equipment within a penal institution and in other occupancies having such systems and equipment in cell areas only. The term includes locks of various types including pin tumbler-standard and mogul types, lever and wafer tumbler, stand alone electro/mechanical and full electronic and pneumatic controlled locks. The term does not include special locking systems within non-cell areas of the building. These systems require an annual certification.

Direct Supervision—oversight given by a qualifier of a firm’s employees or by a technician of an apprentice while performing property protection activity. The qualifier, the technician and apprentice must be licensed to the same firm. A qualifier is considered to provide direct supervision of employees if he routinely engages and regularly reviews the daily property protection activity of the employees of the firm. For a technician to provide direct supervision of an apprentice, both must be physically present at the same work location. They are not required to constantly be in line of sight of each other.

Door Hardware—builders’ hardware or architectural hardware, including but not limited to, stand alone electro/mechanical locks, latches, exit hardware, closures and hinges mounted onto doors intended to operate and secure the door properly. The term does not include special locking systems and equipment, doors or door frames.

Door Hardware Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in property protection activity of door hardware equipment and the consulting or the providing of technical advice regarding the selection of door hardware. The termination of these components to the building power system is not permitted. The term does not include special locking systems.

Door Hardware Consultant Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in the consulting and/or the providing of technical advice regarding the selection of door hardware.

Electronically Controlled Egress Door Assemblies—those locking systems and equipment as outlined in NFPA 101 designed to restrict entry into an area, room, building or space. The release of such locking systems incorporates a mechanical switch that interrupts power to a magnetic or electric lock. These systems require an annual certification.

Elevator Lobby Exit Access Door Assembly Locking Systems—those locking systems and equipment as outlined in NFPA 101 designed to restrict entry into an area, room, building or space from an elevator lobby. The release of such locking systems incorporates redundant features. These systems require an annual certification.

Employee—a person who works for a "firm" as defined by R.S. 40:1664.2 et seq., in return for financial or other compensation.

a. For the purposes of the licensing requirements, contained in R.S. 40:1664.2 et seq., employees shall not include secretaries, drivers or accounting or other administrative personnel.

b. For the purposes of licensing requirements, the firm owner or owners shall be considered an "employee" if he or she is or will be certifying, inspecting, installing, integrating, maintaining, selling and/or servicing security, household fire warning, stand alone electro/mechanical, special locking and closed circuit television equipment and/or systems.

Equipment Distributor—Those firms and/or persons who sell security, locking and/or camera systems and equipment at wholesale to property protection contractors licensed per R.S. 40:1664.1 et seq. Equipment distributors shall not engage in property protection contracting without being properly licensed per this Subpart.

Firm—a sole proprietorship, partnership, corporation, limited Liability Company or any other entity.

Gate System Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in property protection activity of Pedestrian or Vehicle Gate systems and equipment.

Health Care Locking Systems—locking systems and equipment within a health care facility as outlined in NFPA 101 that provides security for the patient based on the clinical needs of the patient. These systems require an annual certification.

Household Fire Warning Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in property protection activity of fire detection and alarm systems in one and two family dwellings.

Household Fire Warning System—fire detection and alarm systems consisting of standalone and/or interconnected devices intended to detect and warn occupants of fire, smoke, heat, and/or poisonous gases. The term includes, but is not limited to, heat detectors, smoke detectors and carbon monoxide detectors. Systems and equipment may be powered by direct or alternating current power.

Inspection—a visual examination of a system or portion thereof to verify that it appears to be in operating condition and is free of physical damage.

Installation—the initial placement of property protection equipment and systems or an addition, extension, or alteration after initial placement.

Integration—the act of developing a unified and functioning property protection system and/or equipment in accordance with manufacturers' specification and/or NFPA codes and standards.

License—that document issued by the state fire marshal to an employee of a certified firm authorizing the employee to engage in the activities as defined by these rules.

Locksmith Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in property protection activity of stand alone electro/mechanical locks, closed circuit television or special locking systems and equipment.

Maintenance—work, including, but not limited to repair, replacement, and service, performed to ensure that equipment operates properly. It includes a thorough examination for physical damage or condition to prevent its operation and any necessary repair or replacement.

Nationally Recognized Testing Laboratory—a nationally recognized testing company concerned with product and service evaluation, which, after conducting successful examinations, inspections, tests and reexaminations, reflects approval by various labeling, listing and classification actions.

NFPA—the National Fire Protection Association, Inc., a nationally recognized standards-making organization.

Officer—the president, vice president, secretary, treasurer, comptroller, general manager or any other person who performs functions corresponding to such positions for a property protection firm.

Operating Location—a physical office which houses employees and business documents or records and from which the acts authorized by the certificate of registration are performed. The office must be open and accessible during normal work hours. Business records must be maintained for a minimum of years. The use of a storage facility, telephone answering service or Post Office Box shall not constitute a location for purposes of this subpart. The office must physically reside within the boundaries of Louisiana.

Pedestrian Gate System—access controls or barriers used to prevent unauthorized entry to a building or area. Pedestrian gates may be secured by either stand alone electro/mechanical locks or special locking systems and equipment. These systems require an annual certification.

Person—a natural individual, including any owner, manager, officer, or employee of any firm.

Pocket license—that document issued by the state fire marshal to an employee of a certified firm, in pocket size

and bearing a photographic image of the licensee, authorizing the employee to engage in the activities as defined by these rules.

Principal—a person or entity that has a controlling interest of a property protection firm regardless of the form of organization. "Principal" includes a person or entity entitled to exercise the prerogatives or indicia of ownership or control of a property protection firm whether by direct action, assignment, or any other kind of substitution or subrogation.

Property Protection Activity—the act of certifying, designing, inspecting, installing, integrating, maintaining, selling and/or servicing of security, household fire warning, stand alone electro/mechanical locking, special locking and closed circuit television equipment and/or systems pursuant to R.S. 40:1664.1 et seq.

Property Protection Equipment and Systems—those systems and equipment designed to protect persons and property from the dangers of fire, theft, unauthorized entry or other harmful actions or events.

Property Protection Sales and Design Endorsement—that document issued by the state fire marshal to an employee of a certified property protection firm who designs or sells a property protection system or equipment.

Qualifying Person—the employee of a firm who currently meets the certification, examination and/or training requirements set for each endorsement by the Life Safety and Property Protection Advisory Board. A qualifier shall physically reside within 150 miles of the operating location and work a minimum of 32 hours per week. The qualifier must be actively engaged in the direct supervision of the daily property protection activities for the firm and its employees for which they are authorized to perform.

Security Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in property protection activity of security, household fire warning, closed circuit television and/or special locking systems and equipment.

Security Systems—those assemblies of wiring, electronic transmitting devices, detection devices, and related equipment for the detection of theft, unauthorized entry or other physical harm to a structure's occupants or property.

Sell—to solicit on behalf of a property protection firm by any means for the sale or lease of a property protection system. The term includes, but is not limited to, solicitation via telephone or electronic devices, public notice or advertisement, door to door or any other type of personal interaction.

Service—the act of repair, bypass or replacement of property protection equipment/systems to ensure its proper functioning.

Special Locking System—electronic, magnetic and/or pneumatic locking systems and/or equipment actuated from a remote location. These systems are typically powered by the building power but may be battery powered only as well. The term includes, but is not limited to, access control, delayed egress, electrified hardware, magnetic locks, health care locks, pneumatic, pin, card reader, proximity, biometric, video/telephone, electronically controlled egress door assemblies, pedestrian and vehicle gates and remote control

and wireless access systems and equipment. This would include any necessary mechanical equipment to complete the installation of the system.

Special Locking System Endorsement—that document issued by the state fire marshal to a firm or employee authorizing either to engage in property protection activity of special locking systems and equipment.

Stand Alone Electro/Mechanical Locks—locks that are operated by electric, electronic and/or mechanical means. They may not be powered by the building power. Stand alone electro/mechanical locks shall only be actuated at and physically mounted on the door leaf. Stand alone electro/mechanical locks include, but are not limited to, hotel room door locks, battery operated locks, push button locks, self-powered door locks, key fob and combination locks. The term does not include special locking systems and equipment.

Vehicle Gate Systems—an access control system or barrier used to prevent unauthorized entry to a building or area. Vehicle gates may be secured by either stand alone electro/mechanical locks or special locking systems and equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2737 (September 2011).

§3213. Certificates of Registration

A. Every firm must obtain from the state fire marshal a certification of registration with the appropriate endorsements as provided for by R.S. 40:1664.1 et seq., before engaging in the property protection activity of security, household fire warning, stand alone electro/mechanical locks, special locking systems and closed circuit television equipment and/or systems.

1. Each firm, as defined by R.S. 40:1664.1 et seq., shall have at least one licensed technician per endorsement of certification to perform the act or acts authorized by its certificate.

2. Each firm, as defined by R.S. 40:1664.1 et seq., shall have at least one licensed qualifier per endorsement of certification to perform the act or acts authorized by its certificate. When a firm only has one technician, the technician can also be the qualifier.

3. Firms as defined by R.S. 40:1664.1 et seq., and their owners shall be responsible for the acts of their agents and employees for the purpose of these rules including the initiation of administrative action by the state fire marshal.

B. The following shall apply to certificates of registration.

1. Posting. Each certificate shall be posted conspicuously at each firm and/or branch office premises.

2. Changes of Ownership. The change of a firm's majority ownership invalidates the current certificate. To assure continuance of the firm's ability to conduct property protection contracting, an application for a new certificate shall be submitted to the state fire marshal within 10 days after such change in ownership.

3. Change of Corporate Officers. Any change of corporate officers within the licensure period, must be reported in writing to the state fire marshal within 10 days of the change. This change does not require a revised certificate.

4. Duplicates. A duplicate certificate must be obtained from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction within 10 days, accompanied by the required fee specified in these rules.

5. Revisions/Changes. The change of a firm's name, location, or mailing address or operating status requires a revision of the certificate of registration. Certificates of registration requiring changes must be surrendered to the state fire marshal within 10 days after the change requiring the revision. The firm must submit written notification of the change with the surrendered certificate of registration, accompanied by the required fee specified in by R.S. 40:1664.1 et seq.

6. Non-Transferability. A certificate of registration is not transferable from one firm to another.

7. Validity. A certificate of registration is valid for one year from date of issue, and must be renewed annually.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2740 (September 2011).

§3215. Licensure

A. Required. Each person who engages in property protection activity of security, household fire warning, stand alone electro/mechanical locks, special locking systems and closed circuit television equipment and/or systems shall have a current and valid license issued by the state fire marshal.

B. Types of Endorsement. Each license shall be identified by endorsement, which indicates the authorized act or acts which may be performed by the licensee.

C. Posting. It is not necessary to post an employee license on a wall. A master list of all employees' names and license numbers must be kept at each office location and must be available for review upon request by the state fire marshal or his designated representative.

D. Pocket License. The pocket license is for immediate identification purposes only so long as such license remains valid and while the holder is employed by the firm reflected on the license and shall be on his/her person at all times when conducting property protection activity in the field. The pocket license need not be visibly displayed when working in areas where the license may be damaged or lost. The license must still be available for inspection upon request.

E. Duplicate License. A duplicate license must be obtained from the state fire marshal to replace a lost or destroyed license. The license holder and his employer must submit written notification within 10 days of the loss or destruction of a license, accompanied by the required fee as specified in these rules.

F. Revised Licenses. The change of a licensee's employer, home address or mailing address or employment status requires a revised license. Licenses requiring revision must be surrendered to the state fire marshal within 10 days after the change requiring the revision. The license holder and his employer must submit written notification of the necessary change with the surrendered license, accompanied by the required fee as specified in these rules.

G. Non-Transferable. A license is not transferable from one person to another or from one firm to another.

H. License Reciprocity. The state fire marshal may waive license requirements for an applicant with a valid license from another state if that state has license requirements substantially equivalent to Louisiana and which recognizes licenses issued by this office.

I. Validity. A license is valid for one year from date of issue, and must be renewed annually, unless the state fire marshal adopts a system under which licenses expire on various dates during the year. Should a staggered renewal system be adopted, the renewal fees shall be prorated on a monthly basis so that each licensee pays only that portion of the fee that is allocable to the number of months during which the license is valid.

J. Transfer of Employer. When a currently licensed employee transfers to a new employer, a revised license shall be required indicating the new firm's information. The license shall be revised to show the same expiration date of the new employer. Upon receipt of the revision application by the state fire marshal, the individual may go to work for the new employer while waiting the processing of the license. This go-to-work allowance shall not authorize the employee to engage in property protection activity for which he/she was not previously licensed to perform or for which the firm is not currently registered to perform.

K. Age Limitations. For the purpose of licensing, no one under the age of 18 shall be eligible for a technician's license and no person under the age of 16 shall be eligible for an apprentice license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2740 (September 2011).

§3217. Alteration of Certificates or Licenses

A. Any alteration of a certificate of registration or license renders it invalid and such alteration shall be the basis for administrative action in accordance with penalties set forth in R.S. 40:1664.1 et seq., and these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2741 (September 2011).

§3219. Application for Certificates of Registration

A. Applications for a certificate of registration for Life Safety and/or Property protection firms shall be in writing on the forms provided by the state fire marshal and accompanied by the required fee as specified in these rules.

B. The application for certificates of registration shall:

1. be executed by the sole proprietor, or by each partner of a partnership, or by the authorized officer of the firm;
2. identify the type of endorsement applied for;
3. identify the physical and mailing address, if different, of the firm's operating location;
4. identify any and all names by which the firm may conduct activity regulated by R.S. 40:1664.1 et seq., and these rules. Only one trade or "Doing Business As" name shall be permitted per each certificate of registration;
5. identify each principal and officer of the firm;
6. identify the contact person and email address of such, as defined by these rules;

7. identify the qualifying person for each endorsement applied for;

8. identify any and all past violations or pending administrative action against the firm in other jurisdictions;

9. include a separate employee application for each qualifying person along with the required training or certification credentials as established by the Life Safety and Property Protection Advisory Board and an originally signed and notarized employment affidavit. A firm must employ and license at least one qualifier. Multiple qualifiers may be licensed;

10. be accompanied by:

a. at least one application with fee from an employee seeking to obtain a technician's license in each endorsement;

b. a current certificate of insurance issued to the Office of State Fire Marshal showing a minimum of \$500,000 coverage;

c. a copy of the local or occupational license for the firm.

C. The application shall also include written authorization by the applicant permitting the state fire marshal or his representative to enter, examine, and inspect any premise, building, room, vehicle, or establishment used by the applicant while engaged in property protection activity to determine compliance with the provisions of R.S. 40:1664.1 et seq., and these rules.

D. When the applicant has completed the requirements contained above, a pre-certification inspection may be conducted at the facilities or of the vehicles of the applicant for verification of compliance with this subpart. The office may inspect vehicles, equipment, buildings, devices, premises or any other area to be used in performing the activities allowed by the certificate of registration. After issuance of a certificate of registration, such facilities may be inspected annually thereafter or as frequently as deemed necessary to ensure that the equipment requirement continues to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2741 (September 2011).

§3221. Qualifying Persons

A. Each certified firm or each firm seeking certification shall employ at least one qualifying person for each endorsement it is making application for. No property protection system or equipment shall be certified, inspected, installed, integrated, maintained, serviced, sold, or submitted to the state fire marshal for review if the firm does not employ a qualifying person as provided herein.

B. The qualifying person shall be a paid employee working a minimum of 32 hours per week and shall receive a W-2 or K-1 tax form from the firm. The qualifier shall only qualify one firm for which he is employed. An individual may not qualify multiple firms at the same time. A contract employee cannot be used to fulfill this requirement except as provided by subsection G below. A qualifier must physically reside within 150 miles of the office for which he or she qualifies.

C. The qualifying person shall be primarily and actively engaged in direct supervision of the daily property protection activity of the firm's employees and for those systems or equipment for which the firm holds endorsements for. If a firm holds multiple endorsements, then multiple qualifiers may be utilized to meet this requirement. Upon request by the state fire marshal or his representative(s), a qualifier shall provide documentation attesting to his or her supervision of any certification, integration, inspection, installation, maintenance or service performed by the firm he or she qualifies.

D. A qualifier must meet the minimum examination, certification, or training requirements as established by the Life Safety and Property Protection Advisory Board. The state fire marshal shall send notice to licensed firms of all changes to qualifier credentials made by the Life Safety and Property Protection Advisory Board.

E. At anytime that a firm finds itself without a qualifying person, such firm shall only be able to continue certifying, inspecting, maintaining and/or servicing existing contractual obligations for that endorsement but shall not engage in any new work until a qualifying person has been employed as provided herein. A firm may not submit plans to the Office of the State Fire Marshal when it finds itself without a qualifying person.

F. This office shall be notified in writing within 10 working days anytime a qualifying person's employment is terminated for any reason.

G. A firm which loses its qualifying person and has timely notified the Office of the State Fire Marshal shall have 90 days to hire another qualifying person. If after the loss of such an employee, a replacement cannot be found within the 90 days, the firm may make a request to the Office of the State Fire Marshal to temporarily hire a qualifying person on a contractual basis. Good cause must be shown why another employee cannot be permanently hired. Approval by the Office of the State Fire Marshal for the hiring of a qualifying person on a contractual basis shall not exceed six months. Not later than 30 days prior to the expiration of the six-month period, the firm may request an additional six-month period to employ a qualifying person on a contractual basis if good cause is shown why the firm cannot hire an employee to fulfill this requirement. The Office of the State Fire Marshal may grant one additional six-month period during which a firm may employ a qualifying person on a contractual basis.

H. Failure to notify this office in writing within 10 working days of the loss of a qualifying person will cause forfeiture of any extension of time to hire another qualifying person.

I. A qualifying person must obtain an individual employee license as required by these rules. Licensure of the qualifier shall include a signed and notarized affidavit indicating the employment relationship and duties of the qualifier. If a firm desires to use multiple qualifiers for submitting plans and supervising the property protection activity of the firm, then it must register and license the additional qualifiers with the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2741 (September 2011).

§3223. Application for Licenses

A. Applications for a license from an employee of a certified firm shall be on forms provided by the State Fire Marshal and accompanied by the required fee as specified in these Rules.

B. Applications for individual licenses shall be accompanied by a written statement from the employer certifying the applicant's competency to perform property protection activity of the systems and equipment authorized by the endorsements applied for and that the individual is an employee who receives a W-2 or K-1 tax form from the firm.

C. Identify the type of endorsement applied for.

D. Identify the physical and mailing address, if different, of the individual's home address.

E. Identify any and all names by which the individual may have conducted activity regulated by R.S. 40:1664.1 et seq., and these rules, if not the same on the application.

F. Identify any and all past felony convictions, first-time offender pardons for a felony, and pleas of guilty or *nolo contendere* to a felony charge.

G. Identify any and all past violations or pending administrative action against the individual in other jurisdictions.

H. Unless a provisional license is issued, applications for individual licenses will not be accepted unless accompanied by documentation showing that the applicant has met all competency requirements as determined by the Life Safety and Property Protection Advisory Board.

I. No competency examination or training is required for an apprentice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2742 (September 2011).

§3225. Fees—General Information

A. Every fee required in accordance with the provisions of R.S. 40:1664.1 et seq., and these rules, shall be paid by firm check or certified funds made payable to the "Office of State Fire Marshal." Cash or personal checks cannot be accepted.

B. Fees shall be paid at or mailed to the Office of the State Fire Marshal, Attention Licensing Section, at 8181 Independence Blvd., Baton Rouge, Louisiana 70806.

C. Late fees are required on all certificates of registration or licenses which are not timely renewed as outlined in R.S. 40:1664.1 et seq.

D. A renewal application accompanied by the required renewal fee and deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a legible postmark date which is on or before the expiration date of the certificate or license being renewed.

E. Certificates or licenses which have been expired for more than 60 days will be suspended and applicants must apply and pay for a new certificate of registration or license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2742 (September 2011).

§3227. Fees—Specific Information

A. Certificate of Registration Fees for Firms

	Initial	Renewal
Technical Endorsement		
Security	\$250	\$50
Locksmith	\$250	\$50
Door Hardware	\$250	\$50
Specialty Endorsement		
Household Fire	\$250	\$50
CCTV	\$250	\$50
Door Hardware Consultant	\$250	\$50
Bank Locking	\$250	\$50
Special Locking	\$250	\$50
Detention Locking	\$250	\$50
Gate Systems	\$250	\$50

B. License Fees for Employees

	Initial	Renewal
Technical Endorsement		
Security	\$100	\$50
Locksmith	\$100	\$50
Door Hardware	\$100	\$50
Specialty Endorsement		
Household Fire	\$100	\$50
CCTV	\$100	\$50
Door Hardware Consultant	\$100	\$50
Bank Locking	\$100	\$50
Bank Auxiliary	\$100	\$50
Special Locking	\$100	\$50
Detention Locking	\$100	\$50
Gate Systems	\$100	\$50
Property Protection Sales and Design	\$100	\$50
Apprentice	\$50	\$50

C. Late Renewal Fee. A penalty shall be assessed in accordance with R.S. 40:1664.2 et seq., for the late renewal of a certificate of registration or license.

- D. Change in ownership: \$250.
- E. Changes or alterations: \$20.
- F. Duplicate certificates of registration or license: \$20.
- G. Replacement pocket registration card: \$20.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2743 (September 2011).

§3229. Initial Licensing Training Certification, Continuing Education

A. Initial Training Certification. Applicants for an individual initial license are required to meet the initial training certification requirements as established by the Life Safety and Property Protection Advisory Board.

B. Continuing Education. Applicants for an individual license who wish to renew their licenses are required to meet the continuing education requirements as established by the Life Safety and Property Protection Advisory Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2743 (September 2011).

§3231. Property Protection Systems and Equipment

A. All property protection systems and equipment shall be certified, designed, installed, integrated, maintained or serviced in a manner that maintains the highest level of operation afforded by the manufacturer of the product.

B. All property protection systems and equipment shall be certified, designed, installed, integrated, maintain or serviced in a manner that meets all applicable codes and/or standards enumerated in LAC 55:V.103 or these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2743 (September 2011).

§3233. Smoke Inducing Security Systems

A. Where a smoke inducing (fog systems) security system is installed in a commercial business, the installing firm shall notify all local law enforcement and fire service agencies in that jurisdiction which have responsibility for response to the business.

B. Such notification shall be in writing and a copy of such shall be maintained at the firm's office located in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2743 (September 2011).

§3235. Installation Tags

A. Upon installation of any special locking system, the system shall have a tag permanently affixed to the control panel or at the connection to the power source. The installation tag shall be a minimum of 2 3/4 inches by 2 3/4 inches. Maximum size cannot exceed 5 inches by 5 inches. The tag shall be white in color and have a self adhesive backing. The following information and wording shall be required to be preprinted on the front side of the tag:

1. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters, in bold type);
2. installation tag;
3. installation date;
4. firm's name;
5. firm's certificate number;
6. technician's name;
7. technician's license number;
8. technician's signature;
9. NFPA code edition system was installed under;
10. plan review or exemption number;
11. serial or model number of panel, if applicable.

B. All tags shall have a signature line for the technician to sign the tag upon completion of the work. No preprinted signatures are permitted. Technicians must sign the tag; initials are not permitted. Other information to be completed on the tag may be either handwritten or preprinted. Apprentices are not permitted to sign tags.

C. If after initial installation a control panel is replaced for any reason, a new installation tag shall be completed and attached as above, noting the appropriate changes in information.

D. Copies of certificates of compliance required to be completed by this office shall be attached to the system in a plastic pocket pouch/sleeve or given to the owner for filing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2743 (September 2011).

§3237. Certification Tags, Service Tags, Partial Impairment Tags, Impairment Tags (Special Locking Systems and Equipment Only)

A. Certification Tags (Green Tags)

1. All firms engaged in property protection activity of special locking systems and equipment shall have a certification tag which shall be completed and attached to a special locking system, after it has been certified, inspected, installed, or integrated indicating all work that has been done.

2. Certification tags shall be green in color.

3. The certification tag shall be attached at the control panel or if no panel, at the connection to the power source (breaker panel).

4. The certification tag shall be attached in such a way as to not hamper the actuation and operation of the equipment or system.

5. A certification tag shall be attached on all systems or equipment found to be in proper working condition and which are found to be in an operational condition per the inspection, testing and maintenance chapters of the applicable NFPA codes and standards. This tag shall be used for new installations and shall be in addition to the installation tag provided for in these rules.

6. Certification tags must contain all of the information listed below. Information shall be preprinted on the tag unless noted otherwise:

a. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

b. firm's name, physical address and telephone number;

c. firm's state fire marshal certificate number;

d. technician's name and state fire marshal license number to be printed on tag either at the time of service or preprinted;

e. technician's signature to be signed at time of service (no preprinted signatures nor initials are permitted; apprentices are not permitted to sign tags);

f. day, month and year in which the certification was performed (must be punched through certification tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of work performed. Only installation or certification shall be noted on tag for type of work performed (must be punched through the certification tag);

i. "Installation" shall be punched on the tag when the special locking system or equipment is initially placed into use or after an addition or extension to the system has been made. Punching "Installation" indicates the initial certification of the system or equipment has been completed;

ii. "Certification" shall be punched on the tag when the special locking system or equipment has its annual inspection. Punching "Certification" indicates that any required service performed to the system or equipment at the time has been completed;

iii. specifics as to the type of work performed shall be noted on rear of tag, (i.e. new installation, annual certification, etc);

h. serial number of special locking system's control panel if present;

i. owner of system and address of owner (to be noted on rear of tag).

7. Other information may be permitted on the tag after a review and approval by the fire marshal. A request for additional information shall be made to the fire marshal in writing with a sample tag indicating the requested additions.

B. Service Tags (Blue Tags)

1. All firms engaged in property protection activity of special locking systems and equipment shall have a service tag which shall be completed and attached to a special locking system, after it has been maintained or serviced indicating all work that has been done.

2. Service tags shall be blue in color.

3. The service tag shall be attached at the control panel or if no panel, at the connection to the power source (breaker panel).

4. The service tag shall be attached in such a way as to not hamper the actuation and operation of the equipment or system.

5. A service tag shall be attached on all systems or equipment found to be in proper working condition after maintenance or service and which are found to be in an operational condition per the inspection, testing and maintenance chapters of the applicable NFPA codes and standards. This tag shall also be used for all service and maintenance where the system is found to meet the above conditions.

6. Service tags must contain all of the information listed below. Information shall be preprinted on the tag unless noted otherwise;

a. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

b. firm's name, physical address and telephone number;

c. firm's state fire marshal certificate number;

d. technician's name and state fire marshal license number to be printed on tag either at the time of service or preprinted;

e. technician's signature to be signed at time of service (no preprinted signatures nor initials are permitted; apprentices are not permitted to sign tags);

f. day, month and year in which service was performed (must be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of work performed. Only "Service" shall be noted on tag for type of work performed;

i. "service" tags shall be used when the special locking system or equipment is repaired or replaced to ensure proper operation in between required certification periods;

ii. specifics as to the type of work performed shall be noted on rear of tag (i.e. changed push button, repaired motion detector, etc);

h. serial number of special locking system's control panel if present;

i. owner of system and address of owner (to be noted on rear of tag).

7. Other information may be permitted on the tag after a review and approval by the fire marshal. A request for additional information shall be made to the fire marshal in writing with a sample tag indicating the requested additions.

C. Partial Impairment Tags (Yellow Tags).

1. All firms engaged in property protection activity of special locking systems and equipment shall be allowed to have a partial impairment tag, to be yellow in color, which is to be used when minor deficiencies are found on the equipment or system. The partial impairment tag is in addition to the requirement of having a service tag and impairment tag.

2. A partial impairment tag may be placed on all equipment or systems in which there is a deficiency with the equipment or system but where the equipment or system is still functional. This would include situations where routine service is needed but has not been approved by the owner of the equipment or system.

3. A partial impairment tag shall not remain on equipment or a system for more than 60 days. If the problem is not corrected after 60 days the certified firm shall be required to notify, in writing, the Office of the State Fire Marshal Inspection Section. The firm does not have to physically return to the building for re-inspection. The mailing of the impairment notice is sufficient.

4. Partial impairment tags must contain all of the information listed below. Information shall be preprinted on the tag unless noted otherwise:

a. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

b. firm's name, physical address and telephone number;

c. firm's state fire marshal certificate number;

d. technician's name and state fire marshal license number to be printed on tag either at the time of service or preprinted;

e. technician's signature to be signed at time of inspection (no preprinted signatures nor initials are permitted; (apprentices are not permitted to sign tags);

f. day, month and year in which the impairment was found (to be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of impairment found (to be hand written on rear of tag); If additional space is needed to note the impairments, then multiple tags shall be used noting 1 of 2, 2 of 2, etc.;

h. serial number of special locking system's control panel if present;

i. business owner or tenant and physical address of where the system is located (to be noted on rear of tag).

D. Impairment Tags (Red Tags)

1. All firms engaged in property protection activity of special locking systems and equipment shall have an impairment tag, to be red in color, which is to be used when major deficiencies are found on these systems or equipment.

2. An impairment tag shall be placed on all special locking systems upon discovery that the system or equipment is impaired to the point that life safety is at risk or

to the point that the automatic or manual release on the system will be prevented from functioning as intended.

3. Impairment tags shall also be placed on any equipment or system where life safety is in imminent danger.

4. Written notice shall be made to the owner and to the Office of the State Fire Marshal Inspection Section by the certified firm as soon as is practically possible but shall not exceed two working days after the system or equipment is red tagged. Notification to the Office of the State Fire Marshal is not needed for fire hoses removed from service. Written notification can be by electronic mail or facsimile. The Office of State Fire Marshal shall provide a form for notification. Additional notification (written or verbally) should be made to the local fire department when a system is red tagged.

5. Impairment tags must contain all of the information listed below. Information shall be preprinted on the tag unless noted otherwise:

a. "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL" (all capital letters in bold face type);

b. firm's name, physical address and telephone number;

c. firm's state fire marshal certificate number;

d. technician's name and state fire marshal license number to be printed on tag either at the time of service or preprinted;

e. technician's signature to be signed at time of inspection (No preprinted signatures nor initials are permitted.) (Apprentices are not permitted to sign tags.);

f. day, month and year in which the inspection was performed (to be punched through service tag at designated marks for day, month and year; designated marks for day, month and year shall only be punched once per tag);

g. type of impairment found (to be hand written on rear of tag); if additional space is needed to note the impairments, then multiple tags shall be used noting 1 of 2, 2 of 2, etc.;

h. serial number of special locking system's control panel if present;

i. business owner or tenant and physical address of where the system is located (to be noted on rear of tag).

6. Notification of special locking equipment/systems inspections where no deficiencies are found need not be sent to the Office of the State Fire Marshal unless specifically requested.

E. Written Notification. The following information is required to be sent when written notification is made to the Office of the State Fire Marshal Inspection Section:

1. name, address, and telephone number of the owner of the system;

2. name, address, telephone number, and certificate number of the firm noting the impairment;

3. name and license number of the technician who did the certification, inspection, maintenance, or service;

4. type of system (manufacturer and model number should also be included);

5. the name and year edition of the code or standard the firm used for inspection;

6. reason for the impairment. Note: A copy of the inspection or service report shall be included; and

7. date system or equipment was red or yellow tagged.

F. Other Requirements

1. On all special locking systems, a plastic pocket pouch/sleeve shall be attached to the control panel, or near the power source when no control panel is installed, where all tags shall be maintained for a period of one year after the system's annual certification. Upon a new annual certification, all previous service tags may be removed and given to the owner to keep on file.

2. All tags must be card stock, plastic, vinyl, tyevak or metal in order to maintain the running record for the system.

3. All tags shall be 5 1/4 inches in height and 2 5/8 inches in width.

4. Firms shall have their tags printed and one forwarded to the state fire marshal's Licensing Section for approval and incorporation in the firm's file.

5. Tags may be removed only by licensed employees of a certified firm or employees of the state fire marshal's Office and certified fire prevention bureaus.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2744 (September 2011).

§3239. Door to Door Solicitation

A. All door to door solicitations shall comply with the following:

1. all local permitting ordinances and requirements;

2. vehicles shall be properly marked with the firm's name and certificate number;

3. all advertisements, invoices, literature, business cards and letter head must include the firm's certificate number and Louisiana address.

B. All firms conducting door to door solicitations shall be required to notify, in writing, the Office of the State Fire Marshal Licensing Section of such. Such notice shall include, the city, time frame of such solicitation and an affirmation that all local solicitation ordinances have been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2746 (September 2011).

§3241. Fair and Ethical Business Practices

A. Property protection firms and employees shall conduct all business practices in compliance with all applicable laws.

B. Property protection firms and employees shall impartially analyze safety or security problems of their customers and advance the best possible solution for the protection of the customer.

C. Property protection firms and employees shall not misrepresent any business claims to the customer.

D. Property protection firms and employees shall not misrepresent the features afforded by any product nor make unwarranted claims about the merits of any product or service they offer. Examples include, but are not limited to the following:

1. representing to a client that non-restricted or widely available keys (whether stamped "Do Not Duplicate" or not) provide any measure of assurance against unauthorized duplication;

2. selling a used product as new;

3. claiming the customer's existing equipment is out of date or substandard when it is not.

E. Property protection firms and employees shall avoid using any improper or questionable means of soliciting business. Prohibited practices include, but are not limited to:

1. affixing stickers to permanent fixtures such as doors or door frames or in any way defacing the property of any person without his express consent;

2. installing stickers or any other promotions in such fashion that they falsely represent that the firm has previously serviced the system or equipment in that location;

3. installing or supplying systems or equipment which curtails the customer's ability to choose a different company or technician for product support or service, unless the firm obtains the customer's expressed written consent;

4. modifying the customer's hardware in any fashion that will curtail the customer's ability to choose a different company or technician for later product support or service or cause him to incur additional expense by doing so, unless the firm obtains the customer's express written consent;

5. claiming the customer's current contractor is out of business when it is not.

F. Property protection firms and employees shall not directly solicit in violation of a no compete agreement, such as an employee offering competing bids to customers of his employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2746 (September 2011).

§3243. Prohibited Acts and Equipment

A. The following acts are prohibited and shall be considered grounds for administrative action to be taken against firms, persons and/or employees committing such:

1. charging a customer for work that was not performed;

2. misrepresenting oneself and/or one's firm to a customer, prospective customer or to employees of the state fire marshal, his designated representative or other public official;

3. impersonating the state fire marshal, his designated representative or any other public official;

4. intimidating or coercing a customer;

5. certifying, inspecting, installing, integrating, maintaining or servicing property protection systems and/or equipment contrary to plans submitted for review, applicable NFPA codes, standards, and/or manufacturer's specifications without specific written permission from the Office of the State Fire Marshal;

6. falsifying an application or any other document submitted to obtain a certificate or license or other documentation requested by or submitted to the Office of the State Fire Marshal;

7. falsifying tags, labels, inspection reports, invoices, system reports and/or other documents;

8. working an apprentice, or as an apprentice, without direct supervision by a technician licensed to perform the work being done and licensed to the same firm;

9. working an employee without the appropriate endorsement of license;

10. working without the appropriate endorsement of firm certificate or license;

11. working with an expired firm certificate or license;
12. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;
13. failing to notify local law enforcement or fire service agencies of the installation of a smoke inducing security system;
14. contracting to a firm or person who is not properly certified or licensed through the Office of the State Fire Marshal to perform acts regulated by the provisions of R.S. 40:1664.1 et seq., or these rules;
15. failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;
16. installing a special locking system prior to submitting plans and required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal;
17. failing to possess the equipment, tools, NFPA codes, standards or manufacturer's UL listed installation and service manuals to properly certify, inspect, install, integrate, maintain or service the systems or equipment for which a firm is certified;

18. failing to adhere to all applicable laws and rules governing property protection systems and/or equipment as promulgated by the Office of the State Fire Marshal;

19. engaging in false, misleading or deceptive acts or unfair or unethical business practices;

20. aiding and abetting an unlicensed person or firm to engage in property protection activity;

21. aiding and abetting a person or firm to certify, install, inspect, or service property protection systems or equipment contrary to code or manufacturer specifications;

22. failing to adhere to local ordinances regarding solicitation, permitting and occupational licensing and activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2746 (September 2011).

§3245. Enforcement

A. The State Fire Marshal or his designated representative, shall make, or cause to be made, from time to time, inspections of a firm's physical locations, vehicles or job sites to verify required certificates, employee lists, employee licenses, business records and insurances, equipment, tools, NFPA codes, standards and manufacturer's manuals and property protection activity performed, and as circumstances dictate, to determine that firms and their employees are engaging in activity in accordance with the requirements of R.S. 40:1664.1 et seq., and these rules.

B. The State Fire Marshal shall investigate all complaints of alleged violations of R.S. 40:1574 et seq., 40:1664.1 et seq., and these Rules. Complaints of alleged violations shall be made in writing to the Licensing Section of the State Fire Marshal's Office. The office shall make available a complaint form to be used as needed. Penalties shall be administered to those firms and/or employees found to have violated these laws and/or rules. Proposed administrative penalty letters shall act as official notification of alleged violations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2747 (September 2011).

§3247. Administrative Actions

A. The State Fire Marshal may refuse the issuance or renewal of, suspend, or revoke a certificate of registration, or license and impose administrative penalties, if, after notice, as provided for by the Administrative Procedures Act, it is found that a person, certified firm, or licensee or an applicant for registration, or license, failed to comply with the provisions of R.S. 40:1664.1 et seq., or these Rules. The State Fire Marshal may consider violations in other states or failing to pay outstanding fine amounts as grounds for refusing the issuance of or the renewing of a certificate of registration or license. Additionally, where it is brought to the attention of the state fire marshal, violations in other states or failing to pay outstanding fine amounts may result in the suspension of or revocation of a certificate of registration or license.

1. Offenses. The following categories shall denote classification of offenses for persons, firms and employees for determining the penalty to be imposed:

a. minor:

i. failing to notify the Office of the State Fire Marshal of any changes that affect licensure;

ii. Failing to adhere to the tagging and/or notification policies of the Office of the State Fire Marshal;

iii. working with an expired (31-45 days) license or certificate of registration;

iv. failing to properly display a firm certificate;

b. serious:

i. failing to notify local law enforcement or fire service agencies of the installation of a smoke inducing security system;

ii. working an apprentice, or as an apprentice, without direct supervision by a technician licensed to perform the work being done and licensed to the same firm;

iii. working an employee without the appropriate endorsement of license;

iv. working without the appropriate endorsement of firm certificate or license;

v. working with an expired (46-60 days) license or firm certificate;

vi. contracting to a firm or person who is not properly certified or licensed through the Office of the State Fire Marshal to perform acts regulated by the provisions of R.S. 1664.1 et seq., or these rules;

vii. failing to possess the equipment, tools, NFPA codes, standards or manufacturer's UL listed installation and service manuals to properly certify, inspect, install, integrate, maintain or service the systems or equipment for which a firm is certified;

viii. failing to adhere to local ordinances regarding solicitation, permitting and occupational licensing activities;

ix. committing five or more minor offenses within a three-year period;

c. major:

i. charging a customer for work that was not performed;

ii. impersonating the state fire marshal, his designated representative or any other public official;

iii. intimidating or coercing a customer;

iv. misrepresenting oneself and/or one's firm to a customer, prospective customer or to employees of the Office of the State Fire Marshal, his designated representative or other public official;

v. falsifying an application or any other document submitted to obtain a certificate or license or other documentation requested by or submitted to the Office of the State Fire Marshal;

vi. falsifying tags, labels, inspection reports, invoices and/or other documents;

vii. working without any or with a suspended firm certificate of registration or license;

viii. working an employee with a suspended license;

ix. aiding and abetting an unlicensed person or firm to engage in property protection activity.

x. certifying, inspecting, installing, integrating, maintaining or servicing special locking systems and/or equipment contrary to plans submitted for review, applicable NFPA codes, standards, and/or manufacturer's specifications without specific written permission from the Office of the State Fire Marshal;

xi. aiding and abetting a person or firm to certify, install, inspect, or service property protection systems or equipment contrary to code or manufacturer specifications;

xii. installing a special locking system or equipment prior to submitting plans and required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal;

xiii. committing three or more Serious offenses within a three year period;

xiv. engaging in false, misleading or deceptive acts or unfair or unethical business practices.

2. Penalties. The following fine schedule shall be used to access fines to persons, firms, and/or employees who violate the laws and rules governing property protection activity. Penalties will be imposed to persons, firms and/or employees based on the classification of offense. Each classification of offense will have a minimum and maximum fine shown and any other administrative penalty that may be imposed.

a. Firms and/or persons

i. minor: \$50 fine to \$250 fine and/or official warnings may be imposed;

ii. serious: \$250 fine to \$1,000 fine and/or suspensions of up to 90 days may be imposed;

iii. major: \$1,000 fine to \$5,000 fine and/or suspensions from 91 to 365 days may be imposed and/or revocation of certificate may be imposed.

b. Employees and/or persons:

i. minor: \$10 fine to \$50 fine and/or official warnings may be imposed;

ii. serious: \$50 fine to \$500 fine and/or suspensions of up to 90 days may be imposed;

iii. major: \$500 to \$5,000 fine and/or suspensions from 91 to 365 days may be imposed and/or revocation of license may be imposed.

c. The State Fire Marshal may deviate from this fine schedule where circumstances and/or evidence warrant a more stringent or more lenient penalty.

d. In lieu of fine payments, the state fire marshal may require remedial or additional training be obtained by those found in violation.

e. Those offenses not enumerated in this list shall receive penalties for violations of similar nature.

f. The Office of the State Fire Marshal may also pursue criminal charges or injunctive relief for any of the above enumerated offenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2747 (September 2011).

§3249. Severability

A. If any provision of these rules or the application thereof to any firm, person, employee or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of these rules which can be given effect without the invalid provisions or application. To this end, all provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2748 (September 2011).

§3251. Adopted Standards

A. The office adopts by reference in their entirety those copyrighted codes or standards enumerated in LAC 55:V:103 published by and available from the National Fire Protection Association, Inc.(NFPA), Batterymarch Park, Quincy, Massachusetts, 02268. A copy of the codes and standards shall be kept available for public inspection in the Office of the State Fire Marshal. In addition to those listed standards, the following shall also be adhered to as applicable:

1. ASME/ANSI A17.1—Safety Code for Elevators and Escalators;

2. ASME/ANSI A17.3—Safety Code for Existing Elevators and Escalators;

3. ASME/ANSI A117.1—Specifications for Handicapped Accessibility;

4. ADAAG—American Disability Accessibility Act Guidelines;

5. United States Department of Transportation;

6. Code of Federal Regulations 49.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2748 (September 2011)

§3253. National Recognized Testing Laboratory

A. This office approves Underwriters Laboratories, Inc., Factory Mutual Research Corporation, the United States Testing Company, Inc. and Intertek-ETL as nationally recognized testing laboratories for the purpose of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2748 (September 2011).

§3255. Equipment and Facilities

A. Each certified firm location shall be required to possess the equipment, tools, NFPA codes, standards and

manufacturer's UL listed installation and service manuals necessary to properly certify, inspect, install, integrate, maintain or service the systems or equipment for which it is certified. Required codes, standards and manuals may be either in print or in an electronic format.

B. The following equipment and code books shall be required depending upon the firm's certification endorsement:

1. security:
 - a. certification, service, partial impairment (optional) and impairment tags;
 - b. installation tags;
 - c. NFPA 70, 72, 80 and 101 (latest edition as enumerated in LAC 55:V.103);
 - d. copy of life safety and property licensing law and rules;
 - e. manufacturer's installation manuals;
 - f. sound level meter;
2. household fire warning:
 - a. NFPA 70, 72 and 101 (latest edition as enumerated in LAC 55:V.103);
 - b. copy of life safety and property licensing law and rules;
 - c. manufacturer's installation manuals;
 - d. sound level meter;
3. closed circuit television:
 - a. NFPA 70 (latest edition as enumerated in LAC 55:V.103);
 - b. copy of life safety and property licensing law and rules;
 - c. manufacturer's installation manuals;
4. locksmith:
 - a. certification, service, partial impairment (optional) and impairment tags;
 - b. installation tags;
 - c. NFPA 70, 80 and 101 (latest edition as enumerated in LAC 55:V.103);
 - d. copy of life safety and property licensing law and rules;
 - e. manufacturer's installation manuals;
5. bank locking:
 - a. NFPA 70, 80 and 101 (latest edition as enumerated in LAC 55:V.103);
 - b. copy of life safety and property licensing law and rules;
 - c. manufacturer's installation manuals;
6. detention locking:
 - a. certification, service, partial impairment (optional) and impairment tags;
 - b. installation tags;
 - c. NFPA 70, 80 and 101 (latest edition as enumerated in LAC 55:V.103);
 - d. copy of life safety and property licensing law and rules;
 - e. manufacturer's installation manuals;
7. door hardware:
 - a. NFPA 70, 80 and 101 (latest edition as enumerated in LAC 55:V.103);
 - b. copy of life safety and property licensing law and rules;
 - c. manufacturer's installation manuals;
8. door hardware installation:

- a. NFPA 70, 80 and 101 (latest edition as enumerated in LAC 55:V.103);
 - b. copy of life safety and property licensing law and rules;
 - c. manufacturer's installation manuals;
9. special locking:
- a. certification, service, partial impairment (optional) and impairment tags;
 - b. installation tags;
 - c. NFPA 70, 80 and 101 (latest edition as enumerated in LAC 55:V.103);
 - d. copy of life safety and property licensing law and rules;
 - e. manufacturer's installation manuals;
10. gate systems:
- a. certification, service, partial impairment (optional), and impairment tags;
 - b. installation tags;
 - c. NFPA 70, 80 and 101 (latest edition as enumerated in LAC 55:V.103);
 - d. copy of life safety and property licensing law and rules;
 - e. manufacturer's installation manuals.

C. The State Fire Marshal or his representative(s) may inspect a firm's physical location(s) or vehicle(s) to ensure the proper equipment, tools, NFPA codes, NFPA standards, manufacturer's UL listed installation and service manuals and business records and insurances are possessed by the firm. Firms must possess all applicable manufacturers' installation and service manuals for the systems and/or equipment it services.

D. Each Louisiana operating location must house all business records of the firm. Business records may be either electronic or hard copies. Business records shall include, but not be limited to, invoices, work orders, service reports, payroll records, federal and state tax information for employees, occupational licenses, local solicitation permits, income tax filings, property tax notifications and filings, utility records, certificates of insurance for general liability and workmen compensation coverage and workers compensation reports and/or filings.

E. The State Fire Marshal or his representative(s) may require that a firm or its employee(s) demonstrate a proficiency to use the necessary equipment to properly certify, inspect, install, integrate, maintain or service special locking systems and equipment. Proficiency shall be deemed to be achieved if the system or equipment complies with the applicable NFPA code or standard and/or manufacturer's specifications.

F. For those firms or their employee(s) which do not possess the proper equipment, tools and manuals or who fail to demonstrate the ability to properly perform the required work, then an order of correction shall be made to the contractor or his employee to obtain the required equipment, tools, NFPA codes, standards or manual or to obtain additional training within a specified time period. Another inspection shall be conducted by the state fire marshal or his representative to verify compliance with the order of correction. Good cause must be shown if proficiency is not shown or the required equipment, tools, NFPA codes, standards or manuals are not obtained by the time of the second inspection. Additional time may be granted for good

cause. If good cause is not shown, then administrative action may be pursued.

G. The office may specifically enumerate additional required equipment or business records at a later date should it be deemed necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2748 (September 2011).

§3257. Plan Review

A. No special locking system requiring plan submittal in accordance with R.S. 40:1574 et seq., shall be installed prior to submitting plans with required documentation and receiving authorization to install such system from the Plan Review Section of the Office of the State Fire Marshal. However, the installation of wiring only for a special locking system shall be permitted upon receipt of plans and a project review number being issued by the Office of the State Fire Marshal, Plan Review Section. No system locks, devices or panels shall be installed prior to review or written authorization by the Office of the State Fire Marshal.

B. All submittals for plan review shall identify the licensed firm performing the installation and the responsible qualifier. The firm that is responsible for the installation of the locks shall be the firm listed as the installation firm.

C. Only listed qualifiers of a firm shall be listed on applications for full plan review or exemption to full plan review. Additionally, any correspondence regarding a submittal, to include but not be limited to, telephone, email or written correspondence, shall only be through a listed qualifier of the firm, owner of the firm, a professional of record or owner of the building.

D. A new plan review shall be required when a firm takes over a project in progress from another firm, listing the new firm's information and any changes to the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2750 (September 2011).

§3259. Electrical Contractors

A. All electrical contractors who have met all requirements and passed a prescribed written examination based upon National Fire Protection Association (NFPA) Code 70, the National Electrical Code, that has been given either by a recognized political subdivision of the State of Louisiana or by the State Licensing Board for Contractors, shall be authorized to install special locking systems, security, household fire and closed circuit television systems and equipment in accordance with manufacturer's specifications and applicable National Fire Protection Association (NFPA) codes as enumerated in LAC 55:V.103 and these rules.

B. The electrical contractor shall ensure that plans have been submitted and reviewed by the state fire marshal prior to installing any new or renovated special locking system. The system shall be certified by a property protection contractor upon the completion of the installation.

C. Electrical contractors are not permitted to certify, inspect or service special locking systems.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2750 (September 2011).

§3261. Miscellaneous Provisions

A. Marking of vehicles. All service vehicles owned or operated by firms or their employees used for regulated activities, as defined by R.S. 40:1664.1 et seq., and these Rules shall have the firm name, firm certificate number and firm telephone number permanently inscribed, painted, stenciled or affixed by magnetic means on such vehicles. Such markings shall be a minimum of two and one-half inches in height and not less than one-fourth inch in width. Letters and numbers shall be on a contrasting background and be conspicuously seen from the outside of the vehicle. This requirement does not prevent a firm to use an unmarked vehicle on special occasions where covert work is required.

B. Restrictions

1. Certificate or license holders are not agents or representatives of the State of Louisiana, the Department of Public Safety or the Office of the State Fire Marshal. No claims or inferences of such shall be made.

2. A certificate or license does not authorize anyone to enforce these Rules or to enter any building without the owner's permission or to engage in property protection activity without the owner's permission.

3. Certificate and license holders shall not allow the use of their certificate or licenses by other firms, persons or employees.

4. A license holder shall not perform any property protection activity unless employed by and within the course and scope of that employment with a firm regulated by the provisions of R.S. 40:1664.1 et seq.

5. A person shall not perform any act for which a certificate or license is required unless:

a. first being certified or licensed to perform such acts; and

b. is employed by a firm certified to perform those acts; and

c. is performing those acts for the certified firm by which he is employed.

6. An apprentice, as defined in these rules, shall not perform any activity regulated by R.S. 40:1664.1 et seq., unless employed by a certified firm and directly supervised by a license holder authorized to perform such act or acts. Both the apprentice and licensee shall be employed by the same certified firm.

7. Nothing in these rules shall prevent an appropriately certified firm or licensed person from certifying, inspecting, installing, integrating, maintaining, selling, or servicing any manufacturer's system or equipment.

C. Multiple Names and Locations

1. If a firm uses multiple names (i.e. trade or "doing business as" names), it must apply for a separate certificate of registration for each name if the firm name has a separate state or federal tax number. If the firm name does not have a separate state or federal tax number, then it shall be permitted to be registered with the firm's primary name. Only one trade or "doing business as" name shall be permitted to be registered along with the firm's primary name. Any other name that the firm wishes to use must have its own certificate of registration and must meet all licensing requirements as a separate and independent firm.

2. If a firm uses multiple locations, each location must apply for and receive its own certificate of registration. Each location is considered a separate firm and must meet all licensing requirements for firms.

3. If a firm advertises telephone numbers for dispatch purposes in various locations but has no physical office in those locations, then the advertisement must indicate "For Dispatch Only."

D. Special Locking System Required Certification

1. A building owner shall ensure that each special locking system within his commercial business is certified

annually. Only the following systems as outlined in NFPA 101 shall require an annual certification:

- a. electronically controlled egress door assemblies;
- b. health care locking systems;
- c. delayed egress systems;
- d. access controlled systems;
- e. elevator lobby exit access door assembly locking systems;
- f. pedestrian gate systems; and
- g. detention locking systems.

2. Special locking systems shall be certified by a firm with the appropriate endorsement as follows:

Type of Endorsement	Type of System						
	Electronically Controlled Egress Door Assemblies	Health Care Locking Systems	Access Control Systems	Delayed Egress Systems	Elevator Lobby Exit Access Door Assembly Locking Systems	Pedestrian Gate Systems	Detention Locking Systems
Security	Yes	Yes	Yes	Yes	Yes	Yes	No
Locksmith	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Special Locking	Yes	Yes	Yes	Yes	Yes	Yes	No
Gate Systems	No	No	No	No	No	Yes	No
Detention Locking	No	No	No	No	No	No	Yes

3. For the purpose of determining the exact date of a required certification, the following guidelines shall apply: where only the year is known but not the month, January shall be used for the month, where the month is known but not the day, the first day of the month shall be used.

4. Annual certifications must be performed between 30 days prior and 30 days after the previous year's certification date.

5. The certified firm shall not be responsible for more frequent inspections as required by the applicable engineered specifications, manufacturer's specifications or per the inspection, testing and maintenance chapters as set forth in the applicable NFPA codes and standards unless under contract to perform such.

E. Advertising. All advertising indicating property protection activity within Louisiana, including but not limited to telephone advertising, bids, letter head and business cards, shall indicate a firm's certificate of registration number, the firm's physical address and local telephone number. Yard signs must include the firm's certificate of registration number and may include a monitoring station telephone number. They do not need to include the firm's local telephone or physical address.

F. Service Invoices and Inspection Reports. All service invoices or inspection reports shall reflect the inspection, installation, integration, maintenance, or service performed, all parts replaced, date of service, the firm name, the firm certificate number, the technician's name who performed the work and the technician's license number.

G. Locking Service Record Keeping

1. A locksmith who bypasses, manipulates, or originates a first key by code for a device safeguarding an area where access is meant to be limited, whether or not for compensation, shall document:

- a. where the work was performed;
- b. the name, address, date of birth, telephone number, and driver's license number or other identification number of the person requesting the work to be done; and
- c. the signature of that person.

2. A copy of the work order form shall be kept by the licensed locksmith for a period of two years and shall include:

- a. the name and license number of the locksmith; or
- b. the name and identification number of the registered employee who performed the services.

3. Work order forms required to be kept under this Section shall be available for inspection upon written request made three days in advance by the state fire marshal or his representative(s) or a law enforcement agency.

4. A locksmith who bypasses, manipulates, or originates a first key for a motor vehicle, whether or not for compensation, shall document:

- a. the name, address, date of birth, telephone number, vehicle identification number, and driver's license number or other identification number of the person requesting entry; and
- b. the signature of that person.

5. A copy of the work order form shall be kept by the licensed locksmith for a period of two years and shall include:

- a. the name and license number of the locksmith; or
- b. the name and identification number of the registered employee who performed the services.

6. Work order forms required to be kept under this Section shall be available for inspection upon written request made three days in advance by the state fire marshal or his representative(s) or a law enforcement agency.

H. Security System Panels, Factory Default Code Reset

1. A security system owner who wishes to change security firms must notify the existing firm in writing of his wishes if he desires to have the panel program code reset. All financial obligations of the system owner to the existing firm must be met prior to firm being required to reset the panel program code to factory default.

2. The firm shall return the panel program code to factory default within five working days upon written notice by the system owner.

3. Where a panel program code cannot be reset to factory default, then the panel shall be cleared of its memory to allow complete reprogramming or the existing firm shall install a new control panel for the security system owner.

4. This provision does not apply to panels which are proprietary in nature and will not work unless monitored and/or maintained by the proprietary firm.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1664.2 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Fire Marshal, LR 37:2750 (September 2011).

Jill P. Boudreaux
Under Secretary

1109#047

RULE

Department of Transportation and Development Professional Engineering and Land Surveying Board

General Provisions

(LAC 46:LXI.Chapters 7, 9, 13, 15 17, 29, and 31)

Editor's Note: This Section is being repromulgated to correct a citation error. The original Rule may be viewed in its entirety on pages 2411-2421 of the August 20, 2011 edition of the *Louisiana Register*.

Under the authority of the Louisiana Professional Engineering and Land Surveying Licensure Law, R.S. 37:681 et seq., and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Professional Engineering and Land Surveying Board has amended its Rules contained in LAC 46:LXI.Chapters 1 through 33.

These are primarily technical revisions of existing rules under which LAPELS operates. One set of revisions to a number of Sections change the titles of LAPELS' executive secretary and deputy executive secretary to be consistent with recent changes to the licensure law. The revisions to Section 707 change (i) the composition and duties of complaint review committees to be consistent with recent changes to the licensure law and (ii) the date for election of board officers. The revisions to this Section also add to the list of LAPELS standing committees the firm licensure committee. The adoption of Section 727 is to memorialize the procedure for the issuance of declaratory orders and rulings. The revisions to Section 909 change the terminology used in describing the requisite experience for professional land surveyor licensure to be consistent with recent changes to the licensure law. The revisions to Section 1301 change the application deadlines for licensure. The revisions to Sections 1509 make it clear that applicants for licensure only need to gain the requisite experience by the time of licensure rather than by the time of application. The revisions to Section 2301 simply change terminology. The revisions to Sections 2901 through 2913 clarify and update the standards of practice for boundary surveys. The revisions to Section 3105 correct the reference to the standards of practice for boundary surveys. The revisions to Sections 3111 and 3113 make it clear that the authoring and publishing of books related to engineering or land surveying will qualify for continuing education credit.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LXI. Professional Engineers and Land Surveyors

Chapter 13. Examinations

§1301. General

A. - B. ...

C. Timely filing of an application with the board does not assure that an applicant will be permitted to take an examination, or be scheduled for examination on a particular date. Effective until July 1, 2011 and ending with the October 2011 exam administration, to be considered for a specific examination date, the application for the following examinations should be received at the board office no later than January 1 for the April examination administration and July 1 for the October examination administration: fundamentals of engineering; fundamentals of land surveying; principles and practice of engineering; principles and practice of land surveying; and Louisiana laws of land surveying. Effective July 1, 2011 and beginning with the April 2012 exam administration, to be considered for a specific examination date, the application for the following examinations should be received at the board office no later than December 1 for the April examination administration and June 1 for the October examination administration: fundamentals of engineering; fundamentals of land surveying; principles and practice of engineering; principles and practice of land surveying; and Louisiana laws of land surveying.

D. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:688.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 5:113 (May 1979), amended LR 7:647 (December 1981), LR 11:363 (April 1985), LR 16:774 (September 1990), LR 19:57 (January 1993), amended by the Department of Transportation and Development, Professional Engineering and Land Surveying Board, LR 27:1030 (July 2001), LR 30:1714 (August 2004), LR 35:1909 (September 2009), LR 37:2413 (August 2011), repromulgated LR 37:2752 (September 2011).

Donna D. Sentell
Executive Director

1109#003

RULE

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Deer Management Assistance Program
(LAC 76:V.111 and 119)

Editor's Note: This Rule is being repromulgated to correct an error upon submission. This Rule was originally promulgated in the July 20, 2011 *Louisiana Register* on pages 2187-2189. The original §111.A.1.d.i.(a) was incorporated into §111.A.1.d.i.

The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission does hereby amend the regulations for the Deer Management Assistance Program.

**Title 76
WILDLIFE AND FISHERIES**

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§111. Rules and Regulations for Participation in the Deer Management Assistance Program

A. The following rules and regulations shall govern the Deer Management Assistance Program.

1. Application Procedure

a. Application for enrollment of a new cooperator in the Deer Management Assistance Program (DMAP) must be submitted to the Department of Wildlife and Fisheries by August 1. Application for the renewal enrollment of an active cooperator must be submitted to the Department of Wildlife and Fisheries annually by September 1.

b. Applicants will select from 1 of 4 levels of DMAP participation. Level 1 participation is limited to qualifying clubs of 1000 acres or more, and will require collection of complete harvest data, including jaw bone removal, weights, antler measurements, and checking females for lactation. Issuance of both antlered and antlerless tags will be mandatory. Level 2 participation is limited to clubs with 500 acres or more and will also require collection of complete harvest data. Antlerless tags only will be issued unless antlered tags are specifically requested and needed to meet harvest objectives. Level 3 participation will be for tracts of 40 acres or larger, and only require recording the total number of male and female deer harvested. Only antlerless tags are available. Licensed deer farmers authorized to hunt deer by Department of Agriculture and Forestry and Department of Wildlife and Fisheries are eligible to participate in this level. Level 4 participation will only require recording the total number of male and female deer harvested and is only available for nuisance deer issues such as crop or lawn depredation. Only antlerless tags will be issued. There is no acreage minimum for Level 4.

c. Each application for a new cooperator must be accompanied by a legal description of lands to be enrolled and a map of the property. Renewal applications must be accompanied by a legal description and map only if the boundaries of the enrolled property have changed from records on file from the previous hunting season. This information will remain on file in the appropriate ecoregion field office.

d. Fee schedule:

- i. Level 1—\$250 + \$50, dependent on acreage;
 - (a). >1,500 acres but <10,000 acres, additional \$100;
 - (b). >10,000 acres but <20,000 acres - \$500;
 - (c). >20,000 acres but <50,000 acres - \$1,500;
 - (d). >50,000 acres but <75,000 acres - \$2,500;
 - (e). >75,000 acres - \$3,750 minimum, to be negotiated;
- ii. Level 2—\$100 + \$50-100, dependent on acreage;
 - (a). >500 but <1,500 acres, additional \$50;
 - (b). >1,500 acres but <10,000 acres, additional \$100;
 - (c). >10,000 acres but <20,000 acres - \$500;
 - (d). >20,000 acres but <50,000 acres - \$1,500;
 - (e). >50,000 acres but <75,000 acres - \$2,500;

- (f). >75,000 acres - \$3,750 minimum, to be negotiated;
- iii. Level 3—\$100 + \$50-100, dependent on acreage;
 - (a). <500 acres, no additional cost;
 - (b). >500 but <1,500 acres, additional \$50;
 - (c). >1,500 acres but <10,000 acres, additional \$100;
 - (d). >10,000 acres but <20,000 acres - \$500;
 - (e). >20,000 acres but <50,000 acres - \$1,500;
 - (f). >50,000 acres but <75,000 acres - \$2,500;
 - (g). >75,000 acres - \$3,750 minimum, to be negotiated;
- iv. Level 4—no fee.
- e. DMAP fees must be paid to the Department of Wildlife and Fisheries Fiscal Section prior to September 15.
- f. An agreement must be completed and signed by the official representative of the cooperator and submitted to the appropriate ecoregion field office for approval. This agreement must be completed and signed annually.
- g. Boundaries of lands enrolled in DMAP shall be clearly marked and posted with DMAP signs in compliance with R.S. 56:110 and the provisions of R.S. 56:110 are only applicable to property enrolled in DMAP. DMAP signs shall be removed if the land is no longer enrolled in DMAP. Rules and regulations for compliance with R.S. 56:110 are as follows.
 - i. The color of DMAP signs shall be orange. The words DMAP and Posted shall be printed on the sign in letters no less than four inches in height. Signs may be constructed of any material and minimum size is 11 1/4" x 11 1/4."
 - ii. Signs will be placed at 1000 foot intervals around the entire boundary of the property and at every entry point onto the property.
- h. By enrolling in the DMAP, cooperators agree to allow department personnel access to their lands for management surveys, investigation of violations and other inspections deemed appropriate by the department. The person listed on the DMAP application as the contact person will serve as the liaison between the DMAP cooperator and the department.
 - i. Each cooperator that enrolls in DMAP is strongly encouraged to provide keys or lock combinations annually to the enforcement division of the Department of Wildlife and Fisheries for access to main entrances of the DMAP property. Provision of keys is voluntary. However, the cooperator's compliance will ensure that DMAP enrolled properties will be properly and regularly patrolled.
 - j. Large acreage ownerships (>10,000 acres) may further act as cooperators and enroll additional non-contiguous tracts of land deemed sub-cooperators. Sub-cooperators shall be defined by the large acreage ownerships lease agreements. Non-contiguous sub-cooperator lands enrolled by large acreage ownerships will have the legal description and a map included for those parcels enrolled as sub-cooperators. Sub-cooperators shall be subject to the same requirements, rules and regulations as cooperators.
 - k. The department may grant season extensions to hunt deer with any legal weapon, up to 15 days prior to or after the established season framework for the regular Deer Area season, not to exceed a total of 30 days, if requested by

the DMAP Level 1 Cooperator in order to fulfill property-specific objectives and goals if biological reasons and limitations exist that support such extensions. Additionally, the department may grant season extensions to hunt rabbits by any legal means for up to 10 days after the established rabbit season framework, if requested by the DMAP Level 1 Cooperator in order to fulfill property-specific objectives and goals if biological reasons and limitations exist that support such extensions.

2. Tags

a. A fixed number of special tags will be provided by the department to each cooperator/sub-cooperator in DMAP to affix to deer taken as specified by the program participation level. These tags shall be used during all seasons. Tags are only authorized on DMAP lands for which the tags were issued.

b. Each hunter must have a tag in his possession while hunting on DMAP land in order to harvest an antlerless deer (or antlered deer if antlered deer tags are issued). The tag shall be attached through the hock in such a manner that it cannot be removed before the deer is transported. The DMAP tag will remain with the deer so long as the deer is kept in the camp or field, is enroute to the domicile of its possessor, or until it 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. The DMAP number shall be recorded on the possession tag of the deer or any part of the animal when divided and properly tagged.

c. DMAP tagged antlered or antlerless deer harvested on property enrolled in DMAP do not count in the daily or season bag limit.

d. All unused tags shall be returned by March 1 to the ecoregion field office which issued the tags.

3. Records

a. Cooperators/sub-cooperators are responsible for keeping accurate records on forms provided by the department for all deer harvested on lands enrolled in the program. Mandatory information includes tag number, sex of deer, date of kill, name of person taking the deer, LDWF i.d. number and biological data (age, weight, antler measurements, lactation) as deemed essential by the Department of Wildlife and Fisheries Deer Section. Biological data collection must meet quality standards established by the Deer Section. Documentation of mandatory information shall be kept daily by the cooperator/sub-cooperator. Additional information may be requested depending on management goals of the cooperator/sub-cooperator.

b. Information on deer harvested shall be submitted by March 1 to the ecoregion field office handling the particular cooperator/sub-cooperator.

c. The contact person shall provide this documentation of harvested deer to the department upon request. Cooperators/sub-cooperators who do not have a field camp will be given 48 hours to provide this requested documentation.

B. Suspension and cancellation of DMAP Cooperators/Sub-Cooperators

1. Failure of the cooperator/sub-cooperator to follow these rules and regulations may result in suspension and cancellation of the program on those lands involved. Failure to make a good faith attempt to follow harvest recommendations may also result in suspension and cancellation of the program.

a. Suspension of cooperator/sub-cooperator from DMAP. Suspension of the cooperator/sub-cooperator from DMAP, including forfeiture of unused tags, will occur immediately for any misuse of tags, failure to tag any antlerless deer, or failure to submit records to the Department for examination in a timely fashion. Suspension of the cooperator/sub-cooperator, including forfeiture of unused tags, may also occur immediately if other DMAP rules or wildlife regulations are violated. Upon suspension of the cooperator/sub-cooperator from DMAP, the contact person may request a Department of Wildlife and Fisheries hearing within 10 working days to appeal said suspension. Cooperation by the DMAP cooperator/sub-cooperator with the investigation of the violation will be taken into account by the department when considering cancellation of the program following a suspension for any of the above listed reasons. The cooperator/sub-cooperator may be allowed to continue with the program on a probational status if, in the judgment of the department, the facts relevant to a suspension do not warrant cancellation.

b. Cancellation of cooperator/sub-cooperator from DMAP. Cancellation of a cooperator/sub-cooperator from DMAP may occur following a guilty plea or conviction for a DMAP rule or regulation violation by any individual or member hunting on the land enrolled in DMAP. The cooperator/sub-cooperator may not be allowed to participate in DMAP for one year following the cancellation for such guilty pleas or conviction. Upon cancellation of the cooperator/sub-cooperator from DMAP, the contact person may request an administrative hearing within 10 working days to appeal said cancellation.

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 17:204 (February 1991), amended LR 25:1656 (September 1999), LR 26:2011 (September 2000), LR 30:2496 (November 2004), LR 34:1427 (July 2008), LR 35:1910 (September 2009), LR 37:2187 (July 2011), repromulgated LR 37:2753 (September 2011).

§119. Rules and Regulations for Participation in the Landowner Antlerless Deer Tag Program

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:110.1 and R.S. 56:115.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 26:2011 (September 2000), amended LR 27:1935 (November 2001), LR 30:2497 (November 2004), LR 34:1443 (July 2008), repealed LR 37:2189 (July 2011), repromulgated LR 37:2754 (September 2011).

Robert J. Barham
Secretary

1109#020

Notices of Intent

NOTICE OF INTENT

Amite River Basin and Water Conservation District

Expropriation of Property

In accordance with the provisions of R.S. 38:3302 et seq., the Amite River Basin Drainage and Water Conservation District hereby gives notice of its intent to adopt the following Rule. The purpose of this Rule is to establish policies and procedures for the acquisition of property for the Comite Diversion Canal Project.

AMITE RIVER BASIN DRAINAGE AND WATER CONSERVATION DISTRICT

Chapter 3. Expropriation of Property by a Declaration of Taking by the Amite River Basin Drainage and Water Conservation District

§301. Short Title

A. This Chapter shall be known as Expropriation of Property by a Declaration of Taking by the Amite River Basin Drainage and Water Conservation District.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

§302. Legislative Declaration

A. The board of commissioners for the Amite River Basin Drainage and Water Conservation District was created by La. R.S. 38:3302. Any rules or regulations for comprehensive drainage, flood control and water resources development, reservoir, and diversion canal systems shall be adopted in accordance with La. R.S. 38:3306. Therefore, prior to the adoption, amendment, or repeal of any rule or regulation by the board, the proposed rule or regulation shall be submitted to the House Committee on Transportation, Highways, and Public Works and the Senate Committee on Transportation, Highways, and Public Works. Oversight review of rules and regulations shall be conducted by the respective committees. The board shall have the authority to establish adequate drainage, flood control, and water resources development to include but not be limited to construction of reservoirs, diversion canals, gravity and pumped drainage systems, and other flood control works. It is further noted that under La. R.S. 38:3306, the board may expropriate property subject to and in accordance with R.S. 48:441-460, and this Chapter shall be construed to carry out those objectives and purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

§303. Statement of Purpose

A. It is the purpose of this Chapter to outline a procedure for expropriation of property by the Amite River Basin Drainage and Water Conservation District in order to

promote, preserve, and protect public safety by and through the effective control of all public drainage, flood control and water resources development, reservoirs, and diversion canals in the district.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

§304. Property Defined

A. As used in this part, the term “property” means immovable property, including servitudes and other rights in or to immovable property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

§305. Authority to Expropriate and Acquisition of Property Prior to Judgment

A. Where the Amite River Basin Drainage and Water Conservation District cannot amicably acquire property needed for canal or bridge purposes, the board of commissioners may acquire the same by expropriation.

B. In any suit for the expropriation of property, including both corporeal property and servitudes, the board of commissioners may acquire the property prior to judgment in the trial court in the manner provided in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

§306. Contents of petition for expropriation; place of filing

A. The rights of expropriation granted by this Part shall be exercised in the following manner.

1. A petition shall be filed by the plaintiff in the district court of the parish in which the property to be expropriated is situated. However, where the property to be expropriated extends into two or more parishes and the owner of the property resides in one of them, the petition shall be filed in the district court of the parish where the owner resides, but if the owner does not reside in any one of the parishes into which the property extends, the petition may be filed in any one of the parishes. In all such cases, the court wherein the petition is filed shall have jurisdiction to adjudicate as to all the property involved.

2. The petition shall contain a statement of the purpose for which the property is to be expropriated, describing the property necessary therefor with a plan of the same, a description of the improvement thereon, if any, and the name of the owner or owners as shown in the public records.

3. The petition shall have annexed thereto the following.

a. A certified copy of a certificate of authorization to expropriate executed by resolution of the board of

commissioners, declaring that the taking is necessary or useful for the purposes of this Part.

b. A certificate signed by the executive director of Amite River Basin Commission or, in his absence, his principal assistant, declaring that he has fixed the right-of-way in a manner sufficient in his judgment to provide presently and in the future for the public interest, safety, and convenience.

c. A certificate signed by the executive director of Amite River Basin Commission, declaring that the location and design of the proposed improvements are in accordance with the best modern practices adopted in the interest of the safety and convenience of the public. In the absence of the executive director of Amite River Basin Commission, his chief assistant may sign for him.

d. An itemized statement of the amount of money estimated to be the full extent of the owner's loss for the taking or the damage, or both, as the case may be, the methodology used in the estimate, and all of the information required by R.S. 48:443 relative to estimators. It shall be signed by those who made the estimate, showing the capacity in which they acted, and the date on which it was made. The executive director of the Amite River Basin Drainage and Water Conservation District or his designated representative shall signify his approval on the face thereof. It shall not be grounds to dismiss the taking if it is shown that the estimate is or may be less than the full extent of the owner's loss.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2755 (September 2011).

§307. Appointment of Estimators; Restrictions in Selection

A. The executive director of the Amite River Basin Drainage and Water Conservation District shall select one or more persons to make the estimate of just compensation except when the estimate is expected to exceed the amount of thirty thousand dollars in which case he shall select two or more persons. However, when the board of commissioners cannot amicably acquire clear title to property solely for reasons unrelated to the amount of just compensation to be paid such as unopened successions, absentee defendants, or partial interests, one person shall be selected to make the estimate regardless of the amount. The estimate shall be performed by either a real estate appraiser or real estate specialist or a licensed Louisiana appraiser certified pursuant to the Louisiana Real Estate Appraisers Law. The person performing the estimate shall be familiar with land values in the vicinity of the property to be taken and shall conduct the appraisal in accordance with real estate appraisal guidelines.

B. Each estimator in determining the extent of the owner's loss shall consider the replacement value of the property taken.

C. Prior to filing its petition, the board of commissioners shall provide to the owner the following information with respect to each estimate of the owner's loss.

1. The name, address, and qualifications of the person or persons preparing the estimate.
2. The amount of the estimate.

3. A description of the methodology used in the estimate.

4. Upon request by the owner, a copy of the estimate prepared by each estimator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

§308. Minable Minerals

A. Before exercising the rights of expropriation provided for in this Part, the state or any of its departments, offices, boards, commissions, agencies, or instrumentalities, except political subdivisions but specifically including levee districts and their boards, shall, upon request of the owner whose property is to be taken, provide the owner with the results of tests by the Louisiana Geological Survey that show whether or not sand or gravel is present in the property. The test shall be done at no cost to the property owner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

§309. Prayer of Petition; Ex Parte Order of Taking

A. The petition shall conclude with a prayer that the property be declared taken for the acquisition of right of ways or mitigation lands in connection with bridge or canal purposes. Upon presentation of the petition, the court shall issue an order directing that the amount of the estimate be deposited in the registry of the court and declaring that the property described in the petition has been taken for the acquisition of right of ways or mitigation lands in connection with bridge or canal purposes at the time of the deposit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

§310. Vesting of Title

A. Upon the deposit of the amount of the estimate in the registry of the court, for the use and benefit of the persons entitled thereto, the clerk shall issue a receipt showing the amount deposited, the date it was deposited, the style and number of the cause, and the description of the property and property rights, as contained in the petition. Upon such deposit, title to the property and the property rights specified in the petition shall vest in the board of commissioners and the right to just compensation therefor shall vest in the persons entitled thereto.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

§311. Notice to Defendant

A. Upon receipt of the deposit, the clerk of court shall issue a notice to each defendant in the suit, notifying him that the property described in the petition has been expropriated for bridge or canal purposes.

B. This notice, together with a certified copy of the order, the petition, and the clerk's receipt for the deposit, shall be delivered by the clerk to the proper sheriff for

service on each defendant in the manner provided for the service of citations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2756 (September 2011).

§312. Contesting Validity of Taking; Waiver of Defenses

A. Any defendant desiring to contest the validity of the taking on the ground that the property was not expropriated for a public purpose or on the ground that the petition and attached exhibits do not satisfy the provisions contained in R.S. 48:442 through 444 may file a motion to dismiss the suit within twenty days after the date on which the notice was served on him. He shall certify thereon that a copy thereof has been served personally or by mail on either the plaintiff or its attorney of record in the suit. This motion shall be tried contradictorily with the plaintiff to the judge alone and shall be decided prior to fixing the case for trial.

B. Failure to file the motion within the time provided constitutes a waiver of all defenses to the suit except claims for compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

§313. Right of Possession; Limitation by Court

A. If there are no buildings located wholly or partially upon the property described in the petition, the board of commissioners is entitled to enter upon and take possession of the property upon the deposit of the estimated compensation.

B. If any building is located wholly or partially upon the property described in the petition, the court may postpone the right of entry for any period not to exceed thirty days from the date on which the last of any parties defendant was served with the notice. However, the board of commissioners in its discretion, may request the court to order possession surrendered after a longer delay. The court may fix a reasonable rental to be paid to the board of commissioners by a defendant in possession of the property for each day he remains in possession after the withdrawal of any part of the amount deposited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

§314. Withdrawal of Amount Deposited

A. Upon the application of any party in interest, and upon due notice to all parties, the court may order that the money deposited, or any part thereof, be paid forthwith to the person entitled thereto for or on account of the just and adequate compensation to be awarded in the proceedings.

B. The court may make such orders as shall be just and equitable to direct the payments of taxes, encumbrances and other charges out of the money deposited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

§315. Defendant's Answer; Requirements; Delay for Filing

A. Where an entire lot, block or tract of land is expropriated, any defendant may apply for a trial to determine the measure of compensation to which he is entitled, provided:

1. he files an answer within ninety days from the date he is served with the notice;

2. his answer sets forth the amount he claims;

3. his answer has a certificate thereon showing that a copy thereof has been served personally or by mail on all parties to the suit who have not joined in the answer.

B. Where a portion of a lot, block, or tract of land is expropriated, any defendant may apply for a trial to determine the measure of compensation to which he is entitled, provided:

1. he files an answer within one year from the date he is served, in the same manner provided for service of the petition, with a copy of the board of commissioners' notice of acceptance, which has been filed with the clerk of court of the parish in which the action is pending, declaring that it has finally accepted the construction of the project for which the property was expropriated; provided however, that he may file his answer at any time prior thereto;

2. his answer sets forth the amount he claims, including the value of each parcel expropriated and the amount he claims as damages to the remainder of his property;

3. his damage claim is reasonably itemized;

4. his answer has a certificate thereon showing that a copy thereof has been served personally or by mail on all parties to the suit who have not joined in the answer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

§316. Fixing for Trial; Notice

A. After answer is filed, if no motion to dismiss the suit pursuant to R.S. 48:447 is pending before the court, either party may, upon ex parte motion, request that the matter be docketed for trial. The court shall fix the time for the trial of the suit not more than sixty days after the filing of the motion, and the trial shall be conducted with preference and with the greatest possible dispatch. The clerk of court shall thereupon issue to all parties a notice of the time fixed for the trial. This notice shall be served at least thirty days before the time fixed for the trial and in the manner provided by law for the service of citations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

§317. Right to Trial by Jury

A. In an expropriation proceeding pursuant to this Part any party has the right to demand a trial by jury to determine just compensation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2757 (September 2011).

§318. Time Limit for Demanding Jury Trial; Waiver of Demand for Jury Trial; Limitations

A. A defendant may demand jury trial in his answer or by motion filed within the delays provided for the filing of his answer.

B. The board of commissioners may demand jury trial by motion filed no later than fifteen days after service upon the board of commissioners of an answer filed by a defendant.

C. For purposes of this Section, answers filed by attorneys appointed to represent absent or unknown defendants shall not cause these delays to begin to run, unless that answer indicates that the appointed attorney has been retained or employed by the owner to assert and prosecute a claim in his behalf.

D. Once any party has timely demanded a jury trial, that demand is effective against and binding upon all parties to the suit, and cannot thereafter be waived without the consent of all parties. With the consent of all parties, a demand for jury trial may be waived at any time prior to the swearing of the jury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§319. Deposit of Security for Jury Costs

A. The court shall require any party, including the board of commissioners, who demands a jury trial, to post a bond or other security as may be required in ordinary similar jury cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§320. Trial of Less than all Issues; Stipulation

A. The trial of all issues for which jury trial has been requested shall be by jury unless the parties stipulate that the jury trial shall be as to certain issues only, but in all cases there shall be but one trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§321. Qualification and Exemption of Jurors

A. The qualifications and exemptions of jurors and the method of choosing and summoning the general venire in jury cases are provided by special laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§322. Procedure in General

A. In cases to be tried by jury, six jurors summoned in accordance with law shall be chosen by lot to try the case. The method of calling and drawing by lot shall be at the discretion of the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§323. Swearing of Juror before Examination

A. Before being examined every prospective juror shall be sworn to answer truthfully such questions as may be propounded to him.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§324. Examination of Juror

A. The court shall permit the parties or their attorneys to conduct the examination of a prospective juror and may itself conduct an examination, which shall be limited to ascertaining the qualifications of the juror.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§325. Peremptory Challenges

A. Each side is allowed three peremptory challenges. If there is more than one party on any side, the court may allow each side additional peremptory challenges, not to exceed two. Each side shall be allowed an equal number of peremptory challenges. If the parties on a side are unable to agree upon the allocation of peremptory challenges among themselves, the allocation shall be determined by the court before the examination on the voir dire.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§326. Challenges for Cause

A. A juror may be challenged for cause based upon any of the following:

1. when the juror lacks a qualification required by law;
2. when the juror has formed an opinion in the case or is not otherwise impartial, the cause of his bias being immaterial;
3. when the relations, whether by blood, marriage, employment, friendship, or enmity, between the juror and any party or his attorney are such that it must be reasonably believed that they would influence the juror in coming to a verdict;
4. when the juror served on a previous jury which tried the same case or one arising out of the same facts;
5. when the juror refuses to answer a question on the voir dire examination on the ground that his answer might tend to incriminate him.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§327. Time for Peremptory Challenge

A. After the entire jury has been accepted and sworn, no party has the right to challenge peremptorily.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2758 (September 2011).

§328. Challenging or Excusing Jurors after Acceptance

A. Although the entire jury may have been accepted and sworn, up to the beginning of the taking of evidence, a juror may be challenged for cause by either side or be excused either for cause or by consent of both sides, and the panel completed in the ordinary course.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

§329. Swearing of Jurors; Selection of Foreman

A. When the jury has been accepted by all parties, the jurors shall be sworn to try the case in a just and impartial manner, to the best of their judgment, and to render a verdict according to the law and the evidence. When the jury has retired, the jurors shall select a foreman to preside over them and sign the verdict which they may render.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

§330. Alternate Jurors

A. The court may direct that one or two jurors in addition to the regular panel be called and empanelled to sit as alternate jurors. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict. If one or two alternate jurors are called, each side shall have an equal number of peremptory challenges. The court shall determine how many challenges shall be allowed and shall allocate them among the parties on each side. The additional peremptory challenges may be used only against an alternate juror, and the other peremptory challenges allowed by law shall not be used against the alternate jurors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

§331. Time for Charging the Jury; Recordation of Charge

A. After the trial of the case and the presentation of all the evidence and arguments, the court shall charge the jury in accordance with law. This charge shall be in writing or recorded in the same manner as testimony taken in the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

§332. Contents of Charge to Jury

A. In his charge to the jury, the judge shall instruct the jurors on the law applicable to the cause submitted to them, but he shall not recapitulate or comment upon the evidence

in such manner as to exercise any influence upon their decision as to the facts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

§333. Instruction to Jury; Objections

A. At the close of the evidence or at an earlier time during the trial as the court reasonably directs, a party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury.

B. A party may not assign as error the giving or the failure to give an instruction unless he objects thereto before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

§334. Taking Evidence to Jury Room

A. In reaching a verdict, the jurors should rely upon their memories, and when they retire to the jury room to deliberate, they shall not be allowed access to any written evidence or to any notes of the testimony of any witness, with the following exceptions.

1. The judge may permit the jury to take into the jury room a concise summary of the property affected containing only the following: the size of the owner's affected property immediately before the expropriation; the size of the area expropriated; the size of the owner's remaining affected property immediately after the expropriation; a list of any improvements expropriated, and a list of any improvements not taken but which may have been affected by the expropriation, provided said summary has been admitted into evidence.

2. The judge may permit the jury to take into the jury room a statement of the relevant value conclusions reached by each expert witness, if applicable, provided said statement has been admitted into evidence. Such statements shall not contain any corroborative or persuasive material and should consist solely of the name of the witness, the effective date of the value estimate, and a recitation of the pertinent value conclusions, and unit value conclusions, if applicable, testified to by the witness.

3. The jury may take with them into the jury room any object or document received in evidence which requires a physical examination to enable them to arrive at a just conclusion.

4. The parties may stipulate that appraisal reports or summaries of appraisal reports testified to by expert witnesses may be taken into the jury room.

5. The jury shall be permitted to take into the jury room an itemized statement of the loss the owner alleges he has suffered if testimony has been presented as to each item of loss, and if such statement has been admitted into evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2759 (September 2011).

§335. Number Required for Verdict

A. In order to reach any verdict, five of the jurors trying the case must concur therein.

§336. Special Verdicts

A. With the consent of all parties, the court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event, the court may submit to the jury written questions susceptible of categorical or other brief answer, or may submit written forms of the several findings which might properly be made under the pleadings and evidence, or may use any other appropriate method of submitting the issues and requiring the written findings thereon. The court shall give to the jury such explanation and instruction concerning the matter submitted as may be necessary to enable the jury to make its findings upon each issue. If the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to trial by jury of the issue omitted, unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand, the court may make a finding, or, if it fails to do so, it shall be presumed to have made a finding in accord with the judgment on the special verdict.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

§337. General Verdict Accompanied by Answer to Interrogatories; Objection

A.1. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict.

2. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers.

3. When the answers are consistent with each other, but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict, or may return the jury for further consideration of its answers and verdict, or may order a new trial.

4. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment, but may return the jury for further consideration of its answers or may order a new trial.

B. At any time prior to argument, a party may file written requests that the court submit to the jury written interrogatories as set forth in this Section. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury.

1. A party may not assign as error the submission or failure to submit a written interrogatory unless he objects thereto before the jury retires to consider its verdict, stating specifically the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

§338. Remittitur or Additur as Alternative to New Trial; Reformation of Verdict

A. If the trial court is of the opinion that the verdict is so excessive or inadequate that a new trial should be granted for that reason only, it may indicate to the party or his attorney the time within which he may enter a remittitur or additur. This remittitur or additur is to be entered only with the consent of the plaintiff or the defendant, as the case may be, as an alternative to a new trial, and is to be entered only if the amount of the excess or inadequacy of the verdict or judgment can be separately and fairly ascertained. If a remittitur or additur is entered, then the court shall reform the jury verdict or judgment in accordance therewith.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

§339. New Trial on Showing of Misconduct by Jury

A. A new trial shall be granted if it is proved that the jury was bribed or has behaved so improperly that impartial justice has not been done.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

§340. Laches by Defendant Forfeits Defenses; Judgment

A. If a defendant fails to file his answer timely, the board of commissioners shall thereafter give affirmative notice, by certified mail, to such defendant of the pendency of the proceedings. If an answer is not filed within ten days after the date on which such notice is mailed, the court shall render final judgment fixing just compensation in the amount deposited into the registry of court and awarding that sum to the defendant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

§341. Abandonment in Trial and Appellate Court

A. An owner's claim for an increase in the compensation is perfected when he timely files his answer as provided in R.S. 48:450 and is thereafter abandoned when he fails to take any step in the prosecution of that claim for a period of three years. This provision shall be operative without formal order, but on ex parte motion of the board of commissioners the trial court shall render final judgment fixing just compensation in the amount deposited in the registry of the court and awarding that sum to the defendant and dismissing with prejudice any claim for any increase in compensation.

B. An appeal is abandoned when the parties fail to take any step in its prosecution or disposition for the period provided in the rules of the appellate court, which shall be not less than one year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2760 (September 2011).

§342. Measure of Compensation; Burden of Proof; Extent of Loss

A. The measure of compensation for the property expropriated is determined as of the time the estimated compensation was deposited into the registry of the court, without considering any change in value caused by the proposed improvement for which the property is taken.

B. The measure of damages, if any, to the defendant's remaining property is determined on a basis of immediately before and immediately after the taking, taking into consideration the effects of the completion of the project in the manner proposed or planned.

C. The owner shall be compensated to the full extent of his loss. The court shall include in its consideration the difference between the rate of interest of any existing mortgage on an owner-occupied residence and the prevailing rate of interest required to secure a mortgage on another owner-occupied residence of equal value.

D. The defendant shall present his evidence of value first.

E. Reasonable attorney fees may be awarded by the court if the amount of the compensation deposited in the registry of the court is less than the amount of compensation awarded in the judgment. Such attorney fees in no event shall exceed 25 percent of the difference between the award and the amount deposited in the registry of the court.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

§343. Replacement Compensation According to Amite River Basin Drainage and Water Conservation Statute

A. The owner of residential property or commercial property, including homes, businesses, barns, outbuildings and churches, shall be paid the replacement cost of any such property expropriated by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

§344. Trial According to Code of Civil Procedure and the General Expropriation Laws

A. Except as provided in this Part, these suits are tried in accordance with the provisions of the Code of Civil Procedure and general expropriation laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

§345. Judgment to Provide Interest

A. If the amount finally awarded for compensation exceeds the amount deposited, the judgment shall include legal interest on the excess from the date the defendant files an answer as provided in R.S. 48:450 until paid, but such interest shall not accrue on any award made for expert fees or attorney fees prior to judgment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

§346. Judgment as to Difference Awarded; Payment of Judgment

A. If the amount finally awarded exceeds the amount so deposited, the court shall enter judgment against the board of commissioners and in favor of the persons entitled thereto for the amount of the deficiency. The judgment shall not be an in globo award, but shall list separately the amounts awarded, but not deposited, for:

1. an increase in the fair market value of the part taken;
2. an increase in severance damages;
3. attorney fees;
4. expert witness fees; and
5. any other type of loss or damage.

B. Those portions of the final judgment which award an increase in the value of the part taken, an increase in severance damages, compensation for any other type of loss or damage, together with interest payable on those sums not deposited, attorney fees, and expert witness fees shall be paid within ninety days after becoming final. Thereafter, upon application by the owner or owners, the trial court may issue a writ of mandamus to enforce payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

§347. Estimate Less than Deposit

A. The plaintiff shall not be required to amend its petition in order to obtain judgment in an amount less than that originally deposited into the registry of the court, but the plaintiff may not introduce evidence as to any special benefits unless specially pleaded. If severance damages are pleaded by the defendant, the plaintiff shall have the opportunity to plead special benefits twenty days prior to trial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

§348. Distribution of Final Award

A. The court also has the power to make such orders as are just and equitable with respect to distribution of the amount finally awarded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2761 (September 2011).

§349. Grant as Additional Authority

A. The right to take possession and title in advance of final judgment, as provided herein, is in addition to any right or authority conferred by the laws of this state under which expropriation proceedings may be conducted, and shall not be construed as abrogating, eliminating, or modifying any such right or authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

§350. Devolutive Appeal; Effect of Appeal

A. A devolutive appeal shall lie from expropriation suits tried pursuant to this Chapter without any additional deposit by the plaintiff, and no appeal from any expropriation suit brought under the provisions of this Part shall operate to prevent or delay the vesting of title in the plaintiff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

§351. Divesting of Title

A. The plaintiff shall not be divested by court order of any title acquired under these provisions except where such court finds that the property was not taken for a public purpose. In the event of such findings, the court shall enter such judgment as is necessary to compensate the defendant for the period during which the property was in the possession of the plaintiff and to recover for the plaintiff any award paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

§352. Right of Way and Mitigation Acquisition Activities

A. Where it is necessary for the Amite River Basin Drainage and Water Conservation District to acquire a right of way and/or mitigation property for the purpose of the Comite River Diversion Canal Project, said right of way acquisition activities shall be subject to and in accordance with the Louisiana Department of Transportation and Development Office of Right of Way Operations Manual, 2010.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

§353. Prohibition of Expropriation of any Mitigation Property

A. Where it is necessary for the Amite River Basin Drainage and Water Conservation District to acquire mitigation property for the purpose of the Comite River Diversion Canal Project, said acquisition activities shall be subject to and in accordance Act 734 of the 2010 Regular Legislative Session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:3302.

HISTORICAL NOTE: Promulgated by the Amite River Basin Drainage and Water Conservation District, LR 37:2762 (September 2011).

Public Comments

Interested persons should submit written comments on the proposed Rule to Dietmar Rietschier, Executive Director, Amite River Basin Drainage and Water Conservation District, through the close of business October 5, 2011 at 3535 S. Sherwood Forest Blvd, Suite 135, Baton Rouge, LA 70816.

Dietmar Rietschier
Executive Director

1109#015

NOTICE OF INTENT

**Department of Agriculture and Forestry
Horticulture Commission**

Retail Florist Exam (LAC 7:XXIX.107, 109, 111, and 113)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3801, the Department of Agriculture and Forestry, Horticulture Commission is intending on amending these rules and regulations (“the proposed action”) to provide the correct name of the commission in the title of this Part and to remove provisions regarding the demonstration of actual floral design work by persons taking the retail florist examination. The legislature by Acts 2010, No. 1040, §1 repealed the requirement in R.S. 3:3807(B)(2) that applicants for the retail florist examination demonstrate actual floral design work as part of the examination and revoked the authority of the Horticulture Commission to adopt rules and regulations regarding the demonstration portion of the retail florist examination. The proposed action implements the changes made by Act 1040 to the retail florist examination.

Title 7

AGRICULTURE AND ANIMALS

Part XXIX. Horticulture Commission

Chapter 1. Horticulture

§107. Application for Examination and Licensure or Permitting

A. Each applicant must complete the application form prescribed by the commission for the area in the practice of horticulture for which the license or permit is sought.

B. Landscape Architect

1. Applicants who desire to take the examination for landscape architect must file the completed application, together with any supporting evidence, official transcript(s), and affidavit(s) as may be necessary, and with the fee required under §109.B at the commission's state office in Baton Rouge. The application must be postmarked or received by the deadline date established for applying for examination, which date shall be published in a prior issue of the *Louisiana Register*.

2. Any applicant for licensure as a landscape architect who successfully completes one or more of the different sections of the examination but does not successfully complete all sections of the examination will not be required to submit to re-examination in any section which was successfully completed. In such cases, the applicant may apply to re-take only the section(s) of the examination which were not successfully completed.

C. Arborist, Landscape Horticulturist, Landscape Irrigation Contractor, Retail Florist, Utility Arborist, Wholesale Florist

1. Applicants who desire to take the examination for arborist, landscape horticulturist, landscape irrigation contractor, retail florist, utility arborist, or wholesale florist may apply at any time, in person or by writing, to the commission's state office in Baton Rouge or to any district office of the Department of Agriculture and Forestry. Applicants who apply in person, will be allowed, whenever feasible, to complete the written application form at the initial visit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3801, R.S. 3:3807, and R.S. 3:3808.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:7 (January 1988), LR 18:249 (March 1992), LR 20:639 (June 1994), LR 23:854 (July 1997), LR 29:1460 (August 2003), LR 31:1053 (May 2005), LR 35:1227, 1228 (July 2009), LR 37:

§109. Examination Fees

A. Landscape Architect

1. The fee for examination for licensure as a landscape architect shall be the cost for each section of the examination plus an administrative fee of \$200 for first time applicants and those applying through reciprocity.

2. The fee for re-examination in the various sections for licensure as a landscape architect shall be the cost for each section plus one administrative fee of \$100.

B. Arborist, Landscape Horticulturist, Landscape Irrigation Contractor, Retail Florist, Utility Arborist, Wholesale Florist

1. The fee for examination or re-examination for licensure as an arborist, landscape horticulturist, landscape irrigation contractor, retail florist, utility arborist, or wholesale florist shall be \$50.

C. All fees required under this rule must be submitted at the same time as the application; failure to submit any required fees will bar the applicant from taking the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3806, R.S. 3:3805, and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 18:249 (March 1992), LR 20:640 (June 1994), LR 29:2297 (November 2003), LR 31:1053 (May 2005), LR 35:1227 (July 2009), LR 37:

§111. Minimum Examination Performance Levels Required

A. The performance level for satisfactory completion of all examinations for licensure, except the examination for landscape architect shall be a minimum of 70 percent.

B. The minimum performance level for satisfactory completion of the examination for landscape architect shall be the minimum performance level acceptable to the Council of Landscape Architects Registration Board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3807 and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:184 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 20:153 (February 1994), LR 35:1229 (July 2009), LR 37:

§113. Examination Schedule

A. Landscape Architect

1. The examination for licensure as a landscape architect shall be given by the commission on the date selected for administration of the examination nationally by the Council of Landscape Architects Registration Board.

2. The commission shall publish the time and location selected by the Council of Landscape Architects Registration Board for administration of the examination for landscape architect in an issue of the *Louisiana Register* to be published prior to the scheduled examination date and will disseminate information concerning the scheduled examination to all interested applicants.

3. The Louisiana section of the examination for landscape architect shall be given on the date selected for administration of the examination nationally by the Council of Landscape Architects Registration Board and at no more than one other time during the year, if deemed necessary to the commission based on the number of applicants desiring to take the Louisiana section.

B. Arborist, Landscape Horticulturist, Landscape Irrigation Contractor, Retail Florist, Utility Arborist, Wholesale Florist

1. Examinations for licensure as an arborist, landscape horticulturist, landscape irrigation contractor, retail florist, utility arborist, or wholesale florist will be administered in the commission's state office in Baton Rouge and in district offices of the Department of Agriculture and Forestry upon request. Interested applicants may apply, in person or by writing, at the state office or the most convenient district office. A date for the examination will be established for each applicant.

2. Whenever any applicant fails to successfully complete an examination for licensure, he may not apply to re-take the examination for a period of two weeks following the date of the examination which he failed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3807 and R.S. 3:3801.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Horticulture Commission, LR 8:185 (April 1982), amended by the Department of Agriculture and Forestry, Horticulture Commission, LR 14:8 (January 1988), LR 18:250 (March 1992), LR 20:640 (June 1994), LR 31:1053 (May 2005), LR 35:1227 (July 2009), LR 37:

Family Impact Statement

It is anticipated that the proposed action will have no significant effect on the: (1) stability of the family; (2) authority and rights of parents regarding the education and supervision of their children; (3) functioning of the family; (4) family earnings and family budget (5) behavior and personal responsibility of children; or (6) ability of the family or a local government to perform the function as contained in the proposed action.

Small Business Statement

It is anticipated that the proposed action will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to Craig Roussel, Director of the Horticulture Commission, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on October 30, 2011. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Retail Florist Exam**

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

The proposed administrative rule change removes provisions that applicants for the retail florist examination must demonstrate actual floral design work as part of the examination and revokes the authority of the Horticulture Commission to adopt rules and regulations regarding the demonstration portion of the exam in accordance with Act 1040 of the 2010 Regular Session of the Legislature. This action will align administrative rules with R.S. 3:3807(B)(2). Act 1040 is anticipated to reduce departmental expenditures by approximately \$22,700 per year.

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

The proposed rule change is anticipated to reduce revenue collections to the department by approximately \$13,000 per year from fees that will no longer be collected. Pursuant to Act 1040 of 2010, the proposed action reduces the examination requirements for licensure, which previously consisted of both written and demonstration portions, to only the written portion; reduces the examination fee from \$150 to \$50; and eliminates the re-examination fee for the design phase of the examination. The proposed administrative rule is anticipated to have no direct effect on the revenue collections of local governmental units.

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

The proposed rule change reduces the overall out-of-pocket expenditure for those seeking floral licenses from \$150 (written and demonstration) to \$50 (written only). Applicants to become retail florists will realize a \$100 cost savings associated with the examination. Additional economic benefits to directly affected persons or non-governmental groups are unknown.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Ninety-eight (98) retail florist licenses were issued in FY 09-10, the last year that the retail florist practical exam was given. Eighty-eight retail florist licenses were issued in FY 10-11, the first year that the practical exam was not given. The repeal of the retail florist practical exam by Act 1040 of 2010 has had no measureable effect on competition and employment.

Craig Gannuch
Assistant Commissioner
1109#037

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Agriculture and Forestry
Office of Agriculture and Environmental Sciences
Advisory Commission on Pesticides**

Pesticides (LAC 7:XXIII.Chapters 1-35)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., and with the enabling statute, R.S. 3:3203, the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides is intending on revising the rules and regulations (“the proposed action”) in Part XXIII of Title 7 of the LAC. The revisions to the existing rules are necessary to bring all of them up to date and to reflect changes in agriculture and pesticides used in this state. The rules and regulations regarding bulk pesticide facilities are being adopted to comply with new standards adopted by the U.S. Environmental Protection Agency (EPA) dealing with pesticide containment and containers. EPA put the new rules in place to regulate pesticide containers and the filling and refilling of those containers. The proposed action will bring the current state rules and regulations governing bulk handling of pesticides into compliance with the EPA rules.

These revisions add chapters, remove and revise subchapters, and changes the section numbers of most of the regulations. To assist interested persons in learning the revisions the following table shows the changes in Chapters, Subchapters, and Sections from the old format to the new format.

Louisiana Pesticide Regulations—Revisions of LAC 7LXXIII (Pesticides)	
Formerly	2011 Revisions
Chapter 1	Chapter 1
Subchapter A	None
§101	§101
Subchapter B	None
§103	§103
Subchapter C	Chapter 3
§105	§301
§107	§303
§109	§305
None	§307
Subchapter D	Chapter 5
§111	§501
§113	§503
§115	§505
§117	§507
§119	§509
Subchapter E	Chapter 7
None	Subchapter A
§121	§701
Subchapter F	Subchapter B
§123	§709
§125	§711
§127	§713
§129	§715
Subchapter G	None
§131	§901
Subchapter H	Subchapter C
§133	§723
§135	§725

Louisiana Pesticide Regulations—Revisions of LAC 7LXXIII (Pesticides)	
Formerly	2011 Revisions
§137	§727
§139	§729
None	Chapter 9
§131	§901
Subchapter I	Chapter 11
§141	§1101
§143	§1103
§145	§1105
§147	§1107
§149	§1109
§151	None
§153	§1111
§155	§1113
Subchapter J	Chapter 13
§157	§1301
None	§1303
Subchapter K	Chapter 15
§159	§1501
Subchapter L	Chapter 17
§161	§1701
Subchapter M	Chapter 19
§163	§1901
§165§	§1903
Subchapter N	Chapter 21
§167	§2101
§169	§2103
§171	§2105
Subchapter O	Chapter 23
§173	§2301
Subchapter P	Chapter 25
§175	§2501
Subchapter Q	Chapter 27
§177	§2701
Subchapter R	None
§179	None
Subchapter S	None
§181	§3301
Subchapter T	None
§183	None
Subchapter U	None
§185	None
Subchapter V	None
§187	None
Subchapter W	Chapter 29
§189	§2901
§191	§2903
§193	§2905
§195	§2907
§197	§2909
§199	None
Subchapter X	Chapter 31
§201	§3101
§203	§3103
§205	§3105
§207	§3107
Subchapter Y	Chapter 33
None	§3301
§209	§3303
§211	§3305
§213	§3307
§215	§3309
§219	§3311
Subchapter Z	Chapter 35
§221	§3501

Title 7
AGRICULTURE AND ANIMALS

Part XXIII. Pesticides

Chapter 1. Authority, Pesticide Declarations, Definitions

§101. Authority

A. Under the authority of the Louisiana Pesticide Law, R.S. 3:3201 et seq., and in accordance with the provisions in R.S. 49:950 et seq., the commissioner of Agriculture and Forestry adopts the following regulations.

B. The commissioner of Agriculture and Forestry, in accordance with R.S. 3:3203(E) has determined that pharmaceuticals administered to livestock used for agriculture purposes are pesticides. Pharmaceuticals administered to livestock used for agricultural purposes shall be registered with the department in accordance with the Louisiana Pesticide Law and the rules and regulations found in this Chapter.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:171 (April 1983), amended LR 27:2084 (December 2001), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§103. Definitions

A. The definitions in R.S. 3:3202 are applicable to this Part.

B. The following words and terms are defined for the purposes of this Part.

Agricultural Pesticide—any pesticide product labeled for use in or on a farm, forest, nursery, or greenhouse.

Bulk Facilities—any person, except registrants, who engage in the activity of repackaging any agricultural pesticide product, except manufacturing use products and plant-incorporated protectants into refillable and non-refillable containers. This includes certified commercial applicators and licensed owner-operators dispensing agricultural pesticides from a stationary container.

Containment Pad—a containment structure that meets the design, construction materials and capacity requirements of 750 gallons or 100 percent of the capacity of the largest container/equipment used on the pad (whichever is less), for new and existing containment structures and accommodates pesticide spills or leaks in dispensing areas at bulk facilities.

Containment Structure or Structure—new and existing structures, at bulk facilities, that meets the design, construction materials and capacity requirements to contain spills or leaks from stationary pesticide containers or pesticide dispensing activities.

a. An existing containment structure is a structure for which installation began on or before July 1, 2011.

b. A new containment structure is a structure for which installation began after July 1, 2011 if certain conditions regarding permits, construction and contracts are met.

Director—the director of the division of Pesticide and Environmental Programs or his duly authorized representatives acting at his direction.

District Office—any office of the department other than the Baton Rouge main office.

Division—the Division of Pesticide and Environmental Programs in the Office of Agricultural and Environmental Sciences of the department.

Herbicide—any substance or mixture of substances intended for use in preventing or inhibiting the growth of, killing, or destroying plants and plant parts defined to be pests by the commissioner. The term herbicide shall for the purposes of these regulations include a substance or mixture of substances intended for use as a plant growth regulator, defoliant, or desiccant.

Inorganic Arsenical—any herbicide containing a compound formed by a reaction between arsenic and any substance which does not contain a carbon-hydrogen (organic) group (radical). Examples are arsenic trioxide, sodium arsenate, and arsenic acid.

Insecticide—any substance or mixture of substances intended for preventing or inhibiting the establishment, reproduction, development, or growth of; destroying; or repelling any member of the class insecta or other allied classes in the phylum arthropoda that is defined as a pest by the commission.

Livestock used for Agricultural Purposes—any animal bred, kept, maintained, raised or used for profit or for the purpose of selling or otherwise producing crops, animals, or plant or animal products for market. This definition includes cattle, buffalo, bison, oxen and other bovine; horses, mules, donkeys, and other equine; sheep; goats; swine; domestic rabbits; fish, pet turtles and other animals identified with aquaculture which are located in artificial reservoirs or enclosures that are both on privately owned property and constructed so as to prevent, at all times, the ingress and egress of fish life from public waters; imported exotic deer and antelope, elk, farm-raised white-tailed deer, farm-raised ratites and other farm-raised exotic animals; chickens, turkeys and other poultry; any animals placed under the jurisdiction of the commissioner or the department; and any hybrid, mixture or mutation of any type of animal if used for an agricultural purpose. However, dogs and cats shall not be considered livestock under these regulations.

Pharmaceuticals—any substance intended for use in the diagnosis, cure, mitigation, treatment or prevention of plant or animal pests, diseases, viruses, bacteria or other microorganisms in or on livestock and any substance other than food intended to affect the structure or any function of the body of any livestock.

Phenoxy Herbicides—any herbicide as defined above that contains a phenoxy derivative of lower aliphatic acid as an ingredient thereof.

Public Utility—a business or service which is engaged in regularly supplying the public with a service which is of public consequence and need, such as electricity, gas, water, transportation, or telephone or telegraph service.

Resident—any person who has been domiciled in Louisiana for a period of at least 90 days immediately preceding the date of application for the license and/or certification and has not claimed residence elsewhere for any purpose.

Rinsate—the liquid produced from the rinsing of the interior of any equipment or container that has come in direct contact with any pesticide.

Secondary Containment Structure (for the purposes of Subpart J)—a structure, including rigid diking, that is designed and constructed to intercept and contain agricultural pesticide spills and leaks and to prevent runoff and leaching from stationary agricultural pesticide containers. These are described as new or existing with the required capacities in the following:

a. new containment structures, un-protected from precipitation, 110 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within the containment area; or

b. existing structures, un-protected from precipitation, 100 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within the containment area; or

c. new or existing structures, protected from precipitation, 100 percent of the largest stationary container plus the displaced volume of other tanks and appurtenances within a containment area.

Stationary Pesticide Container—a refillable container that is fixed at a single bulk facility or, if not fixed, remains at the bulk facility for at least 30 consecutive days, and that holds pesticide during the entire time. Stationary pesticide containers are subject to the regulations if they are designed to hold undivided quantities of pesticides equal to or greater than 500 gallons for liquids or 4000 pounds for dry pesticides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3202 and 3:3203.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:171 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 27:2085 (December 2001), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 3. Advisory Commission on Pesticides

§301. Filings with the Commission

A. All notices, petitions, documents, or other correspondence to the commission or the commissioner shall be addressed and mailed to Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, 5825 Florida Blvd, Baton Rouge, LA 70806.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§303. Chairman; Presiding Officer

A. The chairman shall serve a term of one year or until a successor is elected. In the absence of the chairman, the vice-chairman shall preside. In the absence of both the chairman and the vice-chairman, the chairman's duly appointed representative shall preside.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3212.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§305. Expulsion

A. Each member being considered for expulsion and his sponsoring group, if any, shall be notified of the upcoming action at least 15 days before the commission meeting at which the action is to be considered. This notice shall be by certified mail. The commission may excuse an absence of a member.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3211.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§307. Requests for Changes in Regulations or for Declaratory Rulings

A. A request for the adoption, amendment or repeal of a regulation in this Part shall be made in accordance with LAC 7:I.303.

B. A request for a declaratory order or ruling as to the applicability of any statutory provision or of any rule or regulation in this Part or order made pursuant to any applicable law or regulation shall be made in accordance with LAC 7:I.305.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 5. Registration of Pesticides

§501. Registration Required

A. No pesticide, including pharmaceuticals administered to livestock used for agricultural purposes, shall be sold, offered for sale, or distributed in this state without being registered by the manufacturer annually with the department. This registration shall expire on December 31 of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 27:2085 (December 2001), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§503. Chart of Tolerances

A. Content of active ingredients on all pesticides should be at the level of guarantee. However, determination of compliance based on assay of a single sample shall be made as follows.

1. A single sample whose assay deviates below the stated guarantee shall be considered in compliance except as noted in Paragraph 2, below, if its active ingredients are found to be within the following ranges.

Active Ingredient Percent Guaranteed	Allowable Deviation below Guarantee
Up to 1.00 percent	15 percent of Guarantee
1.01 percent-19.99 percent	0.1 plus 5 percent of Guarantee
20.00 percent-49.99 percent	0.5 plus 3 percent of Guarantee
50.00 percent-100.00 percent	1.0 plus 2 percent of Guarantee

2. A single sample whose assay deviates below the stated guarantee beyond the above limits may not be considered deficient if special sampling problems such as

those associated with fertilizer-pesticide mixtures and granular formulations or if problems associated with accuracy, specificity or reproducibility of the method of analysis can reasonably be expected to have contributed to the lower assay.

3. A single sample whose assay ranges above the stated guarantee shall be judged individually. However, an assay ranging above the stated guarantee shall not be considered violative if:

a. no illegal residue can be expected to result when product is used according to label directions;

b. no significant increase in hazard to man or the environment can be expected to result when product is used according to label directions;

c. stability of the formulation or ingredients thereof require over-formulation to insure that assay over a period stated on the label shall not fall below the minimum provided in Paragraph 1, above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3225 and R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission of Pesticides, LR 11:943 (October 1985), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§505. Standard Registrations

A. Application for registration shall consist of two types, namely initial registration and renewal registration. Initial registration application may be filed at any time of the year. Renewal registration application shall be filed by the first day of December each year. Application shall be made on forms or formats prescribed by the commissioner; or on forms or formats which have the prior, written approval of the commissioner.

1. Each application for the initial registration of a pesticide and for the re-registration of a pesticide for which the label has been changed shall be accompanied by the following information:

a. the brand of the pesticide;

b. the name, address and contact person of the manufacturer of the pesticide;

c. two complete copies of the labeling of the pesticide, containing:

i. the specific name of each active ingredient in the pesticide;

ii. the percentage of the active ingredients in the pesticide unless the proportion of the active ingredients are expressed in international units, or some other form of scientifically recognized and accepted measurement; in which case the proportion of active ingredients may be reported in that manner;

iii. the percentage of the inert ingredients in the pesticide unless the proportion of the active ingredients in the pesticide are expressed in international units, or some other form of scientifically recognized and accepted measurement; in which case the proportion of inert ingredients may be reported in that manner;

iv. the net contents of each package in which the pesticide will be sold;

v. a statement of claims made for the pesticide;

vi. directions for the use of the pesticide, including warnings or caution statements;

d. the material safety data sheet prepared in accordance with the requirements of the Environmental Protection Agency;

e. the method for laboratory analysis if the pesticide is a pharmaceutical administered to livestock used for agricultural purposes;

f. such other information as the commissioner may require.

2. Application for re-registration of a pesticide for which the label has not been changed shall be accompanied by the following information:

a. the brand of the pesticide;

b. the name, address and contact person of the manufacturer of the pesticide;

c. such other information as the commissioner may require.

3. The registration requirements as described in Subsection A shall be resubmitted for any pesticide for which the label has been changed within 60 days of the change.

B. Any registration may be denied by the commissioner if he determines that:

1. the composition of the pesticide is not sufficient to support the claims made for the pesticide;

2. the label on the pesticide does not comply with state and federal requirements;

3. use of the pesticide may produce unreasonable adverse effects on the environment;

4. information required in Subsection A has not been furnished to the commissioner by the manufacturer.

C. Any pesticide registered in Louisiana must comply with the following.

1. Any pesticide sold or offered for sale or distribution must bear a label consistent with the label submitted in the registration application.

2. Each shipping container must bear the lot or batch number of the pesticide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:172 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 23:192 (February 1997), LR 23:853 (July 1997), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 27:2085 (December 2001), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§507. Special Registrations

A. The commissioner may issue the following registrations.

1. State Experimental Use Permits (5f, FIFRA). If the EPA authorizes the commissioner to issue state experimental use permits, the following terms and conditions shall apply.

a. Each person wishing to accumulate information necessary to register a pesticide for a special local need in this state shall file five copies of an application containing the following information:

i. the manufacturer's name;

ii. the name, address and telephone number of the applicant;

iii. the proposed date of shipment or proposed shipping period not to exceed one year;

iv. the percentage of the active ingredients in the pesticide;

v. the percentage of the inert ingredients of the pesticide;

vi. a statement of the approximate quantity to be tested;

vii. available summary of test results on the acute toxicity of the pesticide;

viii. a statement of the scope of the proposed experimental program, including:

(a). the type of pests or organisms included in the study;

(b). the crops, animals or commodities to be included in the study;

(c). the areas of the state in which the study is to be conducted;

(d). the results of any previous tests conducted by the applicant of the pesticide in this or any other state;

ix. when the pesticide is to be used on food or feed, a temporary tolerance must be obtained from the EPA or evidence that the proposed experiment will not result in injury to man or animals, or in illegal residues entering the food chain;

x. the proposed labeling which must bear:

(a). the prominent statement For Distribution and Experimental Use Only Within Louisiana on each container label and any labeling that accompanies the pesticide;

(b). an adequate caution or warning statement to protect those who may handle or be exposed to the pesticide;

(c). the name and address of the manufacturer;

(d). the point of destination of the pesticide;

(e). directions for use;

(f). a statement listing the name and percentage of each active ingredient and the total percentage of inert ingredients.

b. After an application has been received, the commissioner shall review it for completeness. If the commissioner determines that an application is not complete, the applicant shall be allowed to submit such subsequent data as required by the commissioner for review. If the commissioner determines that an application is complete, he may assign the application to an ad hoc advisory committee consisting of:

i. director, or his designee;

ii. assistant commissioner, Office of Agricultural and Environmental Sciences, department, or his designee;

iii. director, Louisiana Cooperative Extension Service, or his designee;

iv. director, Louisiana Agricultural Experiment Station, or his designee;

v. the member of the commission who represents the Louisiana Wildlife Federation, or his designee(R.S. 3:3211(B)9).

c. The committee shall consider the application based on the following criteria:

i. the applicant's need for the permit in order to accumulate data to support a special local needs registration;

ii. that the labeling is complete and correct as required in §507.A.1.a.x;

iii. that use of the pesticide under the permit will not cause unreasonable adverse effects on the environment;

iv. that either the applicant has supplied evidence that a tolerance or exemption from the requirement of a tolerance has been established for residues of the pesticide on such food or feed under section 408 of the Federal Food, Drug and Cosmetic Act; or that the applicant shall destroy all food or feed crops involved in the project.

d. After receiving the recommendations of the committee, the commissioner may: grant the request, in which event he shall prescribe the terms, conditions, and period of time of the permit; or deny the permit.

e. The commissioner may revoke a permit if he finds that:

i. the terms and conditions of the permit have been violated, or are inadequate to avoid unreasonable adverse effects on the environment;

ii. any required tolerance under the Federal Food, Drug, and Cosmetic Act (12 U.S.C. 301 et seq.) has been revoked by EPA or any exemption from the requirements for tolerance has been withdrawn by EPA;

iii. the permittee or any cooperator has failed to comply with any other federal or state law or regulation concerning state experimental use permits.

2. Special Local Needs Registration (24-C FIFRA)

a. Each person wishing to register a pesticide for a special local need in this state shall file five copies of an application containing the following:

i. name and address of the applicant and any other person whose name will appear on the labeling or in the directions for use;

ii. the name of the pesticide product, and, if the application is for an amendment to a federally registered product, the EPA registration number of that product;

iii. a copy of proposed labeling, including all claims made for the product as well as directions for its use to meet the special local need, consisting of:

(a). for a new product, a copy of the complete proposed labeling; or

(b). for an additional use of a federally registered product, a copy of proposed supplemental labeling and a copy of the labeling for the federally registered product;

iv. the active ingredients of the product, if the application is for a new product registration;

v. the appropriate application fees as required by §901 of these regulations.

b. The issuance or denial of a registration of a pesticide under this Section shall be done in accordance with federal regulations. The commissioner may refer this application to an ad hoc committee composed of:

i. director, commission, or his designee;

ii. director, Louisiana Cooperative Extension Service, or his designee;

iii. director, Louisiana Agricultural Experiment Station, or his designee;

iv. one agricultural consultant;

v. one farmer;

vi. such other members appointed by the commissioner as the commissioner deems necessary.

c. The committee shall consider the application based on the following criteria:

i. that the labeling is complete and correct;

ii. that use of the pesticide under the permit will not cause unreasonable adverse effects on the environment;

iii. that there is no other pesticide product registered with EPA for the same use;

iv. that no other pesticide product is registered with EPA which would be as safe and as efficacious, under the conditions of use proposed for a special local need;

v. that there is no EPA registered product available;

vi. that there is an EPA tolerance established for the product, if it is to be used on a food or a feed crop;

vii. that the special local needs application is based on a changed use pattern;

viii. that the product shows promise of efficacy for the condition under which it will be used;

ix. such other considerations as the commissioner deems appropriate.

d. After receiving the recommendation of the committee the commissioner may:

i. grant the registration, in which event he may prescribe the terms and conditions of use; or

ii. deny the registration.

e. The commissioner may amend or revoke a registration if he finds that:

i. the terms and conditions of the registration have been violated, or are inadequate to avoid unreasonably adverse effects on the environment;

ii. any required tolerance under the Federal Food, Drug, and Cosmetic Act (12 U.S.C. 301 et seq.) has been revoked by EPA or any exemption from the requirements for tolerance has been withdrawn by EPA;

iii. the registrant has failed to comply with any other federal or state law or regulation concerning state experimental use permits.

3. Special Exemptions

a. Specific exemption applications shall be completed in accordance with federal requirements after receiving the recommendations of the director the Louisiana Cooperative Extension Service or his designee and the director of the Louisiana Agricultural Experiment Station, or his designee.

b. Quarantine-Public Health Exemption. The commissioner may apply to EPA for a quarantine and/or public health exemption to allow the application of a pesticide if the commissioner finds that a foreign pest or a pest not previously known to be established in Louisiana threatens to become established. This application will be completed in accordance with federal requirements.

c. Crisis Exemption. The commissioner may issue a crisis exemption in accordance with federal regulations for the use of an unregistered pesticide if he finds that:

i. a situation involving the unpredictable outbreak of pests in the state is occurring;

ii. there is no readily available pesticide registered for the particular use to eradicate or control the pest; and

iii. the time element with respect to the application of the pesticide is so critical that there is no time to request a registration under any other Section of this Subchapter.

d. Pharmaceuticals in Custom Blended Feed(s) Exemption. It shall not be necessary to register a feed as a pesticide that contains a pharmaceutical ingredient if the following conditions are met.

i. The feed blend is prepared to the order of the customer and is not held in inventory by the blender.

ii. The blend is to be used on the customer's property or fed to the customer's livestock.

iii. The pharmaceutical(s) used in the blend bears end-use labeling directions that do not prohibit use of the product in such a blend.

iv. The blend is prepared from a pharmaceutical registered with the department.

v. The blend is delivered to the end-user along with a copy of the end-use labeling of each pharmaceutical used in the blend and a statement specifying the composition of mixture.

e. Commercial feeds, as defined in R.S. 3:1891(1), which are manufactured or distributed as feed to livestock and which contain pharmaceutical ingredients are hereby declared to be pharmaceuticals administered to livestock. Each such commercial feed shall be registered with the department in accordance with the provisions of these regulations except for the following commercial feeds.

i. Commercial feeds registered with the department in accordance with the requirements of the Commercial Feeds Law found at Chapter 14 of Title 3 of the Louisiana Revised Statutes of 1950, (R.S. 3:1891-1907) as long as those registration and inspection fees and tonnage reports are current.

ii. Commercial feeds that have been manufactured or produced by any person for the purpose of feeding his own livestock.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3221.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:175 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 27:2085 (December 2001) amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§509. Supervision of Use

A. The sale, use, storage, distribution, transportation, or disposal of pesticides registered under this Subchapter shall be subject to the supervision by the department.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission Pesticides, LR 9:178 (April 1983), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 7. Examinations, Certification and Licensing

Subchapter A. Examinations

§701. Examinations of Applicators, Salespersons and Agricultural Consultants

A. The minimum score necessary for successful completion of examinations for certifications under these rules shall be 70 percent.

B. The director, in cooperation with the director of the Cooperative Extension Service or his designee, shall be responsible for the preparation of all examinations.

C. The director shall be responsible for the administration and grading of all examinations.

D. Each applicant who fails to receive a passing score on any test in any category or subcategory shall wait a minimum of 10 days before being eligible for re-examination.

E. No person shall be allowed to take an examination in any category more than three times in a 12-month period.

F. Louisiana citizens who have failed any examinations under these standards shall not be permitted to receive certification under a reciprocal agreement with another state.

G. All applicants for private applicators' certification must be at least 16 years of age or an emancipated minor. All applicants for salesperson certification must be at least 18 years of age or an emancipated minor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3241 and 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:178 (April 1983), amended LR 11:943 (October 1985), amended by the Department of Agriculture and Forestry, amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 15:76 (February 1989), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 28:39 (January 2002), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Subchapter B. Certification

§709. Certification of Private Applicators

A. Certification for private applicators shall be issued only after the applicant has satisfactorily passed an examination or has satisfactorily completed a training course approved by the commissioner.

B. Examinations for certification for private applicators of pesticides will be given during office hours upon request of the applicant, in Baton Rouge, at the division, at any district office of the department, at any location approved by the Director or at the office of the county agent in any parish of the state.

C. Each person that has been certified as a private applicator and whose certification has not been revoked, suspended or expired may renew that certification by attending a recertification meeting or passing an examination as approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:179 (April 1983), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§711. Certification of Commercial Applicators

A. The commissioner hereby establishes the following standards as qualifications required for certification.

1. Standards applicable to all categories:

a. must be at least 18 years of age or an emancipated minor;

b. must be able to read and write the English language with sufficient proficiency to demonstrate comprehension of label and labeling content and instructions;

c. must submit an application for certification in the form required by the commissioner;

d. must be able to demonstrate knowledge of the principles and practices of pest control and the safe use of pesticides. Applicants must demonstrate these capabilities by successfully completing the general standards examinations;

e. must be able to successfully complete an examination in the specific category in which certification is sought;

f. all prior certifications, if any, must be in good standing at the time that the application for any examination is filed;

g. aerial applicators shall successfully complete the aerial application of pesticides examination.

2. An individual applying for certification in subcategory 7c (§711.B.2.g.iii) must have two years of experience in the phase of work in which he is making application. Required experience must be substantiated by a notarized statement acceptable to the commissioner.

3. An individual applying for certification in subcategory 8d (§711 B.2.h.iv) must have either:

a. a bachelor's degree with at least 12 hours in entomology; or

b. at least four years of experience in mosquito control working under supervision of a person certified in subcategory 8d. Required experience must be substantiated by a notarized statement acceptable to the commissioner.

4. Commercial aerial pesticide applicators, with the single exception of aerial mosquito pest control applicators, who have been found to have violated a provision of the Louisiana Pesticide Law or any of the rules or regulations adopted pursuant to that law by the commission or the commissioner, or who received a "warning letter" from the department during the past calendar year, shall attend a department-approved off-target training course prior to making any application in the following year, in order to maintain their certification as a commercial aerial applicator.

5. Commercial aerial pesticide applicators who are certifying for the first time or who have not been certified within the past three years, with the single exception of aerial mosquito pest control applicators, must attend a department-approved off-target training course prior to making any application.

B. Categories are established on the basis of the location where the application of pesticides will be made, and each applicant for certification is required to successfully complete an examination in the category in which the applicant desires certification.

1. Certification in a category authorizes the commercial applicator to make application of or supervise the application of restricted use pesticides in the areas listed for each category.

2. The commissioner hereby establishes the following categories and subcategories of certification for commercial applicators.

NOTE: The classifications in this Subsection reflect national categories established by EPA.

a. Agricultural Pest Control (category 1). This category includes commercial applicators using or supervising the use of restricted use pesticides on agricultural lands, grasslands and non-crop agricultural lands.

i. This category also includes commercial applicators using or supervising the use of restricted use

pesticides on animals and to places on or in which animals are confined.

ii. This category includes Doctors of Veterinary Medicine engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large scale use of pesticides.

b. Forest Pest Control (category 2). This category has been subdivided into the following three subcategories.

i. General Forestry (subcategory 2a). This subcategory includes commercial applicators using or supervising pesticides with restricted use to control pests in the regeneration, management, and production of forest stands.

ii. Forest Tree Seed Orchards and Nurseries (subcategory 2b). This subcategory includes commercial applicators using or supervising the use of restricted use pesticides to control pests and undesirable plants in the production of forest tree seed, seedlings, and cuttings.

iii. Wood Processing (subcategory 2c). This subcategory includes wood or fiber processing firms such as sawmills, veneer plants, plywood plants, wood preservation plants and pulping facilities which use restricted use pesticides in the manufacturing process of wood products.

c. Ornamental and Turf Pest Control (category 3). This category includes commercial applicators using or supervising the use of restricted use pesticides to control pests in the maintenance and production of ornamental trees, shrubs, flowers, and turf.

d. Seed Treatment (category 4). This category includes commercial applicators using or supervising the use of restricted use pesticides on seeds.

e. Aquatic Pest Control (category 5). This category is subdivided into two subcategories.

i. Subcategory 5a includes commercial applicators using or supervising the use of any restricted use pesticide purposefully applied to standing or running water, excluding applicators engaged in public health related activities included in category 8 (Subparagraph B.2.h);

ii. Subcategory 5b includes commercial applicators using, or supervising the use of, any restricted use pesticide containing Tributyltin (TBT) in paints to be applied to vessel hulls and other marine structures to inhibit the growth of aquatic organisms such as barnacles and algae.

f. Right-of-Way and Industrial Pest Control (category 6). This category includes commercial applicators using or supervising the use of restricted use pesticides in the maintenance of public roads, electric power lines, pipelines, railway rights-of-way or other similar areas.

g. Industrial, Institutional, Structural, and Health Related Pest Control (category 7). This category includes commercial applicators and nonfee commercial applicators using, or supervising the use of, pesticides with restricted uses in, on, or around food-handling establishments; human dwellings; institutions, such as schools and hospitals; industrial establishments, including warehouses and grain elevators; and any other structures and adjacent area, public or private; and for the protection of stored, processed or manufactured products. This category has been subdivided into four subcategories.

i. Subcategory 7a is for pest control operators who are, or will be, certified and licensed by the Structural Pest Control Commission. The commissioner hereby

delegates to the Structural Pest Control Commission the authority to examine and certify all persons in this subcategory. The commissioner hereby delegates to the Structural Pest Control Commission the authority to enforce all federal and state laws and regulations as they apply to persons certified under this subcategory.

ii. Subcategory 7b is for applicators who apply or supervise the application of restricted use pesticides on a nonfee basis in, on or around institutions, motels, hotels, hospitals and like places as the owner or in the employ of the owner and for persons applying or supervising the application of any herbicide, rodenticide, or insecticide for grass and weed control and rodent and general pest control in, on, or around structures or grounds of government subsidized and administered housing and multiplex housing.

iii. Subcategory 7c is for applicators who apply, or supervise the application of, restricted use pesticides on a nonfee basis in, on, or around commercial grain elevators and other grain handling establishments, feed mills, flour mills, food processing plants, and other places where processed or unprocessed foods are stored, as the owner or in the employ of the owner. This subcategory is divided into three separate areas of certification:

- (a). (7c1) general pest control;
- (b). (7c2) vertebrate control;
- (c). (7c3) stored grain pest control.

iv. Subcategory 7d is for employees of a school or school system who apply or supervise the application of pesticides on a nonfee basis for grass and weed control and rodent and general pest control (roaches, wasps, and ants) or restricted use pesticides, in, on, or around structures and grounds of schools that provide education for classes kindergarten through 12. Pesticide applications for wood destroying insects shall be applied by licensed structural pest control operators. Each 7d certified applicator shall annually train all persons applying pesticides under his/her supervision in the proper handling, storage, use, application and disposal of pesticides.

h. Public Health Pest Control (category 8). This category is for commercial applicators and state, federal and other government employees using or supervising the use of pesticides in public health programs for the management and control of pests having medical and public health importance. This category has been subdivided into six subcategories, as follows.

i. Mosquito Control—Applicator (subcategory 8a). This subcategory is for commercial applicators and government employees who are applicators in mosquito control programs.

ii. Rodent Control (Subcategory 8b). This subcategory is for commercial applicators and government employees who are applicators in rodent control programs.

iii. Community Public Health (subcategory 8c). This subcategory is for commercial applicators and government employees who are applicators concerned with the control of all arthropods and rodents of public health importance.

iv. Mosquito Control: Program Supervisor (subcategory 8d). This subcategory is for commercial applicators and government employees who are program supervisors in organized mosquito control programs.

v. Antimicrobial Pest Control (subcategory 8e). This subcategory is for commercial applicators, including those in subcategory 7(a) found at LAC 7:XXIII. §711.B.2.g.i, engaged in antimicrobial pest control using restricted use pesticides.

vi. Sewer Root Control (subcategory 8f). This subcategory is for commercial applicators and government employees who are applicators engaged in root control in sewers using restricted use pesticides.

i. Regulatory Pest Control (category 9). This category includes state, federal or other governmental employees using or supervising the use of pesticides with restricted uses in the control of regulated pests.

j. Demonstration and Research Pest Control (category 10). This category includes individuals who demonstrate to the public the proper use and techniques of application of pesticides with restricted uses, or supervise such demonstrations and persons conducting field research with pesticides, and in doing so, use or supervise the use of pesticides with restricted uses. This category has been subdivided into eight subcategories:

- i. agricultural pest control;
- ii. forest pest control;
- iii. ornamental and turf pest control;
- iv. seed treatment;
- v. aquatic pest control;
- vi. right-of-way and industrial pest control;
- vii. industrial, institutional, structural and health related pest control;
- viii. public health pest control.

C. In addition to a determination of competence in a specific category or subcategory, each commercial applicator shall demonstrate practical knowledge of the principles and practices of pest control and safe use of pesticides. In order to meet this requirement, each commercial applicator, at the time of initial certification in at least one category, must take a general standards exam.

D. Examinations for certification for commercial applicators will be given upon request of the applicant in Baton Rouge at the division or in any district office of the department during office hours. Request for exams in district offices must be made seven days in advance.

E. Each person that has been certified in any category or subcategory as a commercial applicator, and whose certification has not been revoked or suspended or expired, may renew that certification by attending a recertification meeting or training course for that category as approved by the commissioner.

F. The commissioner shall issue a certification card to each commercial applicator showing the categories or subcategories in which the applicator is certified. This certification card shall expire on December 31 of each year. Each person wishing to renew a certification card shall do so by submitting an application form prescribed by the commissioner and by submitting the proper fee.

G. Each person who is certified as a commercial applicator need not be certified as a private applicator or a pesticide salesperson to apply or supervise the application of any restricted use pesticide as a private applicator, or to sell or supervise the sale of restricted use pesticides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:324.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:179 (April 1983), amended LR 10:193 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 18:953 (September 1992), LR 19:735 (June 1993), LR 20:641 (June 1994), LR 21:928 (September 1995), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, Advisory Commission on Pesticides, LR 23:193 (February 1997), LR 24:280 (February 1998), LR 28:39 (January 2002), LR 32:794 (May 2006), repromulgated LR 32:1011 (June 2006), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§713. Certification of Pesticide Salespersons

A. Examinations for certification for pesticide salespersons will be given upon request of the applicant in Baton Rouge, at the division, or at any district office of the department. Each person who has been certified as a pesticide salesperson, and whose certification has not been revoked or suspended or expired, may renew that certification by attending a recertification meeting or training course for that category as approved by the commissioner. The commissioner shall issue a certification card to each pesticide salesperson. This card shall expire on December 31 of each year. Each person wishing to renew a certification card shall do so by submitting an application form and the proper fee, as prescribed by the commissioner.

B. No pesticide salesperson shall sell or distribute any restricted use pesticide to any person who does not hold a valid certification card.

AUTHORITY NOTE: Promulgated In accordance with R.S. 3:3203, R.S. 3:3244 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:184 (April 1983), amended LR 10:194 (March 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:280 (February 1998), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§715. Certification of Agricultural Consultants

A. Each application for Agricultural consultant shall be in writing and shall be on forms prescribed by the commissioner.

B. The agricultural consultant application experience requirements shall be substantiated by a notarized statement from the person who was responsible for the applicant during the time this experience was gained.

C. Each application for an agricultural consultant's examination shall be reviewed by an ad hoc committee appointed by the chairman of the commission. The committee shall consider the application and make its recommendation to the commission.

D. Each application for an agricultural consultant's examination shall be approved by the commission before an examination is administered. Examinations for agricultural consultants shall be administered only in Baton Rouge at the division during office hours and shall be administered only after payment of the proper fee.

E. Certification of Agricultural Consultants

1. Certification in a category authorizes the agricultural consultant to make recommendations in the areas listed for each category.

2. Applicants for certification as agricultural consultants shall elect to be examined in one or more of the following categories.

a. Control of Insects, Mites, Nematodes or Other Invertebrates (category 1)

i. Agricultural Entomology (subcategory 1a). Making recommendations for the control of pests of agronomic crops, especially cotton, rice, soybeans, sugarcane, vegetables, pasture and forage, and grain crops.

ii. Forest Entomology. Making recommendations for the control of forest pests.

iii. Household, Structural and Industrial Entomology. Making recommendations for the control of household pests, structural and industrial pests (such as termites, in stores, warehouse and transportation facilities).

iv. Medical, Veterinary and Public Health Entomology. Making recommendations for control of arthropods affecting man and animals.

v. Orchard and Nut Tree Entomology. Making recommendations for the control of orchard pests.

vi. Ornamental Entomology. Making recommendations for the control of pests of ornamentals, lawns, turf and shade trees.

b. Control of Plant Pathogens (category 2)

i. Agricultural Plant Pathology. Making recommendations for the control of diseases of agronomic crops, especially sugarcane, cotton, rice, soybeans and home garden plants.

ii. Turf, Ornamental, Shade-tree and Floral Plant Pathology. Making recommendations for the control of diseases of turf, ornamentals, shade-trees and floral plants. Also includes greenhouse and nursery plant disease control.

iii. Forest Pathology. Making recommendations for the control of diseases of trees in plantations, nurseries and managed or unmanaged forests wherein the principal value lies in the production of wood fiber.

iv. Orchard Pathology. Making recommendations for the control of diseases of wood vines and trees wherein the principal value lies in the production of fruits or nuts.

c. Control of Weeds (category 3)

i. Agricultural Weed Control. Making recommendations for the control of weeds and grasses in field crops, vegetable crops, pastures and rangeland.

ii. Turf, Ornamental and Shade-Tree Weed Control. Making recommendations for the control of weeds and grasses in ornamentals, turf areas, cemeteries and other similar areas.

iii. Forest Weed Control. Making recommendations for the control of weeds and grasses in forest lands.

iv. Right-of-Way and Industrial Weed Control. Making recommendations for the control of weeds and grasses in and around industrial and commercial sites.

d. Soil Management (category 4)

i. Agricultural Field Soil Management. Knowledgeable in symptoms of soil and/or tissue nutrient problems; sampling techniques for soil and/or tissue analysis; interpretation of laboratory results; and recommendations for soil and/or tissue amendments.

ii. Agricultural Soil, Water and Tissue Laboratory Analysis. Knowledge of all diagnostic procedures pertaining to analysis of soil, water and/or tissue samples.

iii. Agricultural Soil Reclamation. Knowledge of techniques, methods, etc., for restoring or attempting to restore soil productivity as a result of physical and/or chemical disturbance or natural causes such as severe erosion or contaminated soils.

iv. Agricultural Water Management. Knowledge of irrigation scheduling practices and techniques for various enterprises requiring water on a regular or intermittent basis.

E. Each person that has been certified in any category or subcategory as a agricultural consultant, and whose certification has not been revoked or suspended or expired, may renew that certification by attending a recertification meeting or training course for that category as approved by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3246 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:184 (April 1983), amended LR 11:943 (October 1985), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:281 (February 1998), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides LR 28:39 (January 2002), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Subchapter C. Licensing Requirements

§723. Owner-Operators

A. Every owner-operator of a pesticide application business must have a current license issued by the commissioner before making any applications of pesticides.

B. No person required by the provisions of R.S. 3:3243 to be licensed by the commissioner shall be licensed as an owner-operator unless such person:

1. has a current commercial applicator certification; or
2. employs a person having a current commercial applicator certification. All persons applying pesticides under an owner-operator license must maintain their commercial applicator certification in current status at all times.

C. No person may apply pesticides under an owner-operator license unless:

1. such person is named on the application for license;
- or

2. if employed subsequent to issuance of the license or on a temporary basis, the owner-operator has notified the commissioner of such employment prior to the first day of such employment. Initial notification of employment subsequent to issuance of the license may be made by telephone but must be confirmed, in writing, by the owner-operator within three days after the first day of employment.

D. Prior to issuance of the license, the applicant for an owner-operator license shall file proof of financial responsibility with the commissioner, as follows.

1. Ground Applicators—\$25,000
2. Aerial applicators who do not apply phenoxy herbicides—\$25,000
3. Aerial applicators who apply phenoxy herbicides—\$50,000

E. Proof of financial responsibility may be made by any of the following means:

1. filing a surety bond in the proper amount, written by a company authorized to do business in Louisiana and

conditioned upon the licensee fulfilling his obligations to persons proven to have suffered damages as a result of actions of the owner-operator or any of his employees. Such surety bond shall provide for 90 days written notice to the commissioner prior to cancellation;

2. filing a certificate of insurance, in the form prescribed by the commissioner, in the same amount as required for a surety bond. Such insurance shall be payable to the benefit of persons proven to have suffered damages as a result of the actions of the owner-operator or any of his employees and shall provide for 30 days written notice to the commissioner. Such insurance shall not be applied to damages or injury to agricultural crops, plants, or land being worked upon by the commercial applicator. An owner-operator shall not change the amount of such insurance during the period of the license without the prior written approval of the commissioner;

3. filing a certificate(s) of deposit in the same amount as required for a surety bond. Such certificates of deposit shall be assigned to the commissioner, endorsed, and deposited with the commissioner. Holders of such certificates shall continue to draw all interest thereon. Upon the request of the certificate holder, certificates of deposit may be exchanged at maturity, under procedures acceptable to the commissioner;

4. filing an irrevocable letter of credit, issued by a guarantor and in a form acceptable to the commissioner, which shall be non-cancelable during the term of the license for which the irrevocable letter is offered as security;

5. depositing cash equal to the amount required for the surety bond with the commissioner, which cash shall remain on deposit until replaced by other security acceptable to the commissioner or until expiration, suspension, or revocation of the license.

F. Failure to maintain the required security in full force and effect throughout the license period, as required under Subsection D of this Section, shall subject a licensee to immediate suspension or revocation of his license.

G. Applicants for owner-operator license must satisfactorily complete the application form prescribed by the commissioner and pay the fee.

H. Prior to issuance of the license and/or during the period of licensure, persons applying for owner-operator license under a corporate name must provide proof of compliance with Louisiana's Corporation Laws upon the commissioner's request.

I. Each application for owner-operator license must list all commercial applicators employed on a regular basis when the application is filed. Commercial applicators hired after the license is issued must be certified to the commissioner as required under this Section.

J. All mechanically powered pesticide application equipment used by any person required by the provisions of R.S. 3:3243 to be licensed by the commissioner shall have a department issued decal affixed to the equipment. The equipment shall be registered and decalced annually with the department.

K. Owner-operator licenses shall be valid until December 31 following date of issue and must be renewed annually by filing the application form prescribed by the commissioner, together with the fee, prior to December 31. A late fee of \$50 shall be imposed on any applicant filing

application for renewal of an owner-operator license after December 31.

L. Licensed owner-operators who apply any pesticides which, upon disposal, are classified as hazardous wastes must comply with all rules adopted by the commissioner to regulate the handling of such pesticides prior to renewal of the license. If licensed after January 1, the owner-operator must comply with all rules regulating the handling of pesticides, which upon disposal are classified as hazardous wastes, within 30 days after issuance of the license.

M. Any person whose license or required certification has been suspended or revoked may be required to appear before the commission prior to issuance of a new license or certification. No owner-operator license or required certification shall be reinstated after suspension or revocation unless the applicant for reinstatement has complied fully with all requirements of this Rule.

N. The commissioner may deny an owner-operator license or commercial applicator certification to any person who:

1. fails to demonstrate a knowledge of pesticides necessary for the safe and efficacious use thereof;
2. fails or has previously failed to comply with any requirement of these regulations and/or the pesticides statutes;
3. has previously been adjudged, in a properly conducted adjudication procedure, to have violated any provisions of the pesticide statutes and/or these regulations; and/or
4. has failed to apply for and receive a decal for every item of mechanically powered pesticide application equipment used in the operation of the business.

O. Grass-Cutter Exemption. A person, when applying a general use pesticide to the lawn or ornamental plants of an individual residential property owner using pesticides and pesticide application equipment owned and supplied by the property owner, is exempt from licensing provided the person does not advertise for or solicit herbicide (grass or weed control) application business and does not hold oneself out to the public as being engaged in herbicide (grass or weed control) application. The person shall not supply his/her own pesticide application equipment, use pesticide applying power equipment, or use any equipment other than a hand held container when applying the pesticide.

P. Licensed owner-operators and any person working under the license shall not apply any pesticide(s) which is in any way excluded from the coverage required by Subsection E of this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3243.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission of Pesticides, LR 9:169 (April 1983), amended LR 10:194 (March 1984), LR 12:187 (February 1986), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 23:194 (February 1997), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§725. Pesticide Dealers Selling Restricted Use Pesticides

A. Pesticide dealers must be licensed by the commissioner prior to making any sale of restricted use pesticides.

B. No person shall be licensed as a pesticide dealer unless such person:

1. holds a current pesticide salesperson certification;
2. employs at least one person who holds a current pesticide salesperson certification; or
3. holds a current commercial applicator certification.

C. No person shall sell restricted use pesticides unless:

1. his/her name is listed on the application for pesticide dealer license; or
2. if employed after issuance of the license, the licensed pesticide dealer has notified the commissioner of such employment, in writing, within 30 days after the first day of such employment. Such subsequent notification shall contain the name, address, and certificate number of certified pesticide salespersons who are employed after the license is issued.

D. No licensed pesticide dealer may sell, offer for sale, or hold for distribution any pesticide which has not been registered with the department as required by R.S. 3:3221.

E. Applicants for pesticide dealer license shall satisfactorily complete the application form prescribed by the commissioner and pay the fee prior to issuance of the license.

F. Each application for pesticide dealer license shall contain the name, address, and certificate number of all certified pesticide salespersons.

G. Within 30 days after the termination of any certified pesticide salesperson listed on the license application form and/or certified to the commissioner after issuance of the pesticide dealer license, the licensee must notify the commissioner, in writing, of such termination.

H. Whenever such termination results in no certified pesticide salesperson at a licensed pesticide dealer's business, the pesticide dealer license shall be revoked 30 days after such termination, unless the licensee employs another certified pesticide salesperson within 30 days after termination of the original employee. In such event, the licensee may request the administration of an examination for pesticide salesperson certification on a priority basis, and the examination shall be immediately administered.

I. Pesticide dealer licenses shall be valid until December 31 following date of issue and must be annually renewed by filing the application form prescribed by the commissioner, together with the fee, prior to December 31. A late fee of \$50 shall be imposed on any applicant filing application for renewal of a pesticide dealer license after December 31.

J. Any person whose license or required certification has been suspended or revoked may be required to appear before the commission prior to issuance of a new license or certification. No pesticide dealer license shall be reinstated after suspension or revocation unless the applicant for reinstatement has complied fully with all requirements of this rule.

K. The commissioner may deny a pesticide dealer license or pesticide salesperson certification to any person who:

1. fails to demonstrate a knowledge of pesticides necessary for the safe and efficacious use thereof;
2. fails or has previously failed to comply with any requirement of these regulations and/or the pesticides statutes; and/or

3. has previously been adjudged, in a properly conducted adjudication procedure, to have violated any provisions of the pesticides statutes and/or these regulations.

L. Pesticide dealers shall maintain sufficient records to comply with the Hazardous Material Information Development, Preparedness, and Response Act (Act), for the required time as specified in the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3245.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:188 (April 1983), amended LR 10:195 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§727. Pesticides Dealers; Restrictions on Cash Sales

A. Pesticide dealers shall not sell the following restricted use pesticides for currency without first visually inspecting and confirming that the person seeking to purchase said pesticide holds the proper certification:

1. methyl parathion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3252 (A)(8).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 19:609 (May 1993), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR

§729. Agricultural Consultants

A. No person shall be licensed as an agricultural consultant unless such person:

1. is currently certified as an agricultural consultant; or
2. employs a person currently certified as an agricultural consultant.

B. No person shall make pesticide recommendations for a fee unless:

1. his/her name is listed on the application for agricultural consultant license; or
2. if employed after issuance of the agricultural consultant license, the licensee has notified the commissioner in writing within 30 days after the first day of such employment. Notification of employment after the license is issued shall include the name, address, and certificate number of agricultural consultants employed by the licensee.

C. All applicants for agricultural consultant licenses shall complete the application form prescribed by the commissioner and pay the fee required prior to issuance of the license.

D. Each application for agricultural consultant license shall include the name, address, and certificate number of all certified agricultural consultants and the name and address of all field scouts employed by the applicant when the application for license is filed.

E. Each licensed agricultural consultant shall register every field scout employed under his/her license with the commissioner within 30 days after the first day of the scout's employment.

F. Reserved.

G. Agricultural consultant licenses shall be valid until December 31 following date of issue and shall be renewed annually by filing the application form prescribed by the commissioner, together with the fee required prior to

December 31 of each year. A late fee of \$50 shall be imposed on any applicant filing application for renewal of an agricultural consultant license after December 31.

H. Any person whose license or required certification has been suspended or revoked may be required to appear before the commission prior to issuance of a new license or certification. No agricultural consultant license shall be reinstated after suspension or revocation unless the applicant for reinstatement has complied fully with all requirements of this Rule.

I. The commissioner may deny an agricultural consultant license or certification to any person who:

1. fails to demonstrate knowledge of pesticides necessary for the safe and efficacious use thereof;
2. fails or has previously failed to comply with any requirement of these regulations and/or the pesticides statutes; and/or
3. has previously been adjudged, in a properly conducted adjudication procedure, to have violated any provisions of the pesticides statutes and/or these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3246.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:188 (April 1983), amended LR 10:195 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 9. Fees

§901. Fees

A. Fees required under the Louisiana Pesticide Law to be adopted by regulation are established as:

Special Local Need Registration Application Fee	\$100
Examination Fees (for each exams' Private Applicator exempt)	
In Baton Rouge	\$25
At Meeting outside Baton Rouge	\$25
At District Offices	\$50
Duplicate Licenses and/or Certification Cards	Same as Original
	Postage + minimum of \$1 or Postage +
Requested Lists and Copies	\$0.25 /page

B. Fees for licensing shall be paid at the time of application for said license.

C. Fees for registration for field scouts and for equipment inspections shall be paid at the time of application for the appropriate license.

D. Fees for registrations, examinations, and certifications shall be paid at the time the application is submitted.

E. No application shall be processed until all criteria for which the application is made has been met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3221, R.S. 3:3222 and R.S. 3:3251.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:194 (March 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 24:281 (February 1998), amended by the Department of Agriculture and Forestry, Office of Commissioner, Advisory Commission on Pesticides, LR 30:197 (February 2004), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 11. Regulations Governing Application of Pesticides

§1101. General Requirements

A. No person shall apply pesticides as a commercial applicator unless such person is:

1. licensed as required under §725 hereof;
2. employed by a person licensed as required by §725 hereof;
3. making ground applications of pesticides under the direct supervision of a person certified as a commercial applicator; or
4. certified in demonstration and research.

B. No person shall apply any pesticide which is not registered with the department and the EPA, provided that this restriction shall not apply to:

1. activities conducted by persons certified in demonstration and research; and
2. activities conducted under an approved experimental use permit.

C. No person who is required under the provisions of R.S. 3:3243 to be licensed by the commissioner shall apply pesticides with mechanically powered pesticide application equipment which does not bear a current decal affixed by the commissioner, except as provided under §725.J.

D. No person shall apply any ester compound of phenoxy herbicide containing an aliphatic alcohol radical with less than six carbon atoms at any location within Louisiana.

E. All pesticides shall be applied in accordance with label and labeling requirements.

F. All persons who apply pesticides aerially must be certified as commercial applicators.

G. No person who is required under the provisions of R.S. 3:3243 to be licensed by the commissioner may dispose of any unused portions of pesticides and/or rinsate of pesticides at any location other than a site approved by the commissioner.

H. Commercial pesticide applicators applying any concentrations of agricultural pesticides shall not make applications from a height of greater than 18 feet for aerial applicators and 3 feet for ground applications, above the target field crops.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§1103. Restrictions on Application of Certain Pesticides

A. In addition to all other pesticides classified by EPA as restricted use pesticides, the pesticides listed in Subsection B of this Section are classified as restricted use pesticides within the state of Louisiana, except:

1. when formulated in concentration of 2 percent or less; or
2. when formulated with fertilizer for use by homeowners; or
3. when formulated in containers of one quart or less or two pounds dry weight or less.

B. The following pesticides may not be applied by commercial applicators during the times set forth in this Rule in the areas listed in §1103.C, D and E.

Chemical Name	Common Name
1. 4-amino-3, 5,6-trichloro-picolinic acid	Picloram
2. Arsenic trioxide	---
3. 3-chlorophenoxy-alpha-propionamide	3-CPA
4. 4-chlorophenoxy acetic acid	4-CPA
5. 2,4-dichlorophenoxy acetic acid	2,4-D
6. 4-(2,4-dichlorophenoxy) butyric	2,4-DB
7. 2-methoxy-3, 6-dichlorobenzoic acid	Dicamba
8. 2-methyl-4-chlorophenoxyacetic acid	2, 4-MCPA
9. 4-(2 methyl-4-chlorophenoxy) butyric acid	---
10. 2-(2 methyl-4-chlorophenoxy)	2-MCPP
11. Arsenic acid	Arsenic
12. Sodium arsenite	---
13. 2-(2,4,5-trichlorophenoxy) ethyl dichloropropionate	2,2
14. Tris (2,4-dichlorophenoxy ethyl) phosphite	---
15. A mixture of tri-, tetra-, and polychlorobenzoic acid	---

C. The pesticides listed in §1103.B shall not be applied by commercial applicators between March 15 and September 15 in the following parishes or wards:

1. Avoyelles;
2. Bossier;
3. Caddo;
4. Caldwell;
5. Catahoula;
6. Claiborne, Ward 4;
7. Concordia;
8. DeSoto, Ward 7;
9. East Carroll;
10. Evangeline, Wards 1, 3 and 5;
11. Franklin;
12. Grant;
13. Iberville Ward 9;
14. LaSalle;
15. Madison;
16. Morehouse;
17. Natchitoches;
18. Ouachita;
19. Pointe Coupee;
20. Rapides;
21. Red River;
22. Richland;
23. St. Landry;
24. St. Martin, Ward 5;
25. Tensas;
26. Union;
27. West Carroll;
28. West Baton Rouge, Wards 5, 6, and 7;
29. Winn, Ward 7.

D. The pesticides listed in §1103.B shall not be applied by commercial applicators between March 1 and June 15 in the area between the Mississippi River and Highway 61 in the Parishes of St. James and St. John the Baptist.

E. The pesticides listed in §1103.B shall not be applied by commercial applicators in the Parish of Plaquemines.

F. No commercial applicator may make application of the products listed in §1103.B and the following pesticides when the wind speed is at 10 miles per hour or above.

1. 3¹4¹-Dichloropropionanilide—Propanil
2. 1:1-Dimethyl-4, 41-Bipyridinium (cation)—Paraquat
3. Isopropylamine salt of glyphosate—Glyphosate
4. Sulfosate Trimethylsulfonium carboxymethylaminomethyl-phosphonate—Touchdown
5. Glufosinate-ammonium—Ignite

H. Reserved.

I. Hand injections of pesticides are exempt from the requirements of §1103.C.

J. Reserved.

K. Reserved.

L. No person shall apply, use, or incorporate the use of any herbicide, as defined in §103, including but not limited to, those registered with and/or approved by the U.S. Environmental Protection Agency or the department, for the management, control, eradication or maintenance of weeds, grass, trees, shrubs, foliage, vegetation or other natural growth in any parish right-of-way, ditch, servitude, drainage area, roadside, road shoulder, green area, buffer zone, waterway, neutral ground or median in the unincorporated areas of St. Tammany Parish.

1. Definitions as used in this Subsection

Ditch—natural or dedicated area which provides for the containment or flow of water from rain or adjacent drainage areas or waterways such as streams, creeks, ponds, lakes or rivers.

Drainage Area—an area maintained for the purpose of channeling or preventing accumulation of water from surrounding land.

Easement—a designated right to use the property of another for a specific purpose, i.e., drainage, utility easement.

Median/Neutral Ground—the area dividing or separating a roadway and not used for right of passage.

Right-of-Way—any public way, street, road, alley, easement, servitude or access, which was dedicated to or acquired by the St. Tammany Parish to provide means of access to abutting properties; whether paved, improved or unimproved, including those areas dedicated for proposed or future uses.

Roadside/Road Shoulder—natural or dedicated areas which are parallel, contiguous to, abut, adjoin, border, edge, connect or approach any public right-of-way, road, street or highway.

Servitude—a right-of-way through or across property belonging to another.

2. Exemptions are hand held manual pump sprayers up to a maximum three-gallon capacity.

M. An ultra low volume (ULV) malathion and a ULV pyrethroid insecticide (tank mixed) may be applied to control plant bugs in cotton only between sunrise on May 15 through sunrise on September 15 of each year, subject to the following.

1. Applications shall be made at no less than seven day intervals at an application rate not to exceed the individual pesticide product labels and with no other dilutions or tank mixes.

2. Each application shall be reported, in writing and within 24 hours of the application, to the appropriate Boll Weevil Eradication Program district office by the farmer, agricultural consultant or owner/operator.

3. The report shall include the names and addresses of the farmer, agricultural consultant (if appropriate), owner/operator and applicator; the applicator's number issued by the department; the field name or number; the number of acres treated; the name and EPA registration number of the pesticide product; and the application date and time.

N. Reserved.

O. Regulations Governing Aerial Applications of 2, 4-D or Products Containing 2, 4-D

1. Registration Requirements

- a. Prior to making any commercial aerial or ground application of 2, 4-D or products containing 2, 4-D, as described in §1103.P.3.a.i., the owner/operator must first register such intent by notifying the in writing.

- b. All permits and written authorizations of applications of 2, 4-D or products containing 2, 4-D in the areas listed in §1103.P.3.a.i., shall be a part of the record keeping requirements, and be in the possession of the owner/operator prior to application.

2. Grower Liability. Growers of crops shall not force or coerce applicators to apply 2, 4-D or products containing 2, 4-D to their crops when the applicators, conforming to the Louisiana Pesticide Law and rules and regulations promulgated there under or to the pesticide label, deem it unsafe to make such applications. Growers found to be in violation of this Section may be subject to a stop order, subject to an appeal to the commission.

3. 2, 4-D or Products Containing 2, 4-D; Application Restriction

- a. Aerial application of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between April 1 and May 1 in the following parishes.

- i. Aerial application of 2, 4-D or products containing 2, 4-D is limited to only permitted applications annually between April 3 and May 1 in the following parishes: Allen (East of U.S. Highway 165 and North of U.S. Highway 190), Avoyelles (West of LA Highway 1), Evangeline, Pointe Coupee (West of LA Highway 1 and North of U.S. Highway 190), Rapides, and St. Landry (North of U.S. Highway 190).

- ii. Applications of 2, 4-D or products containing 2, 4-D, shall not be made in any manner by any commercial or private applicators between May 1 and August 1, in the areas listed in §1103.P.3.a.i., except commercial applications of 2, 4-D or products containing 2, 4-D permitted by the department may be made in the area in Allen Parish which is south of Deer Farm Road and Carrier Road, north of U.S. Highway 190 between U.S. Highway 165 and Castor Creek and in the area in Evangeline Parish south of LA Highway 104, north of US Highway 190 and west of LA Highway 13. The request to the department for a permitted application shall be made in writing to the department and must be approved in writing by the Assistant Commissioner of the Office of Agricultural and Environmental Sciences or his designee.

4. Procedures for Permitting Applications of 2, 4-D or Products Containing 2, 4-D

a. Prior to any application of 2, 4-D, or products containing 2, 4-D, a permit shall be obtained in writing from DPEP. Such permits may contain limited conditions of applications and shall be good for five days from the date issued. Growers or commercial ground or aerial applicators shall obtain permits from DPEP. Commercial ground and aerial applicators shall fax daily to DPEP all permitted or written authorized applications of 2, 4-D or products containing 2, 4-D. The faxed information shall include but not be limited to the following:

- i. wind speed and direction at time of application;
- ii. temperature at time of application;
- iii. field location and quantity of acreage;
- iv. time of application;
- v.

grower name, address and phone number;

vi. owner/operator firm name, address and phone number;

vii. applicator name, address, phone number and certification number;

viii. product name and EPA registration number;

ix. any other relevant information.

b. The determination as to whether a permit for application is to be given shall be based on criteria including but not limited to:

- i. weather patterns and predictions;
- ii. wind speed and direction;
- iii. propensity for drift;
- iv. distance to susceptible crops;
- v. quantity of acreage to be treated;
- vi. extent and presence of vegetation in the buffer zone;

vii. any other relevant data.

5. Monitoring of 2, 4-D or Products Containing 2, 4-D

a. Growers or owner/operators shall apply to the DPEP, on forms prescribed by the commissioner, all requests for aerial applications of 2, 4-D or products containing 2, 4-D.

b. All owner/operators and private applicators shall maintain a record of 2, 4-D or products containing 2, 4-D applications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 9:189 (April 1983), amended LR 10:196 (March 1984), LR 11:219 (March 1985), LR 11:942 (October 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), LR 19:1119 (September 1993), LR 21:668 (July 1995), LR 24:281 (February 1998), LR 24:2076 (November 1998), LR 26:1428 (July 2000), LR 26:1966 (September 2000), LR 27:279 (March 2001), LR 27:1672 (October 2001), LR 33:1855 (September 2007), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§1105. Fixed Wing Aircraft; Standards for Commercial Aerial Pesticide Applications

A. Commercial aerial pesticide applicators, with the single exception of aerial mosquito pest control applicators, shall adhere to the following standards for fixed wing aircraft, regarding boom configurations, nozzle angles, and volume of pesticides per acre.

1. The effective spray boom length shall not exceed 75 percent of the length of the wing (wing tip to wing tip) on which the boom is attached.

2. Except as follows, all spray nozzles shall be oriented to discharge straight back toward the rear of the aircraft. When applying insecticides by aircraft, with a maximum flying speed of less than 120 miles per hour, the applicator shall have the option to position nozzles at an angle of 45 degrees down from straight back or 45 degrees back from straight down.

3. The spray boom pressure shall not exceed a maximum of 40 pounds per square inch (40 PSI).

4. When disc and core type nozzles are used for herbicide, desiccant, or defoliant applications, a number 46 or larger core must be used.

5. Unless further restricted by other regulations or labeling herbicides shall be applied in a minimum of five gallons of total spray mix per acre.

6. Unless further provided for by other regulations or labeling all other pesticides shall be applied in a minimum of one gallon of total spray mix per acre. With the following exception:

a. insecticides applied in the Boll Weevil Eradication Program, which shall be applied in accordance with their labels.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:953 (September 1992), amended LR 21:927 (September 1995), LR 26:1964 (September 2000), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§1107. Waiver of Restrictions

A. No commercial applicator shall apply any of the pesticides listed in §1103.B in the parishes and during the periods specified in §1103.C without written authorization from the commissioner prior to such application, except as described in §1103.P.

B. The commissioner may waive the time restrictions on application of pesticides listed in §1103.B upon written request, as follows.

1. Any commercial applicator desiring a waiver of any restriction contained in §1103 shall apply to the commissioner at least 24 hours prior to the date scheduled for application of the pesticide.

2. The application for waiver shall be submitted on a form provided by the commissioner and shall contain the following information:

a. the name and address of the person requesting the application;

b. the name of the applicator who will actually make the application;

c. the name of the owner-operator, if different from the applicator making the application;

d. the location where the application will be made, including the crop and name and address of the landowner;

e. the proposed date and hour when the application is scheduled; and

f. any other information pertinent to the specific waiver application which may be required by the commissioner.

C. Both the commercial applicator and the person for whom the pesticide application will be made must sign and date the waiver application.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:197 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 27:279 (March 2001), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§1109. Special Restrictions on Commercial Aerial Pesticide Applications; Applications in the Rain and Buffer Zones

A. All aerial pesticide applicators are prohibited from making an application of any pesticide while it is raining. This prohibition shall not apply to a drizzle of rain so light as to not cause puddling or run-off water from the field.

B. Unless further restricted by other regulations or labeling, commercial aerial pesticide applicators, with the single exception of aerial mosquito pest control applicators, are prohibited from making an application of any pesticide within 100 feet from the edge of the swath to any inhabited structure, including but not limited to inhabited dwellings, hospitals, nursing homes and places of business. No aerial applicator, with the single exception of aerial mosquito pest control applicators, shall apply pesticides within 1000 feet of any school grounds during normal school hours.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 18:953 (September 1992), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§1111. Special Restrictions on Pesticide Applications in Schools

A. Any person who applies or supervises the application of pesticides on a nonfee basis for grass and weed control and rodent and general pest control (roaches, wasps, and ants) or restricted use pesticides, in, on, or around school structures and grounds shall be a certified commercial applicator or under the supervision of a certified commercial applicator.

B. School systems with 10 or more schools shall employ a minimum of two certified commercial applicators. School systems with less than 10 schools shall employ a minimum of one certified commercial applicator.

C. The governing authority (including but not limited to superintendents, headmasters, school boards, board of directors, chief executive officer, or principals) shall prepare and submit in writing, for each school under its authority, to the director, an annual integrated pest management (IPM) plan for pest control for grass and weed control and rodent and general pest control (roaches, wasps, and ants) in, on, or around school structures and grounds. The IPM plan shall include all pest control methods employed, including pesticide and non-pesticide methods and strongly recommends the least toxic methods of control. The first IPM plan shall be submitted prior to any application of

pesticides beginning March 1, 1995 and shall be submitted on an annual year of August 1 through July 31. The plan shall be available for review, upon request, by the commissioner and the general public, during normal school hours, at each school, in the business office. The annual IPM plan shall include, but not be limited to the following:

1. school name and mailing address, physical address, telephone number and contact person;
2. name and license or place of business number of company(s) and certification numbers of applicators, if contracted;
3. name and certification number of certified commercial applicator(s) of school system;
4. brand name and EPA registration number of all pesticides to be used;
5. for each pesticide to be used a list of the following:
 - a. pest to be controlled;
 - b. type of application to be used;
 - c. location of application;
 - d. restricted use pesticide or general use pesticide;
6. proposed location and date for non-certified applicator training;
7. other methods of pest control.

D. Any deviation from the integrated pest management plan submitted shall be submitted in writing to the director, within 24 hours after any application.

E. Records of pesticide applications shall be maintained according to §2101 and records of inspections, identification, monitoring, evaluations, and pesticide applications for grass and weed control and general pest control, shall be maintained by the school and submitted with the annual integrated pest management plan to the department annually on a form prescribed by the department in accordance with §2101.

F. No pesticides shall be applied for general pest control inside school buildings and no restricted use pesticides shall be applied in, on or around school grounds when students are present or expected to be present for normal academic instruction or extracurricular activity for at least eight hours after application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3242 and R.S. 3:3249.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 21:928 (September 1995), amended LR 23:194 (February 1997), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§1113. Complaints

A. Persons filing complaints shall, at the same time the complaint is filed, execute a consent form granting access to the property for the purpose of inspection.

B. Each person filing a crop injury complaint must notify the commissioner at least 24 hours before the start of harvest of the alleged injured crop.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3255.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:197 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 13. Pesticide Containers and Bulk Facilities

§1301. Pesticide Containers

A. Storage Areas for Full or Partially Full Pesticide Containers

1. Pesticide containers shall be stored in a secure enclosure.

2. Pesticide containers shall be free of leaks.

3. The storage area shall be maintained in good condition, without unnecessary debris.

B. Pesticide containers shall be cleaned and disposed of according to the product label.

C. Pesticide containers, ready for disposal, shall be stored in a secured area and shall be kept for no more than 90 days after the end of the product spraying season or 180 days if held for recycling.

D. Rinsate from pesticide container cleaning shall be used in the following manner:

1. in subsequent applications of the pesticide; or

2. placed in a rinsate collection system dedicated to that pesticide and used according to the label and labeling by the end of that applicable pesticide's spray season; or

3. disposed in a permitted waste facility.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:197 (March 1984), amended LR 11:943 (October 1985), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§1303. Bulk Facilities

A. Bulk facilities:

1. shall be registered with LDAF as a bulk facility and EPA as a producing establishment;

2. shall have a written contract/agreement from each pesticide's registrant prior to repackaging a pesticide. The contract/agreement for each registrant's product shall include but not be limited to the following:

a. the label and labeling; and

b. the residue removal procedure; and

c. a description of acceptable containers;

3. shall not change the pesticide formulation without an EPA registration for a new pesticide formulation;

4. shall repackage the pesticide into containers that:

a. are identified as acceptable by the registrant; and

b. meet the specified criteria with respect to continued container integrity, required markings and openings;

5. shall be responsible for:

a. the integrity of pesticides repackaged into containers; and

b. securely attaching the label containing the net contents and EPA establishment number to the container;

6. can repackage any quantity of pesticide into containers, up to the rated capacity of the container. There are no limits on the size of the containers;

7. shall clean a refillable container, according to the residue removal procedure, if one or more of the following occur:

a. each tamper-evident device is not intact; or

b. one-way valve (if equipped) is not intact; or

c. the container previously held a pesticide product other than the pesticide product being refilled;

8. shall not refill a refillable container with an agricultural pesticide if it fails an inspection or is compromised in at least one of the following ways:

a. the container shows signs of rupture or other damage which reduces its structural integrity; or

b. the container has visible pitting, significant reduction in material thickness, metal fatigue, damaged threads or closures, or other significant defects; or

c. the container has cracks, warpage, corrosion or any other damage which might render it unsafe for transportation; or

d. there is damage to the fittings, valves, tamper-evident devices or other appurtenances; or

e. the integrity of the container cannot be repaired, reconditioned or remanufactured; or

f. The container does not bear a legible and durably marked serial number or other identifying code; or

g. The container does not have an intact and functioning one-way valve, if required or tamper-evident device on each opening other than a vent;

9. shall keep and maintain for three years the following records:

a. the registrant-bulk facility written contract/agreement; and

b. the residue removal procedure; and

c. the description of acceptable containers; and

d. for each time a refillable container is refilled with an agricultural pesticide:

i. the EPA registration number of the pesticide product; and

ii. the date of repackaging; and

iii. the serial number or other identifying code of the container;

e. for containment structures:

i. inspection date; and

ii. name of person conducting inspection or maintenance; and

iii. conditions noted and specific maintenance performed; and

f. records of how long non-stationary tanks (with the specified capacities) remain at the facility; and

g. construction date of the structure (for as long as the structure is in use and for 3 years afterwards);

10. shall have secondary containment structures for stationary pesticide containers except for the following:

a. empty containers; or

b. containers holding only rinsate or wash water and so labeled; or

c. containers holding pesticides which are gaseous at atmospheric temperature and pressure; or

d. containers dedicated to non-pesticide use and so labeled;

11. shall have containment pads for dispensing areas if:

a. refillable containers of agricultural pesticide are emptied, cleaned or rinsed; or

b. agricultural pesticides are dispensed from any stationary container; or

c. agricultural pesticides are dispensed from a transport vehicle into a refillable container; or

d. agricultural pesticides are dispensed from any other container for the purpose of refilling a refillable container or filling a non-refillable container for sale or distribution;

12. containment structures shall:

a. be constructed of steel, reinforced concrete or other rigid material capable of withstanding the full hydrostatic head and load of any substances, equipment and appurtenances placed on the structure; and

b. be compatible with the pesticides stored; and

c. be liquid-tight with cracks, seams and joints sealed; and

d. not be constructed of Natural earthen material, unfired clay and asphalt;

13. shall protect appurtenances and containers against damage from personnel and moving equipment.

14. shall seal appurtenances, discharge outlets or drains through the base or wall of existing containment structures, except direct connections between containment structures.

15. shall not configure appurtenances, discharge outlets or drains through the base or wall of new containment structures, except direct connections between containment structures.

16. shall control stormwater in all containment structures by constructing with sufficient freeboard to contain precipitation and prevent water and other liquids from seeping into or flowing onto them from adjacent land or structures.

17. shall have the following for new and existing secondary containment:

a. liquid pesticide stationary containers shall be anchored or elevated to prevent flotation.

b. dry pesticide stationary containers shall:

i. be protected from wind and precipitation; and

ii. be on pallets or raised concrete; and have a floor that extends completely beneath the pallets or raised concrete platforms; and

iii. be enclosed by a curb a minimum of 6 inches high that extends at least 2 feet beyond the perimeter of the container;

18. shall have the following for containment pads:

a. for existing pads:

i. intercept leaks and spills; and

ii. have enough surface area to extend under containers on it; and

iii. accommodate at least the portion of the vehicle where the hose or device couples to it, for transport vehicles delivering pesticide; and

iv. allow for removal/recovery of spilled, leaked or discharged material and rainfall; and

v. have no automatic pumps without overflow cutoffs.

b. for new pads be designed and constructed to:

i. intercept leaks and spills; and

ii. have enough surface area to extend under containers on it; and

iii. accommodate at least the portion of the vehicle where the hose or device couples to it, for transport vehicles delivering pesticide; and

iv. allow for removal/recovery of spilled, leaked or discharged material and rainfall;

v. have no automatic pumps without overflow cutoffs; and

vi. have their surface sloped toward an area where liquids can be collected for removal;

19. shall:

a. prevent pesticides from escaping the structure;

b. manage spilled and leaked materials no later than the end of the day of occurrence except in circumstances where a reasonable delay would significantly reduce the likelihood or severity of adverse effects to human health or the environment and according to the label and all regulations;

c. ensure that transfers of pesticides are attended;

d. lock valves on stationary pesticide containers or lock the facility, whenever the facility is unattended;

e. initiate repair to any areas showing damage and seal cracks and gaps no later than the end of the day on which damage is noticed and complete repairs within a reasonable time frame, taking into account factors such as the weather, and the availability of cleanup materials, trained staff and equipment. Additional pesticides cannot be stored until repairs have been made; and Equip stationary containers with suitable sample points for official samples.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3243.

HISTORICAL NOTE: Promulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 15. Mechanically Powered Pesticide Application Equipment

§1501. Commercial Applicators

A. The following systems or controls must be present and in good operating order prior to the issuance of a decal.

1. Aerial and Ground Application Equipment

a. The hopper must be free of leaks and in good working order; and

b. all equipment must include a properly functioning pressure gauge(s).

2. Aerial Application Equipment

a. The booms, nozzles, and hose fittings must be free of leaks;

b. the emergency dump, if present on an aircraft, must be free of leaks when in the closed position;

c. there must be a main fluid filter between the main tank and the boom system; and

d. the distance between the outermost nozzles on the boom of a fixed wing aircraft shall not be more than 75 percent of the wing span of the aircraft. The boom on the rotary-wing aircraft may not exceed the rotor diameter. The commissioner may waive these requirements for specific aircraft.

3. secondary containment and containment pads are required for dispensing pesticides from stationary containers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3243.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:198 (March 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 24:281 (February 1998), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 17. Monitoring of Commercial Applicator Operations

§1701. Monitoring of Commercial Applicator Operations

A. Duly authorized representatives of the commissioner may inspect all pesticide applicator operations semi-annually, with or without prior notification, provided that the commissioner may monitor such sites on a more frequent basis whenever, in his sole discretion, he determines that there is a need for more frequent monitoring of any specific commercial applicator.

B. In such monitoring, the authorized representative of the commissioner shall:

1. inspect the physical surroundings of the site to determine that all requirements of these regulations have been complied with;

2. inspect the records required by this Part;

3. take samples, as determined by the commissioner, at any of the following locations:

a. any site where an application of pesticides has been made by the applicator;

b. any base storage;

c. any containment tank for pesticides which, upon disposal, are classified as hazardous wastes;

d. any surface impoundment;

e. any wash pad;

f. any soils or water, flowing or still, at any location on or adjacent to the base operation; or

g. any application equipment (i.e., hopper tanks and connections, mixing tank, etc.).

C. Any samples taken as provided above shall be marked for identification under chain of custody procedures and shall be analyzed in accordance with procedures approved by the Association of Official Analytical Chemists and/or other methods approved by the U.S. Environmental Protection Agency.

D. The owner-operator from whose operations any sample is taken shall be provided with a copy of the analysis results within 30 days after the analysis is completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3201.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:198 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 19. Requirements for Access, Examination and Sampling

§1901. Pesticide Dealers and Pesticide Salespersons

A. The commissioner, upon reasonable request, shall be permitted access to any premises where restricted use pesticides are sold, offered for sale, or held for distribution.

B. The commissioner may examine the records required under §2105 and may take samples of any restricted use pesticides found on the premises.

C. Such samples shall be marked for identification by accepted chain of custody requirements and shall be analyzed in accordance with procedures approved by the Association of Official Analytical Chemists and/or other methods approved by the U.S. Environmental Protection Agency.

D. The owner of any restricted use pesticide from which such sample is taken shall be provided with a copy of the

analysis results within 30 days after the analysis is completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3245.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:198 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§1903. Agricultural Consultants

A. The commissioner, upon reasonable request, shall be permitted access to the records required under §2105.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3246.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR

Chapter 21. Record Keeping Requirements

§2101. Owner-Operators, Non-Fee Commercial Applicators, and Commercial Applicators

A. Any person applying pesticides for a fee and commercial applicators described in §711, with the single exception of applicators listed in §711.B.2.g Category 7, shall accurately maintain, for a period of two years, records of pesticide applications on a record keeping form or record keeping format approved by the director. Records described herein must be maintained, within three days of the application, at the physical address of the employer or the physical address on the owner/operator license. A copy of these records shall be provided to any employee of department upon request at a reasonable time during normal working hours. The following information shall be included on that form:

1. owner/operator name, address, and license number;
2. certified applicator, name, address, and certification number;
3. customer name and address;
4. product/brand name;
5. EPA registration number;
6. restricted/general use pesticide;
7. application date;
8. crop/type of application;
9. location of application;
10. size of area treated (acres, square feet, or minutes of spraying);
11. rate of application;
12. total amount of product (concentrate) applied;
13. applicator;
14. certification number of applicator (if applicable).

B. Non-fee commercial applicators as described in §711.B.2.g, Category 7, shall accurately maintain, for a period of two years, records of applications of all herbicides, insecticides, rodenticide, and fumigants on the appropriate record keeping form as described in LAC 7:XXV.117.I and §2101.A and approved by the director. Records described herein shall be maintained, within seven days of the application, at the physical address of the employer. A copy of these records shall be provided to any employee of the department upon request, at a reasonable time during normal working hours.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 21:929 (September 1995), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§2103. Pesticide Dealers and Salespersons

A. The requirements of this rule apply to sales of:

1. pesticides classified as restricted use pesticides by the commissioner or the EPA;
2. pesticides which, upon disposal, are classified as hazardous wastes; and
3. pesticides listed in §1103.B, except when sales of pesticides listed in §1103.B are:
 - a. sold in concentrations of 2 percent or less; or
 - b. formulated with fertilizers for use by homeowners.

B. Licensed pesticide dealers, certified pesticide salespersons, and/or persons under the direct supervision of a certified dealer or salesperson shall maintain the following records on a current basis for a period of two years:

1. the name and amount of the pesticide purchased and/or sold;
2. the date of all purchase and/or sale transactions;
3. the name, address, and certification number of the purchaser, including the purchaser's name, address, and certification number in all purchases made for cash;
4. the name of the person handling any sales of pesticides covered by this rule.

C. Whenever any pesticides which, upon disposal, are classified as hazardous wastes are delivered to a purchaser, the records required under this rule shall include the name of the purchaser, amount of pesticide purchased, date of delivery, and location to which delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3245.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§2105. Agricultural Consultants

A. Every recommendation made by an agricultural consultant shall be in duplicate original and shall be dated and signed by the agricultural consultant.

B. Each recommendation made by an agricultural consultant shall include the following:

1. the name and address of person purchasing the consultant's services;
2. the location, including the crop, for which the recommendation is made;
3. the pesticide or pesticides recommended;
4. the recommended rate of application;
5. a brief statement as to the reasons for the recommendation; and
6. the date of when the recommendation is given.

C. The pesticide recommendation shall be given to the purchaser of the consultant services or his designee and a copy shall be maintained in the records of the agricultural consultant.

D. The commissioner, or his duly authorized representative, shall be permitted access to such records upon reasonable request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3246.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 23. Penalties

§2301. Penalties for Violation of Pesticide Statutes and These Regulations

A. The commissioner may suspend or revoke any license issued under the provisions of R.S. 3:3241-3257 and/or may assess a civil penalty not to exceed \$5,000 for violation of any provision of R.S. 3:3201 through 3:3257 or any violation of any regulation enacted under the authority of said statutes.

B. Each separate day on which any violation occurs may be considered as a separate violation.

C. No penalty may be assessed by the commissioner prior to the holding of an adjudicatory hearing before the commission. Such adjudicatory hearing shall be conducted in accordance with the requirements of the Administrative Procedure Act; any person alleged to have violated any provision of the pesticide statutes or these regulations shall be accorded all of the rights and privileges guaranteed under said Act.

D. The commission shall recommend penalties to be imposed as a result of findings of fact and/or conclusions of law that a violation occurred.

E. Whenever the commissioner fails to accept the recommendations of the commission for the imposition of penalties following an adjudicatory proceeding, the commissioner shall notify the commission, in writing, of the reasons for his failure to accept the commission's recommendations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3252.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:199 (March 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 25. General Requirements for Rinsate Water

§2501. Rinsate Water

A. Rinsate from certified applicator's cleaning pesticide application equipment shall be used in the following manner:

1. in subsequent applications of the pesticide; or
2. placed in a rinsate collection system dedicated to that pesticide and used according to the label and labeling by the end of that applicable pesticide's spray season; or
3. disposed in a permitted waste facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:397 (May 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 27. Handling Pesticide Spills by Applicators

§2701. Handling Pesticide Spills

A. All uncontained spills of more than 1 gallon liquid or 4 pounds dry weight must be reported to the director of

Pesticides and Environmental Programs within 24 hours by telephone and by written notice within three days.

B. The costs of cleanup resulting from pesticide spills are the responsibility of the person who spills the pesticide.

C. Cleanup of pesticide spills shall be approved by the Director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:397 (May 1984), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 29. Emergency Procedures Related to Pesticides

§2901. Definitions

A. In addition to the definitions listed below, and unless otherwise provided, the definitions in R.S. 3:3202 and §103 shall apply to this Subchapter of these regulations.

Complaint—any information or report of any pesticide-related problem which could adversely affect human health or the environment.

Emergency—a situation involving pesticides where there is imminent danger to human health or to the environment.

Environment—includes water, air and land and the interrelationship which exists among and between water, air, land and all living things.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:247 (March 1992), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§2903. Identification of Emergency

A. Procedure

1. Persons detecting or discovering what they reasonably believe to be an emergency involving the use, misuse or storage of pesticides shall immediately contact the division via the 24-hour telephone hotline at (225) 925-3763.

2. Personnel receiving any complaint related to pesticides shall record the information required on department-approved telephone complaint forms.

3. Personnel receiving any complaint that could constitute an emergency shall immediately notify the director.

4. Upon notification, the commissioner shall make a determination as to whether an emergency exists. This determination shall be made as soon as possible. In determining the gravity of the danger, the commissioner shall consider whether the pesticides have resulted in the death of marine life or wildlife and whether the maximum contaminant levels established by §3103 have been exceeded.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:247 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§2905. Declaration of Emergency

A. Upon determining that an emergency exists, the director shall immediately declare in writing that an emergency exists and direct that the following emergency procedures be employed. The director shall notify the appropriate governmental agencies and the media as soon as is practical, and in no case later than eight hours after declaration of emergency.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:247 (March 1992), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§2907. Response to Emergency

A. Containment. At the earliest possible time, the director shall direct and supervise efforts to accomplish the containment of the emergency.

B. Identification of Pesticide. The pesticide or pesticides involved in the emergency shall be identified. Efforts to identify the pesticide(s) shall include, but not be limited to the following:

1. labels of containers of the pesticides or other substances involved shall be consulted;

2. the point source or non-point source shall be investigated and if determined, the relevant records and storage areas of that source examined;

3. all emergency reports shall be reviewed by the director's staff;

4. if indicated, an investigation shall be made relative to any recalled, suspended or canceled pesticides;

5. samples shall be obtained at the earliest possible time and analyzed in accordance with procedures approved by the Association of Official Analytical Chemists and/or other methods approved by the U.S. Environmental Protection Agency.

C. Reporting Requirements. If it is reasonably believed that a pesticide emergency has taken place, all appropriate requirements for reporting to the department shall be complied with, according to §2903.

D. Investigation. In investigating any possible or known pesticide emergencies, the following information shall be sought and recorded:

1. the date, time and location of the incident;

2. the date and time the incident was reported to the department;

3. the department employee receiving the report;

4. from whom the report was received;

5. who initiated the investigation, along with the date, time and place the investigation was initiated;

6. the identity and location of any witness(es);

7. the time, place and circumstances under which each witness' statement was taken and whether such statement was confirmed;

8. the time, description and location of any samples taken;

9. the time, description and location of any other physical evidence; and

10. any information obtained, including that obtained through the inspection of records relevant to causation, identity of pesticide, containment, clean-up, and disposal.

E. Remediation

1. At the earliest possible time, the director shall develop a written plan for clean-up and disposal of pesticide waste as necessary to accomplish remediation of the emergency. In developing said plan, the director shall consider at a minimum, the following information if ascertainable:

- a. the location of the land where the pesticide(s) was applied;
- b. the year, month, date and time the pesticide(s) was applied;
- c. the product name(s) used on the registered label, and the scientific name(s);
- d. the inert ingredients contained in the pesticide(s);
- e. the United States Environmental Protection Agency and state registration numbers of the pesticide(s) that were applied;
- f. the crop and site to which the pesticide(s) was applied;
- g. the amount of pesticide(s) applied per acre, or other appropriate measure;
- h. the concentration of pesticide(s) that was applied as well as concentrations in the soil and water to indicate extent of contamination;
- i. the applicator's business name, if any;
- j. the applicator's name, address, and telephone number;
- k. if applied aerially, the direction and velocity of the wind at the time the pesticide(s) were applied; and
- l. possible hazards to human health that may result from the release considering both direct and indirect effects of the pesticide(s) application.

2. The director shall issue appropriate remedial orders as are necessary to accomplish the plan for clean-up and disposal.

F. Health Related Complaints. Any complaint involving a health-related emergency shall be handled according to the agreement entered into between the department and the Louisiana Department of Health and Hospitals.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Agricultural and Environmental Sciences, LR 18:247 (March 1992), amended LR 20:641 (June 1994), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§2909. Declaration of Termination of Emergency

A. When remediation is complete or there no longer exists a situation involving imminent danger to human health or the environment, the director shall declare in writing that the emergency has ended. The director shall notify the appropriate governmental agencies and the media as soon as it is practical.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:248 (March 1992), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 31. Water Protection

§3101. Definitions

A. In addition to the definitions listed below, and unless otherwise provided, the definitions in R.S. 3:3202 and §103 shall apply to this Subchapter of these regulations.

Base Line Conditions—the pesticide level found in the water of a site immediately preceding the pesticide application season.

Maximum Contaminant Level—the maximum permissible concentration level of a pesticide in the waters of the state.

Pesticide Application Season—that period of time during the year that insecticides, herbicides or other pesticides are normally used on agricultural lands in a given area.

Reasonable Expectation of a Threat—a condition that is probable to lead to substantive injury to human health or the environment.

Threat—a condition that would lead to substantive injury to human health or the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3303(B) and R.S. 3:3306(B).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:248 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§3103. Establishment of Standards for Pesticides in Water

A. The maximum contaminant level standards as published by EPA shall be incorporated as standards for pesticides in waters of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3303(B) and R.S. 3:3306(B).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:248 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§3105. Procedures for the Determination of Threats

A. The procedures for determining whether pesticide concentrations exceed maximum contaminant level standards or pose a threat or reasonable expectation of a threat to human health or the environment shall be:

1. the department shall maintain a water monitoring program;
 - a. water sample collection sites shall be distributed throughout the state. The locations of said sites shall be selected by criteria including, but not limited to:
 - i. those areas that have agricultural land use;
 - ii. those areas that have water drainage from agricultural lands;
 - iii. the propensity for runoff due to topography, soil types and other characteristics;
 - iv. data from aquifer potential maps used to locate well sampling sites in a wide spectrum of the state's aquifers; and
 - v. proximity to pesticide application of irrigation wells or shallow private water wells;
 - b. the water sampling frequency requirements shall be based upon criteria including, but not limited to:

i. the pesticide application season in the area of the water collection sample site;

ii. sampling shall as determined by the commissioner;

c. analytical parameters shall be established for each sampling site and shall be based upon, but not limited to, the following criteria:

i. the major crop(s) grown in the area of the monitoring site;

ii. the pesticide(s) most commonly used on the major crop(s) of the monitoring site area; and

iii. the base line conditions existent prior to the pesticide application season;

d. base line conditions at each water sampling site shall be established by water sampling and analysis prior to the pesticide application season;

e. the analysis of water samples shall be accomplished in accordance with procedures of the Association of Official Analytical Chemists and/or other methods approved by the U.S. Environmental Protection Agency;

2. the commissioner shall consider results of the analysis of the samples, the criteria established in R.S. 3:3306(C), and/or other relevant data and shall promptly determine whether a threat or reasonable expectation of a threat to human health or to the environment exists and whether the standards as adopted herein have been exceeded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3303(B) and R.S. 3:3306(B).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:248 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§3107. Determination of Appropriate Action

A. Upon determination by the commissioner that a threat or reasonable expectation of a threat to human health or to the environment exists or that the maximum contaminant level standards as adopted herein have been exceeded he shall:

1. promptly direct that thereafter the emergency procedures established by Chapter 29 of this Part be employed;

2. complete sufficient investigation as to permit appropriate action.

B. In determining appropriate action as to the pesticide involved the commissioner shall consider:

1. registration denial;
2. stop orders for use, sales or application;
3. label changes;
4. remedial or protective orders;
5. injunctive relief; and
6. any other relevant remedies.

C. In determining appropriate action as to the responsible party the commissioner shall consider:

1. referral for criminal prosecution;
2. referral to the commission;
3. remedial or protective orders;
4. injunctive relief; and
5. any other relevant remedies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3303(B) and R.S. 3:3306(B).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 18:249 (March 1992), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 33. Pesticide Wastes

§3301. Listing of Hazardous Pesticide Wastes

A. The commissioner shall annually, on or before December 31, publish in the Louisiana Register a full and complete list of all pesticides which, upon disposal, are classified as hazardous wastes under regulations of EPA and may supplement such listing at any time when any changes in such classifications are made by EPA.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3243.

HISTORICAL NOTE: Promulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§3303. Procedures for Monitoring

A. In the course of conducting routine monitoring of pesticides, the commissioner shall monitor for the presence of pesticide wastes.

B. Monitoring for the presence of pesticide wastes shall include, but not be limited to, investigations involving canceled or suspended products, spill responses, and citizen complaints.

C. The procedures for monitoring pesticide wastes shall include but not be limited to the following activities:

1. visual or other sensory observations of conditions which may support the probability or actuality of the presence of pesticide wastes;

2. inquiries into the relevant circumstances surrounding the probability or actuality of the presence of pesticide wastes which may include sample taking and analysis; and

3. a preliminary determination as to whether or not there is a presence of pesticide wastes based upon the observations and the inquiries or upon relevant data, shall be made by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3271 and R.S. 3:3273.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:609 (May 1993), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§3305. Procedures for Determinations

A. When the director makes a preliminary determination as a result of monitoring or otherwise, that there is a presence of pesticide wastes as a result of monitoring or otherwise, the procedures for determining whether the concentrations of pesticide wastes exceed promulgated federal or state standards, or that the concentrations of pesticides pose a threat or reasonable expectations of a threat to human health or to the environment are as set out below.

1. The commissioner shall take into consideration the following:

- a. the results of the analysis of samples, if available;
- b. the criteria established in R.S. 3:3274; and
- c. other relevant data.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3271 and R.S. 3:3274.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental

Science, LR 19:609 (May 1993), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§3307 Appropriate Actions

A. When the commissioner has determined that there is a presence of pesticide wastes and that the pesticide wastes do not exceed promulgated federal or state standards, or when the commissioner determines that the concentrations of pesticides do not pose a threat or reasonable expectation of a threat to human health or to the environment, the commissioner may take one or more of the following actions:

1. issue appropriate orders to provide for proper disposal;
2. take such other action as the commissioner deems appropriate under circumstances.

B. When the commissioner has determined that there is a presence of pesticide wastes and that the pesticide wastes exceed promulgated federal or state standards, or when the commissioner determines that the concentrations of pesticides pose a threat or reasonable expectation of a threat to human health or to the environment, the commissioner may take one or more of the following actions:

1. issue appropriate protective orders to mitigate the further contribution to the accumulation of the pesticide or pesticide wastes;
2. issue remedial orders directing prompt remedial action to correct the offending situation;
3. communicate his determination to any appropriate governmental agency;
4. participate in issuing a public communication concerning the determination. Where a cooperative agreement exists, each public communication shall be issued in accordance with same;
5. take such other action as the commissioner deems appropriate under circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:610 (May 1993), amended LR 19:1120 (September 1993), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§3309. Record Keeping

A. In addition to the record keeping requirements set out in this Part, all persons conducting or having conducted activities of, generating, owning, possessing, storing, transporting, or disposing of pesticide wastes, shall keep copies of all records required by local, state or federal laws or regulations for a period of not less than three years from the receipt of any such record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:610 (May 1993), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

§3311. Transportation of Pesticide Waste

A. All persons transporting pesticide wastes shall transport such wastes in a manner that conforms to the procedures and requirements set forth by the Louisiana

Department of Environmental Quality and the Louisiana Department of Public Safety, in addition to all other applicable local, state and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and R.S. 3:3271.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Science, LR 19:610 (May 1993), repromulgated by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Chapter 35. Health Complaints

§3501. Notification of Pesticide Poisoning

A. Each physician who treats a health complaint that is diagnosed as caused by pesticide poisoning shall provide notice of the poisoning to the director of the division via the 24-hour telephone hotline, (225) 925-3763, within 24 hours of the diagnosis and in writing posted within three days of the diagnosis. Each report shall contain the following:

1. the name, address, and telephone number of the treating physician;
2. the name, address, and telephone number of each patient treated;
3. date of treatment; and
4. the location of the facility where the reporting physician provided treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203 and 3:3208.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences Programs, LR 20:642 (June 1994), amended by Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Advisory Commission on Pesticides, LR 37:

Family Impact Statement

It is anticipated that the proposed action will have no significant effect on the stability of the family, authority and rights of parents regarding the education and supervision of their children, functioning of the family, family earnings and family budget, behavior and personal responsibility of children, or ability of the family or a local government to perform the function as contained in the proposed action.

Small Business Statement

It is anticipated that the proposed action will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to David Fields, Department of Agriculture and Forestry, at P. O. Box 3596, Baton Rouge, LA 70806 or 5825 Florida Blvd., Baton Rouge, LA 70806 and must be received no later than 4:00 p.m. on October 26, 2011. No preamble regarding these proposed regulations is available.

Mike Strain, DVM
Commissioner

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

RULE TITLE: Pesticides

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

The proposed action is not anticipated to have a direct material effect on governmental costs or savings. The proposed action revises the rules regulating pesticides to make technical corrections, define and clarify certain terms, modernize and update these rules and regulations to reflect changes in agricultural practices and pesticide applications in this state, and to add rules regulating bulk facilities that comply with new federal rules on containers and containment.

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

The proposed action is not anticipated to have a direct material effect on governmental revenues.

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

The revisions to the existing rules are not anticipated to have any effect on the costs of or economic benefits to persons or non-governmental groups directly affected by the proposed action. The adoption of rules for bulk facilities is not anticipated to have any effect on the cost of or economic benefits to persons or non-governmental groups directly affected by the proposed action because the proposed action complies with federal rules that are substantially the same.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed action is not anticipated to have a direct material effect on competition or employment.

Craig Gannuch
Assistance Commissioner
1109#036

Evan Brasseux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Children and Family Services
Economic Stability Section**

**Child Care Assistance Program and Quality Start
(LAC 67:III.Chapter 51)**

In accordance with provisions of R.S. 49:950 et seq., the Administrative Procedure Act, the Department of Children and Family Services (DCFS), Economic Stability (ES), proposes to amend the Louisiana Administrative Code (LAC), Title 67, Part III, Subpart 12, Chapter 51, Sections 5107, 5109, 5113, 5117, 5119, 5121, and 5123.

The department finds this amendment necessary to address changes within the new Child Care Resource and Referral (CCR and R) contracts, to address possible fraud and penalties for fraud, and other needed revisions identified through best practices in Quality Start.

Section 5107 is being amended to include summer care programs at participating schools as an option for Child Care Assistance Program (CCAP), to include identity requirements for providers, owners, and directors of centers, to include in-home provider health statement requirements, and to clarify reasons a CCAP provider may be disqualified rather than terminated.

Section 5117 is being amended to require directors to be on site at the center participating in Quality Start a minimum

of 30 hours a week during operating hours in addition to meeting director qualifications for licensure.

Section 5119 is being amended to replace some training required of staff to earn points in Quality Start with other training and for clarification of information regarding attendance at directors' meetings.

Section 5121 is being amended to address possible fraud and penalties for fraud for centers participating in Quality Start and to reflect the replacing of the midpoint review of star awards with a rating review of a percentage of participating centers.

Sections 5109, 5113, and 5123 are being amended for language clarification.

Title 67

SOCIAL SERVICES

Part III. Economic Stability and Self-Sufficiency

Subpart 12. Child Care Assistance Program

Chapter 51. Child Care Assistance Program

Subchapter B. Child Care Providers

§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 centers, licensed Class A Head Start centers which provide before-and-after school care and/or summer programs, and child care centers licensed by the Department of Defense), a registered family child day care home (FCDCH) provider, in-home child care, and public and non-public BESE-regulated schools which operate kindergarten, pre-kindergarten, before and after school and/or summer programs.

B. A licensed Class A center, licensed Class A Head Start center, or center licensed by the Department of Defense must be certified and active in the CCAP Provider Directory before payments can be made to that provider.

1. To be eligible for participation in CCAP, a licensed Class A center, licensed Class A Head Start center, or center licensed by the Department of Defense must complete and sign a Class A or Department of Defense provider agreement as appropriate and Form W-9, and meet all requirements, including:

a. provide complete and accurate documentation and information required for direct deposit;

b. participate in the system designated by the department for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a working internet connection at the center. A landline telephone can be substituted only if internet connection is unavailable due to no provider of service at the level required.

c. provide verification of identity and Social Security number of all owners and directors.

C. An FCDCH provider must be registered and active in the CCAP provider directory before payments can be made to that provider.

1. To be eligible for participation in CCAP, an FCDCH provider must meet registration requirements as provided in R.S. 46:1441 et seq., complete and sign an FCDCH provider agreement, complete a CCAP application for registration and Form W-9, pay appropriate fees, furnish verification of Social Security number, identification, and residential address, provide proof that he/she is at least 18

years of age, and meet all registration requirements, including:

a. - c. ...

d. submission of criminal background check(s) on all adults living at the provider's residence or employed by the provider and working in the provider's home or on the provider's home property, including the provider; each of which must be received from State Police indicating no enumerated conviction if the provider is a relative of a child in care;

e. effective March 1, 2002, submission of verification of 12 clock hours of training in job-related subject areas approved by the Department of Children and Family Services annually;

f. - i. ...

j. participation in the system designated by the department for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a working internet connection or a landline telephone.

2. All registration functions for FCDCH providers, as provided in R.S. 46:1441 et seq. and as promulgated in the *Louisiana Register*, September 20, 1991, previously exercised by the Bureau of Licensing, shall be carried out by the Department of Children and Family Services.

D. An In-Home child care provider must be certified and active in the CCAP provider directory before payments can be made to that provider.

1. To be eligible for participation, an in-home child care provider must be at least 18 years of age, complete and sign an In-Home provider agreement and Form W-9, pay appropriate fees, furnish verification of Social Security number, identification, and residential address, and meet all certification requirements, including:

a. - b. ...

c. submission of a criminal background check conducted by State Police indicating no enumerated conviction;

d. ...

e. retain a statement of good health signed by a physician or his designee which must have been obtained within the past three years and be obtained every three years thereafter;

f. possession of or access to a working telephone that can receive incoming calls and that can send outgoing calls and that is available at all times in the home in which care is being provided;

g. participation in the system designated by the department for capturing time and attendance.

E. - E.4. ...

5. participate in the system designated by the department for capturing time and attendance and possess the minimum equipment necessary to operate the system which includes a landline telephone;

E.6. - F.7. ...

G.1. A provider shall be denied or terminated as an eligible CCAP provider:

a. if an FCDCH provider fails to pass inspection by the fire marshal;

b. if a provider fails to timely return all requested forms and fees;

c. if a Class A or Department of Defense center's license is revoked or not renewed;

d. if a school child care provider no longer meets the BESE regulations;

e. if a school child care provider is no longer Brumfield vs. Dodd approved; or

f. for any period for which the provider is disqualified as described in LAC 67:III.5113;

g. if a Class A, Department of Defense, or school child care provider fails to submit complete and accurate documentation and information required for direct deposit.

G.2. - H.2. ...

I. On a limited basis due to one-time American Recovery and Reinvestment Act (ARRA) funding, an incentive will be offered to certain Quality Start centers with a collaborative agreement with a local education agency to provide pre-kindergarten, specifically C. Picard Pre-kindergarten Program (LA 4). Payments will be available on a first-come, first-serve basis to up to three qualifying centers in each DCFS region. The bonus will be equal to \$500 for each child included in the agreement. The collaborative agreement can be based on, but not limited to, the following criteria:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session, Act 58, 2003 Reg. Session, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189(February 2003), LR 30:496 (March 2004), LR 30:1484 (July 2004), LR 31:102 (January 2005), LR 31:2263 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), (LR 36:845 (April 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2535 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:

§5109. Payment

A. - B.1.a ...

b. the state maximum rate for authorized services effective January 1, 2007, and with the addition of rates for Class M centers effective October 30, 2009, as indicated below.

Provider Type	Regular Care	Regular Care for Infants/Toddlers (under age 3)	Special Needs Care Incentive	Special Needs Care Incentive for Infants/Toddlers (under age 3)
Class A	\$17.50	\$18.50	\$21.65	\$22.65
Class E	\$15.00	\$16.00	\$18.50	\$19.50
Class R	\$15.00	\$16.00	\$18.50	\$19.50
Class U	\$14.50	\$15.50	\$17.90	\$18.90
Class M	\$17.50	\$18.50	\$21.65	\$22.65

B.2. - D. ...

E. Payment will not be made for absences of more than five days by a child in any calendar month or for an

extended closure by a provider of more than five consecutive days in any calendar month. A day of closure, on a normal operating day for the provider, is counted as an absent day for the child(ren) in the provider's care. If a child authorized for full-time care attends child care less than four hours in one day, this will be counted as a half day absent and half the daily rate will be paid to the provider. No absences will be authorized for part-time care. Exception: In cases of a federal/state/locally declared emergency situation, or other special circumstances, the department may at the discretion of the assistant secretary waive this absence policy.

F. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, and P.L. 104-193, ACF Guidance: ACYF-IM-CC-05-03.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357 (February 1998), amended LR 25:2445(December 1999), LR 26:2828 (December 2000), LR 27:1933 (November 2001), LR 28:1491 (June 2002), LR 29:1834 (September 2003), LR 30:1485 (July 2004), repromulgated LR 30:2078 (September 2004), amended LR 31:2265 (September 2005), LR 32:1465 (August 2006), LR 32:2097 (November 2006), LR 33:507 (March 2007), LR 34:692 (April 2008), LR 36:555 (March 2010), LR 36:847 (April 2010), LR 36:1279 (June 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:

§5113. Disqualification Periods for CCAP Providers

A. A child care provider shall be disqualified from receiving CCAP payments if the department determines that certain acts or violations have been committed by that provider. CCAP disqualifications shall apply as follows:

1. - 3.c....

4. A validated complaint of child abuse or neglect due to lack of supervision shall be deemed by the department as either a Category 1 or a Category 2 complaint, based on the severity of the complaint and the circumstances that existed at the time of the complaint.

5. - 6.c....

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L.104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 34:2208 (October 2008), LR36:556 (March 2010), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2536 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:

Subchapter C. Child Care Quality Rating System

§5117. Definitions

* * *

Child Care Resource and Referral (CCR and R)—a state and/or local organization with whom the department has contracted to provide services to families, early childhood professionals, and communities statewide.

* * *

Director—an administrator who meets the director qualifications as outlined in Louisiana Administrative Code, Title 67, Chapter 73, Section 7311 and is on site a minimum of 30 hours per week during operating hours when children are present.

* * *

Louisiana Pathways Child Care Career Development System—the state practitioner registry maintained by the

Department of Children and Family Services and/or its contractor. LA Pathways registers child care directors and staff according to requirements based on training and education, experience, and professional activities, as approved by the Department of Children and Family Services. Categories are established for child care staff, child care assistant teacher, child care teacher, child care assistant director and child care director. Information on LA Pathways can be found at <http://pathways.louisiana.gov/> or www.dss.state.la.us.

* * *

AUTHORITY NOTE: 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2783 (December 2007). amended LR 34:2408 (November 2008), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:

§5119. Quality Start Child Care Rating System Requirements

A. ...

B. The secretary of the Department of Children and Family Services, in specific instances, may waive compliance with a requirement if it is determined that the economic or adverse impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff and/or children are not imperiled. If it is determined that the facility or individual is meeting or exceeding the intent of a requirement, the requirement may be deemed to be met. The decision to grant or deny a waiver rests with the sole discretion of the secretary.

1. - 2.b.i. ...

ii. Give every parent enrolling a child a list of community resources including, but not limited to, LaCHIP, Medicaid, child care assistance, housing assistance, SNAP assistance and information on a child's medical home.

2.c. - 3.a. ...

b. Staff Qualifications

Points	Criteria
1	Directors and all lead teachers complete training in Louisiana's Early Learning Guidelines and Standards which encompasses information from Louisiana's Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003). Director (on site) 1. Six semester hour credits in the care of young children or child development ¹ ; and 2. Three semester hour credits in administrative coursework ² , and 3. One year experience teaching young children in an early childhood program. Assistant Director Three semester hour credits in the care of young children or child development. ¹ Lead Teacher All of lead teachers must complete three semester hour credits in the care of young children or child development from a list of approved courses ¹ or enroll in the course and complete the course within one year of employment. Assistant Teacher Fifty percent of assistant teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development ¹ and complete the course within one year of employment.

Points	Criteria
2	<p>Directors and all teachers complete training in Louisiana's Early Learning Guidelines and Standards which encompasses information from Louisiana's Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Nine semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework²; and One year of teaching experience and one year teaching or administrative experience in an early childhood program. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework²; and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> Seventy-five percent of lead teachers must have completed six semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment, and One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>Fifty percent of assistant teachers must have completed or be enrolled in three semester hour credits in the care of young children or child development¹ and complete the course within one year of employment.</p>
3	<p>Directors and all teachers complete training in Louisiana's Early Learning Guidelines and Standards which encompasses information from Louisiana's Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Twelve semester hour credits in the care of young children or child development¹; and Six semester hour credits of administrative coursework²; and Three years experience in an early childhood setting as follows: At least one year of teaching experience and at least one year of administrative experience and one year of either teaching or administrative experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework²; and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> Seventy-five percent of lead teachers must have completed nine semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed six semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment, and One year full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>Fifty percent of assistant teachers must have completed three semester hour credits in the care of young children or child development¹.</p>
4	<p>Directors and all teachers complete training in Louisiana's Early Learning Guidelines and Standards which encompasses information from Louisiana's Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p>

Points	Criteria
	<p>Director</p> <ol style="list-style-type: none"> Fifteen semester hour credits in the care of young children or child development¹; and Six semester hour credits of administrative coursework²; and Four years experience in an early childhood setting as follows: At least one year of teaching experience and at least one year of administrative experience and two years of either teaching or administrative experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Three semester hour credits in the care of young children or child development¹; and Three semester hour credits in administrative coursework²; and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> Seventy-five percent of lead teachers must have completed 12 semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed nine semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment and Two years full-time experience in an early childhood setting. <p>Assistant Teacher</p> <p>All assistant teachers must have completed three semester hour credits in the care of young children or child development¹.</p>
5	<p>Directors and all teachers complete training in Louisiana's Early Learning Guidelines and Standards which encompasses information from Louisiana's Early Learning Guidelines and Program Standards: Birth Through Three, (DSS October 2006) and the Louisiana Standards for Programs Serving Four-Year-Old Children (DOE June 2003).</p> <p>Director</p> <ol style="list-style-type: none"> Associate's degree in the care of young children, child development or related field, with specific coursework in infant-toddler care, and the care of exceptional children or equivalent such as Director III LA Pathways and Six semester hour credits of administrative coursework² and five years experience in an early childhood setting as follows: At least one year of teaching experience and at least one year of administrative experience, and three years of either teaching or administrative experience. <p>Assistant Director</p> <ol style="list-style-type: none"> Six semester hour credits in the care of young children or child development¹; and Three semester hour credits in administration²; and One year experience in teaching young children in an early childhood program. <p>Lead Teacher</p> <ol style="list-style-type: none"> All lead teachers must have six semester hour credits in the care of young children or child development¹ from a list of approved courses; and Seventy-five percent of lead teachers must have completed 15 semester hour credits in the care of young children or child development¹ from a list of approved courses or have completed 12 semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment; and Two years full-time experience in an early childhood setting for all teachers. <p>Assistant Teacher</p> <p>All assistant teachers must have completed six semester hour credits in the care of young children or child development¹ or have completed three semester hour credits and be enrolled in an additional three semester hour credits in the care of young children, child development or related coursework¹ and complete the course within one year of employment.</p>

c. An additional quality point can be earned by meeting additional requirements in both the administration practices and the family and community involvement areas.

Quality Point	
Points	Criteria
1	<p>Administration Practices - meet three requirements below:</p> <ol style="list-style-type: none"> 1. Provide four of the benefits from the list⁴ of options below for all full-time staff. 2. Include grievance procedure and a professional conduct code for staff in written personnel policies. 3. Pay scale based on education, experience, responsibilities and merit. 4. Provide training to staff on cultural sensitivity. 5. Written parent and staff confidentiality policy and provide training to staff <p>and</p> <p>Family and Community Involvement - meet four requirements below:</p> <ol style="list-style-type: none"> 1. Director or assistant director participates annually in at least two director's meetings provided by the resource and referral agency. 2. Provide a complaint process for parents. 3. Offer opportunity for a formal parent/teacher conference meeting annually. 4. Provide an expanded list of local community resources to parents annually including, but not limited to, LaCHIP, Medicaid, Child Care Assistance, housing assistance, SNAP assistance and information on a child's medical home. 5. Parent Advisory Council meets annually to review policies, procedures and parent handbook. 6. One group meeting per year offered to all families. 7. One parent education workshop offered per year by center or other agency.

The following footnotes reference program criteria and staff qualifications in Section 5119:

Staff Qualifications

¹The following may be substituted to meet this requirement of three semester hour credits in the care of young children or child development: a current CDA or have approved high school child development courses or have five years full-time experience in an early childhood program or have completed a Child Care Assistant Teacher 1 LA Pathways Classroom Certificate. The following may be used to meet the requirement of up to six semester hour credits in the care of young children or child development: current CDA or have completed a Child Care Assistant Teacher 2 LA Pathways Classroom Certificate. An individual may use the above substitutions to meet the requirements for a maximum of six semester hour credits.

²The following may be substituted to meet the requirement for three semester hour credits in administration: LA Pathways Administrator Certificate or National Administrator Credential (NAC) or three years experience in administration or a combination of one year in administration experience and four years in teaching young children in an early childhood program.

NOTE For Director Qualification: Experience in teaching young children or administration may only be substituted one time. At the next rating review, the necessary educational requirement (credits in the care of young children or child development or credits in administration) must be met.

³For the purpose of this document, the designated social-emotional subscale of the ERS is defined as consisting of the following subscales: ITERS-R - Listening and Talking, Interaction and Program Structure; ECERS-R - Language-Reasoning, Interaction and Program Structure.

⁴Staff benefits options: employee health insurance or comparable health benefits; paid annual leave; paid sick leave; paid holiday; child care benefit/discount; bonus based on merit/achievement or education; retirement compensation; annual increments based on merit; tuition reimbursement and other related educational expenses such as books, travel, fees, substitutes; differential shift pay, flextime, paid professional association fee.

AUTHORITY NOTE: 45 CFR Part 98 and R.S. 36:474.

HISTORICAL NOTE: Promulgated in accordance with the Department of Social Services, Office of Family Support, LR 33:2784 (December 2007), amended LR 34: 2408 (November 2008), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:

§5121. Participation

A. A child care center will complete the application to participate in the Quality Start Child Care Rating System at one star. If awarded, this will establish the center's initial year in the system.

B. Centers with two to five stars may submit an application for a star(s) six months after the date of award of the current rating or denial of an award. A verification visit will be conducted by the department prior to the award of two or more stars.

C. Quality ratings will be valid for two years from the date of the star rating award as long as the center continues to qualify for the star rating. A rating review, which may be a visit or verification of documentation, will be conducted on a percentage of participating centers to ensure continued compliance.

D. Centers that have achieved a star rating may have their rating reviewed and modified. If at any time, it becomes known to the department or the department receives information from the center that the child care center no longer meets standards for the center's current star rating award.

E. Centers that have achieved a star rating will have their rating revoked if the child care license is revoked or not renewed.

F. Centers that have achieved a star rating may have their rating revoked, or centers applying may be denied, if it is determined by the department that false or misleading statements or documents have been submitted or misrepresented or relevant facts have been concealed or withheld in order to qualify or maintain a star(s) in the quality start child care rating system or to obtain the school readiness tax credit (SRTC).

G. The provider must reimburse the department for all ineligible benefits received.

H. Participation in the quality start child care rating system is voluntary. There are no administrative appeal rights for providers whose participation is denied or terminated.

I. Centers that have their star award revoked by quality start may be prohibited from participating in quality start for 12 months from the date of revocation of star award.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2788 (December 2007), amended LR 34:2412 (November 2008), amended LR 36:332 (February 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:

§5123. Quality Start Child Care Rating System Tiered Bonus Payments

A. Bonus payments will be issued after the end of each calendar quarter to Class A child care centers that care for children receiving assistance from the Child Care Assistance Program and for children in the state's Foster Care Program in accordance with the star rating. The payment is equal to a percentage, as defined below, of all child care subsidy

payments received by the center from DCFS for services provided during the service period(s) in that quarter and the center's rating(s):

1. One Star—0 per cent;
2. Two Star—3 per cent;
3. Three Star—8 per cent;
4. Four Star—13.5 per cent;
5. Five Star—20 per cent.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Part 98 and R.S.36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 33:2788 (December 2007), amended LR 34:2412 (November 2008), amended by the Department of Children and Family Services, Economic Stability Section, LR 37:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? This Rule should have no impact on family stability.
2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? This Rule will have no effect on the authority and rights of persons regarding the education and supervision of their children.
3. What effect will this have on the functioning of the family? This Rule will have no effect on the functioning of the family.
4. What effect will this have on family earnings and family budget? This proposed Rule will have no effect on family earnings or family budget.
5. What effect will this have on the behavior and personal responsibility of children? This Rule has no effect on the behavior or personal responsibility of children.
6. Is the family or local government able to perform the function as contained in this proposed Rule? No, these functions are agency functions.

Small Business Impact

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Public Comments

All interested persons may submit written comments through October 27, 2011, to Sammy Guillory, Deputy Assistant Secretary, Department of Children and Family Services, Division of Programs, Post Office Box 94065, Baton Rouge, LA, 70821-9065.

Public Hearing

A public hearing on the proposed Rule will be held on October 27, 2011 at the Department of Children and Family Services, Iberville Building, 627 N. Fourth Street, Seminar

Room 1-129, Baton Rouge, LA, beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Bureau at least seven working days in advance of the hearing. For assistance, call area code (225) 342-4120 (Voice and TDD).

Ruth Johnson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Child Care Assistance Program and Quality Start

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

This rule proposes to amend Title 67, Part III, Subpart 12, Chapter 51 Child Care Assistance Program, Sections 5107, 5109, 5113, 5117, 5119, 5121, and 5123 of the Louisiana Administrative Code (LAC). The proposed rule addresses changes in the new Child Child Care Resource and Referral (CCR&R) contracts, possible fraud and penalties for fraud, and other needed revisions identified through best practices in Quality Start. Proposed rule changes include summer care programs at participating schools as an option for CCAP, require verification of identity for providers, owners and directors of centers, require In-Home providers to obtain a statement of good health, clarify reasons a provider may be disqualified rather than terminated, require directors to be on site at the same center a minimum of 30 hours a week during operating hours, replace some training required to earn points in Quality Start with other training, address fraud and penalties for fraud, and reflect that midpoint review of star awards is being replaced by a rating review of a percentage of participating centers.

The only cost associated with this rule is the cost of publishing rulemaking and printing policy that is estimated to be \$3,500. This one-time cost is routinely included in the department's annual operating budget.

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

Implementation of the rule will have no effect on state or local government revenue collection.

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

There is no anticipated cost or economic benefit to affected persons or non-governmental groups as a result of this rule. This proposed rule simply codifies existing policies and procedures regarding possible fraud and penalties.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact to competition or employment.

Sammy Guillory
Deputy Assistant Secretary
1109#049

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Civil Service Civil Service Commission

Civil Service Rule 2.10—Rule Promulgation

In order to reduce the administrative burden on the Department of State Civil Service and expense to the state of Louisiana, the State Civil Service Commission proposes to amend Civil Service Rule 2.10 to provide that a Notice of Intent to adopt, amend or repeal a Civil Service Rule will be provided to the general public through a general circular electronically disseminated, instead of publishing a Notice of Intent in the *Louisiana Register*.

The state Civil Service Commission is not subject to the Louisiana Administrative Procedure Act, therefore it is not required to provide notice in the *Louisiana Register*. This was an administrative burden the commission imposed upon itself prior to the advent of the internet and email.

Consideration of this Rule is for the reasons given above and for the reasons given as explanation in General Circular 2011-023 that was issued on September 1, 2011 to announce consideration of the Rule.

Proposed Rule Amending Rule 2.10

2.10 Adoption, Amendment or Repeal of Rules; Emergency Rule Changes

(c). ...

(5). A statement of the fiscal impact of the proposed action and if possible, a statement of the economic impact of the proposed action, both of which statements shall have been submitted to the Legislative Fiscal Office for comment.

(e). No action shall be taken by the commission on the proposed Rule until a Notice of Intent to consider the proposed Rule has been published in a general circular electronically disseminated.

(f) If the commission finds that an imminent peril to the public health, safety, or welfare or another emergency requires adoption of a rule change without compliance with this Rule and within five days of adoption of the rule change, states in writing to the governor of the state of Louisiana, and the attorney general of Louisiana, its reasons for that finding, it may proceed without such compliance or upon any abbreviated notice that it finds practicable, to adopt an Emergency Rule change. Notice of the Emergency Rule change shall be mailed, within five days of adoption of the Emergency Rule change, to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs. The month following the month in which any Emergency Rule is adopted, the Emergency Rule change shall be published in full in a general circular electronically disseminated with the reason submitted by the commission for the finding of the emergency. Any Emergency Rule change adopted by the commission shall become effective on the date of adoption or on a date specified by the commission not more than 60 days future from the date of adoption. Such an Emergency Rule change shall not be effective for a period longer than 120 days, but an identical rule change may be adopted in

accordance with the provision of Paragraphs B through E of this Rule.

Public Hearing

A public hearing on this matter will be held at the general business meeting of the state Civil Service Commission on Wednesday, October 5, 2011 at 9 a.m., 1201 North Third Street, Baton Rouge, LA 70804, Louisiana Purchase room.

Shannon Templet
Director

1109#017

NOTICE OF INTENT

Department of Economic Development Office of Business Development Services

Industry Assistance Program (LAC 13:I.Chapter 17)

The Department of Economic Development, Office of Business Development Services, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 36:104 and 36:108 hereby gives notice of its intent to amend the following rules of the Industry Assistance Program.

Title 13

ECONOMIC DEVELOPMENT PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXV. Credentialed Social Workers Chapter 17. Industry Assistance Program §1701. Use of Louisiana Contractors, Labor and Supplies

A. The Louisiana Department of Economic Development (“LED”) and the Board of Commerce and Industry (“board”) encourages applicants and their contractors to give preference and priority to Louisiana manufacturers and in the absence of Louisiana manufacturers, to Louisiana suppliers, engineers, contractors and labor except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications under this program for whole or partial exemptions from taxation as provided by Section 1715 herein, the secretary, board, governor and Joint Legislative Budget Committee may take into account:

1. the past and projected future capital investment of the applicant in its Louisiana facilities;
2. the applicant’s use of machinery, supplies and equipment manufactured in Louisiana, or sold or distributed by Louisiana residents;
3. the business potential for a clustering of industries including the applicant, or the applicant as a factor in an existing cluster; and
4. the applicant’s creation or continuance of new and retained employment of Louisiana residents; and
5. the applicant’s use of projected use of Louisiana engineers, contractors and labor in the construction, maintenance and operation of applicant’s facilities.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of

Economic Development, Office of Business Development Services, LR 37:

§1703. Qualifications

A. To qualify for the exemption, in whole or in part, from the taxation referenced in Section 1715, the applicant must be:

1. a person defined as an *employer* within the meaning of R.S. 51:2453(1)(b)(1) and in §1105.A.1-A.5 of the quality jobs rules promulgated by this board;

2. an existing business with operating Louisiana facilities. The applicant must be able to demonstrate to the board's satisfaction that because of the exemption as well as its current and projected operating business plan and projections with the exemption, it will continue to maintain its current employment levels and will commit to significant investment sufficient to continue to grow and prosper in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1705. How to Apply

A. An "advance notification" of intent to file for industry assistance shall be filed by the company at least 90 days prior to filing an application. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. Application to the Board of Commerce and Industry for the Industry Assistance Program must be filed with the Louisiana Department of Economic Development, Box 94185, Baton Rouge, LA 70804-9185 on the form prescribed, along with the required additional information.

C.1. An application fee shall be submitted with the application based on the following range of taxes estimated to be exempted.

Fee Amount	Range of Taxes to be Exempted
\$200	\$1 to \$15,000
\$300	\$15,001 to \$50,000
\$400	\$50,001 to \$150,000
\$500	over \$150,000

2. LED reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

D. Application must be accompanied by five years of comprehensive financial statements, prepared in accordance with generally accepted accounting principles; and, which contains relevant information that will support the application justification. The justification should refer to qualitative as well as quantitative information contained in the financial statements which can materially demonstrate the need for the program benefits, and the resulting cost/impact benefits to the state on the basis of sound business plans and objectives. Qualitative information for

the previous five year period should provide explanation about: economic resources, past and projected capital investment in the facilities, past and projected employment levels in the facilities and the wages, salaries and employee benefits paid to employees and projected into the future, the sources of prospective cash inflows: obligations to transfer economic resources to others, the causes of prospective cash outflows; and earnings, the financial results of operations and other events and conditions that affect the enterprise, and comparables for the applicant's similar facilities and operations in other states.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1707. Additional Information May Be Required

A. In addition to the information contained in the application, the applicant shall make available any additional information and records that LED and/or the board may request.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1709. Public Hearings

A. The Board of Commerce and Industry shall conduct a public hearing on an application for exemption that receives the recommendation of the secretary of Economic Development who, personally or through his designee, shall present his recommendations to the Board of Commerce and Industry. After due consideration to all facts and testimony, the Board of Commerce and Industry shall determine whether or not the approval of the application should be recommended to the governor and to the Joint Legislative Committee on the Budget.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1711. Requirements for Exemption

A. The secretary of Economic Development, the Board of Commerce and Industry, the governor and the Joint Legislative Committee of the Budget may consider any and all factors which are relevant to the continued operations of the applicant. These should include, but not be limited, to the following:

1. the benefits to the state in terms of continued employment opportunities, payroll, expenditures for goods and services, contributions to the revenue base of the state and local governments and the creation of new and additional permanent jobs in conjunction with the considerations set forth in §§1701 and 1703 of these rules;

2. competitive conditions existing in other states or in foreign nations including the effect, if any, of United States

and foreign trade policies, federal laws and regulations, and the competitive effect of like or similar policies upon related businesses;

3. the economic viability of the applicant and the effect of any tax exemption on maintaining or increasing capital investment, employment levels economic viability as reflected in the business plan of the applicant and the manner in which it addresses future competitive contingencies and other conditions pertinent to the prospects for maintaining or increasing investment capacity and job growth;

4. the applicant's history of compliance with Louisiana and federal environmental, tax, fair trade, civil rights and other laws in its operations.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1713. Approval of the Joint Legislative Committee of the Budget and the Governor

A. The Board of Commerce and Industry, after acting on the application, shall forward its recommendations together with all supporting documents and the recommendations of the Department of Economic Development to the governor and the Joint Legislative Committee of the Budget the assessor of the parish in which the plant is located, each member of the legislature, and the governing authority of each political subdivision as required by the statute. The governor and the Joint Legislative Committee on the Budget may determine that all, part or none of the recommendation of the board is to be followed and upon making that determination, shall advise each other and the Board that the recommendation is rejected, or that the Board may, subject to any restrictions imposed by the governor or the Joint Legislative Committee of the Budget, enter into a contract with such establishment exempting it from taxation.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1715. Taxes to be Exempt

A. The Department of Economic Development shall report to the governor and to the Joint Legislative Committee of the Budget the effect upon the applicant of the taxes or portions thereof to be exempt. Taxes that may be exempted include:

1. the corporation franchise tax;
2. sales and use taxes imposed by the state on any goods, services, material and supplies necessary for or used in manufacturing or production of a product or consumed by the applicant;
3. sales and use taxes imposed by the state on machinery and equipment to be used by the applicant, or materials and building supplies, whether purchased directly or through a contractor, to be used in the repair, reconstruction, modification or construction of plant and facilities;
4. the corporation income tax;

5. any other taxes imposed directly by the state on the applicant.

B. The Department of Economic Development shall recommend to the governor, such tax relief as shall be appropriate to and consistent with the purposes of statute and these Rules. Provided, however, that the governor and the Joint Legislative Committee on the Budget shall agree to a determination of the relief to be provided by contract with the applicant subject to a maximum amount of exemption from taxation.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1717. Limits to Amount of Tax Exemption

A. The total amount of tax exemptions that can be granted to any single applicant shall be reasonably proportionate to the amount that shall be granted to other applicants based upon each applicant's total number of employees in Louisiana and amount of capital investment in Louisiana, provided that the wages for each job must equal or exceed the average wage paid in the parish or parishes of business operation of the applicant. Exceptions may be made if the department determines and recommends to the Board of Commerce and Industry that an additional amount of exemption will materially improve the viability and stability of the applicant's operation in Louisiana as measured by jobs created or retained and capital investment in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1719. Contract Subject to Annual Audit and Review

A. The contract shall provide that the applicant will be subject to an annual audit by the Louisiana legislative auditor. The company will receive notice of the annual review 45 days in advance. A review fee of \$100 must be returned and received 15 days prior to the appointment date of the annual review. The contract will be reviewed annually by both the Board of Commerce and Industry and the Joint Legislative Committee of the Budget. Should the audit or other review or other known facts and circumstances uncover a violation of the contract, the Board of Commerce and Industry, with the approval of the governor and the Joint Legislative Committee of the Budget, shall give notice, thereof, in writing, and unless the violation is corrected within 90 days, any remaining portion of the exemption from taxation granted under any contract entered into under this statute may be canceled. The contract may also be canceled if the need for the exemption or the grounds for the exemption are no longer applicable.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October

1986), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1721. Renewing the Contract

A. The initial contract can be entered into for any period not exceeding five years. Each contract may be renewed for periods of up to five years providing that:

1. the total number of years of exemption shall not exceed 15 years;
2. the applicant can show that it is in the best interest of the state of Louisiana to extend the contract;
3. the renewal is recommended by the Department of Economic Development, and the Board of Commerce and Industry; and
4. the renewal is approved by the Joint Legislative Committee on the Budget and the governor.

AUTHORITY NOTE: Promulgated in accordance with Act 403 of 2005 amending R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1725. Economically Disadvantaged Business Set-Aside

A. Any establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to economically disadvantaged businesses an amount not less than ten percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such economically disadvantaged businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Community Outreach Services (the "division") for assistance in identifying qualified, economically disadvantaged businesses.

C. Each affected applicant establishment shall submit to the division, at the time of submitting an application for industry assistance to the Office of Business Development Services, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each establishment shall include the following:

- a. an affirmation that the establishment is committed to compliance with the intent of the economically disadvantaged business set-aside statutes and rules;
- b. the methods it will use to:
 - i. encourage economically disadvantaged business participation;
 - ii. keep records of economically disadvantaged business participation;
 - iii. require compliance by its bidders, contractors, and subcontractors for their contracts with economically disadvantaged businesses;
- c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;
- d. on the same forms, those products and services which the establishment believes:

- i. cannot be purchased from an economically disadvantaged business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

- ii. cannot be delivered by an economically disadvantaged business in a timely manner; or

- iii. cannot be performed by an economically disadvantaged business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Subsection D.3 and 4 of this Rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the economically disadvantaged business set-aside statutes and Rules, the secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the economically disadvantaged business set-aside statutes and Rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4306; R.S. 39:1956.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

Family Impact Statement

This proposed 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 there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons should submit written comments on the proposed Rule to Susan Bigner through the close of business on Thursday October 27, 2011, at 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by email to Susan.Bigner@la.gov.

Public Hearing

A public hearing on this proposed Rule is scheduled for Friday October 28, 2011 at 10 a.m. at the Department of Economic Development, 1051 North Third St., Baton Rouge, LA 70802. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kristy Mc Kearn,
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Industry Assistance Program**

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

There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules. Any significant policy changes have been effective for numerous years, and additional administrative costs, if any, are already incorporated into the existing budget.

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

The proposed rules incorporate Act 403 of the 2005 Regular Session, which expands eligibility by allowing existing Vision 2020 establishments to qualify for Industry Assistance (referred to as Exemptions for Manufacturing Establishments in statute) incentives. Prior to the Act, only new manufacturers were eligible. In addition, the proposed rule also adjusts language from a mandate to encouragement that preferential treatment will be given to those businesses who promise to use Louisiana sources before any others. The proposed rule also eliminates a per project cap of 5% of available funding replacing it with a "reasonable" proportion based on jobs created and a stipulated maximum benefit by contract. This measure will allow a more precise monitor for the impact to the state and may serve to limit costs if the maximum contractual incentive is less than the company's tax liabilities. However, since these rules address items that are already current practice, the impact due to these exact changes is included in the current incentive claims. According to the Department of Revenue FY 10/11 Tax Exemption Budget, the Industry Assistance program posted claims of \$1.3M in FY 10 compared to \$632,000 in FY 05/06 and \$21.7M in FY 07/08. These figures provide the total amount of state general fund reduction due to the program. Whether the entire amount of the volatility can be attributed to these statutory changes is indeterminable given the explanatory data available for the program. Other proposed changes to the rule include updating relevant names and removing references to mandates for Louisiana purchases. These changes are not expected to have a fiscal impact to the state.

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

The proposed rule lists additional documentation required upon application but these documents have been collected as current practice so no additional costs are anticipated as a result of this change. The income of applicants will increase by the amount of benefits received under this program. With the removal of the per project 5% cap restriction, some projects

may receive a larger or smaller incentive that would have been distributed has the cap remained in place, assuming a verifiable mechanism is in place in order to properly impose a reasonable limit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Kristy McKearn
Undersecretary
1109#033

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development Office of Business Development Services

Tax Equalization Program (LAC 13:I.Chapter 19)

The Department of Economic Development, Office of Business Development Services, as authorized by and pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with R.S. 36:104 and 36:108 hereby gives notice of intent to adopt the following rules of the Tax Equalization Program.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 19. Tax Equalization Program

§1901. General

A. Intent of Law. For qualifying manufacturing establishments, headquarters, or warehousing and distribution establishments, the Board of Commerce and Industry may enter into a contract to equalize the total tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The Tax Equalization Program is an inducement to attract, retain, and encourage the expansion of, manufacturing establishments, headquarters, and warehousing and distribution establishments to Louisiana, which would not do so in Louisiana due to a higher tax burden. This program is designed to eliminate the tax differential through the equalization of the overall taxes between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development Services, LR 37:

§1903. Louisiana Manufacturers and Suppliers

A. The Louisiana Department of Economic Development ("LED") and the Board of Commerce and Industry ("board")

encourages applicants and their contractors to give preference and priority to Louisiana manufacturers, and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications under this program for whole or partial exemptions from taxation as provided by Section 1715 herein, the secretary, board, governor and Joint Legislative Budget Committee may take into account:

1. the past and projected future capital investment of the applicant in its Louisiana facilities;
2. the applicant's use of machinery, supplies, and equipment manufactured in Louisiana, sold or distributed by Louisiana residents;
3. the business potential for a clustering of industries including the applicant, or the applicant as a factor in an existing cluster; and
4. the applicant's creation or continuance of new and retained employment of Louisiana residents; and
5. the applicant's use of projected use of Louisiana engineers, contractors and labor in the construction, maintenance and operation of applicant's facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1905. Economically Disadvantaged Business Set-Aside

A. Any establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to economically disadvantaged businesses an amount not less than ten percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such economically disadvantaged businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Community Outreach Services (the "division") for assistance in identifying qualified, economically disadvantaged businesses.

C. Each affected manufacturing establishment shall submit to the division, at the time of submitting an application for tax equalization to the Office of Business Development Services, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each establishment shall include the following:

- a. an affirmation that the establishment is committed to compliance with the intent of the economically disadvantaged business set-aside statutes and rules;
- b. the methods it will use to:
 - i. encourage economically disadvantaged business participation;
 - ii. keep records of economically disadvantaged business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with economically disadvantaged businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from an economically disadvantaged business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by an economically disadvantaged business in a timely manner; or,

iii. cannot be performed by an economically disadvantaged business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Subsection D.3 and 4 of this Rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the economically disadvantaged business set-aside statutes and rules, the secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the economically disadvantaged business set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1907. Eligibility for Submission of Application

A. An applicant for tax equalization must be either a manufacturing establishment, a headquarters, or a warehousing and distribution establishment.

B. The sites under consideration must be valid and viable for the proposed operations.

C. An applicant must either be located in another state or be located in Louisiana and contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which the applicant is or seeks to be located.

D. The state in which the establishment is located or is contemplating locating must have a state, parish (county) and local taxing structure which offers a greater tax advantage to such establishment than does the taxing structure of Louisiana.

E. The secretary of the Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1909. Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. The Office of Business Development Services reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1911. Application Procedure

A. Prior to the formal announcement, an "advance notification" of intent to file for Tax Equalization must be filed with the Office of Business Development Services. The company will submit, on forms provided by the Office of Business Development Services, a comparison of taxes for all sites under consideration.

B. The secretary of the Department of Economic Development, after review of the advance notification shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Business Development Services, may be filed with the Office of Business Development Services. Upon staff review, the analysis and

recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Business Development Services. All Commerce and Industry Board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Department of Revenue.

E. The Department of Revenue shall within 10 days after receipt of the notice file in writing with the Board of Commerce and Industry any objections it has to granting the exemption.

F. If no objection is made, the Board of Commerce and Industry shall send the recommendation to the governor with a finding that no objection was filed by the Department of Revenue. If any such objection is made, the Board of Commerce and Industry shall hold a contradictory hearing to determine whether such exemption should be granted and the Board of Commerce and Industry shall act as arbitrator at such hearing. The Board of Commerce and Industry shall make its recommendations in writing to the governor for a final determination.

G. The Board of Commerce and Industry, with the approval of the governor, may enter into a contract of tax equalization with the new manufacturing establishment.

H. All contracts for tax equalization shall contain goals for new or retained employment, investment, and growth.

I. All information submitted will be held in confidence to the fullest extent permitted by the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1913. Application Contents

A. The application shall be submitted on forms provided by the Office of Business Development Services. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information.

1. The chief financial officer of the applicant company requesting tax equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

- a. construction cost;
- b. annual labor cost;
- c. annual raw materials cost;
- d. annual transportation cost;
- e. annual power cost; and
- f. site cost.

2. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

- a. state sales/use tax;
- b. state corporate income tax;
- c. state corporate franchise tax;
- d. state ad valorem property tax (where applicable);
- e. state inventory tax (where applicable); and
- f. any other state taxes.

3. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

- a. local sales/use tax;
- b. local ad valorem property tax;
- c. local inventory tax; and
- d. any other local taxes.

B. All applications for retention of an existing business located in Louisiana, shall demonstrate, to the satisfaction of the Board of Commerce and Industry, a real and compelling potential for the business to relocate to the competing site, including a demonstration that it is economically feasible to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1915. Yearly Determination of Tax Equalization

Amount

A. The contract of tax equalization shall, on an annual basis, effect equality in amount between the taxes payable in Louisiana and the taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana corporate income and franchise tax return, the contractee shall furnish to the Department of Revenue and the Department of Economic Development, the following, where applicable, on an annual basis:

1. a taxable year compilation of what would have been the state and local sales and use taxes, including any applicable tax incentives, of the contractee had it located in the competing state, together with a compilation of the actual Louisiana state and local sales and use taxes paid for the contractee's taxable year;

2. using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state;

3. all other state and local returns or tax payment information, including any applicable tax incentives, for the contractee's taxable year which would have been filed or paid by the contractee had the contractee located in the competing state; and

4. all other tax returns, including any applicable incentives, filed in the state of Louisiana with other state agencies or local governments.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue.

C. The data reflecting the tax burden, including any available tax incentives, which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent certified public accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same

level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue shall compute the total tax liability of the contractee in Louisiana and the total tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Business Development Services will assist the Department of Revenue should any audit of the tax data for the competing state be necessary.

E. If the total tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the total tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

F. Exemptions from taxation for manufacturing establishments shall be granted in the following priority:

1. state corporation franchise tax;
2. state corporation income tax;
3. state sales and use tax on machinery and equipment to be used in manufacturing;
4. state sales and use taxes on materials and supplies required in the manufacture or production of a product;
5. any other tax imposed by the state of Louisiana to which the applicant is subject.

G. Exemptions from taxation for headquarter shall be granted in the following priority:

1. state corporation franchise tax;
2. state corporation income tax;
3. state sales and use tax on purchases and leases of, and repairs to, machinery and equipment which is used in the on-site operation of the headquarters facility;
4. state sales and use tax on purchases of tangible personal property used in the construction of the headquarters facility;
5. any other taxes imposed by the state to which such businesses are subject.

H. Exemptions from taxation for warehousing and distribution establishments shall be granted in the following priority:

1. state corporation franchise tax;
2. state corporation income tax;
3. state sales and use tax on purchases and leases of, and repairs to, machinery and equipment which is used in the on-site operation of the warehousing and distribution establishment;
4. state sales and use tax on purchases of materials and supplies necessary for the on-site operation of the warehousing and distribution establishment;
5. state sales and use tax on purchases of tangible personal property used in the construction of the warehousing and distribution establishment;
6. any other taxes imposed by the state to which like businesses are subject.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR

15:1048 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1917. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Business Development Services, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the project completion report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1919. Affidavit of Final Cost

A. Within six months after completion of construction or the purchase of facility, the owner of the establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the inspection which will be conducted by the Office of Business Development Services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1921. Contract Renewals

A.1. Except as otherwise provided in this Section, each contract of exemption entered into under authority of this Chapter shall be reviewed and reevaluated, and shall be subject to renegotiation, five years from the date of the execution of the contract and may be renewed for an additional five-year period.

2. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in §1913.A.2 and 3 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application.

B.1. Subsequent renewals for additional periods of five years or less may be granted to a contract holder whose contract has not expired as of the date of application for renewal if the applicant can demonstrate the conditions of the initial contract were met and the activities of the applicant in the state of Louisiana generate economic benefits to the state that exceed 20 times the benefit to the applicant of the incentive provided by this Chapter for the year preceding the request for renewal. Such benefit to the state shall be determined by the application of nationally recognized multipliers as appropriate and set forth in the Regional Input-Output Modeling System ("RIMS II"), or its successor publications, for the business operations of the

applicant as published by Regional Economic Analysis Division BE-61, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, D.C. 20230.

2. The contract holder's application for subsequent renewal shall include an attestation by an independent public accounting firm of the calculation of the economic benefit to the state.

3. In addition to the requirements of R.S. 47:3203, the Board of Commerce and Industry shall forward its recommendations, together with the proposed contract and all supporting documents, to the Department of Economic Development and the Joint Legislative Committee on the Budget. Upon receipt of the recommendations and proposed contract, the Joint Legislative Committee on the budget shall have thirty days to approve or reject the renewal contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1923. Annual Review/Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have ninety days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

§1925. Environmental Report Requirement

A. Any applicant, the primary business of which is the commercial treatment, disposal, or destruction of hazardous waste generated outside Louisiana, shall submit with the application:

1. information relative to the impact the establishment will have on the environment;

2. a history of the compliance with environmental laws in Louisiana or any other state in which the applicant has operated. The history will include a list of any citations issued by any federal, state or local agency charged with the enforcement of any law concerning the environment or the transportation, treatment, disposal or destruction of hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989), amended by the Department of Economic Development, Office of Business Development, LR 37:

Chapter 21. Tax Equalization for Manufacturing Facilities

§2101. Foreword

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2103. Eligibility

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2105. Certification of Sites

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2107. Certification of Taxes

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2109. Certification of Local Taxes

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2111. Contract Period

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2113. Method of Computation

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2115. Contract Renewals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2117. Board Action on Applications

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2119. Violation of Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973, repealed by the Department of Economic Development, Business Incentive Services, LR 37:

Chapter 23. Tax Equalization for New Corporate Headquarters

§2301. General

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2303. Louisiana Manufacturers and Suppliers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2305. Minority Set-Aside

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2307. Eligibility for Submission of Application

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2309. Application Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2311. Application Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2313. Application Contents

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2315. Yearly Determination of Tax Equalization Amount

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2317. Contract Period/Project Completion Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2319. Affidavit of Final Cost

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2321. Contract Renewals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2323. Annual Review/Violation of Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office Of Commerce and Industry, Finance Division, LR 15:1046 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2325. Environmental Report Requirement

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division. LR 15:1046 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

Chapter 25. Tax Equalization for New Warehousing and Distribution Establishments

§2501. General

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2503. Louisiana Manufacturers and Suppliers

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2507. Eligibility for Submission of Application

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2509. Application Fees

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2511. Application Procedure

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2513. Application Contents

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1056 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2515. Yearly Determination of Tax Equalization Amount

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1056 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2517. Contract Period/Project Completion Report

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2519. Affidavit of Final Cost

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2521. Contract Renewals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

§2523. Annual Review/Violation of Contract

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989), repealed by the Department of Economic Development, Business Incentive Services, LR 37:

Family Impact Statement

This proposed 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 there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of the children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Public Comments

Interested persons should submit written comments on the proposed Rule to Susan Bigner through the close of business on Thursday October 27, 2011, at 1051 North Third Street, Baton Rouge, LA 70802. Comments may also be submitted by email to Susan.Bigner@la.gov.

Public Hearing

A public hearing on this proposed Rule is scheduled for Friday October 28, 2011 at 10 a.m. at the Department of Economic Development, 1051 North Third St., Baton Rouge, LA 70802. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Kristy Mc Kearn
Undersecretary

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

RULE TITLE: Tax Equalization Program

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

There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules. Any significant policy changes have been effective for numerous years, and additional administrative costs, if any, are already incorporated into the existing budget.

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

The proposed rules incorporate Act 403 of the 2005 Regular Session, which allows existing manufacturing establishments, headquarters, and warehousing and distribution establishments to qualify for tax equalization incentives and Act 389 of the 2007 Regular Session that allows for unlimited five year renewals of the incentive as long as certain multipliers show proof of economic benefits to the state (which mathematically will always be the case). In addition, the proposed rule also removes references to the requirement that preferential treatment will be given to those businesses who promise to use Louisiana sources before any others. Since these rules address items that are already current practice, the impact due to these exact changes is included in the current incentives. According to the Department of Revenue FY 10/11 Tax Exemption Budget, the tax equalization program showed claims of \$14.4M in FY 10 compared to \$7.8M in FY 05/06, which indicates a significant reduction in state general fund revenue as the incentives increase. Whether the entire amount of the increase can be attributed to these statutory changes is indeterminable given the explanatory data available for the program. Other proposed changes to the rule, including combining separate rules for similar components, updating relevant names, and removing reference to mandates for Louisiana purchases are not expected to have a fiscal impact.

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

There are no costs or economic benefits to directly affected persons. The income of applicants will increase by the amount of benefits received under this program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Kristy McKearn
Undersecretary
1109#032

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

**NOTICE OF INTENT
Department of Economic Development
Office of the Secretary**

**Angel Investor Tax Credit Program
(LAC13:I.3301, 3303, 3305 and 3307)**

Under the authority of R.S. 47:6020 and R.S. 36:104, and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Economic Development proposes to adopt LAC 13:I.3301 relative to the administration of the angel investor tax credit program.

The purpose of this regulation is to explain the procedure employed for the administration of the angel investor tax credit program under R.S. 47:6020 as enacted by Act 414 of the 2011 Regular Session of the Legislature. The proposed regulation discusses how businesses qualify as a Louisiana Entrepreneurial Business, who is considered an accredited investor, how businesses should apply for the credits on behalf of their investors, how the Department of Economic Development will administer the \$5 million annual cap for

the program and other determinations relevant to the program.

Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 33. Angel Investor Tax Credit

§3301. General

A. The intent of the Angel Investor Tax Credit Program Act of 2011(Act 414 of 2011; R.S. 47:6020, the provisions of which shall hereinafter be referred to as "Act 414") is to enhance the entrepreneurial business environment and raise ready sources of capital for this environment through encouraging third parties to invest in early stage wealth-creating businesses expanding the economy of the state, enlarging the quality jobs available in Louisiana to retain the presence of young people in Louisiana. These provisions are to be read in pari materiae with Act 414. For the purposes of this Chapter, the "department" shall be Louisiana Economic Development.

B. Act 414 repealed the Angel Investor Tax Credit Program Act of 2005 and replaced it with the reenacted provisions of La. R.S. 47:6020. Therefore, effective July 8, 2011, which is the date the governor signed Act 414, the department must recertify all Louisiana entrepreneurial businesses and all annual and program caps for individual businesses will start over.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:

§3303. Accredited Investor

A. An *accredited investor* shall be defined as:

1. an angel pool (which may be a limited liability corporation or limited liability partnership, as provided below) as determined by the department, all of whose participants shall be accredited investors;

2. a person who has individual net worth, or joint net worth with the person's spouse, that exceeds \$1 million at the time of the purchase;

3. a person with income exceeding \$200,000 in each of the two most recent years or joint income with a spouse exceeding \$300,000 for those years and a reasonable expectation of the same income level in the current year;

4. persons, including corporations, partnerships, limited liability partnerships and limited liability corporations composed of persons meeting the qualifications of Paragraphs A.2 and 3 above, provided that the person's share of the tax credits of the entrepreneurial business shall not exceed that person's share of the profits of the entrepreneurial business or a person's share of the tax credits as a partner or a member of a limited liability corporation or partnership shall not exceed that person's share of the profits of the LLC.

B. Angel pools may receive certification from the department upon showing:

1. the proposed pool of investors is organized solely for the purposes of making angel investments;

2. participants in the pool are given the opportunity to screen applicants for pool investments and to participate in

deal reviews as well as post investment review of company performance;

3. participants are given the opportunity to opt in or out of proposed angel investments and are not participating solely upon the determinations of an investment or fund manager;

4. such other factors of operation of the pool as may distinguish it from the operation of a venture fund.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 through 6020.4 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:

§3305. Louisiana Entrepreneurial Business

A. A *Louisiana Entrepreneurial Business* shall be defined as those businesses approved by the department under Act 414 and that meet the following requirements.

1. A business shall provide the department with a business plan that includes all appropriate long and short term forecasts and contingencies of business operations, including research and development, profit, loss and cash flow projections and details of expenditure of angel investor funding in accordance with Act 414 and shall also include the following:

a. the principal business operations of the business are located in Louisiana including Louisiana as the primary place of employment for the employees of the business;

b. demonstrating a plan or progression through which more than 50 percent of its sales will be from outside of Louisiana;

c. employs 50 or fewer full-time employees; and

d. the business has either gross annual sales of less than \$10 million or a business net worth of less than \$2 million.

2. Exclusions

a. Businesses primarily engaged in the following activities are not eligible to be certified as a Louisiana entrepreneurial business: retail sales, real estate, professional services, gaming or gambling, natural resource extraction or exploration, and financial services, including venture capital funds.

b. Businesses primarily engaged in the following activities may qualify as a Louisiana entrepreneurial business but only if the department, in its discretion, determines from the business plan that the company is a wealth-creating business for Louisiana: state or local government enterprises, business associations and professional organizations as defined in North American Industry Classification System (NAICS) code 8139, automotive rental and leasing, local solid waste disposal, local sewage systems and local water systems businesses, hospitals or nonprofit organizations.

3. Such other findings by the department as shall be consistent with Act 414, provided that under no circumstances shall the department's certification of the applicant as a Louisiana entrepreneurial business be considered or implied to be an endorsement of the business or any investment in that business and the applicant shall so advise all investors of this fact.

B. Certification of a Louisiana entrepreneurial business shall be obtained from the department by submitting the above business plan together with the Louisiana taxpayer identification number of the business and all other information regarding those items necessary to qualify the investment in the business for the angel tax credit as provided for by Act 414 electronically to an email address specified by the department on its website. Upon receipt, the department shall make such requests for other information necessary to a determination that the business should or should not be certified as a Louisiana entrepreneurial business. The department's certification of the business shall include the Louisiana taxpayer identification number of the business. This certification shall be in effect for one year from the date of the department's letter. The certification may be extended for additional one year periods upon application to the department showing that the business continues to be an entrepreneurial business within the meaning of the act and these rules, and the application includes the use of proceeds previously raised, number of employees, amount of payroll, annual revenue, and such other information as shall be requested by the department. In order to continue to be certified, the business shall be in compliance with all reporting and other provisions of Act 414 and these rules with respect to the administration of the credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:228 (February 2006), amended LR 32:1594 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:

§3307. The Amount, Allocation and Limitations of the Angel Investor Tax Credits

A. The following rules shall be applicable to investments by accredited investors in Louisiana Entrepreneurial Businesses.

1. For calendar year 2011, the department will begin accepting applications on September 1 and for calendar years 2012-2015, the department will begin accepting applications on January 1. The allocation of credits for all years will be administered on a first come, first serve basis until the annual \$5 million cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated.

a. Upon receipt of an application for the reservation of credits, the department will send the business a reservation letter indicating the dollar amount of credits which their investors are entitled to receive if proof of investment can be shown.

b. Each business applicant will have to decide on their application if they are willing to accept a prorated credit amount should their application be received on the day the cap is reached. The business will also have to determine what percentage of proration they will accept. If the business does not indicate in their application a willingness to accept a prorated credit amount at the percentage of proration available on the day the cap is reached, their application will be deemed to have been received the day following the day in which the cap was reached.

c. Proof of investment must be provided to the department within 60 days from the date of the reservation letter. The department will accept the Subscription Agreement as required by the Securities and Exchange Commission as proof of investment.

d. If proof of investment is made within the requisite 60 day period, the department will issue a tax credit certification letter to the investor.

i. The tax credit certification letter will include the investor's name, address, Louisiana taxpayer identification number and the amount of the credit. The tax credit certification letter will include a breakdown of which years and in what amounts per year the credit will be claimed.

ii. The Louisiana Department of Revenue will receive a copy of the tax credit certification letter for purposes of verification of the credits.

e. If proof of investment is not provided to the Department within the requisite 60 day period, the angel investor tax credits which had been reserved for that company's investors will be added to the remaining available annual credit cap.

f.i. Any returned reservation credits whose businesses could not provide proof of investment within 60 days, will be allocated when available on a first come, first serve basis until the annual \$5 million cap has been reached. However, on the day that the cap is reached, all applications received that day will be treated as received at the same time and the credits remaining for allocation that day will be prorated. Returned reservation credits will be made available the sooner of

(a) the day returned reservation credits exceed the amount of credits requested in applications in line to receive credits the next day or

(b) the day all 60 day proof of investment periods have expired.

ii. The timeline for proof of investment will be the same 60 day period as mentioned above.

g. A business who fails to provide proof of investment within 60 days will not be allowed to apply for angel investor credits again for a three month period. The three month period will begin on the day following the end of the 60 day period for proof of investment.

B. All applications for the reservation of credits shall be made on a form prescribed by the department. All applications for the reservation of credits shall be submitted to the department electronically to an email address specified by the department on its website.

C. An investment earns tax credits in the calendar year in which the investment is made. The request for the reservation of credits for an investment must be made in the same year in which the investment is made.

D. The angel investor tax credits should be claimed on the investor's income and corporation franchise tax returns in accordance with the statutory requirements of La. R.S. 47:6020(D)(3).

E. Transfers of the angel investor tax credits will be allowed in compliance with La. R.S. 47:6020(F).

E. The Angel Investor Tax Credit Program has a program cap of \$5 million in tax credits granted per calendar year. In the event that the total amount of credits granted in

any calendar year is less than \$5 million, any residual amount of unused credits shall carry forward for use in subsequent years and may be granted in addition to the \$5 million limit for each year.

F. For purposes of receiving angel investor tax credits, an investor may not invest more than \$1 million per year per business or more than \$2 million per business total over the life of the program.

G. The department has the authority to change the administration of the Angel Investor Tax Credit Program when it is deemed necessary for the effective administration of the program. Notice of any change in administration will be done with 10 day prior notice published on the Department's website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6020 and R.S. 36:104.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 32:229 (February 2006), amended LR 32:1595 (September 2006), amended by Department of Economic Development, Office of the Secretary, LR 37:

Family Impact Statement

The proposed Rule changes have no impact on family formation, stability or autonomy, as described in R.S. 49.972.

Public Comments

Interested persons may submit written comments to Danielle Clapinski, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to Capitol Annex Building, Office of the Secretary, Second Floor, 1051 North Third Street, Baton Rouge, LA, 70802. Comments may also be sent by fax to (225) 342-9448, or by email to danielle.clapinski@la.gov. All comments must be received no later than 5 p.m., on October 26, 2011.

Public Hearing

A public hearing to receive comments on the Notice of Intent will be held on October 26, 2011 at 2 p.m. at the Department of Economic Development, 1051 North Third Street, Baton Rouge, LA 70802.

Kristy G. McKearn
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Angel Investor Tax Credit Program

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

There will be no incremental costs or savings to state or local governmental units due to the implementation of these rules. The Department of Economic Development intends to administer the program with existing personnel.

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

Act 414 of the 2011 legislative session provides for a nonrefundable, transferable credit equal to 35% of an accredited investor's investment in a Louisiana Entrepreneurial Business (LEB). The Act provides for an annual program cap of \$5 million each year. The credit must be claimed evenly over a five year period and the investor must wait to claim the

credit for the tax year which occurs 24 months following the allocation of credit. So while credits will begin being allocated in 2011-2012 fiscal year, they will not begin to have an effect on state revenue collections until Fiscal Year 2013-2014. The projected fiscal impact by year is as follows: FY14 \$1 million, FY15 \$2 million, FY16 \$3 million, FY17 \$4 million, FY18 \$4 million, FY19 \$3 million, FY20 \$2 million, and FY21 \$1 million. A total of \$20 million of tax credits are allowed to be disbursed under this revision of the program.

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

The income of investors will increase by the amount of benefits received under this program. LEB applicants will also have access to a larger investment pool. The proposed rules change the LEB investment allocation procedure from a pro-rata model to a first-come-first served model. However, on the day the cap is reached, the allocation reverts to a pro-rata share. It is possible that some applicants may be subject to a pro-rata allocation as stipulated in these proposed rules, and applicants filing early may be allocated a larger investment allocation than provided under existing rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Companies receiving benefits under this program will gain competitively over companies that do not receive the program's benefits. While employment may increase in participating businesses, employment may be lessened in other competing businesses that do not participate in the program.

Kristy Mc Kearn
Undersecretary
1109#034

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 111—The Louisiana School, District, and State Accountability System
(LAC 28:LXXXIII.409, 613, 3301, 3303, 3501, and 4313)

Editor's Note: This Notice of Intent is being reprinted in order to correct a submission error. The original Notice of Intent can be viewed on pages 2445-2449 of the August 20, 2011 *Louisiana Register*.

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*: §409. Calculating a 9-12 Assessment Index, §613. Calculating a Graduation Index, §3301. Inclusion of New Schools, §3303. Reconfigured Schools, §3501. Alternative Schools, and §4313. Corrective Actions. Proposed changes in Bulletin 111, Chapter 4, provide detail for dropout adjustment regarding end of course testing, establishing weight for subject-test index scores, and outlines Inclusion of end of test scores earned in middle school. Proposed changes in Bulletin 111, Chapter 6, provide detail for the change in the calculation of the graduation rate adjustment factor to eliminate a negative effect on schools with a graduation rate above the state goal or current grade target. Proposed changes in Bulletin 111, Chapters 33 and 35, provide detail

of clarifications for schools that change grade configurations, merge with other schools, or form two schools from one school. Change in routing policy for alternative schools with student population of 25 percent or less Full Academic Year adds an assessment for students in ninth grade who are pursuing GED and state skills Certificate. Proposed changes in Bulletin 111, Chapter 43, provide detail to describe entry and exit from district improvement. Act 478 of the 1997 Regular Legislative Session called for the development of an accountability system for the purpose of implementing fundamental changes in classroom teaching by helping schools and communities focus on improved student achievement. The state's accountability system is an evolving system with different components that are required to change in response to state and federal laws and regulations.

Title 28

EDUCATION

Part LXXXIII. Bulletin 111—The Louisiana School, District, and State Accountability System

Chapter 4. Assessment, Attendance, and Dropout Index Calculations

§409. Calculating a 9-12 Assessment Index

A. All operational end-of-course (EOC) tests will be used in the calculation of the assessment index.

1. All subjects will be weighted equally.

2. Algebra I EOC passing test scores earned by students at a middle school will be included in the SPS calculations of the high school to which the student transfers. The scores will be included in the accountability cycle that corresponds with the students' first year of high school. Middle schools will earn incentive points for EOC passing scores the same year in which the test was administered.

3. Algebra I EOC test scores considered "not passing" will not be transferred to the high school. Students will retake the test at the high school, and the first administration of the test at the high school will be used in the calculation of the assessment index the same year in which it was earned.

B. For all EOC assessments a dropout adjustment factor will not be used in the assessment index.

C. For all GEE assessment data, use the values from the table in §405.A, above.

D. Adjust each subject-test index by the corresponding dropout adjustment factor.

1. The ninth grade dropout adjustment factor is the previous year's ninth grade non-dropout rate plus 4.0 percent (100.0 percent - ninth grade DO rate + 4.0 percent).

2. The tenth grade dropout adjustment factor is the product of the previous year's ninth grade non-dropout rate plus 4.0 percent and the tenth grade non-dropout rate plus 4.0 percent [(100.0 percent - ninth grade DO rate + 4.0 percent) x (100.0 percent - tenth grade DO rate + 4.0 percent)].

3. The eleventh grade dropout adjustment factor is the product of the previous year's ninth grade non-dropout rate plus 4.0 percent and the tenth grade non-dropout rate plus 4.0 percent and the eleventh grade non-dropout rate plus 4.0 percent [(100.0 percent - ninth grade DO rate + 4.0 percent) x (100.0 percent - tenth grade DO rate + 4.0 percent) x (100.0 percent - eleventh grade DO rate + 4.0 percent)].

E. All EOC assessment indices will be equally weighted.

Unit Weights for 9-12 Assessment Index					
Grade	ELA	Math	Science	Social Studies	Total
9th Grade	1.00	1.00			2.00
10th Grade	1.25	1.25			2.5
11th Grade			1.25	1.25	2.5

F. Sum all weighted values from Subsection C of this Section.

G. Divide the sum from Subsection D of this Section by the sum of all weights applied to subject-test index scores from the table above (in Subsection C of this Section). This quotient is the 9-12 Assessment Index.

H. Example of 9-12 Assessment Index Calculation

1. Non-dropout rates in this example are; ninth-95.0 percent, tenth-98.0 percent, and eleventh-99.0 percent.

Grade	Subject	Subject-Test Index Score	Dropout Adjustment	Adjusted Subject-Test Index Score	Unit Weight	Weighted Adjusted Subject-Test Index Score
9	ELA	100	.990	99.0	1000	99.0
9	MTH	50	.990	49.5	1000	49.5
10	ELA	100	1.010	101.0	1.25	126.3
10	MTH	150	1.010	151.5	1.25	189.4
11	SCI	50	1.040	52.0	1.25	65.0
11	SS	50	1.040	52.0	1.25	65.0
Sums					7	594.2
9-12 Assessment Index				594.2 ÷ 7 = 84.9		

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1021 (June 2006), amended LR 33:252 (February 2007), LR 36:1989 (September 2010), LR 37:

Chapter 6. Graduation Cohort, Index, and Rate

§613. Calculating a Graduation Index

A. Points shall be assigned for each member of a cohort during the cohort's fourth year of high school according to the following table.

1. Students who do not dropout and do not earn a diploma, a GED, a skills certificate, or a certificate of achievement after four years of high school are defined as attendees.

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

B. The graduation index of a school shall be the average number of points earned by cohort members.

1. Beginning with the 2011 baseline SPS, the baseline graduation index shall be adjusted using a factor derived

from the cohort graduation rate used in the current subgroup component (see §708).

2. Beginning with the 2012 growth SPS, the growth graduation index shall be adjusted using a factor derived from the cohort graduation rate used in the prior year's subgroup component (see §708).

3. For 2011-2013, the cohort graduation rate adjustment factor shall be calculated using the appropriate formula:

a. for schools with graduation rate greater than 80: unadjusted graduation index + [(graduation rate – 80) * 1.5];

b. for schools with graduation rate greater than or equal to the graduation rate target, but less than 80: no adjustment;

c. for schools with graduation rate less than the graduation rate target: unadjusted graduation index + [(graduation rate – graduation rate target) * 1.5].

4. For 2014, the cohort graduation rate adjustment factor shall be calculated using one formula for all schools: unadjusted graduation index + [(graduation rate – graduation rate target) * 1.5].

5. The graduation rate target shall be 65 percent in 2011 and increase 5 percent per year until 2014 when it will reflect the goal of 80 percent established in R.S. 17:2928.

C. - E. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 32:1025 (June 2006), amended LR 33:2031 (October 2007), LR 33:2594 (December 2007), LR 35:1472 (August 2009), LR 36:1769 (August 2010), repromulgated LR 36:1994 (September 2010), LR 36:2243 (October 2010), LR 37:

Chapter 33. New Schools and/or Significantly Reconfigured Schools

§3301. Inclusion of New Schools

A. - C. ...

D. The new high school in an existing LEA shall enter accountability using its first year of assessment data, adjusted by the district average dropout data.

1. This adjusted assessment index shall be used as a first year baseline SPS to assign letter grades.

2. The baseline in year two shall consist of the adjusted assessment data from year one and assessment data from year two adjusted by the schools own dropout data from year one.

3. The growth SPS in year two shall consist of one year adjusted assessment data.

4. The graduation index calculated from the school's second graduating class shall be included as a baseline SPS indicator (along with two years of adjusted assessment data in year three of the school's operation).

E. New schools in new districts and new charter schools unaffiliated with existing districts shall enter state accountability after their second year of assessment.

1. Elementary schools shall receive their first baseline scores using two years of assessment data and one year of their own attendance and dropout data.

2. High schools shall receive their first baseline scores using two years of assessment data, the first year unadjusted by dropout data, and the second year adjusted by dropout data.

3. High schools shall receive their first growth scores in their third year of operation.

4. The graduation index calculated from the school's second graduating class shall be included as a baseline SPS indicator, along with two years of adjusted assessment data in year three of the school's operation.

F. - G. ...

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 31:2765 (November 2005), LR 33:2599 (December 2007), LR 36:1992 (September 2010), LR 37:

§3303. Reconfigured Schools

A. Reconfigured schools are identified as schools that change grade configuration, combine two schools with separate sitecodes into one school with a single sitecode, or divide one school into two separate schools with different sitecodes. Data collected at one site shall not be moved to another site and included in accountability results except when two or more schools with dissimilar configurations combine to create one school.

B. Prior to any reconfiguration, the LDE will review the changes to school sites in the planned reconfiguration and will consult with the LEA on the effects that the reconfiguration will have on rewards and/or AUS or subgroup component failure status. After this consultation, the LDE shall make all decisions regarding the effects of these changes on rewards, AUS or subgroup component failure status, and sanctions for all schools effected by the changes and will notify the LEA of its decision. Any AUS, SCF, or AA status and eligibility for participating in any specific programs shall be determined by the LDE.

C. All reconfigurations must be submitted to the sponsor site database before October 1 of the first year of operation under the reconfiguration.

D. High schools with a grade 12 that merge with a school without a grade 12 will retain its graduation data from the prior year.

E. When a high school with a grade 12 merges with another school with a grade 12, the graduation cohort outcome data from both schools will be combined together and recalculated.

F. A district with a K-8 school with a greater than 50 percent change in student enrollment, excluding expected grade progression, may request that the school receive a baseline SPS using the first year of assessment data under the new configuration and a district average for attendance and dropout data. No growth score shall be calculated nor growth labels assigned.

G. The LDE will consult with the district concerning the SPS calculation when unusual circumstances or configurations exist.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended LR 30:2446 (November 2004), LR 31:2765 (November 2005), LR 33:2600 (December 2007), LR 36:1993 (September 2010), LR 37:

Chapter 35. Inclusion of Alternative Education Schools and Students in Accountability

§3501. Alternative Schools

A. For the purposes of school accountability, alternative schools are those schools established to meet the specific needs of students with special challenges that require educational environments that are alternatives to the regular classroom. They house one or more programs designed to address discipline, dropout prevention and recovery, credit recovery, etc. Schools are not considered alternative schools in accountability if created to provide programs for students who are academically advanced, gifted, talented, or pursuing specific areas of study (arts, engineering, medical, technical, etc.).

B. Alternative Schools will be classified into three categories.

1. **Accountable Alternative School.** There is sufficient data to calculate a school performance score for all indicators appropriate for school configuration

2. **Non-accountable alternative school:**

a. there is insufficient data to calculate a statistically reliable school performance score for the school; or

b. less than 25 percent of the students in the school are enrolled for a full academic year *(beginning with the 2011-12 fall accountability release).

3. **Alternative Program.** The school does not have a site code and students who attend the program are enrolled in another school in the district.

a. All assessment data will be routed back to the school in which the student is enrolled.

b. Requests to convert a school to a program must be submitted for approval prior to the opening of a school year.

C. Beginning with the 2010-11 fall accountability release, the school performance scores and letter grades of accountable alternative schools will be published with other schools.

1. Accountable alternative schools will be clearly labeled as alternative schools in public releases.

2. School performance scores for alternative schools will exclude the assessment data for students who are not full academic year (FAY) enrollees. The assessment data for non-FAY students will be routed back to the sending school.

D. Beginning in 2011-12, assessment for alternative schools will include a new assessment for students who do not participate in end-of-course tests (EOCT).

1. A system will be used to assign performance levels and points for each level to be used in alternative school accountability for students in GED and skills certificate programs.

GED/Skills Certificate Options Test	Assessment Points
Basic	150
Approaching Basic	75
Unsatisfactory	0

E. Alternative schools with sufficient data shall also be evaluated in the subgroup component in the same manner as are regular schools.

F. School performance scores and subgroup evaluations for alternative school students shall consist of:

1. the assessment data of all eligible FAY student;
2. the attendance data of all enrollees (K-8 only);
3. the dropout data of all students who have been enrolled for a FAY prior to exiting;

4. graduation data of students who:
 - a. were enrolled at the alternative school for the FAY in their second year of high school;
 - b. entered the alternative school after their fourth year of high school and completed at a higher level. The alternative school earns the incentive points.

G. All eligible accountability data that is not included in the school performance score of the alternative school shall be routed to the sending school when the data collection and aggregation processes can produce accurate results except in the following instances.

1. Students transferring from outside the LEA must be enrolled at a non-alternative school for a FAY to be considered a sending school.

2. Accountability data shall not be routed across district lines except as described in Subsection H of this Section.

H. All eligible accountability data from an alternative school with insufficient data to be included in accountability shall be routed to the sending schools.

I. The Louisiana School for Math, Science, and the Arts shall be included in accountability according to its configuration, but its assessment data shall also be routed to the sending schools provided the sending schools have the same assessed grades as the routed data.

J. For routing purposes, a sending school is the school the student last attended.

K. In those cases where a particular grade-level assessment score must be routed from an alternative school to a sending school where the grade does not exist, scores shall be included as follows.

1. *i*LEAP results will be aggregated with the *i*LEAP grade closest in number or 1 grade-level lower.

2. LEAP/GEE results will be aggregated with the LEAP/GEE grade closest in number with consideration for subject area.

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 29:2753 (December 2003), amended 31:423 (February 2005), LR 34:868 (May 2008), LR 35:1472 (August 2009), LR 37:

Chapter 43. District Accountability

§4313. Corrective Actions

A. The Louisiana Department of Education shall report district scores and labels on every school district.

B. The district responsibility index and the associated labels are discontinued. Districts must complete a self-assessment only after failing all three clusters in the same subject.

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 are identified for improvement by the subgroup component shall write district improvement plans based on the prior years' self-assessments and submit those plans to the LDE within 60 days of identification.

1. A district is identified for district improvement Level 1 when it fails to achieve AYP in all three grade-

clusters, in the same subject, in the subgroup component for two consecutive years.

a. For 2004 only, districts that failed subgroup AYP in 2003 and who fail all three grade-clusters in the same subject as they failed in 2003, will be identified for district improvement.

2. The DOE shall review each district improvement plan and within 30 days of receipt of the plan, recommend revisions until the plan is deemed acceptable.

3. The DOE may recommend that BESE schedule a district dialogue with the district.

4. The district shall implement the district improvement plan immediately upon approval by the DOE.

D. Districts in District Improvement Level 1 that fail to achieve AYP in all three grade clusters, in the same subject, in the subgroup component for a third consecutive year or for an additional year within the following two years shall enter District Improvement Level 2 and have a district level external review conducted by the LDE.

E. Districts in District Improvement Level 2 that fail to achieve AYP in all three grade clusters, in the same subject, in the subgroup component for a third consecutive year or for an additional year within the following two years shall enter District Improvement Level 3 and address the findings of the district level external review immediately upon identification by implementing one of the following:

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

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

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

F. Districts shall exit district improvement if they pass subgroup AYP in the same subject for which they entered district improvement in the same cluster for two consecutive years. An example is in the following table.

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

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

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

33:1334 (July 2007), LR 33:1612 (August 2007), LR 33:2032 (October 2007), LR 34:429 (March 2008), LR 37:

Family Impact Statement

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

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

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

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

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

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

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

Public Comments

Interested persons may submit written comments via the U.S. Mail until 4:30 p.m., September 19, 2011, to Nina A. Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Catherine R. Pozniak
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 111—The Louisiana School, District, and State Accountability System

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

Proposed changes in Bulletin 111, Chapter 4 provide detail for dropout adjustment regarding End of Course Testing, establishing weight for subject-test index scores, and outlines Inclusion of End of Test scores earned in middle school.

Proposed changes in Bulletin 111, Chapter 6 provide detail for the change in the calculation of the graduation rate adjustment factor to eliminate a negative effect on schools with a graduation rate above the state goal or current grade target.

Proposed changes in Bulletin 111, Chapter 33 and 35 provide detail of clarifications for schools that change grade configurations, merge with other schools, or form two schools from one school. Change in routing policy for alternative schools with student population of 25% or less Full Academic Year adds an assessment for students in ninth grade who are pursuing GED and State Skills Certificates.

Proposed changes in Bulletin 111, Chapter 43 provide detail to describe entry and exit from District Improvement.

The proposed rule changes will result in no cost or savings to state or local governmental units.

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

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

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment.

Beth Scioneaux
Deputy Superintendent
1109#011

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Student Financial Assistance Commission
Office of Student Financial Assistance**

Scholarship/Grant Programs—Award Amount
(LAC 28:IV.1401)

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).

This rulemaking will amend Section 1401 of LASFAC's Scholarship/Grants rules for the Early Start Program to provide the same award amount for students enrolled at Louisiana Technical College campuses as other institutions beginning with the fall semester of 2011. (SG11133NI)

**Title 28
EDUCATION**

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

Chapter 14. Early Start Program

§1401. General Provisions

A. - D. ...

E. Award Amount

1. The Early Start Program will pay postsecondary institutions, except for campuses of the Louisiana Technical College during the spring semester of 2011, \$100 per college credit hour, not to exceed \$300 per course, for each course in which a student enrolled in a Louisiana public high school is eligible to enroll.

2. For the spring semester of 2011, the Early Start Program will pay \$50 per credit hour, not to exceed \$150 per course, for students enrolled at campuses of the Louisiana Technical College.

3. The award amount shall not be paid on behalf of students enrolled in nonpublic high schools or in home school; however, beginning with the 2008-2009 academic year (college), the program allows participating eligible Louisiana postsecondary institutions to enroll eligible eleventh and twelfth grade Louisiana nonpublic high school and home school students at the same rate as the award amount that funding is provided for public high school students at these institutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036, R.S. 17:3042.1, R.S. 17:3048.1 and R.S. 17:3048.5.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 33:2609 (December 2007), amended LR 34:240 (February 2008), LR 35:231 (February 2009), LR 37:

Family Impact Statement

The proposed Rule has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Small Business Statement

The proposed Rule will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Public Comments

Interested persons may submit written comments on the proposed changes (SG11133NI) until 4:30 p.m., September 9, 2011, to Melanie Amrhein, 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
Award Amount**

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

The proposed rule change increases the Early Start Program Award Amount for Louisiana Technical College students from \$50 to \$100 per credit hour and from \$150 to \$300 per course. By direction of the Board of Regents, the Louisiana Office of Student Financial Assistance (LOSFA) currently limits Early Start Program Awards to three credit hours per semester. The proposed rules will likely have no impact on state expenditures associated with the Early Start program in Fiscal Year 2012 because the program is capped by the amount appropriated by the Legislature and because LOSFA revised the distribution of the state appropriation for the Early Start Program to remain within the amount appropriated by the Legislature. However, LOSFA's revised distribution of the state appropriation for the Early Start Program may result in insufficient funding to some institutions if such institutions choose to provide services to students who are eligible for Early Start beyond the amounts included in LOSFA's revised distribution of funding required by the proposed rule change. However, institutions are likely to provide unfunded services to these students only if extra instructional space is available, decreasing the likelihood of significant cost increases to such institutions. The proposed rule may increase state expenditures associated with the Early Start program in Fiscal Year 2013 and thereafter if the Legislature fully funds student demand for such services in future years.

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

Revenue collections of state and local governments will not be affected by the proposed changes.

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

The proposed rule change will allow continued participation by eligible students in the Early Start program within the funding constraint imposed by the program's appropriation. Participating institutions may deny services to Early Start students that exceed the funding amount appropriated by the Legislature. However, institutions may also choose to provide Early Start services to students if instructional space is available and institutions want to provide such services for recruitment or other purposes. Furthermore,

students that are denied Early Start courses may incur costs to fund such courses in high school or in the post secondary setting.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change will have no impact on competition or employment.

George Badge Eldredge
General Counsel
1109#005

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Regulatory Permit for Rock, Concrete, and Asphalt Crushing Facilities (LAC 33:III.317)(AQ321)

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.317 (AQ321).

This Rule will provide for a regulatory permit which will authorize air emissions from concrete, rock, and asphalt crushing facilities. The authorization will become effective only upon notification by the department that the application required by the regulatory permit has been determined complete. R.S. 30:2054(B)(9)(a) allows LDEQ to develop regulatory permits for certain sources of air emissions provided the conditions in R.S. 30:2054(B)(9)(b) are satisfied. Pursuant to R.S. 30:2054(B)(9)(b)(viii), all regulatory permits shall be promulgated in accordance with the procedures provided in R.S. 30:2019-Promulgation of rules and regulations (i.e., the Administrative Procedure Act, R.S. 49:950 et seq.). The basis and rational for this Rule are to establish a regulatory permit to authorize air emissions from concrete, rock, and asphalt crushing facilities. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

Chapter 3. Regulatory Permits

§317. Regulatory Permit for Rock, Concrete, and Asphalt Crushing Facilities

A. Applicability

1. This regulatory permit authorizes the construction and operation of rock, concrete, and asphalt crushing facilities, subject to the requirements established herein, upon notification by the department that the application (i.e., notification form) submitted in accordance with Subsection H of this Section has been determined to be complete.

2. This regulatory permit may be used to authorize both fixed and portable crushers. Fixed crushers are those attached by a cable, chain, turnbuckle, bolt, or other means to any anchor, slab, or structure, including bedrock.

B. New Source Performance Standards. Each fixed crusher with a capacity of more than 25 tons per hour and

each portable crusher with a capacity of more than 150 tons per hour for which construction, modification, or reconstruction commenced after August 31, 1983, shall comply with the applicable provisions of 40 CFR 60, Subpart 000—Standards of Performance for Nonmetallic Mineral Processing Plants. Modification and reconstruction are described in 40 CFR 60.14 and 15, respectively.

C. Control of Fugitive Emissions

1. Emission of particulate matter shall be controlled so that the shade or appearance of the emission is not denser than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

2. Emissions of smoke or suspended particulate matter that pass onto or across a public road and create a traffic hazard by *impairment of visibility*, as defined in LAC 33:III.111, or intensify an existing traffic hazard condition are prohibited.

3. All reasonable precautions shall be taken to prevent particulate matter from becoming airborne. These precautions shall include, but not be limited to, the following.

a. Open-bodied trucks transporting materials likely to give rise to airborne dust shall be covered at all times when in motion.

b. Earth or other material on paved areas within the facility due to transport by trucking or other means shall be promptly removed.

c. In-plant roads, active work areas, material stockpiles, and other surfaces at the facility shall be watered, treated with dust-suppressant chemicals, oiled, or paved and cleaned as necessary to minimize dust emissions to the greatest extent practicable.

4. If dust cannot be controlled by other means, the department may require permanently mounted spray bars to be installed at the inlet and outlet of the crusher, at all shaker screens, and/or at all material transfer points and used as necessary.

5. Best housekeeping and maintenance practices shall be employed to minimize emissions of organic compounds. Good housekeeping shall include, but not be limited to, the practices described in LAC 33:III.2113.A.1-4.

D. Filter Vents (Baghouses)

1. Monitoring and Repair

a. Filter vents shall be inspected for visible emissions on a daily basis.

b. Filter elements (bags) shall be inspected no less than once every six months or more frequently if daily visual checks indicate maintenance may be necessary.

c. Elements shall be changed in accordance with the manufacturer's recommendations or more frequently if maintenance inspections reveal damage or other impairments impacting the design efficiency of the unit.

2. Recordkeeping. The following records shall be kept on-site and available for inspection by the Office of Environmental Compliance:

a. the results of the visual checks required by Subparagraph D.1.a of this Section;

b. the dates and results of the maintenance inspections required by Subparagraph D.1.b of this Section; and

c. the dates and a description of any maintenance or repair conducted in accordance with Subparagraph D.1.c of this Section.

3. The daily monitoring and recordkeeping requirements in this Subsection shall not apply when the crusher is not operational.

E. Internal Combustion Engines

1. Fuels and Fuel Sulfur Content

a. Internal combustion engines (ICEs) shall not combust noncommercial fuels, including any used oil, facility byproducts, or other type of waste material. Only commercially available fuels such as diesel or gasoline shall be used as a fuel in ICEs.

b. The permittee shall not combust distillate oil that contains greater than 0.5 weight percent sulfur.

2. Opacity

a. Limitations

i. Smoke. The emission of smoke shall be controlled so that the shade or appearance of the emission is not darker than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

ii. Particulate Matter. The emission of particulate matter shall be controlled so that the shade or appearance of the emission is not denser than 20 percent average opacity, except that the emissions may have an average opacity in excess of 20 percent for not more than one 6-minute period in any 60 consecutive minutes.

iii. Subparagraph E.2.a of this Section shall not apply if the presence of uncombined water is the only reason for failure of an emission to meet the opacity limitations.

b. Monitoring, Recordkeeping, and Reporting

i. The permittee shall inspect each ICE's stack for visible emissions once each month.

ii. If visible emissions are detected for more than one 6-minute period over a 60 consecutive minute test period, the permittee shall conduct a 6-minute opacity reading in accordance with Method 9 of 40 CFR 60, Appendix A, within 3 operating days.

iii. If the shade or appearance of the emission is darker than 20 percent average opacity in accordance with Method 9 of 40 CFR 60, Appendix A, the permittee shall take corrective action to return the ICE to its proper operating condition, and the 6-minute opacity reading shall be repeated in accordance with Method 9. The permittee shall notify the Office of Environmental Compliance no later than 30 calendar days after the occurrence of any Method 9 readings in excess of 20 percent average opacity. This notification shall include the date the visual check was performed, results of the Method 9 testing, and a record of the corrective action employed.

iv. Records of visible emissions checks shall include the ICE's serial number, the date the visual check was performed, a record of emissions if visible emissions were detected for a period longer than 6 consecutive minutes, the results of any Method 9 testing conducted, and a record of any corrective action employed. These records shall be kept on-site and available for inspection by the Office of Environmental Compliance.

3. New Source Performance Standards

a. Each stationary compression ignition (CI) ICE described in 40 CFR 60.4200(a) shall comply with the applicable provisions of 40 CFR 60, Subpart IIII—Standards of Performance for Stationary Compression Ignition Internal Combustion Engines, unless the ICE is exempted as described in 40 CFR 60.4200(d).

b. Each stationary spark ignition (SI) ICE described in 40 CFR 60.4230(a) shall comply with the applicable provisions of 40 CFR 60, Subpart JJJJ—Standards of Performance for Stationary Spark Ignition Internal Combustion Engines, unless the ICE is exempted as described in 40 CFR 60.4230(e) or meets the conditions set forth in 40 CFR 60.4230(f).

4. National Emissions Standards for Hazardous Air Pollutants. Each stationary reciprocating ICE described in 40 CFR 63.6590 shall comply with the applicable provisions of 40 CFR 63, Subpart ZZZZ—National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.

5. Gasoline storage tanks associated with an ICE and with a nominal capacity of more than 250 gallons shall be equipped with a submerged fill pipe.

F. Operating Time. The crusher and associated equipment (excluding stockpiles and storage vessels) shall not operate for more than 4380 hours per calendar year.

1. Operating time shall be monitored by any technically sound means.

2. Operating time of the crusher shall be recorded each month, as well as its operating time for the last 12 months. The records shall be kept on-site for five years and available for inspection by the Office of Environmental Compliance.

G. Monitoring of Capacity. The department may require the crusher to be equipped with a weigh hopper or scale belt to accurately determine the weight of material being crushed.

H. Notification Requirements. Written notification describing the crusher shall be submitted to the Office of Environmental Services using the appropriate form provided by the department. A separate notification form shall be submitted for each crusher.

I. Relocation. The permittee shall notify the department prior to moving the crusher to a new operating site. The permittee shall obtain approval from the department before commencing operations at a new site.

J. Standby Plan. The permittee shall develop and retain on site a standby plan for the reduction or elimination of emissions during an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency. The plan shall be designed in accordance with the objectives set forth in LAC 33:III.5611.Tables 5, 6, and 7.

1. Activate the pre-planned abatement strategies listed in LAC 33:III.5611.Table 5 when the department declares an Air Pollution Alert.

2. Activate the pre-planned abatement strategies listed in LAC 33:III.5611.Table 6 when the department declares an Air Pollution Warning.

3. Activate the pre-planned abatement strategies listed in LAC 33:III.5611.Table 7 when the department declares an Air Pollution Emergency.

K. Fees. In accordance with LAC 33:III.223, Table 1, the new permit application fee for this regulatory permit shall be \$2,080 (fee number 0870). In accordance with LAC 33:III.209 and 211, the annual maintenance fee associated with this regulatory permit shall be \$416. If potential emissions from the crusher are such that it qualifies for a small source permit as described in LAC 33:III.503.B.2, then fee number 1722 located in LAC 33:III.223, Table 1 shall apply in accordance with LAC 33:III.211.B.13.e.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ321. Such comments must be received no later than November 2, 2011, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@la.gov. Copies of these proposed regulations 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 AQ321. These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on October 26, 2011, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulatory Permit for Rock, Concrete, and Asphalt Crushing Facilities

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 as a result of the proposed rule change. The proposed Rule change will create a more efficient process for rock, concrete, and asphalt crushing facilities to apply for air emissions permits. The permit application will be specific to the source category and simplify the administrative process.

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

No increase or decrease in revenues to state or local governmental units will be realized. R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to submit "any fee authorized by this Subtitle and applicable regulations to the secretary... in lieu of submission of a permit application." This fee is equivalent to, and in place of, that which would have been required had a permit been applied for and processed pursuant to LAC 33:III.501 or if another approval mechanism (e.g., a variance) had been employed to authorize air emissions from the source or activity in question.

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

R.S. 30:2054(B)(9)(b)(vii) requires an applicant seeking a regulatory permit to "submit a written notification ... in lieu of submission of a permit application." However, this notification form will be specifically tailored to the activity addressed by the regulatory permit (i.e., rock, concrete, and asphalt crushing facilities) and used in place of the traditional, more generic permit application documents. Therefore, there will be no increase in costs to applicants seeking coverage under this regulatory permit.

Use of a notification form specifically tailored to the activity addressed by this regulatory permit should facilitate the department's review of such documents. A final decision on proposed projects should be reached more expeditiously, possibly resulting in economic benefits to applicants.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed Rule change will have no effect on competition or employment in the public or private sector.

Herman Robinson, CPM
Executive Counsel
1109#039

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Permit Review
(LAC 33:I.1503 and 1507)(OS087)

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 Office of the Secretary regulations, LAC 33:I.Chapter 15 (OS087).

The Rule will provide a technical review period for working draft permit documents. This technical review period will provide the applicant an opportunity to provide comments of a technical nature regarding the working draft permit document so that significant errors are avoided prior to issuance of a draft permit decision. By allowing this review period, the department will benefit by not having to reissue draft permit decisions for public comment based on

errors that can be caught by the applicant in a technical review.

This Rule provides a regulatory basis for the program currently being administered by the Air Permits Division and Waste Permits Division. Air and waste permits are currently undergoing this technical review based on divisional policies. This Rule will memorialize the process into the regulatory scheme. The basis and rationale for the proposed Rule is to meet the requirements of Act 986 of the Louisiana State Legislature, effective July 6, 2010, which enacts R.S. 30:2022(D). Paragraph (D)(5) of this Act requires the secretary to adopt rules, in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., to implement the requirements of R.S. 30:2022(D). This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 15. Permit Application and Working Draft Permit Review

§1503. Definitions

A. For all purposes of this regulation, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Database—the Tools for Environmental Management and Protection Organizations (TEMPO) information management system or any similar information management system used by the department to generate permits.

* * *

Permit Differences Report—a document generated by TEMPO summarizing the differences between the existing permit for a facility or process unit, and a draft permit renewal or substantial permit modification for the same facility or process unit.

* * *

Technical Review Period—the time during which a permit applicant may review and comment on a *working draft permit*.

Working Draft Permit—the initial draft document prepared by one or more department employees based on the application and supplemental information submitted by the permit applicant. The document is not yet approved for public notice (where required) or for a final permit decision. The document includes supporting material such as statements of basis or fact sheets when required by regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2022(B) and (D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Legal Affairs and Enforcement, Enforcement and Regulatory Compliance Division, LR 19:487 (April 1993), amended by the Office of the Secretary, Legal Affairs Division, LR 33:1341 (July 2007), LR 37:

§1507. Review of Working Draft Permits

A. Technical Review Period

1. If requested by the permit applicant, the department shall provide the applicant with a reasonable opportunity to review a working draft permit renewal or a modification to a

hazardous waste, solid waste, water discharge, or air quality permit before public notice is provided. If the draft permit includes revisions to an existing permit, the working draft permit, as defined in LAC 33:I.1503, shall clearly identify each change made by the department to the existing permit.

2. When public notice is not required, the department shall provide the applicant with a reasonable opportunity to review the working draft permit or permit modification prior to a final permit decision if:

a. a technical review period, as defined in LAC 33:I.1503, is requested by the applicant; or

b. the department proposes modifications or revisions not associated with the applicant's request. In lieu of a technical review period, the department may reopen the permit in accordance with applicable law.

3. When a technical review period is not requested or required by Subparagraph A.2.b of this Section, an opportunity to review a working draft permit may be provided to the permit applicant upon a determination of need by the department.

B. Permit Differences Report. If requested by the permit applicant, the department shall transmit to the applicant, with the working draft permit, a permit differences report, as defined in LAC 33:I.1503, when such report can be generated by the department's database, as defined in LAC 33:I.1503.

C. The technical review period shall be no longer than 10 business days. The department may extend the review period upon request of the permit applicant.

D. The permit applicant shall name a designated contact to receive the working draft permit, and provide the appropriate mailing and electronic mail addresses for the contact. Hardcopies of working draft permits shall be provided only when electronic copies are not available.

E. Comments on a working draft permit provided by the permit applicant shall be submitted by the designated contact using the appropriate form provided by the department.

F. When public notice is required, the notice shall indicate that a working draft of the proposed permit was provided to the permit applicant's designated contact and that any remarks submitted on behalf of the permit applicant, and the department's responses thereto, are included in the permit record that is available for public review.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2022(D).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 37:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS087. Such comments must be received no later than November 2, 2011, at 4:30 p.m., and should be sent to Perry Theriot, Attorney Supervisor, Office of the Secretary, Legal Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to perry.theriot@la.gov. Copies of these proposed regulations 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 OS087.

These proposed regulations are available on the Internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on October 26, 2011, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Perry Theriot at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson, CPM
Executive Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Permit Review**

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

The proposed Rule change, required by Act 986 of the 2010 Regular Legislative Session, will result in an additional workload for the Department of Environmental Quality (DEQ). This Act provides permit applicants a review period for working draft permits. During this period the applicant has the opportunity to provide comments regarding the working draft permit as to avoid errors prior to the draft permit decision. The costs associated with implementing the proposed rule change cannot be quantified, but are not likely to be significant, because the additional workload will be dependent on the number and nature of the comments received from permit applicants as a result of their review of these permits. The technical review period may result in fewer comments by the applicant during the formal public comment period. The proposed Rule change will have no impact on local governmental expenditures.

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 as a result of the proposed Rule change.

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

There will be no costs and/or economic benefits to directly affected persons or non-governmental groups as a result of the proposed Rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment in the public or private sector because of the proposed Rule change.

Herman Robinson, CPM
Executive Counsel
1109#038

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Board of Examiners of Certified Shorthand Reporters

Examinations (LAC 46:XXI.301, 307 and 309)

In accordance with the Administrative Procedures Act, R. S. 49:950 et seq. Notice is hereby given that the Louisiana Board of Examiners of Certified Shorthand Reporters proposes to adopt changes made to the examination rules.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXI. Certified Shorthand Reporters

Chapter 3. Examinations

§301. Applications for Examinations

A. - F. ...

G. A Certified Digital Reporter (CDR) applicant who is eligible as an official or deputy official reporter will be scheduled for an examination to be given by a designee of the Education or Examination Committee Chair. The examination will be administered at the court in which the applicant wishes to obtain certification and will not be administered for an individual CDR applicant more frequently on an annual basis than the number of examinations scheduled each year by the board in accordance with Paragraph A of this Section. A Certified Digital Reporter applicant is not subject to the qualifying exam.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and R.S. 37:2555(F).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR 16:393 (May 1990), LR 17:578 (June 1991), LR 19:1537 (December 1993), LR 27:183 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters LR 29:1086 (July 2003), LR 35:64 (January 2009), LR 37:

§307. Content of Examination

A. - B. ...

C. Completion time for the written knowledge test is one hour. Four hours are allowed for transcribing the three segments of the dictated test. The time allocated for an applicant taking fewer than three segments of the dictated test shall be reduced proportionately. A certified digital reporter applicant must pass all three segments in one sitting. Transcripts must be typed.

D. ...

E. Only stenomask and certified digital reporter candidates will be allowed to use electronic recording equipment during an examination.

F. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:2554.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Shorthand Reporters, LR 14:530 (August 1988), LR 16:394 (May 1990), LR 27:183 (February 2001), LR 37:

§309. Grading of Examination

A. Each candidate’s examination will be graded on the basis of his ability to accurately transcribe his notes or a digital, electronic, or audio recording; the time occupied in the transcription; his knowledge of court reporting procedure, and its related terminology, spelling, and punctuation; and the general style of the transcript.

B. - D. ...

E. Except for a certified digital reporter applicant, an examinee who passes any segments of the skills test is exempt from retaking those segments under the following conditions.

E.1. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2554 and R.S. 37:2555(F).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Examiners of Certified Shorthand Reporters, LR 9:678 (October 1983), amended by the Department of Economic Development, Board of Examiners of Certified Shorthand Reporters, LR 14:530 (August 1988), LR 16:394 (May 1990), LR 19:1010 (August 1993), LR 19:1537 (December 1993), LR 27:184 (February 2001), amended by the Office of the Governor, Board of Examiners of Certified Shorthand Reporters LR 29:1087 (July 2003), LR 37:

Family Impact Statement

The proposed rule changes have no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

Interested persons may submit written comments on the proposed changes until 4 p.m., October 10, 2011, to Vincent P. Borrello, Jr., Chairman of the Education Committee of the Louisiana Board of Examiners of Certified Shorthand Reporters P.O. Box 1840, Walker, LA 70785-1840.

Vincent P. Borrello, Jr.,
Education Committee Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Examinations

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

The proposed rule change is anticipated to result in an indeterminable but likely minimal increase in expenditures for the La. Board of Examiners of Certified Shorthand Reporters. These costs include travel reimbursements for board members who travel to and from each court requesting examinations and those one-time costs associated with the publication and dissemination of the rules.

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

The proposed rule change is anticipated to result in an indeterminable but likely minimal increase in revenues for the La. Board of Examiners of Certified Shorthand Reporters. Pursuant to Act 700 of the 2010 Regular Legislative Session, the proposed rule change establishes the guidelines for the state examination to be given to Certified Digital Reporters. The examination cost is \$265 for written and oral portion.

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 associated with the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition or employment as a result of this rule change.

Vincent P. Borrello, Jr.
Education Committee Chairman
1109#045

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Division of Administration
Office of State Uniform Payroll**

Payroll Deduction
(LAC 4:III.101, 106, 112, 114, 127 and 131)

In accordance with R.S. 42:455, notwithstanding any other provision of law to the contrary, the Office of the Governor, Division of Administration, Office of State Uniform Payroll is proposing to adopt amendments to the rule regarding payroll deductions for state employees. The purpose of the amendment is to adjust the timelines for the submission of applications, policy changes, and enhancements for statewide vendor deductions so that they coincide with the new Office of Group Benefits Flexible Benefits Plan year and to make technical changes.

Title 4

**ADMINISTRATION
Part III. Payroll**

Chapter 1. Payroll Deductions

§101. Definitions

Administrative Coordinator—a statewide vendor designated representative who provides the single authorized contact for communication between the vendor and state departments/agencies, company representatives, the Division of Administration, Office of State Uniform Payroll, payroll systems outside of the LaGov HCM payroll system and any administrative contract(or).

Agency Number—three digit identifier representing a single agency in the LaGov HCM payroll system which serves as a key for processing and reporting.

Flexible Benefits Plan Year—the annual period of time designated for participation (e.g., January 1 through December 31).

Integrated Statewide Information System Human Resource Payroll System (ISIS HR)—Repealed.

LaGov Human Capital Management Payroll System (LaGov HCM)—the statewide system administered by the Division of Administration, Office of State Uniform Payroll to provide uniform payroll services to state agencies.

Statutory Vendors—any entity having deductions mandated or permitted by federal or state statute which includes, but is not limited to union dues, credit unions, IRC §457 and §403(b) plans, health and life insurance products sponsored by the Office of Group Benefits, retirement

systems, Student Tuition Assistance and Revenue Trust Program (START), and qualified United Way entities.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1026 (May 2000), LR 32:84 (January 2006), LR 37:

§106. Statewide Vendor Annual Renewal and New Application Process

A. ...

B. Written notice of requests for a new statewide vendor payroll deduction or for current vendors to add additional products or to add additional policy forms or service plans under the current products should be sent to OSUP prior to July 1 annually, in order for the vendor to receive an application form from OSUP. Applications for the purpose of providing deductions for IRA's, annuities, noninsurance investment programs or group plans are not permitted.

C. On or before August 1 annually, OSUP will provide deduction application forms along with instructions for completion to each renewal and new entity on file.

D. On or before August 31 annually, renewal and new applications must be completed and submitted to the Division of Administration, Office of State Uniform Payroll, P.O. Box 94095, Baton Rouge, LA 70804 or 1201 N. Third Street, Ste. 6-150, 70802.

1. - 2.g. ...

E. On or before October 1 each year, OSUP will conduct a compliance review and shall notify vendors of any products that will be removed due to not meeting the participation requirements in §114.C.3. In a separate letter, the vendor will be notified whether their annual application has been conditionally approved.

F. Between September and April each year, the EPBC shall conduct a thorough review of all products authorized for deduction and new applications.

1. - 3. ...

G. On or before April 1 annually, the EPBC shall issue a summary report of opinions resulting from the annual review of products and new applications, along with recommended actions to the Commissioner of Administration.

H. ...

I. On or before May 1 annually, the Commissioner of Administration shall advise OSUP whether EPBC recommendations relative to current products and new applications have been accepted or denied.

J. On or before May 31 annually, OSUP will:

1. - 2. ...

3. notify LaGov HCM payroll system user agencies and other departments/agencies and governing boards of authorized deductions by vendor and product name, providing LaGov HCM system information and the effective date. Governing boards shall notify universities.

K. Payroll systems outside of the LaGov HCM payroll system will advise vendors whether the deduction will be established.

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:86 (January 2006), amended LR 37:

§112. Statewide Vendor Requests for Enhancements/Changes to Products

A. Requests for enhancements to existing statewide vendor products, policies or service plans must be submitted to OSUP for review and approval by April 1 and October 1 annually.

1. - 1.e. ...

2. OSUP and the EPBC will review the request and notify the vendor of approval or denial by June 1 and December 1 annually.

a. If approved, OSUP will include in the approval notification the procedures for implementing the enhancement for July 1 and January 1 annually.

b. ...

B. Notification of policy changes must be submitted to OSUP by July 1 annually.

1. - 1.c. ...

2. OSUP will review the information submitted and notify the vendor by September 30 annually and provide procedures for implementing the policy change for January 1 annually.

B.3. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 26:1027 (May 2000), amended LR 32:87 (January 2006), LR 37:

§114. Statewide Vendor Requirements and Responsibility

A. - C.2. ...

3. maintain individual product (product categories as defined by OSUP) participation levels that meet or exceed 100 employees paid through the LaGov HCM payroll system. Vendors will be allowed 12 months after initial product approval to meet the minimum product participation requirements;

4. - 5.c. ...

d. the authorization must specify product name, IRC §125 eligibility, monthly premium or fee, and the semi-monthly (24 annually) premium or fee. Statewide vendor deductions in the LaGov HCM payroll system must be semi-monthly deduction amounts only (to the second decimal place). Payroll systems outside of the LaGov HCM payroll system which permit monthly deductions may continue same;

5.e. - 8.a. ...

b. monthly reconciliation exception listing shall identify the employee by Social Security number and payroll agency number and shall be grouped within payroll agency numbers for LaGov HCM payroll system agencies and similarly for payroll systems outside of the LaGov HCM payroll system;

9. furnish evidence of reconciliation to OSUP as requested by that office. Like verification may be required by other payroll systems outside of the LaGov HCM payroll system;

C.10. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 32:87 (January 2006), amended LR 37:

§127. Department/Agency Responsibility

A. - B.5. ...

6. process refunds for amounts previously deducted from any vendor which receives LaGov HCM payments only as directed by OSUP policy. Payroll systems outside of the LaGov HCM payroll system shall establish written policy for remittance and refund of deductions taken;

7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1031 (May 2000), LR 32:90 (January 2006), LR 37:

§131. Fees

A. Data, information, reports, or any other services provided to any vendor or any other party by the LaGov HCM payroll system or other state payroll system may be subject to payment of a fee for the cost of providing said data, information, reports, and/or services in accordance with the Uniform Fee Schedule established by rule promulgated by the DOA under R.S. 42:458.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 42:455.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Uniform Payroll, LR 12:763 (November 1986), amended LR 16:402 (May 1990), LR 19:318 (March 1993), LR 22:22 (January 1996), LR 26:1031 (May 2000), LR 32:90 (January 2006), LR 37:

Family Impact Statement

1. What effect will this Rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this Rule have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this Rule have on the functioning of the family? This Rule will not affect the functioning of the family.

4. What effect will this Rule have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this Rule have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the action proposed is strictly a state enforcement function.

Public Comments

Interested persons may submit written comments to the Andrea Hubbard, Director of the Office of State Uniform Payroll, P.O. Box 94095, Baton Rouge, LA 70804-9095. All

comments must be received no later than 5 p.m., October 20, 2011.

Steven Procopio, Ph.D.
Assistant Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Payroll Deduction**

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

There is no anticipated direct material effect on state agencies or local governmental units as a result of the proposed administrative rule. The proposed administrative rule adjusts the timelines for the submission of applications, policy changes and enhancements for statewide vendor deductions to coincide with the new Office of Group Benefits Flexible Benefits plan year, which is being changed from July to June (state fiscal year) to January to December (calendar year) beginning January 1, 2012.

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 a result of this proposed action.

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

State of Louisiana employees, Louisiana human resource/payroll staff and insurance vendors having payroll deductions will be directly affected by this rule. There are three major changes to the rule which affect these groups: 1) timeline was adjusted for the application process to coincide with the new Office of Group Benefits Flexible Benefits Plan year, 2) timeline was adjusted for the vendor requests for enhancements to products, and 3) timeline was adjusted for the vendor requests for changes to approved products. Because employees, agencies, and vendors currently operate under similar timelines (with a different time period), and no substantive changes are being made to the rule, there will be no effect on the costs or economic benefits to these groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition and employment as a result of this proposed action.

Steven Procopio
Assistant Commissioner-Finance
1109#014

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Homeland Security and Emergency Preparedness**

Homeland Security and Emergency Preparedness
(LAC 55:XXI.Chapters 1, 3, and 5)

Under the authority of the Louisiana Homeland Security and Emergency Assistance and Disaster Act, R.S. 29:721 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the director gives notice that rulemaking procedures have been initiated to amend the agency's evacuation and sheltering

regulations contained in LAC 55:XXI.Chapters 1 and 3, and adopt Chapter 5 (Resource Allocation and Distribution of Non-federal Cost Share).

The proposed Rule applies to actions taken by the state and local governments in preparation for, and in response to, disasters impacting the state of Louisiana. The Rule will implement changes intended to broaden the Rule's applicability to encompass all hazards that may threaten the state; synchronize reporting of data relevant to preparing for and responding to disasters; require a parish to identify, inventory, report, and utilize its own resources before requesting state resources; provide factors for the agency to consider in allocating state resources in response to a disaster; and, require a parish requesting state evacuation or sheltering assistance to bear any costs not reimbursed by the federal government unless otherwise determined by the commissioner of the Division of Administration.

Title 55

PUBLIC SAFETY

Part XXI. Homeland Security and

Emergency Preparedness

Chapter 1. General Provisions

§101. Overview

A. Act 35 of the First Extraordinary Session of 2006, effective on March 1, 2006, established the Governor's Office of Homeland Security and Emergency Preparedness in R.S. 29:725.

B. Revised Statutes 29:727(E)(13) added by Act 36 of the First Extraordinary Session of 2006, effective February 23, 2006, requires the Office of Homeland Security and Emergency Preparedness, prior to May 31, 2006 to promulgate standards and regulations in accordance with the Administrative Procedure Act for local governments when a mandatory evacuation has been ordered in response to a weather event or disaster, of people located in high risk areas utilizing all available modes of transportation, including but not limited to local school and municipal buses, government-owned vehicles, vehicles provided by volunteer agencies, and trains and ships to public shelters located outside of the high risk area with priority consideration being given to the special needs of the following classes of people:

1. people with specific special needs such as the elderly and the infirm;
2. tourists;
3. those who refuse to leave;
4. those without personal transportation.

C. Revised Statutes 29:727(E)(14) added by Act 36 of the First Extraordinary Session of 2006, effective February 23, 2006, requires the Office of Homeland Security and Emergency Preparedness, prior to May 31, 2006 to promulgate standards and regulations in accordance with the Administrative Procedure Act for local governments when a mandatory evacuation has been ordered for the evacuation or safe housing of essential workers located in high risk areas.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), LR 37:

§103. Goals and Objectives

A. The goals of these regulations are:

1. to protect citizens who cannot protect themselves when threatened or endangered by a weather event or disaster;
2. to reduce loss of life due to impediments to self-evacuation from a weather event or disaster;
3. to protect essential workers whose jobs require that they remain in harm's way before, during and after a weather event or disaster; and
4. to protect personal liberty while preserving law and order in areas evacuated due to the threat of a weather event or disaster.

B. The objectives of these regulations are:

1. to identify the population which lacks means to self-evacuate;
2. to identify and provide for the use of the nearest available transportation resources for use by local governments during mandatory evacuations;
3. to identify and provide means of protection for essential workers whose employment or commission requires that they remain in areas susceptible to damage and destruction wrought by weather events or disasters; and
4. to provide for establishment of rules by local government for citizens in high risk areas who refuse to leave when a mandatory evacuation is ordered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), LR 37:

§105. Definitions

At Risk Population—people who fall within the following non-exclusive categories:

1. those without means of personal transportation;
2. the infirm who are not living in a public or private health care facility;
3. nursing home residents;
4. private hospital patients;
5. other special needs who are not confined to a health care facility;
6. hotel and motel guests.

Contiguous Risk Area—any parish, not directly threatened by a weather event or disaster requiring the evacuation of some or all of its citizens, that can render assistance to a high risk area.

Essential Worker—persons working in public safety, government, disaster response, health care, or private business as designated and deemed necessary and/or critical for disaster response by their employer or by virtue of their official commission.

High Risk Area—any parish, directly threatened by a weather event or disaster requiring the evacuation of some or all of its citizens.

Local Government—a parish or municipality of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), LR 37:

Chapter 3. Risk Assessment

§301. Biennial Risk Assessment

A. Every parish and municipality shall perform a biennial risk assessment in the form and format prescribed by the Governor's Office of Homeland Security and Emergency Preparedness for the at-risk population with the results thereof to be provided to the Governor's Office of Homeland Security on or before December 1, 2006 and on or before that date every second year thereafter as prescribed by the Governor's Office of Homeland Security and Emergency Preparedness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), LR 37:

§303. Evacuating and Sheltering Private Nursing Home Residents

A. The evacuation and sheltering of private nursing home residents and private hospital patients is and shall remain the primary responsibility of the host health care facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), LR 37:

§305. Municipal Risk Assessment

A. The municipal risk assessment shall consist of a survey of the people living within the corporate limits to identify the people in each category of the at-risk population defined herein and the essential workers as defined herein, and to determine whether the individuals so identified may need sheltering in a general population shelter or a special needs shelter as those terms are defined by the Louisiana Department of Health and Hospitals. To the greatest extent possible, the municipal risk assessment should be based upon reliable sources of information such as the most current U.S. Census data, historical seasonal tourism estimates, average population of hospital and nursing home residents, and numbers of anticipated essential workers responding to an incident. The results of the municipal survey shall be furnished to the parish Office of Homeland Security and Emergency Management established pursuant to R.S. 29:727(B).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:646 (April 2007), LR 37:

§307. Parish Risk Assessment

A. The parish risk assessment shall consist of a survey of the people living outside the corporate limits of any municipality to identify the people in the each category of the at-risk population defined herein and the essential workers as defined herein, and to determine whether the individuals so identified may need sheltering in a general population shelter or a special needs shelter as those terms are defined by the Louisiana Department of Health and Hospitals.

B. To the greatest extent possible, the parish risk assessment should be based upon reliable sources of information such as the most current U.S. Census data, historical seasonal tourism estimates, average population of hospital and nursing home residents, and numbers of anticipated essential workers responding to an incident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:647 (April 2007), LR 37:

§309. Transportation

A. Every parish and municipality shall prepare an inventory in the form and format prescribed by the Governor's Office of Homeland Security and Emergency Preparedness of all local modes of transportation subject to the parish president's emergency powers, including but not limited to school and municipal buses, government-owned vehicles, vehicles expected to be provided by volunteer agencies, and trains or ships, for use in a mandatory evacuation. A copy of the municipal inventory shall be provided to the parish office of homeland security and emergency management established pursuant to R.S. 29:727(B). A copy of the combined parish and municipal inventory shall be submitted biennially beginning on or before December 1, 2006, and on or before that date in every second year thereafter to the Governor's Office of Homeland Security and Emergency Management as prescribed by the Governor's Office of Homeland Security and Emergency Preparedness.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:647 (April 2007), LR 37:

§311. Evacuation and Sheltering Plan

A.1. The parish Office of Homeland Security and Emergency Management established pursuant to R.S. 29:727(B), using the combined list of at-risk population and essential workers and the combined list of available means of transportation, shall develop an evacuation and sheltering plan for each category of at-risk population to include at a minimum:

- a. use of locally available, or non-local, means of transportation for evacuation of all categories of the at-risk population;
- b. means of notification of the different categories of the at-risk population of a mandatory evacuation;
- c. means of notification of the different categories of the at-risk population of available transportation;
- d. determination of individuals and facilities where the risk of sheltering in place outweighs the risk of loss of life during the evacuation process;
- e. coordination of transportation resources with a shelter destination outside of a high risk area;
- f. provisions for medical emergencies which occur during the evacuation process;
- g. plans and procedures to execute the evacuation and sheltering plan within 36 hours of declaration of a voluntary evacuation and within 12 hours of declaration of a mandatory evacuation.

2. The plan shall be submitted to GOHSEP on or before March 1, 2007 and updated in the form and format prescribed by the Governor's Office of Homeland Security and Emergency Preparedness in conjunction with the other biennial reports described in this Part.

B. The parish Office of Homeland Security and Emergency Management shall develop an evacuation and sheltering plan for essential workers which shall include, at a minimum, provisions for food, water, and shelter for at least 72 hours subsequent to a weather event or disaster.

C. Each parish and municipality shall prepare for the possibility of those citizens who refuse to leave when a mandatory evacuation is ordered and shall respect the rights of personal liberty and freedom of all citizens, while protecting and preserving law and order and accomplishing the goals and objectives enumerated in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Homeland Security and Emergency Preparedness, LR 33:647 (April 2007), LR 37:

Chapter 5. Resource Allocation and Distribution of Non-federal Cost Share

§501. Evacuation

A. The Governor's Office of Homeland Security and Emergency Preparedness, in preparing and maintaining regional and statewide evacuation plans and in responding to an actual disaster or emergency, shall allocate state evacuation resources in accordance with parish compliance with the requirements of this Part, to include the following factors:

1. the parish's designation as a high-risk area or contiguous risk area;

2. the parish's geographic proximity to the weather event or disaster, in relation to other parishes in the high risk area;

3. the risk assessment prepared by the parish and municipality identifying the at-risk population and essential workers of the parish;

4. the transportation inventory prepared by the parish and municipality identifying all local modes of transportation subject to the parish president's emergency powers, and non-local modes of transportation with which the parish has executed contingency agreements for transporting its at-risk population during a mandatory evacuation;

5. the evacuation plan prepared by the parish making maximum utilization of its own local modes of transportation subject to the parish president's emergency powers for its at-risk population and essential workers;

6. whether the parish president has declared an emergency and evacuation in conjunction with requesting state evacuation assistance.

B. The state will rely on the parish's transportation inventory submitted in accordance with this Part for planning purposes and, when requested by the parish, use its best efforts to supplement the parish's evacuation assets with state evacuation resources. However, for a disaster or emergency in which a parish requests state or federal evacuation assistance to support an evacuation, the parish's request for state evacuation assistance shall serve as acknowledgement of the parish's responsibility for that portion of the nonfederal share of the evacuation costs

allocable to the services provided by the state to that parish. All costs associated with the evacuation services provided by the state shall be allocated to the parish unless otherwise determined by the commissioner of the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Governor's Office of Homeland Security and Emergency Preparedness, LR 37:

§503. Sheltering

A. The Governor's Office of Homeland Security and Emergency Preparedness, in preparing and maintaining regional and statewide sheltering plans and in responding to an actual disaster or emergency, shall allocate state sheltering resources in accordance with the requirements of this Part, to include the following factors:

1. the parish's designation as a high-risk area or contiguous risk area;

2. the parish's geographic proximity to the weather event or disaster, in relation to other parishes in the high risk area;

3. the risk assessment prepared by the parish and municipality identifying the at-risk population and essential workers of the parish;

4. the shelter inventory prepared by the parish and municipality identifying all available local places of shelter subject to the parish president's emergency powers, and non-local facilities with which the parish has executed contingency agreements for sheltering its at-risk population;

5. the evacuation plan prepared by the parish making maximum utilization of its own means of transportation for its at risk population.

B. The state will rely on the parish's shelter inventory submitted in accordance with this Part for planning purposes and, when requested by the parish, use its best efforts to supplement the parish's shelter assets with state shelter resources. However, for a disaster or emergency in which a parish requests state or federal shelter assistance, the parish's request for state shelter assistance shall serve as acknowledgement of the parish's responsibility for that portion of the nonfederal share of the shelter costs allocable to the services provided by the state to that parish. All costs associated with the shelter services provided by the state shall be allocated to the parish unless otherwise determined by the commissioner of the Division of Administration.

C. For a disaster or emergency in which a parish requests state or federal sheltering assistance, the state may assume all or part of the non-federal share of the cost of the state or federal sheltering assistance based upon compliance with this Part and availability of state funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:725.

HISTORICAL NOTE: Promulgated by the Governor's Office of Homeland Security and Emergency Preparedness, LR 37:

Family Impact Statement

It is anticipated that the proposed action will have no significant effect on the: (1) stability of the family; (2) authority and rights of parents regarding the education and supervision of their children; (3) functioning of the family; (4) family earnings and family budget; (5) behavior and personal responsibility of children; or (6) ability of the family or a local government to perform the function as contained in the proposed action.

Small Business Statement

It is anticipated that the proposed action will not have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act (R.S. 49:965.2 et seq.). The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting the proposed action to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

Public Comments

Interested persons may submit written comments, data, opinions, and arguments regarding the proposed action. Written submissions are to be directed to Thomas Enright, Governor's Office of Homeland Security and Emergency Preparedness, 7667 Independence Boulevard, Baton Rouge, LA 70806 and must be received no later than 4 p.m. on October 31, 2011. No preamble regarding these proposed regulations is available.

Pat Santos
Interim Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Homeland Security and Emergency Preparedness**

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

The proposed administrative rules may result in an indeterminable amount of savings to the state, but could potentially increase costs to local governmental entities. The proposed administrative rules require during an emergency situation for parishes to identify and utilize its own resources before requesting state resources, and if a parish is requesting state evacuation or sheltering assistance to bear any costs not reimbursed by the federal government (unless otherwise determined by the Commissioner of Administration). In addition, the proposed administrative rules broaden the applicability to encompass all hazards that may threaten the state and synchronizes reporting of data relevant to preparing for and responding to disasters.

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

There is no anticipated direct material effect on governmental revenues as a result of the proposed administrative rules.

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

There is no anticipated direct material effect on costs and/or economic benefits to directly affected persons or nongovernmental groups as a result of the proposed administrative rules.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated direct material effect on competition and employment as a result of the proposed administrative rules.

Mark Rile
Chief of Staff
1109#050

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Dentistry

Dentistry Requirements
(LAC 46:XXXIII.124, 306, 403,
409, 415, 1611, 1709, and 1711)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.124, 306, 403, 409, 415, 1611, 1709, and 1711. No preamble has been prepared.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 1. General Provisions

§124. Guidelines for Returning to Active Practice

A. - C. ...

D. When a licensee has been inactive for a period of three months to one year, it is the prerogative of the board to have the licensee evaluated in any specific or all fields of dentistry or dental hygiene as deemed necessary by the board.

E. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 25:511 (March 1999), amended LR 28:1776 (August 2002), LR 28:2512 (December 2002), LR 37:

Chapter 3. Dentists

§306. Requirements of Applicants for Licensure by Credentials

A. - A.19. ...

B. The applicant must also:

1. ...

2. sign a release authorizing the peer review chairman to provide such information to the board;

3. show that his professional liability insurance has never been revoked, modified, or nonrenewed; and

4. provide satisfactory documentation that the initial licensing examination passed by the applicant included the use of live patients and that the overall examination was at least equivalent to the licensing examination of the Louisiana State Board of Dentistry.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1612 (August 2000), repromulgated LR 27:1893 (November 2001), amended LR 28:1777 (August 2002), LR 30:2305 (October 2004), LR 31:927 (April 2005), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 33:2652 (December 2007), LR 34:2564 (December 2008), repromulgated LR 35:67 (January 2009), amended LR 37:1405 (May 2011), LR 37:

Chapter 4. Fees and Costs

Subchapter A. General Provisions

§403. Form of Payment Required

A. With the exception of nonrestricted dental and dental hygiene license and permit renewal fees, payments to the board of fees or costs shall be made in U.S. funds in the form of a check, a certified check, a cashier's check or a money order.

B. Nonrestricted dentists and all dental hygienists shall pay license and permit renewal fees to the board in U.S. funds in the form of a check, a certified check, a cashier's check, a money order, or a credit card.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 37:

§409. Term of License; Renewal

A. All nonrestricted licenses shall be renewed biennially and will expire on December 31 of each calendar year of the renewal period. License renewal notifications are to be mailed by the board to licensed dentists and dental hygienists at their last known mailing address as indicated in the board files.

B. All restricted dental licenses shall expire annually on June 30. Restricted license renewal notifications are to be sent to the dentists' employing dental school or facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:791 (November 1988), amended LR 23:1529 (November 1997), LR 37:

Subchapter C. Fees for Dentists

§415. Licenses, Permits, and Examinations (Dentists)

A. For processing applications for licensure, permits, and examinations, the following non-refundable fees shall be payable in advance to the board.

1.-23. ...

24. Application and permitting for mobile or movable dental office \$250

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 16:566 (June 1990), LR 18:741 (July 1992), LR 23:1526 (November 1997), LR 24:1115 (June 1998), LR 25:1478 (August 1999), LR 26:691 (April 2000), LR 28:1778 (August 2002), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009), amended LR 37:2150 (July 2011), LR 37:

Chapter 16. Continuing Education Requirements

§1611. Continuing Education Requirements for Relicensure of Dentists

A. - K. ...

L. Louisiana licensed dentists shall be eligible for three hours of clinical continuing education for treating a donated dental service patient (pro bono) from a Louisiana State Board of Dentistry approved agency. The maximum number of hours will be no more than six in any two year biennial renewal period, and verification of treatment from the agency is mandatory in order to obtain these continuing education credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:244 (February 2006), LR 35:1237 (July 2009), LR 36:2038 (September 2010), LR 37:2151 (July 2011), LR 37:

Chapter 17. Licensure Examinations

§1709. Examination of Dentists

A. - C. ...

1. Effective January 1, 2012 the clinical licensing examinations administered by Central Regional Dental Testing Service (CRDTS), Northeast Regional Board (NERB), Southern Regional Testing Agency (SRTA), American Dental Exam (ADEX), and Western Regional Examining Board (WREB), will not be accepted by the Louisiana State Board of Dentistry for initial licensure. However, applicants who have taken those examinations prior to the examination cycle of calendar year 2011 shall have three years from the date of their successful completion of those examinations to apply for a license via examination in the state of Louisiana. After the three year deadline it will necessary for those applicants to apply for a licensure by credentials in the state of Louisiana.

D. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:2513 (December 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:

§1711. Examination of Dental Hygienists

A. - C.5. ...

6. Effective January 1, 2012 the clinical licensing examinations administered Central Regional Dental Testing Service (CRDTS), Northeast Regional Board (NERB), Southern Regional Testing Agency (SRTA), American Dental Exam (ADEX), and Western Regional Examining Board (WREB), will not be accepted by the Louisiana State Board of Dentistry for initial licensure. However, applicants who have taken those examinations prior to the examination cycle of calendar year 2011 shall have three years from the date of their successful completion of those examinations to apply for a license via examination in the state of Louisiana. After the three year deadline it will necessary for those applicants to apply for a licensure by credentials in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:1779 (August 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Public Comments

Interested persons may submit written comments on these proposed Rule changes to C. Barry Ogden, Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA 70130. Written comments must be submitted to and received by the board within 60 days of this notice. A request

pursuant to R.S. 49:953(A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of this notice.

C. Barry Ogden
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Dentistry Requirements**

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

There will be a one-time cost of \$500 in FY 12 for publication of the proposed rules in the State Register. There are no new costs or savings to local governmental units from the proposed rules. Specifically, the Louisiana State Board of Dentistry (the board) eliminated the need for a notarized statement regarding negative case of an applicant for licensure by credentials in LAC 46:XXXIII.306, and made changes to sections .403 and .409 for clarification regarding payment methods and notifications for those with restricted licenses (those who practice for a teaching institution) and nonrestricted licenses (all other dentists and hygienists). Section .415 adds a fee for mobile dental offices, and in .1611 the board merely seeks to clarify the language regarding donated dental services being used for continuing education credit. Lastly, sections .1709 and .1711 eliminate the use of any other clinical licensing examination other than the examination administered by the Council Interstate Testing Agency (CITA) for both dentists and hygienists.

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

The proposed rule change to LAC 46:XXXIII.415 adds a \$250 application/permit fee for mobile dental offices. The board anticipates only one or two mobile dental office applications per year, and intends to use this revenue to offset the board's currently unreimbursed costs of inspecting these mobile dental offices.

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

Those who wish to operate a mobile or movable dentist office will have to pay a \$250 application fee to the board for a permit and inspection under the new provisions of section .415.

The changes to sections .1709 and .1711 require that all dentists and hygienists be tested for licensure by CITA. Starting January 1, 2012, the board will no longer accept any other testing agency. However, the board will allow for a 3-year grace period for those who have successfully completed their test for licensure from the old examination agencies before 2012, after which, the applicant will have to pursue licensure by credentials or take the CITA examination. Licensure by credentials costs \$1,600 more than licensure by examination for dentists (\$2,000 vs. \$400) and \$550 more for hygienists (\$800 vs. \$250).

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment.

C. Barry Ogden
Executive Director
1109#030

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Board of Medical Examiners**

Respiratory Therapists, Licensure, Certification
and Practice (LAC 46:XLV.2501-2575, and 5501-5517)

Notice is hereby given in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., that pursuant to the authority vested in the Louisiana State Board of Medical Examiners (the "board") by the Louisiana Medical Practice Act, R.S. 37:1261-1292 and the Louisiana Respiratory Therapy Practice Act, R.S. 37:3351-3361, as amended by Act No. 142 of the 2007 session of the Louisiana legislature, that the board intends to amend its administrative rules governing the general provisions, as well as the licensure, certification and practice of respiratory therapists in this state. The proposed amendments update all Sections of its Rules generally (excepting only 46:XLV.2505, 2515, 2553 and 5501), incorporate certain revised definitions, and make other substantive and technical modifications consistent with the controlling law, R.S. 37:3351-3361.

Among other items, the proposed amendments eliminate the separate categories of licensure for "registered respiratory therapist" (RRT) and "certified respiratory therapists" (CRT) and instead identify all respiratory therapists by the single title of "licensed respiratory therapists" (LRT). As a result, in Subpart 1, Chapter 1, Subchapter I, Sections 195 and 197, the separate initial and renewal licensing fees for these categories have been eliminated and replaced with new single category license fees for LRT. The proposed amendments to Subpart 2, Chapter 25, Subchapters A-H: provide revised definitions applicable to the practice of respiratory therapy (2503); eliminate the separate licensure requirements for "registered" and "certified" respiratory therapists and instead categorize all respiratory therapists as "licensed respiratory therapists" (2507-2509); identify the qualifications for licensure (2507), including graduation from a respiratory care education program or the completion of all program requirements (2507.A.4), and passage of the entry level re-credentialing examination for an initial, reciprocity or reinstatement applicant who has not been licensed or practiced respiratory therapy in any state for more than four years prior to application (2507.B, 2511, 2545.C); prescribe the requirements for recognition of respiratory care education programs (2510); provide for licensure by reciprocity (2511); set forth the procedure and effect of an application (2517-2519); designate the qualifying licensing examinations (2521-2523); place limitations on the number of examination attempts (2536) and provide for the passing examination score (2537); provide for licensure issuance, expiration, renewal, reinstatement, a temporary license and a temporary work permit (2540-2548); identify the organization and authority of the committee established by law to assist the board in its licensing and regulation of respiratory therapists (2549-2551) and provide for a per diem of \$50 for each member of the committee for attendance at committee meetings (2549.B.10); prescribe the

continuing professional education requirements and the qualifying programs, program sponsors, procedure for program approval, method of documentation, penalties for failure to satisfy the requirements, provide a waiver for extenuating circumstances and identify exceptions to the requirements (2553-2569); and provide the requirements for supervision of students enrolled in a respiratory care education program who participate in clinical training as part of a course of study (2571-2575). The proposed amendments to Subpart 3, Chapter 55, Subchapters A-D: identify the scope and general definitions, unauthorized practices, exemptions and prohibitions (5501-5509); and set forth the causes that may result in the denial of licensure or the suspension, revocation, or imposition of terms, conditions and/or restrictions on a respiratory therapist's license (5517-5519).

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

Subchapter I. Respiratory Therapists

§193. Scope of Subchapter

A. The rules of this Subchapter prescribe the fees and costs applicable to the licensing of respiratory therapists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, 37:1270 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:239 (February 2004), LR 37:

§195. Licenses

A. For processing an application for licensing a respiratory therapist, a fee of \$125 shall be payable to the board.

B. For processing a temporary license or a temporary work permit, a fee of \$50 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, 37:1270, 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:240 (February 2004), LR 37:

§197. Annual Renewal

A. For processing an application for annual renewal of a respiratory therapist's license, a fee of \$85 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, 37:1270 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:240 (February 2004), LR 37:

Subpart 2. Licensure and Certification

Chapter 25. Respiratory Therapists

Subchapter A. General Provisions

§2501. Scope of Chapter

A. The rules of this Chapter govern the licensing of respiratory therapists in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2212 (November 1999), LR 37:

§2503. Definitions

A. As used in this Chapter, unless the context clearly states otherwise, the following terms and phrases shall have the meanings specified.

Advisory Committee or Committee—the Respiratory Therapy Advisory Committee, as established, appointed and organized pursuant to R.S. 37:3356 of the Act.

American Association for Respiratory Care or AARC—a professional society associated with the respiratory care profession or its successor.

Applicant—a person who has applied to the board for a license or permit to practice respiratory therapy in this state.

Certified Respiratory Therapist—also known as a Certified Respiratory Therapy Technician prior to July 1, 1999, means one who is in good standing with, and has successfully completed the entry level credentialing examination or its successor administered by the National Board for Respiratory Care.

CoARC—the Commission on Accreditation for Respiratory Care, or its successor or predecessor organizations.

License—the lawful authority to engage in the practice of respiratory therapy in the state of Louisiana, as evidenced by a certificate duly issued by and under the official seal of the board.

Licensed Respiratory Therapist or LRT—a person who is licensed by the board to practice respiratory therapy in Louisiana under the qualified medical direction and supervision of a licensed physician. The term *licensed respiratory therapist* shall be used to signify either a certified or registered respiratory therapist, or a person who was licensed by the board to practice respiratory care prior to 1991.

Medical Gases—gases commonly used in a respiratory care department in the calibration of respiratory care equipment and in the diagnostic evaluation and therapeutic management of diseases, including but not restricted to carbon monoxide, carbon dioxide, compressed air, helium, nitric oxide, nitrogen, and oxygen.

National Board for Respiratory Care or NBRC—the official national credentialing board of the profession, or its successor.

Registered Respiratory Therapist—one who is currently in good standing with, and has successfully completed the advanced practitioner registry credentialing examination or its successor administered by the National Board for Respiratory Care.

Respiratory Care—is synonymous with the term *respiratory therapy* as defined in this Chapter.

Respiratory Care Education Program—a program of respiratory therapy studies accredited by the Commission on the Accreditation for Respiratory Care (CoARC), or its

predecessor or successor organizations, including programs formerly accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) in collaboration with CoARC.

Respiratory Therapy—the allied health specialty practiced under the direction and supervision of a physician involving the assessment, treatment, testing, monitoring, and care of persons with deficiencies and abnormalities of the cardiopulmonary system. Such therapy includes, but is not limited to, the following activities conducted upon the prescription or other order of a physician, advanced practice registered nurse, or physician assistant howsoever communicated and duly recorded:

a. application and monitoring of oxygen therapy, invasive and non-invasive ventilatory therapy, mechanical ventilation, bronchial hygiene therapy and cardiopulmonary rehabilitation and resuscitation;

b. insertion and care of natural and artificial airways;

c. institution of any type of physiologic monitoring applicable to respiratory care, including but not limited to cardiopulmonary and neurological processes related to such diseases;

d. insertion and care of peripheral arterial lines;

e. administration of non-controlled drugs and medications commonly used in respiratory care that have been dispensed by a pharmacist and prescribed by a physician, advanced practice registered nurse, or physician assistant to be administered by a licensed respiratory therapist as defined in this Chapter. Nothing in this Chapter shall be construed to authorize the administration of sedatives, hypnotics, anesthetics or paralytic agents, or intravenous administration of medications, with the exception of the administration of medications necessary during cardiopulmonary arrest by a licensed respiratory therapist certified in advanced cardiac life support (ACLS), pediatric advanced life support (PALS), or in a neonatal resuscitation program (NRP);

f. pulmonary assessment, testing techniques, and therapy modification required for the implementation of physician-approved respiratory care protocols;

g. administration of medical gases and environmental control systems and their apparatus, including hyperbaric oxygen therapy;

h. administration of humidity and aerosol therapy;

i. application of chest pulmonary therapy and associated broncho-pulmonary hygiene techniques;

j. institution of physician-approved, patient-driven respiratory therapy protocols in emergency situations in the absence of a physician;

k. supervision of students;

l. performance of specific procedures and diagnostic testing relative to respiratory therapy that are ordered by a physician, advanced practice registered nurse, or physician assistant to assist in diagnosis, monitoring, treatment, and research, including:

i. drawing of arterial, venous, and capillary blood samples and other body fluids for analysis to determine laboratory values to be performed on blood gas instrumentation;

ii. collection of sputum and other body fluids for analysis;

iii. procedures involved in patient preparation and assisting a physician who is in attendance with invasive procedures related to respiratory therapy, including but not limited to bronchoscopy, chest tube insertion, and tracheotomy;

iv. measurement of expired gases in the performance of cardiopulmonary function tests common to respiratory therapy; and

v. starting of intravenous lines for the purpose of administering fluids pertinent to the practice of respiratory therapy in a special procedure area under the order of a physician, advanced practice registered nurse, or a physician assistant;

m. transcription and implementation of physician, advanced practice registered nurse, or physician assistant orders pertinent to the practice of respiratory therapy to be provided by a licensed respiratory therapist; and

n. instruction of patient, family, and caregivers in the prevention, management, and therapeutic modalities related to respiratory therapy for patients in any setting.

Respiratory Therapy Practice Act or the Act—R.S. 37:3351-3361, as amended.

United States Government—any department, agency or bureau of the United States Armed Forces or Veterans Administration.

B. Masculine terms wherever used in this Chapter shall also be deemed to include the feminine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 19:744 (June 1993), LR 25:2212 (November 1999), LR 37:

Subchapter B. Requirements and Qualifications for Licensure

§2505. Scope of Subchapter

A. The rules of this Subchapter govern and prescribe the requirements, qualifications and conditions requisite to eligibility for licensure as a licensed respiratory therapist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2213 (November 1999).

§2507. Requirements for Licensure of Respiratory Therapists

A. To be eligible and qualified to obtain a respiratory therapist license, an applicant shall:

1. be at least 18 years of age;

2. be of good moral character;

3. be a high school graduate or have the equivalent of a high school diploma;

4. be a graduate of a respiratory care education program, or have successfully completed all program requirements established by the NBRC for entry level respiratory therapy credentialing;

5. possess current credentials as a certified or registered respiratory therapist granted by the National

Board of Respiratory Care or its predecessor or successor organization;

6. be a citizen of the United States or possess valid and current legal authority to reside and work in the United States duly issued by the United States Citizenship and Immigration Services of the United States, Department of Homeland Security, under and pursuant to the Immigration and Nationality Act (66 Stat. 163) and the regulations thereunder (8 C.F.R.);

7. satisfy the applicable fees as prescribed by Chapter 1 of these rules;

8. satisfy the procedures and requirements for application provided by Subchapter C of this Chapter; and

9. not be otherwise disqualified for licensure by virtue of the existence of any grounds for denial of licensure as provided by the law or in these rules.

B. An applicant previously licensed to practice respiratory therapy in any other state, who has not held such a license or been engaged in the practice of respiratory therapy for more than four years immediately prior to the date of the application shall, within such four year period, have been re-credentialed with the NBRC by the successful passage of the entry level credentialing examination.

C. The burden of satisfying the board as to the qualifications and eligibility of the applicant for licensure shall be upon the applicant. An applicant shall not be deemed to possess such qualifications unless the applicant demonstrates and evidences such qualification in the manner prescribed by and to the satisfaction of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:479 (May 1991), LR 25:2213 (November 1999), LR 37:

§2509. Requirements for Licensure of Certified

Respiratory Therapists

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 15:271 (April 1989), LR 17:479 (May 1991), LR 19:745 (June 1993), LR 25:2213 (November 1999), repealed LR 37:

§2510. Recognition of Respiratory Care Education Programs

A. Graduation from a respiratory care education program, or the successful completion of all program requirements established by the NBRC for entry level respiratory therapy credentialing, is among the required qualifications for respiratory therapy licensure. This qualification shall be deemed to be satisfied if, as of the date of the applicant's graduation, or successful completion of all program requirements established by the NBRC for entry level respiratory therapy credentialing, the respiratory therapy care education program is accredited by CoARC, including programs formerly accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) in collaboration with CoARC.

B. A respiratory care education program that is not accredited, or whose accreditation has been revoked or suspended by CoARC, shall be deemed unacceptable to qualify applicants for licensure in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:746 (June 1993), amended LR 25:2214 (November 1999), LR 37:

§2511. License by Reciprocity

A. A person who possesses a current, unrestricted license to practice respiratory therapy issued by the medical licensing authority of another state, the District of Columbia, or a territory of the United States, shall only be eligible for licensure in this state if the applicant meets all of the qualifications for licensure specified in §2507 of this Subchapter, and satisfies the procedural and other requirements specified in Subchapters C and D of this Chapter, including but not limited to the restriction and limitation on examination set forth in §2536 of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2214 (November 1999), LR 37:

§2513. Temporary License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-61.

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 25:2214 (November 1999), LR 37:

Subchapter C. Application

§2515. Purpose and Scope

A. The rules of this Subchapter govern the procedures and requirements applicable to application to the board for licensure of a licensed respiratory therapist in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended, Department of Health and Hospitals, Board of Medical Examiners, LR 25:2215 (November 1999), LR 37:

§2517. Application Procedure

A. Application for licensure shall be made in a format approved by the board.

B. Applications and instructions may be obtained from the board's web page or by personal or written request to the board.

C. An application for licensure under this Chapter shall include:

1. proof, documented in a form satisfactory to the board, that the applicant possesses the qualifications for licensure set forth in this Chapter;

2. one recent photograph of the applicant;

3. certification of the truthfulness and authenticity of all information, representations and documents contained in or submitted with the completed application;

4. criminal history record information;
5. payment of the applicable fee as provided in Chapter 1 of these rules; and
6. such other information and documentation as is referred to or specified in this Chapter or as the board may require to evidence qualification for licensure.

D. All documents required to be submitted to the board must be the original thereof. For good cause shown, the board may waive or modify this requirement.

E. The board may reject or refuse to consider any application which is not complete in every detail, including submission of every document or item required by the application. The board may, at its discretion, require a more detailed or complete response to any request for information set forth in the application as a condition to consideration of an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2215 (November 1999), LR 37:

§2519. Effect of Application

A. The submission of an application for licensure to the board shall constitute and operate as an authorization by the applicant to each educational institution at which the applicant has matriculated, each governmental agency to which the applicant has applied for any license, permit, certificate or registration, each person, firm, corporation, organization or association by whom or with whom the applicant has been employed as a respiratory therapist, each physician whom the applicant has consulted or seen for diagnosis or treatment, and each professional or trade organization to which the applicant has applied for membership, to disclose and release to the board any and all information and documentation concerning the applicant which the board deems material to consideration of the application. With respect to any such information or documentation, the submission of an application for licensure to the board shall equally constitute and operate as a consent by the applicant to the disclosure and release of such information and documentation as a waiver by the applicant of any privileges or right of confidentiality which the applicant would otherwise possess with respect thereto.

B. By submission of an application for licensure to the board, an applicant shall be deemed to have given his consent to submit to physical or mental examinations if, when, and in the manner so directed by the board if the board has reasonable grounds to believe that the applicant's capacity to act as a respiratory therapist with reasonable skill or safety may be compromised by physical or mental condition, disease or infirmity, and the applicant shall be deemed to have waived all objections as to the admissibility or disclosure of findings, reports or recommendations pertaining thereto on the grounds of privileges provided by law.

C. The submission of an application for licensure to the board shall constitute and operate as an authorization and consent by the applicant to the board to disclose any information or documentation set forth in or submitted with the applicant's application or obtained by the board from other persons, firms, corporations, associations or

governmental entities pursuant to this Section, to any person, firm, corporation, association or governmental entity having a lawful, legitimate and reasonable need therefor, including, without limitation, the respiratory care licensing authority of any state, the National Board for Respiratory Care, the Louisiana Department of Health and Hospitals, state, county or parish and municipal health and law enforcement agencies and the armed services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2215 (November 1999), LR 37:

Subchapter D. Examination

§2521. Purpose and Scope

A. The rules of this Subchapter govern the procedures and requirements applicable to the examination for the licensure of respiratory therapists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2216 (November 1999), LR 37:

§2523. Designation of Examination

A. The examinations accepted by the board pursuant to R.S. 37:3354 are the National Board for Respiratory Care entry level credentialing examination and the advanced practitioner registry credentialing examination or their successor(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2216 (November 1999), LR 37:

§2525. Eligibility for Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2216 (November 1999), LR 37:

§2527. Dates, Places of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2216 (November 1999), LR 37:

§2529. Administration of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by Department of Health

and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999), LR 37:

§2531. Subversion of Examination Process

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2216 (November 1999), LR 37:

§2533. Finding of Subversion

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2217 (November 1999), LR 37:

§2535. Sanctions for Subversion of Examination

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2217 (November 1999), LR 37:

§2536. Restriction, Limitation on Examination

A. An applicant who failed to obtain a passing score upon taking the entry level credentialing examination offered by the NBRC four times shall be ineligible for licensure under this Chapter.

B. An applicant who is ineligible for licensure pursuant to Subsection A of this Section, shall regain licensure eligibility upon the successful completion of the advanced practitioner registry credentialing examination offered by the NBRC; provided, however, that an applicant who fails to achieve a passing score upon four attempts of either part of such examination shall not thereafter be considered eligible for licensing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended LR 14:87 (February 1988), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:479 (May 1991), LR 25:2217 (November 1999), LR 37:

§2537. Passing Score

A. An applicant will be deemed to have successfully passed a credentialing examination if he attains a score equivalent to that required by the National Board for Respiratory Care as a passing score.

B. Applicants for licensure shall be required to authorize the National Board for Respiratory Care to release their test scores to the board each time the applicant-examinee attempts the examination according to the procedures for such notification established by the National Board for Respiratory Care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2217 (November 1999), LR 37:

§2539. Lost, Stolen, or Destroyed Examinations

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2218 (November 1999), LR 37:

Subchapter E. Licensure Issuance, Termination, Renewal, and Reinstatement

§2540. Issuance of License

A. If the qualifications, requirements and procedures prescribed or incorporated in Subchapter B this Chapter are met to the satisfaction of the board, the board shall issue a license to the applicant to practice respiratory therapy in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2218 (November 1999), LR 37:

§2541. Expiration of License

A. Every license issued by the board under this Chapter shall expire, and thereby become null, void and to no effect each year on the last day of the month in which the licensee was born.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 22:1218 (December 1996), LR 24:1502 (August 1998), LR 25:2218 (November 1999), LR 37:

§2543. Renewal of License

A. Every license issued by the board under this Subchapter shall be renewed annually on or before the last day of the month in which the licensee was born by submitting to the board:

1. a renewal application in a format prescribed by the board;
2. the renewal fee prescribed in Chapter 1 of these rules; and
3. documentation of not less than ten contact hours of approved continuing professional education within the past twelve months as prescribed by Subchapter G of these rules.

B. Renewal applications and instructions may be obtained from the board's web page or upon personal or written request to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 22:1218 (December 1996), LR 24:1502 (August 1998), LR 25:2218 (November 1999), LR 37:

§2545. Reinstatement of License

A. A license which has expired may be reinstated by the board subject to the conditions and procedures hereinafter provided.

B. An application for reinstatement shall be submitted in a format approved by the board and be accompanied by:

1. a statistical affidavit in a form provided by the board;
2. a recent photograph;
3. proof of ten hours of approved continuing professional education for each year that the license lapsed, up to a total of thirty hours, as set forth in Subchapter G of this Chapter;
4. such other information and documentation as is referred to or specified in this Chapter or as the board may require to evidence qualification for licensure; and
5. the renewal fee set forth in Chapter 1 of these rules, plus a penalty computed as follows:

- a. if the application for reinstatement is made less than two years from the date of license expiration, the penalty shall be equal to the renewal fee;
- b. if the application for reinstatement is made more than two years from the date of license expiration, the penalty shall be equal to twice the renewal fee.

C. An applicant who has not been licensed to practice respiratory therapy or engaged in the practice of respiratory therapy in any state for more than four years immediately prior to the date of the application shall, within such four year period, have been re-credentialed with the NBRC by the successful passage of the entry level credentialing examination. Such an applicant shall not be required to furnish evidence of continuing professional education as otherwise required by §2545.B.3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 22:1218 (December 1996), LR 25:2218 (November 1999), LR 37:

§2547. Temporary License

A. The board may issue a 6-month temporary license, also known and designated as an "examination permit," to an individual who has made application to the board for a license as a respiratory therapist under the following terms and conditions.

1. To be eligible for a 6-month examination permit an applicant shall:
 - a. be qualified for respiratory therapy licensure under §2507.A, except for having taken and passed the required NBRC credentialing examination;
 - b. have taken, or made application to take, the required NBRC credentialing examination and be awaiting the administration and/or reporting of scores thereon; and
 - c. have applied within one year of the applicant's date of graduation from a respiratory care education program or the successful completion of all program requirements established by the NBRC for entry level respiratory therapy credentialing. Exceptions may be made at the discretion of the board.
2. An examination permit shall be effective for 6 months and shall expire and become null and void on the earlier of:
 - a. six months from the date of issuance;
 - b. the date on which the board takes action on the application following notice of:

- i. the applicant's successful completion of the NBRC credentialing examination; or

- ii. the applicant's fourth unsuccessful attempt to pass the NBRC entry level credentialing examination.

3. An examination permit shall not be renewed but may be extended only once for a maximum period of 3 months based on an appeal identifying extenuating circumstances. Such an appeal shall be submitted to the board in writing at least thirty days prior to the expiration of the examination permit. Requests for an extension may be referred to the advisory committee for review and recommendation to the board. The advisory committee or the board may require additional documents from the licensee including, but not limited to:

- a. licensing examination results for all attempts;
- b. evidence of having attended entry level examination review courses; and/or
- c. proof of extenuating circumstances preventing the licensee from attempting the licensing examination.

4. An examination permit that is extended under this Subsection shall be effective for not more than 3 months and shall, in any event, expire and become null and void on the earlier of:

- a. three months from the date of issuance;
- b. the date on which the board takes action on the application following notice of:

- i. the applicant's successful completion of the NBRC credentialing examination; or

- ii. the applicant's fourth unsuccessful attempt to pass the NBRC entry level credentialing examination.

B. The maximum term of an examination permit shall be reduced by any amount of time that an applicant held a temporary work permit issued under this Subchapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 15:271 (April 1989), LR 17:480 (May 1991), LR 19:746 (June 1993), LR 25:2218 (November 1999), LR 37:

§2548. Temporary Work Permit

A. The board may grant a temporary work permit to practice, effective for a period of 60 days, to an applicant who has made application to the board for a license as a respiratory therapist, who:

1. is currently credentialed in respiratory therapy by the NBRC, and who is not otherwise demonstrably ineligible for licensure under §2507.A of these rules; or
2. satisfies the criteria for a temporary license (examination permit) specified by §2547 of these rules.

B. A work permit issued under this Subsection may not be extended or renewed beyond its initial term.

C. An applicant who is granted a 6-month temporary license (examination permit) under this Subchapter shall be ineligible for subsequent consideration for a temporary work permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 15:271 (April

1989), LR 17:480 (May 1991), LR 19:746 (June 1993), LR 25:2218 (November 1999), LR 37:

Subchapter F. Advisory Committee on Respiratory Care §2549. Organization; Authority

A. The Advisory Committee on Respiratory Care (the "committee"), as established, appointed and organized pursuant to R.S. 37:3356 of the Act is hereby recognized by the board.

B. The committee shall:

1. have such authority as is accorded to it by the Act;
2. function and meet as prescribed by the Act;
3. monitor respiratory care education and training programs conducted in the state of Louisiana;
4. advise the board on issues affecting the licensing of respiratory therapists and regulation of respiratory care in the state of Louisiana;
5. provide advice and recommendations to the board respecting the modification, amendment and supplementation of rules and regulations, standards, policies and procedures respecting respiratory care licensure and practice;
6. serve as liaison between and among the board, licensed respiratory therapists, and professional organizations;
7. have authority to review and advise the board on requests for extension of temporary licenses (examination permits) and applications for license reinstatement;
8. conduct audits on applications to ensure satisfactory completion of continuing education and competency as specified by the board's rules;
9. perform such other functions and provide such additional advice and recommendations as may be requested by the board; and
10. receive reimbursement in the amount of fifty dollars per day for attendance at meetings of the advisory committee and other activities and expenses specifically authorized by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), amended LR 25:2219 (November 1999), LR 37:

§2551. Delegation of Authority

A. Authority is hereby delegated to the Advisory Committee on Respiratory Care to:

1. monitor all respiratory care education programs located in this state for the purpose of reporting and making recommendations to the board. To facilitate its responsibility committee may, among other items:
 - a. survey, by site visit or otherwise, programs and their affiliated hospitals, other institutions and associated clinical training sites;
 - b. request and obtain information from students, instructors, administrators or others associated with any hospital or clinical affiliate involved in such programs;
 - c. track enrollment, attrition, and retention statistics;
 - d. trend NBRC examination passage rates and scores; and
 - e. request information regarding examination passage and scores from the NBRC.

2. assist the board in the review of applicants' satisfaction of continuing professional education requirements for renewal of licensure under this Chapter.

B. To carry out its duties of §2551.A.2, the Advisory Committee is authorized to advise and assist the board in the review and approval of continuing professional education programs and licensee satisfaction of continuing professional education requirements for renewal of licensure, as prescribed by Subchapter G of this Chapter, including the authority and responsibility to:

1. evaluate organizations and entities providing continuing professional education programs for all licensed respiratory therapists and provide recommendations to the board on approval of such organizations and entities as sponsors of qualifying continuing professional education programs and activities pursuant to §2559 of these rules;

2. request and obtain from continuing professional education sponsoring organizations any information necessary to properly evaluate and make informed recommendations to the board relative to the appropriateness of the educational program;

3. review renewal applications selected for audit of continuing professional education or referred by the board to verify the accuracy of documentation and make recommendations to the board with respect to whether programs and activities evidenced by applicants for renewal of licensure comply with and satisfy the standards prescribed by these rules; and

4. request and obtain from applicants for renewal of licensure, as well as those referred by the board, such additional information as the advisory committee may deem necessary or appropriate to enable it to make the evaluations and provide the recommendations for which the committee is responsible.

C. In discharging the functions authorized under this Section the advisory committee and the individual members thereof shall, when acting within the scope of such authority, be deemed agents of the board. All information obtained by the advisory committee members pursuant to this Subchapter shall be considered confidential. Advisory committee members are prohibited from communicating, disclosing or in any way releasing to anyone, other than the board, any information or documents obtained when acting as agents of the board without first obtaining written authorization from the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, 37:1270(B)(6) and 37:3357.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 19:747 (June 1993), amended LR 22:1219 (December 1996), LR 25:2219 (November 1999), LR 37:

Subchapter G. Continuing Professional Education §2553. Scope of Subchapter

A. The rules of this Subchapter provide standards for the continuing professional education requisite to the annual renewal of licensure as a licensed respiratory therapist, as required by §2543 and §2555 of these rules, and prescribe the procedures applicable to satisfaction and documentation of continuing professional education in connection with application for renewal of licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1219 (December 1996), amended LR 25:2220 (November 1999), LR 37:

§2555. Continuing Professional Educational Requirement

A. Subject to the exceptions specified in §2569 of this Subchapter, to be eligible for renewal of licensure a respiratory therapists shall, within each year during which he holds a license, evidence and document, upon forms or in another format acceptable to the board, the successful completion of not less than 10 contact hours of continuing professional education sanctioned by the American Association of Respiratory Care, the organizations identified in §2559 of these rules, or their successors, or the advisory committee.

B. For purposes of this Section, one contact hour of continuing professional education credit is equivalent to 50 minutes of qualifying lecture, laboratory practice, on-line course or workshop instruction on topics pertaining to the respiratory care profession.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1219 (December 1996), amended LR 25:2220 (November 1999), LR 37:

§2557. Qualifying Continuing Professional Education Programs

A. To be acceptable as qualifying continuing professional education under these rules, a program shall:

1. have significant and substantial intellectual or practical content dealing principally with matters germane and relevant to the practice of respiratory care;
2. have pre-established written goals and objectives, with its primary objective being to maintain or increase the participant's competence in the practice of respiratory care;
3. be presented by persons whose knowledge and/or professional experience is appropriate and sufficient to the subject matter of the presentation and is up to date;
4. provide a system or method for verification of attendance or course completion;
5. be a minimum of 50 continuous minutes in length for each contact hour of credit; and
6. allow participants an opportunity to ask questions on the content presented.

B. Other approved continuing professional education activities include:

1. earning a grade of "C" or better in a college or university science course required to earn a degree in cardiopulmonary science or respiratory care, or a grade of "pass" in a pass/fail course. One credited semester hour will be deemed to equal 15 contact hours;
2. programs on advanced cardiac life support (ACLS), pediatric advanced life support (PALS) or neonatal advanced resuscitation program (NRP), or their successors, each of which will equal 5 contact hours;
3. any initial instructor course taken in preparation for teaching ACLS, PALS, NRP, or asthma educator (AE-C) or any other future instructor course sanctioned by the AARC, each of which will equal to 5 contact hours;
4. initial credentialing with the NBRC as a certified or registered respiratory therapist or another specialty examination administered by the NBRC, with each credential equal to 10 contact hours;

5. initial credentialing as a certified or registered cardiovascular technologist, asthma educator or other specialty credential granted by the NBRC, with each credential equal to 10 contact hours;

6. successful completion of any NBRC re-credentialing examination, with each such examination equal to 10 contact hours;

7. respiratory care-related lecture, seminar, workshop, home study, on-line, or correspondence courses approved by either the AARC or the advisory committee, pursuant to the criteria set forth in §2561 of these rules.

C. None of the following programs, seminars or activities shall be deemed to qualify as acceptable continuing professional education programs under these rules:

1. any program not meeting the standards prescribed by this Section;
2. any independent/home study correspondence, on-line, lecture, workshop, program or seminar that is not approved or sponsored by the AARC or the advisory committee pursuant to the criteria set forth in §2561 of these rules;
3. in-service education provided by a sales representative unless approved by AARC;
4. teaching, training or supervisory activities not specifically included in §2557.B;
5. holding office in professional or governmental organizations, agencies or committees;
6. participation in case conferences, informal presentations, or in service activities;
7. giving or authoring verbal or written presentations, seminars or articles or grant applications;
8. passing basic life support (BCLS); and
9. any program, presentation, seminar, or course not providing the participant an opportunity to ask questions or seek clarification of matters pertaining to the content presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1220 (December 1996), amended LR 25:2220 (November 1999), LR 37:

§2559. Approval of Program Sponsors

A. Any program, course, seminar, workshop or other activity meeting the standards prescribed by §2557 shall be deemed approved for purposes of satisfying continuing education requirements under this Subchapter, if sponsored or offered by one of the following organizations: the American Association for Respiratory Care (AARC), the Louisiana Society for Respiratory Care (LSRC), the American Lung Association (ALA), the American Heart Association (AHA), the American Academy of Pediatrics (AAP), the American College of Chest Physicians (ACCP), the American Thoracic Society (ATS), the Louisiana Department of Health and Hospitals (DHH), the Louisiana Hospital Association (LHA), or the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

B. Upon the recommendation of the advisory committee, or on its own motion, the board may designate additional organizations and entities whose programs, courses, seminars, workshops, or other activities shall be deemed approved by the board for purposes of qualifying as an

approved continuing professional education program under §2557 or §2559.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 25:2221 (November 1999), LR 37:

§2561. Approval of Program

A. A continuing professional education program or activity sponsored by an organization or entity that is not approved by the board pursuant to §2557 or 2559 must be evaluated and approved by the advisory committee in order to be accepted for purposes of meeting the continuing professional education requirement for annual renewal of licensure. To be considered for approval the sponsoring organization or entity shall submit a written request to the board. For each continuing professional educational program presented for consideration the following shall be provided:

1. a list of course goals and objectives for each topic;
2. a course agenda displaying the lecture time for each topic;
3. a curriculum vitae for each speaker;
4. information on the location, date(s), and target audience;
5. a copy of the evaluation form used for the overall program topics and speakers; and
6. such other information as the advisory committee may request to establish the compliance of such program with the standards prescribed by §2557 or 2559.

B. A request for pre-approval of a continuing professional education program shall be submitted in a format approved by the board not less than 60 days in advance of the event. Any such request for pre-approval respecting a program which makes and collects a charge for attendance shall be accompanied by a nonrefundable processing fee of \$30.

C. Any such written request shall be referred by the board to the advisory committee for evaluation and approval.

D. If the recommendation is against the approval, the board or the advisory committee shall give notice of such recommendation to the person or organization requesting approval. An appeal may be submitted to the board by written request, accompanied by all information required by Subsection A of this Section within 10 days of such notice. The board's decision with respect to approval of any such activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 25:2221 (November 1999), LR 37:

§2563. Documentation Procedure

A. Annual documentation and certification of satisfaction of the continuing professional education requirements prescribed by these rules shall accompany a licensed respiratory therapist's application for renewal of licensure pursuant to §2543 of these rules.

B. A licensed respiratory therapist shall maintain a record or certificate of attendance for at least four years from the date of completion of the continuing professional education program.

C. The board or advisory committee shall randomly select for audit no fewer than 3 percent of the licensees each

year for an audit of continuing education activities. In addition, the board or advisory committee has the right to audit any questionable documentation of activities. Verification shall be submitted within 30 days of the notification of audit. A licensee's failure to notify the board of a change of mailing address will not absolve the licensee from the audit requirement.

D. Any certification of continuing professional education not presumptively approved in writing by the board, pursuant to §2557 or 2559 of these rules, or pre-approved by the advisory committee, pursuant to §2561, shall be referred to the advisory committee for its evaluation and recommendations prior to licensure denial or renewal.

E. If the advisory committee determines that a continuing professional education program or activity listed by an applicant for renewal does not qualify for recognition by the board or does not qualify for the number of contact hours claimed by the applicant, the board shall give notice of such determination to the applicant. An applicant may appeal the advisory committee's recommendation to the board by written request delivered to the board within 10 days of such notice. The board's decision with respect to approval and recognition of such program or activity shall be final.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 25:2222 (November 1999), LR 37:

§2565. Failure to Satisfy Continuing Professional Education Requirements

A. An applicant for renewal of licensure who fails to evidence satisfaction of the continuing professional education requirements prescribed by these rules shall be given written notice of such failure by the board. The license of the applicant shall remain in full force and effect for a period of 90 days following the mailing of such notice, following which it shall be deemed expired, unrenewed and subject to suspension or revocation without further notice, unless the applicant shall have, within such 90 days, furnished the board satisfactory evidence by affidavit that:

1. the applicant has satisfied the applicable continuing professional education requirements;
2. the applicant is exempt from such requirements pursuant to these rules; or
3. the applicant's failure to satisfy the continuing professional education requirements was occasioned by disability, illness or other good cause as may be determined by the board pursuant to §2567.

B. The license of a licensed respiratory therapist whose license has expired by nonrenewal or has been suspended or revoked for failure to satisfy the continuing professional education requirements of this Subchapter may be reinstated by the board upon application to the board pursuant to §2545 of this Chapter, accompanied by payment of a reinstatement fee, together with documentation and certification that the applicant has, for each calendar year since the date on which the applicant's license lapsed, expired, or was suspended or revoked, completed an aggregate of 10 contact hours of qualifying continuing professional education.

C. Any licensee who falsely certifies attendance and/or completion of the required continuing education requirement will be subject to disciplinary action by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1221 (December 1996), amended LR 24:1502 (August 1998), LR 25:2222 (November 1999), LR 37:

§2567. Waiver of Requirements

A. The board may, in its discretion upon the recommendation of the advisory committee, waive all or part of the continuing professional education required by these rules in favor of a respiratory therapist who makes a written request for such waiver to the board and evidences to its satisfaction a permanent physical disability, illness, financial hardship or other similar extenuating circumstances precluding the individual's satisfaction of the continuing professional education requirement. Any licensed respiratory therapist submitting a continuing professional education waiver request is required to do so on or before the date specified for the renewal of the licensee's license by §2543. Any request received by the board past the date for licensure renewal will not be considered for waiver but, rather, in accordance with the provisions of §2565.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1222 (December 1996), amended LR 25:2222 (November 1999), LR 37:

§2569. Exceptions to the Continuing Professional Education Requirements

A. The continuing professional education requirements prescribed by this Subchapter for renewal of licensure shall not be applicable to:

1. a respiratory therapist employed exclusively by, or at an institution operated by the United States Government; or

2. a respiratory therapist who has within the twelve months prior to the date of renewal, been credentialed or recredentialed by the NBRC on the basis of examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3357(D) and 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 22:1222 (December 1996), amended LR 25:2222 (November 1999), LR 37:

Subchapter H. Supervision of Students

§2571. Scope of Subchapter [Formerly §5511]

A. The rules of this Subchapter prescribe certain restrictions on and requirements for supervision of students enrolled in a respiratory care education program as that term is defined in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), repromulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 25:2224 (November 1999), LR 37:

§2573. Student Participation in Clinical Training

A. A student or trainee providing respiratory care to patients as permitted by R.S. 37:3361(3) in the course of a student's clinical training shall:

1. be supervised in accordance with the provisions of §2575 of this Subchapter;

2. be identified to patients and licensed practitioners by title or otherwise which clearly designates the student's status as a student or trainee; and

3. not be compensated monetarily for services rendered during their education processes for cardiopulmonary clinical experiences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:

§2575. Supervision of Student [Formerly §5515]

A. A person pursuing a course of study leading to certification or registry in respiratory care shall engage in the practice of respiratory care only under the supervision of a licensed respiratory therapist or a physician who actively practices respiratory care, as provided in this Section.

B. A licensed respiratory therapist or a physician who undertakes to supervise a student shall:

1. undertake to concurrently supervise not more than four students;

2. personally evaluate every patient prior to the provision of any respiratory care treatment or procedure by a student;

3. assign to a student only such respiratory care measures, treatments, procedures and functions as such licensed respiratory therapist or physician has documented that the student by education and training is capable of performing safely and effectively;

4. provide continuous and immediate on-premises direction to and supervision of a student and be readily available at all times to provide advice, instruction, and assistance to the student and to the patient during respiratory care treatment given by a student;

5. not permit a student to perform any invasive procedure or any life-sustaining or critical respiratory care, including therapeutic, diagnostic or palliative procedures, except under the direct and immediate supervision, and in the physical presence of, the supervising therapist and/or physician; and

6. provide and perform periodic evaluation of every patient administered to by a student and make modifications and adjustments in the patient's respiratory care treatment plan, including those portions of the treatment plan assigned to the student.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 19:748 (June 1993), LR 25:2224 (November 1999), LR 37:

Subpart 3. Practice

Chapter 55. Respiratory Therapists

Subchapter A. General Provisions

§5501. Scope of Chapter

A. The rules of this Chapter govern the practice of respiratory care in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2223 (November 1999), LR 37:

§5503. General Definitions

A. The definitions set forth in Chapter 25 of these rules shall equally apply to this Chapter, unless the context clearly states otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 19:747 (June 1993), LR 25:2223 (November 1999), repealed LR 37:

Subchapter B. Unauthorized Practice, Exemptions, and Prohibitions

§5505. Unauthorized Practice

A. No person shall engage in the practice of respiratory care in the state of Louisiana unless he has in his possession a current license, a temporary license (examination permit), or a temporary work permit duly issued by the board under Subpart 2 of these rules.

B. No person shall hold himself out to the public, an individual patient, a physician, dentist or podiatrist, or to any insurer or indemnity company or association or governmental authority, nor shall he directly or indirectly identify or designate himself as a licensed respiratory therapist, nor use in connection with his name the letters "LRT" or any other words, letters, abbreviations, insignia, or signs tending to indicate or imply that the person is licensed to practice respiratory therapy in this state, or that the services provided by such person constitute respiratory care, unless such person possesses a current license, a temporary license (examination permit), or a temporary work permit duly issued by the board under Subpart 2 of these rules.

C. A licensed respiratory therapist who is currently certified or registered by and in good standing with the NBRC may identify such credentials with his name or title "Licensed Respiratory Therapist-Certified" or "Licensed Respiratory Therapist-Registered" or the letters "LRT-C" or "LRT-R," respectively.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2224 (November 1999), LR 37:

§5507. Exemptions

A. The prohibitions of §5505A of this Chapter shall not apply to a person:

1. employed exclusively by, or at an institution operated by the United States Government when acting within the course and scope of such employment;

2. acting under and within the scope of a license issued by another licensing agency of the state of Louisiana;

3. enrolled in a respiratory care education program and who is designated by a title which clearly indicates his status as a student; or

4. not licensed as a respiratory therapist in accordance with the provisions of these rules but who is employed in a pulmonary laboratory or physician's office to administer treatment confined to that laboratory or office under the direction and immediate supervision of a licensed physician.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2224 (November 1999), LR 37:

§5509. Prohibitions

A. A licensed respiratory therapist shall not:

1. undertake to perform or actually perform any activities described in §2503 of these rules, definition of "Respiratory therapy," except upon a prescription or other order of a physician, advanced registered nurse or physician assistant;

2. administer any drugs or medications except as dispensed by a pharmacist and prescribed by a physician, advanced practice registered nurse or physician assistant; or

3. perform any surgical incisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 25:2224 (November 1999), LR 37:

Subchapter C. Grounds for Administrative Action

§5517. Causes for Administrative Action

A. The board may deny, refuse to issue, renew, or reinstate, or may suspend, revoke or impose probationary conditions and restrictions on the license, temporary license (examination permit), or temporary work permit of any respiratory therapist if the licensee or applicant for license has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 17:886 (September 1991), LR 25:2225 (November 1999), LR 37:

§5519. Causes for Action; Definitions; Unprofessional Conduct

A. As used herein, the term *unprofessional conduct* by a respiratory therapist or applicant shall mean any of the causes set forth in R.S. 37:3358 of the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6) and 37:3351-3361.

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 17:886 (September 1991), LR 25:2225 (November 1999), LR 37:

Family Impact Statement

It is not anticipated that the proposed Rule will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed Rules to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, at Post Office Box 30250, New Orleans, LA 70190-0250, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries.

Written comments will be accepted until 4:00 p.m., October 20, 2011.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Robert L. Marier, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Respiratory Therapists, Licensure, Certification and Practice**

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

The Board of Medical Examiners proposes to amend its rules governing the general, licensing, certification and practice of respiratory therapists (LAC 46:XLV.193-197, .2501-2575, and .5501-5519) to conform to Act No. 142 of the 2007 legislative session, which amended the Louisiana Respiratory Therapy Practice Act (R.S. 37:3351-3361), and to update such rules generally as made necessary by the passage of time. The proposed amendments update all sections of its existing rules (excepting only 45:XLV.2505, 2515, 2553 and 5501), incorporate certain revised definitions, and make other substantive modifications consistent with the controlling law, R.S. 37:3351-3361. All substantive changes and revised definitions with a fiscal impact are explained below.

In FY 12, implementation of the rule amendments to LAC 46:XLV.2549 will result in anticipated costs of \$1,800 attributable to the payment of \$50 per diem to each of the nine (9) members of its Advisory Committee on Respiratory Care to attend approximately four meetings of the Committee annually (9 x \$50 x 4=\$1,800). This amount will be a recurring cost in subsequent years. Publication costs associated with notice and promulgation of the rule amendments are estimated at a combined total of \$5,412 in FY 12. Other than the recurring cost attributable to the payment of per diem (\$1,800) and rule publication costs during FY 12, it is not anticipated that the proposed rule amendments will have any significant or material impact on the Board or any other state or local governmental unit, inclusive of adjustments in workload and paperwork requirements.

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

Consistent with Act No. 142 of the 2007 session of the Louisiana legislature, the proposed rule amendments eliminate the separate categories of licensure for "registered respiratory therapist" (RRT) and "certified respiratory therapists" (CRT) and instead identify all respiratory therapists by the single title of "licensed respiratory therapists" (LRT). As a result, in LAC 46:XLV.193-197 the separate initial and renewal licensing fees for these categories have been eliminated and replaced with new single category license fees applicable to all respiratory therapists: \$125 for initial issuance and \$85 for renewal (the old fees were \$150 for initial issuance and \$100 for renewal for RRTs, and \$100 for initial issuance and \$75 for renewal for CRTs). There are currently a combined total of 2,926 licensees (1,590 CRTs and 1,336 RRTs). Taking into consideration applicant credentials, estimated attrition and new licensees, the Board anticipates approximately 116 new applicants annually (93 would formerly be licensed as CRT and 23 as RRT). Comparing the new fee structure versus the old fee structure results in a corresponding estimated decrease in agency revenue of (\$2,390) in FY 12, (\$1,805) in FY 13 and (\$1,220) in FY 14 from license and renewal fees. The rule change to

LAC 46:XLV.2545 allows for applicants seeking reinstatement within 2 years of when their license expired to pay the renewal fee as opposed to double the renewal fee, as was the previous practice. The board estimates approximately 3 LRTs will annually seek reinstatement within this two year period (2 formerly CRTs; 1 formerly RRT). As such, when comparing the new reinstatement fee (3 x \$85 = \$255) to the old fee structure (2 CRTs x \$150 = \$300 + 1 RRT x \$200 = \$500), the board will lose approximately \$245 in revenue annually (\$500 - \$255 = \$245) from license reinstatement fees in FY 12 and thereafter.

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

The proposed amendments provide that an initial (.2507B), reciprocity (.2511) or reinstatement applicant (.2545C) who has not been licensed or engaged in the practice of respiratory therapy in any other state for more than four years immediately prior to filing an application will be required to re-credential by the successful passage of the entry level certification examination. The examination fee is set by the National Board of Respiratory Care and is remitted fully to them by the applicant. Further, the initial application fee for those formerly licensed as a RRT is decreased by \$25 (from \$150 to \$125); while the initial fee for those formerly licensed as a CRT is increased by \$25 (from \$100 to \$125). The renewal fee for those formerly licensed as a RRT is reduced by \$15 (from \$100 to \$85); while the renewal fee for those formerly licensed as a CRT is increased by \$10 (from \$75 to \$85). Applicants seeking reinstatement within 2 years of when their license expired will now only have to pay the renewal fee (\$85) as opposed to double the renewal fee (previously \$150 for CRTs and \$200 for RRTs), as was the previous practice under LAC 46:XLV.2545. In addition, under the rule changes to LAC 46:XLV.2547, temporary licenses (also known as extension permits) are now limited to 6 months as opposed to 12 months, and a temporary license may now only be extended once for 3 months versus 6 months based on extenuating circumstances. It is not anticipated that the proposed amendments will have any material effect on paperwork or workload of licensed respiratory therapists or applicants.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule amendments are not anticipated to have a material impact on competition and employment in either the public or private sector.

Robert L. Marier, M.D.
Executive Director
1109#031

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
Active Duty Military Families
(LAC 50:XXI.303)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to adopt LAC 50:XXI.303 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 for Citizens with Developmental Disabilities and the Office of Aging and Adult Services amended the provisions governing home and community-based services waivers to adopt provisions for the termination of services and limited retention of waiver opportunities for waiver recipients displaced by declared disasters (*Louisiana Register*, Volume 34, Number 8). The department now proposes to amend the provisions governing home and community-based waiver services to adopt provisions which will allow any active duty member of the armed forces temporarily assigned to work outside of Louisiana, and any member of his immediate family receiving waiver services through a waiver program for persons with developmental disabilities, to receive the next available waiver opportunity upon the member's resumed residence in the state.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community-Based Services Waivers

Subpart 1. General Provisions

Chapter 3. Eligibility

§303. Active Duty Military Families

A. Any active duty member of the armed forces who has been temporarily assigned to work outside of Louisiana, and any member of his/her immediate family who has qualified for and received home and community-based waiver services provided under the Medicaid Program for persons with developmental disabilities, shall be eligible to receive the next available opportunity for waiver services upon the member's resumed residence in Louisiana.

1. For purposes of these provisions, immediate family shall be defined as the spouse, child, or other person for whom the member of the armed services has guardianship.

B. After the individual returns to live in Louisiana, he/she must contact the department to report his/her address and to request that the waiver services be restarted.

C. The individual's name will be placed on a preferred registry with other active duty persons who have returned to live in Louisiana and requested that their waiver services be restarted.

D. Waiver opportunities shall be offered to individuals on the preferred registry on a first come, first serve basis.

1. The first available waiver opportunity shall be offered to an individual on this registry based on the date that the request to restart services was received.

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, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has a positive impact on family functioning, stability, or

autonomy as described in R.S. 49:972 by allowing waiver service recipients within active duty military families to return to Louisiana and have preferential assignment to available waiver opportunities.

Public Comments

Interested persons may submit written comments to Don Gregory, 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.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, October 26, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home and Community-Based Services Waivers Active Duty Military Families

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$328 (\$164 SGF and \$164 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$164 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule amends the provisions governing home and community-based waiver services to adopt provisions which will allow any active duty member of the armed forces temporarily assigned to work outside of the state, and any member of his immediate family receiving waiver services, to receive the next available waiver opportunity upon the member's resumed residence in the state. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or non-governmental groups for FY 11-12, FY 12-13, and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1109#046

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
and
Office of Aging and Adult Services**

Home and Community-Based Services Waivers
Community Choices Waiver
(LAC 50:XXI.Chapters 81-95)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services propose to repeal and replace LAC 50:XXI.Chapters 81-91 and propose to adopt LAC 50:XXI.Chapters 93-95 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. 49:953(B)(1) et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing adopted provisions governing a home and community-based services (HBCS) waiver for elderly and disabled adults in a codified format for inclusion in the *Louisiana Administrative Code* (LAC) in LAC 50:XXI.Chapters 81-91 (*Louisiana Register*, Volume 30, Number 8). The Elderly and Disabled Adults (EDA) Waiver provides an array of services to the elderly or persons with disabilities in their home or community.

House Concurrent Resolution (HCR) 142 of the 2009 Regular Session of the Louisiana Legislature directed the department to develop a new waiver or state plan options for a sustainable system of home and community-based services and to continue to implement approved cost control mechanisms for the EDA Waiver. Federal requirements also mandate that the department must operate cost-effective home and community-based waiver programs. To assure compliance with federal requirements regarding the cost-effectiveness of the EDA Waiver and in compliance with the directives of HCR 142, the department amended the provisions governing the EDA Waiver to: 1) change the allocation priority of waiver opportunities; 2) implement uniform needs-based assessments to determine the level of support needs and establish an individual cost cap based on need; 3) clarify the service cap for environmental accessibility adaptation services; 4) add shared supports to companion services; 5) mandate that personal representatives cannot be the paid companion care worker; and 6) clarify the provisions governing the development of the waiver recipient's annual services budget (*Louisiana Register*, Volume 35, Number 11). In spite of the revisions to the EDA Waiver program, costs remain higher than comparable waiver programs in many states.

The current federal approval for the EDA Waiver was extended through September 2011. Rather than seek renewal of the EDA Waiver program, the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services promulgated an Emergency Rule which adopted provisions to establish a new waiver program called the Community Choices Waiver (*Louisiana Register*, Volume 37, Number 9). While subject to the same levels and federal cost restrictions as the EDA

Waiver, the Community Choices Waiver will provide a broader range of service options to enable the participant, in conjunction with their support coordinator, families and providers, to tailor a plan of care more responsive to the individual needs of the waiver participant. The Community Choices Waiver will have all of the services currently offered in the EDA Waiver program as well as new services to increase the options available and to provide, where appropriate, less costly alternatives to one-to-one assistance. This proposed Rule is being promulgated to continue the provisions of the October 1, 2011 Emergency Rule.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE Part XXI. Home and Community-Based Services Waivers

Subpart 7. Community Choices Waiver

Chapter 81. General Provisions

§8101. Introduction

A. The target population for the Community Choices Waiver includes individuals who:

1. are currently in the Elderly and Disabled Adults Waiver as of September 30, 2011;
2. are 65 years of age or older; or
3. are 21-64 years of age with a physical disability; and
4. meet nursing facility level of care requirements.

B. Services are provided under the provisions of the approved waiver agreement between the Centers for Medicare and Medicaid Services (CMS) and the Louisiana Medicaid Program.

C. Requests for Community Choices Waiver services shall be accepted from the following:

1. an individual requestor/applicant;
2. an individual who is legally responsible for a requestor/applicant; or
3. a responsible representative designated by the requestor/applicant to act on his/her behalf.

D. Each individual who requests Community Choices Waiver services has the option to designate a responsible representative. For purposes of these provisions, a responsible representative shall be defined as the person designated by the individual to act on his/her behalf in the process of accessing and/or maintaining Community Choices Waiver services.

1. The appropriate form authorized by the Office of Aging and Adult Services (OAAS) shall be used to designate a responsible representative.

a. The written designation of a responsible representative does not take away the right of the individual to continue to transact business on his/her own behalf nor does it give the representative any legal authority other than as specified in the designation form.

b. The written designation is valid until revoked by the individual granting the designation. To revoke the written designation, the revocation must be submitted in writing to OAAS or its designee.

2. The functions of a responsible representative are to:

- a. assist and represent the individual in the assessment, care plan development and service delivery processes; and

- b. to aid the participant in obtaining all of the necessary documentation for these processes.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8103. Request for Services Registry

A. The Department of Health and Hospitals (DHH) is responsible for the request for services registry, hereafter referred to as “the registry,” for the Community Choices Waiver. An individual who wishes to have his or her name placed on the registry must contact a toll-free telephone number which shall be maintained by the department.

B. Individuals who desire their name to be placed on the Community Choices Waiver registry shall be screened to determine whether they meet nursing facility level of care. Only individuals who pass this screen shall be added to the registry.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8105. Programmatic Allocation of Waiver Opportunities

A. When funding is available for a new Community Choices Waiver opportunity or an existing opportunity is vacated, the department shall send a written notice to an individual on the registry indicating that a waiver opportunity is available. If the individual accepts the opportunity, that individual shall be evaluated for a possible Community Choices Waiver opportunity assignment.

B. Community Choices Waiver opportunities shall be offered to individuals on the registry according to priority groups. The following groups shall have priority for Community Choices Waiver opportunities, in the order listed:

1. individuals with substantiated cases of abuse or neglect referred by Adult Protective Services (APS) or Elderly Protective Services (EPS) who, without Community Choices Waiver services, would require institutional placement to prevent further abuse or neglect;
2. individuals diagnosed with Amyotrophic Lateral Sclerosis (ALS), also known as Lou Gehrig’s disease;
3. individuals admitted to a nursing facility who are approved for a stay of more than 90 days;
4. individuals who are not presently receiving home and community-based services (HCBS) under another approved Medicaid waiver program, including, but not limited to the:
 - a. Adult Day Health Care (ADHC) Waiver;
 - b. New Opportunities Waiver (NOW);
 - c. Supports Waiver, and/or
 - d. Residential Options Waiver (ROW); and
5. all other eligible individuals on the Request for Services Registry (RFSR), by date of first request for services.

C. If an applicant is determined to be ineligible for any reason, the next individual on the registry is notified as stated above and the process shall continue until an individual is determined eligible. A Community Choices Waiver opportunity is assigned to an individual when eligibility is established and the individual is certified.

D. Notwithstanding the priority group provisions, 75 Community Choices Waiver opportunities are reserved for qualifying individuals who have been diagnosed with Amyotrophic Lateral Sclerosis (ALS). Qualifying individuals who have been diagnosed with ALS shall be offered an opportunity on a first-come, first-serve basis.

E. Notwithstanding the priority group provisions, up to 100 EDA Waiver opportunities may be granted to qualified individuals who require emergency waiver services. These individuals shall be offered an opportunity on a first-come, first-serve basis.

1. To be considered for an emergency waiver opportunity, the individual must, at the time of the request for the emergency opportunity, be approved for the maximum amount of services allowable under the Long Term Personal Care Services Program and require institutional placement, unless offered an emergency waiver opportunity.

2. The following criteria shall be considered in determining whether or not to grant an emergency waiver opportunity:

- a. support through other programs is either unavailable or inadequate to prevent nursing facility placement;
- b. the death or incapacitation of an informal caregiver leaves the person without other supports;
- c. the support from an informal caregiver is not available due to a family crisis; or
- d. the person lives alone and has no access to informal support.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8107. Resource Assessment Process

A. Each Community Choices Waiver applicant/participant shall be assessed using a uniform assessment tool called the Minimum Data Set-Home Care (MDS-HC). The MDS-HC is designed to verify that an individual meets nursing facility level of care and to assess multiple key domains of function, health, social support and service use. The MDS-HC assessment generates a score that assigns the individual to a Resource Utilization Group (RUG-III/HC).

B. The following seven primary RUG-III/HC categories and subcategories will be utilized to determine the assistance needed for various activities of daily living (ADLs) and instrumental activities of daily living (IADLs):

1. Special Rehabilitation. Individuals in this category have had at least 120 minutes of rehabilitation therapy (physical, occupational and/or speech) within the seven days prior to their MDS-HC assessment.
2. Extensive Services. Individuals in this category have a medium to high level of need for assistance with ADLs and require one or more of the following services:
 - a. tracheostomy;
 - b. ventilator or respirator; or
 - c. suctioning.
3. Special Care. Individuals in this category have a medium to high level of need for assistance with ADLs and

have one or more of the following conditions or require one or more of the following treatments:

- a. stage 3 or 4 pressure ulcers;
- b. tube feeding;
- c. multiple sclerosis diagnosis;
- d. quadriplegia;
- e. burn treatment;
- f. radiation treatment;
- g. IV medications; or
- h. fever and one or more of the following conditions:

- i. dehydration diagnosis;
- ii. pneumonia diagnosis;
- iii. vomiting; or
- iv. unintended weight loss.

4. Clinically Complex. Individuals in this category have the following specific clinical diagnoses or require the specified treatments:

- a. dehydration;
- b. any stasis ulcer. A stasis ulcer is a breakdown of the skin caused by fluid build-up in the skin from poor circulation;
- c. end-stage/terminal illness;
- d. chemotherapy;
- e. blood transfusion;
- f. skin problem;
- g. cerebral palsy diagnosis;
- h. urinary tract infection;
- i. hemiplegia diagnosis. Hemiplegia diagnosis shall include a total or partial inability to move, experienced on one side of the body, caused by brain disease or injury;
- j. dialysis treatment;
- k. diagnosis of pneumonia;
- l. one or more of the eight criteria in Special Care (with low ADL need); or
- m. one or more of the three criteria in Extensive Services (with low ADL need).

5. Impaired Cognition. Individuals in this category have a low to medium need for assistance with ADLs and impairment in cognitive ability. This category includes individuals with short-term memory loss, trouble in decision-making, difficulty in making themselves understood by others and difficulty in eating performance.

6. Behavior Problems. Individuals in this category have a low to medium need for assistance with ADLs and behavior problems. This category includes individuals that may have socially inappropriate behavior, are physically or verbally abusive, have hallucinations or exhibit wandering behavior.

7. Reduced Physical Function. Persons in this category do not meet the criteria in one of the previous six categories.

C. Based on the RUG III/HC score, the applicant/participant is assigned to a level of support category and is eligible for a set annual services budget associated with that level.

1. If the applicant/participant disagrees with his/her annual services budget, the applicant/participant or his/her responsible representative may request a fair hearing to appeal the decision.

2. The applicant/participant may qualify for an increase in the annual services budget amount upon showing that:

- a. one or more answers are incorrect as recorded on the MDS-HC (except for the answers in Sections AA, BB, A, and R); or
- b. he/she needs an increase in the annual services budget to avoid entering into a nursing facility.

D. Each Community Choices Waiver participant shall be re-assessed at least annually.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 83. Covered Services

§8301. Support Coordination

A. Support coordination is services that will assist participants in gaining access to needed waiver and other State Plan services, as well as needed medical, social, educational, housing, and other services, regardless of the funding source for these services. Support coordinators shall be responsible for ongoing monitoring of the provision of services included in the participant's approved plan of care (POC) as well as:

1. evaluation and/or re-evaluation of the level of care;
2. assessment and/or re-assessment of the need for waiver services;
3. development and/or review of the service plan;
4. coordination of multiple services and/or among multiple providers;
5. linking waiver participants to other federal, state and local programs;
6. monitoring the implementation of the service plan and participant health and welfare;
7. addressing problems in service provision;
8. responding to participant crises; and
9. determining the cost neutrality of waiver services for an individual.

B. Support coordinators shall provide information and assistance to waiver participants in directing and managing their services. When participants choose to self-direct their waiver services, the support coordinators are responsible for reviewing the *Self-Direction Employer Handbook* with participants who have elected this option for service delivery. Support coordinators shall be available to participants for on-going support and assistance in these decision-making areas and with employer responsibilities.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8303. Transition Intensive Support Coordination

A. Transition intensive support coordination is services that will assist participants who are currently residing in nursing facilities in gaining access to needed waiver and other state plan services, as well as needed medical, social, housing, educational and other services, regardless of the funding source for these services. Support coordinators shall

initiate and oversee the process for assessment and reassessment, as well as be responsible for ongoing monitoring of the provision of services included in the participant's approved POC.

1. This service is paid for up to six months prior to transition from the nursing facility when adequate pre-transition supports and activities are provided and documented.

2. The scope of transition intensive support coordination shall not overlap with the scope of support coordination.

B. Support coordinators may assist persons to transition for up to 180 days while the individual still resides in the facility.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8305. Environmental Accessibility Adaptations

A. Environmental accessibility adaptations are necessary physical adaptations that will be made to the home to reasonably assure the health and welfare of the participant, or enable the participant to function with greater independence in the home. Without these necessary adaptations, the participant would require institutionalization.

1. There must be an identified need for environmental accessibility adaptations as indicated by the MDS-HC.

a. Once identified by MDS-HC, a credential assessor must verify the need for, and draft specifications for, the environmental accessibility adaptation(s).

b. A credentialed assessor must ensure that the environmental accessibility adaptation(s) meets all specifications before payment shall be made to the contractor that performed the environmental accessibility adaptation(s).

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8307. Personal Assistance Services

A. Personal assistance services (PAS) provide assistance and/or supervision necessary for the participant with functional impairments to remain safely in the community. PAS include the following services and supports based on the approved POC:

1. supervision or assistance in performing activities of daily living;

2. supervision or assistance in performing instrumental activities of daily living;

3. protective supervision provided solely to assure the health and welfare of a participant;

4. supervision or assistance with health related tasks (any health related procedures governed under the Nurse Practice Act) in accordance with applicable delegation/medication administration;

5. supervision or assistance while escorting/accompanying the individual outside of the home to perform tasks, including instrumental activities of daily living, health maintenance or other needs as identified in the

POC and to provide the same supervision or assistance as would be rendered in the home; and

6. extension of therapy services, defined as follows:

a. Licensed therapists may choose to instruct the attendants on the proper way to assist the participant in follow-up therapy sessions. This assistance and support provides reinforcement of instruction and aids in the rehabilitative process.

b. In addition, a Registered Nurse may instruct an attendant to perform basic interventions with a participant that would increase and optimize functional abilities for maximum independence in performing activities of daily living such as range of motion exercises.

B. PAS is provided in the participant's home or in another location outside of the home if the provision of these services allows the individual to participate in normal life activities pertaining to the ADLs and IADLs cited in the POC. IADLs may not be performed in the participant's home when the participant is absent from the home. There shall be no duplication of services. PAS may not be provided while the participant is admitted to or attending a program which provides in-home assistance with ADLs or IADLs or while attending or admitted to a program or setting where such assistance is provided.

C. The provision of PAS services outside of the participant's home does not include trips outside of the borders of the state without prior written approval by OAAS or its designee, through the POC or otherwise.

D. Participants who receive PAS cannot receive Long-Term Personal Care Services.

E. PAS may be provided through the "a.m. and p.m." delivery option defined as follows:

1. a minimum of 1 hour and a maximum of 2 hours of PAS provided to assist the participant at the beginning of his/her day, referred to as the "a.m." portion of this PAS delivery method; and

2. a minimum of 1 hour and a maximum of 2 hours to assist the participant at the end of his/her day, referred to as the "p.m." portion of this PAS delivery method; and

3. a minimum 4 hours break between the "a.m." and the "p.m." portions of this PAS delivery method; and

4. not to exceed a maximum of 4 hours of PAS being provided within a calendar day.

5. "A.m. and p.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

6. It is permissible to receive only the "a.m." or "p.m." portion of PAS within a calendar day. However, "a.m." PAS may not be provided on the same calendar day as other PAS delivery methods.

F. PAS may be provided by one worker for up to three waiver participants who live together and who have a common direct service provider. Waiver participants may share PAS staff when agreed to by the participants and as long as the health and welfare of each participant can be reasonably assured. Shared PAS is to be reflected in the POC of each participant. Reimbursement rates shall be adjusted accordingly.

G. A home health agency direct service worker who renders personal assistance services must be a qualified home health aide as specified in Louisiana's Minimum Licensing Standards for Home Health Agencies.

H. Every PAS provider shall ensure that each waiver participant who receives PAS has a written individualized back-up staffing plan and agreement for use in the event that the assigned PAS worker is unable to provide support due to unplanned circumstances, including emergencies which arise during a shift. The individualized plan and agreement shall be developed and maintained in accordance with OAAS policy.

I. Every PAS provider shall ensure timely completion of the OAAS Emergency Plan and Agreement Form for each waiver participant they serve in accordance with OAAS Policy.

J. The following individuals are prohibited from being reimbursed for providing services to a participant:

1. the participant's spouse;
2. the participant's curator;
3. the participant's tutor;
4. the participant's legal guardian;
5. the participant's responsible representative; or
6. the person to whom the participant has given representative and mandate authority (also known as power of attorney).

K. Participants are not permitted to receive PAS while living in a home or property owned, operated, or controlled by a provider of services who is not related by blood or marriage to the participant.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8309. Transition Services

A. Transition Services are time limited, non-recurring set-up expenses available for individuals who have been offered and approved for a Community Choices Waiver opportunity and are transitioning from a nursing facility to a living arrangement in a private residence where the individual is directly responsible for his/her own living expenses.

B. Allowable expenses are those necessary to enable the individual to establish a basic household, excluding expenses for room and board, but includes:

1. security deposits that are required to obtain a lease on an apartment or house;
2. specific set up fees or deposits (telephone, electric, gas, water and other such necessary housing set up fees or deposits);
3. essential furnishings to establish basic living arrangements; and
4. health and welfare assurances (pest control/eradication, fire extinguisher, smoke detector and first aid supplies/kit).

C. These services must be prior approved in the participant's POC.

D. These services do not include monthly rental, mortgage expenses, food, monthly utility charges and household appliances and/or items intended for purely diversional/recreational purposes. These services may not be used to pay for furnishing or to set-up living arrangements that are owned or leased by a waiver provider.

E. Support coordinators shall exhaust all other resources to obtain these items prior to utilizing the waiver.

F. Funds are available one time per \$1500 lifetime maximum for specific items as prior approved in the participant's POC.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8311. Adult Day Health Care Services

A. Adult day health care (ADHC) services are furnished as specified in the POC at an ADHC center, in a non-institutional, community-based setting encompassing both health/medical and social services needed to ensure the optimal functioning of the participant.

B. ADHC Services include:

1. meals, which shall not constitute a "full nutritional regimen" (3 meals per day) but will include 2 snacks and a hot nutritious lunch;
2. transportation between the participant's place of residence and the ADHC;
3. assistance with activities of daily living;
4. health and nutrition counseling;
5. individualized exercise program;
6. individualized goal-directed recreation programs;
7. health education classes; and
8. individualized health/nursing services.

C. ADHC services may be provided no more than 10 hours per day and no more than 50 hours per week.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8313. Caregiver Temporary Support Services

A. Caregiver temporary support services are furnished on a short-term basis because of the absence or need for relief of caregivers during the time they are normally providing unpaid care for the participant.

B. Federal financial participation is not claimed for the cost of room and board except when provided as part of caregiver temporary support services care furnished in a facility approved by the state that is not a private residence.

C. The intent of caregiver temporary support services is to provide relief to unpaid caregivers to maintain the informal support system.

D. Caregiver temporary support services are provided in the following locations:

1. the participant's home or place of residence;
2. nursing facilities;
3. assisted living facilities;
4. respite centers; or
5. adult day health care centers.

E. Caregiver temporary support services provided by nursing facilities, assisted living facilities and respite centers must include an overnight stay.

F. When Caregiver temporary support service is provided by an ADHC center, services may be provided no more than 10 hours per day.

G. Services may be utilized no more than 30 calendar days or 29 overnight stays per plan of care year for no more than 14 consecutive calendar days or 13 consecutive

overnight stays. The service limit may be increased based on documented need and prior approval by OAAS.

H. Caregiver temporary support may not be delivered at the same time as adult day health care or personal assistance 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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8315. Assistive Devices and Medical Supplies

A. Assistive devices and medical supplies are specialized medical equipment and supplies which include devices, controls, appliances, or nutritional supplements specified in the POC that enable individuals to:

1. increase or maintain their abilities to perform activities of daily living; or

2. to perceive, control, or communicate with the environment in which they live or provide emergency response.

B. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of assistive devices, and durable and non-durable medical equipment. This service includes personal emergency response systems (PERS) and other in-home monitoring and medication management devices and technology.

C. This service may also be used for routine maintenance or repair of specialized equipment. Batteries, extended warranties, and service contracts that are cost effective may be reimbursed. This includes medical equipment not available under the state plan that is necessary to address participant functional limitations and necessary medical supplies not available under the state plan that are addressed in the POC.

D. Where applicable, participant must use Medicaid State Plan, Medicare, or other available payers first. The participant's preference for a certain brand or supplier is not grounds for declining another payer in order to access waiver services.

E. All services must be based on a verified need of the participant and the service must have a direct or remedial benefit to the participant with specific goals and outcomes. This benefit must be determined by an independent assessment on any items whose cost exceeds \$500 and on all communication devices, mobility devices, and environmental controls. Independent assessments are done by the appropriate professional, *e.g.*, an occupational therapist, physical therapist, and/or speech-language pathologist, who has no fiduciary relationship with the manufacturer, supplier, or vendor of the item.

F. All items must reduce reliance on other Medicaid State Plan or waiver services.

G. All items must meet applicable standards of manufacture, design, and installation.

H. All items must be prior authorized and no experimental items shall be authorized.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8317. Home Delivered Meals

A. The purpose of home delivered meals is to assist in meeting the nutritional needs of an individual in support of the maintenance of self-sufficiency and enhancing the quality of life.

B. Up to two nutritionally balanced meals per day may be delivered to the home of an eligible participant who is unable to leave his/her home without assistance, unable to prepare his/her own meals, and/or has no responsible caregiver in the home.

C. Each meal shall provide a minimum of one-third of the current recommended dietary allowance (RDA) for the participant as adopted by the United States Department of Agriculture. The provision of home delivered meals does not provide a full nutritional regimen.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8319. Non-Medical Transportation

A. Non-medical transportation is a service offered to enable waiver participants to participate in normal life activities pertaining to the IADLs cited in the POC and includes activities needed to facilitate transition to the community.

B. Waiver transportation services may not be used to:

1. replace unpaid caregivers, volunteer transportation, and other transportation services available to the individual;

2. replace services that are included in a service provider's reimbursement;

3. obtain items that can be delivered by a supplier or by mail-order; or

4. compensate the service provider for travel to or from the service provider's home.

C. This service shall be offered in addition to medical transportation required under 42 CFR §431.53 and transportation services under the state plan, defined at 42 CFR §440.170(a) (if applicable), and shall not replace them.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8321. Nursing Services

A. Nursing services are services that are medically necessary and may only be provided efficiently and effectively by a nurse practitioner, registered nurse, or a licensed practical nurse working under the supervision of a registered nurse. The nursing services provided must be within the scope of the Louisiana statutes governing the practice of nursing.

B. Nursing services may include periodic assessment of the participant's medical condition when the condition requires a skilled nurse to identify and evaluate the need for medical intervention or to monitor and/or modify the medical treatment services provided by non-professional care providers.

C. Services may also include regular, ongoing monitoring of a participant's fragile or complex medical condition as well as the monitoring of a participant with a history of noncompliance with medication or other medical treatment needs.

D. Nursing may also be used to assess a participant's need for assistive devices or home modifications, training the participant and family members in the use of the purchased devices, and training of direct service workers in tasks necessary to carry out the POC.

E. Where applicable, a participant must use Medicare, Medicaid State Plan services, or other available payers first. The participant's preference for a certain staff or agencies is not grounds for declining another payer in order to access waiver services.

F. All services must be based on a verified need of the participant. The service must have a direct or remedial benefit to the participant with specific goals and outcomes.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8323. Skilled Maintenance Therapy

A. Skilled maintenance therapy is therapy services that may be received by Community Choices Waiver participants in the home or in a rehabilitative center. Unlike State Plan therapy services, provision of therapy services under the Community Choices Waiver expands the provider base to rehabilitative centers and individually licensed therapists so that participants may receive maintenance therapies either at home, work, or at a rehabilitative center in order to increase access to therapy services.

B. Skilled maintenance therapy services include physical therapy, occupational therapy, respiratory therapy and speech and language therapy.

C. Therapy services provided to recipients under the Community Choices Waiver are not necessarily tied to an episode of illness or injury and instead focus primarily on the person's functional need for maintenance of, or reducing the decline in, the participant's ability to carry out activities of daily living.

D. Skilled maintenance therapies may also be used to assess a participant's need for assistive devices or home modifications, training the participant and family members in the use of the purchased devices, performance of in-home fall prevention assessments, and participation on the POC planning team.

E. Services may be provided in a variety of locations including the participant's home, place of employment or a clinic as approved by the POC planning team.

F. Skilled maintenance therapy services specifically include:

1. physical therapy services which promote the maintenance of, or the reduction in, the loss of gross/fine motor skills, and facilitate independent functioning and/or prevent progressive disabilities including:

- a. professional assessment(s), evaluation(s) and monitoring for therapeutic purposes;
 - b. physical therapy treatments and interventions;
 - c. training regarding physical therapy activities, use of equipment and technologies;
 - d. designing, modifying or monitoring the use of related environmental modifications;
 - e. designing, modifying, and monitoring the use of related activities supportive to the POC goals and objectives;
- or

f. consulting or collaborating with other service providers or family members, as specified in the POC;

2. occupational therapy (OT) services which promote the maintenance of, or reduction in, the loss of fine motor skills, coordination, sensory integration, and/or facilitate the use of adaptive equipment or other assistive technology including:

- a. teaching of daily living skills;
- b. development of perceptual motor skills and sensory integrative functioning;
- c. design, fabrication, or modification of assistive technology or adaptive devices;
- d. provision of assistive technology services;
- e. design, fabrication, or applying selected orthotic or prosthetic devices or selecting adaptive equipment;
- f. use of specifically designed crafts and exercise to enhance function;
- g. training regarding OT activities; and
- h. consulting or collaborating with other service providers or family members, as specified in the POC;

3. speech language therapy (SLT) services which preserve abilities for independent function in communication, facilitate oral motor and swallowing function, facilitate use of assistive technology, and/or prevent progressive disabilities including:

- a. identification of communicative or oropharyngeal disorders;
- b. prevention of communicative or oropharyngeal disorders;
- c. development of eating or swallowing plans and monitoring their effectiveness;
- d. use of specifically designed equipment, tools, and exercises to enhance function;
- e. design, fabrication, or modification of assistive technology or adaptive devices;
- f. provision of assistive technology services;
- g. adaptation of the participant's environment to meet his/her needs;
- h. training regarding SLT activities; and
- i. consulting or collaborating with other service providers or family members, as specified in the POC; and

4. Respiratory therapy services which provide preventative and maintenance airway-related techniques and procedures including:

- a. application of medical gases, humidity and aerosols;
- b. intermittent positive pressure;
- c. continuous artificial ventilation;
- d. administration of drugs through inhalation and related airway management;
- e. individual care;
- f. instruction administered to the waiver participant and informal supports; and
- g. periodic management of ventilation equipment for participants whose ventilation care is performed by informal caregivers.

G. Where applicable, the participant must use Medicaid State Plan, Medicare, or other available payers first. The participant's preference for a certain therapist or agency is not grounds for declining another payer in order to access waiver services.

H. All services must be based on a verified need of the participant and the service must have a direct or remedial benefit to the participant with specific goals and outcomes. The authorized service will be reviewed/monitored by the support coordinator to verify the continued need for the service and that the service meets the participant's needs in the most cost effective manner.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 85. Self-Direction Initiative

§8501. Self-Direction Service Option

A. The self-direction initiative is a voluntary, self-determination option which allows the participant to coordinate the delivery of Community Choices personal assistance services through an individual direct support professional rather than through a licensed, enrolled provider agency. Selection of this option requires that the participant utilize a payment mechanism approved by the department to manage the required fiscal functions that are usually handled by a provider agency.

B. Participant Responsibilities. Waiver participants choosing the self-directed services option must understand the rights, risks, and responsibilities of managing their own care and individual budget. If the participant is unable to make decisions independently, he/she must have a responsible representative who understands the rights, risks, and responsibilities of managing his/her care and supports within his/her individual budget.

C. Termination of the Self-Direction Service Option. Termination of participation in the self-direction service option requires a revision of the POC, the elimination of the fiscal agent and the selection of the Medicaid-enrolled waiver service provider(s) of choice.

1. Voluntary Termination. A waiver participant may choose at any time to withdraw from the self-direction service option and return to the traditional provider agency management of services.

2. Involuntary Termination. The department may terminate the self-direction service option for a participant and require him/her to receive provider-managed services under the following circumstances:

a. the health or welfare of the participant is compromised by continued participation in the self-directed option;

b. the participant is no longer able to direct his/her own care and there is no responsible representative to direct the care;

c. there is misuse of public funds by the participant or the responsible representative; or

d. the participant or responsible representative:

i. places barriers to the payment of the salaries and related state and federal payroll taxes of direct support staff;

ii. fails to follow the POC;

iii. fails to provide required documentation of expenditures and related items; or

iv. fails to cooperate with the fiscal agent or support coordinator in preparing any additional documentation of expenditures.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 87. Plan of Care

§8701. Plan of Care

A. The applicant and support coordinator have the flexibility to construct a plan of care that serves the participant's health and welfare needs. The service package provided under the POC may include the array of services covered under the Community Choices Waiver in addition to services covered under the Medicaid State Plan (not to exceed the established service limits for either waiver or state plan services) as well as other services, regardless of the funding source for these services. All services approved pursuant to the POC shall be medically necessary and provided in a cost-effective manner. The POC shall be developed using a person-centered process coordinated by the support coordinator.

B. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's, or its designee's, approval of the POC.

C. The support coordinator shall complete a POC which shall contain the:

1. types and number of services (including waiver and all other services) necessary to reasonably assure health and welfare and to maintain the person in the community;

2. individual cost of each service (including waiver and all other services); and

3. the total cost of services covered by the POC.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 89. Admission and Discharge Criteria

§8901. Admission Criteria

A. Admission to the Community Choices Waiver Program shall be determined in accordance with the following criteria:

1. meets the target population criteria as specified in the approved waiver document;

2. initial and continued Medicaid eligibility;

3. initial and continued eligibility for a nursing facility level of care;

4. justification, as documented in the approved POC, that the Community Choices Waiver services are appropriate, cost effective and represent the least restrictive environment for the individual; and

5. reasonable assurance that the health and welfare of the participant can be maintained in the community with the provision of Community Choices Waiver services.

B. Failure of the individual to cooperate in the eligibility determination process or to meet any of the criteria above shall result in denial of admission to the Community Choices Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§8903. Admission Denial or Discharge Criteria

A. Admission shall be denied or the participant shall be discharged from the Community Choices Waiver Program if any of the following conditions are determined.

1. The individual does not meet the target population criteria as specified in the approved waiver document.
2. The individual does not meet the criteria for Medicaid eligibility.
3. The individual does not meet the criteria for a nursing facility level of care.
4. The participant resides in another state or has a change of residence to another state.
5. Continuity of services is interrupted as a result of the participant not receiving and/or refusing Community Choices Waiver services (exclusive of support coordination services) for a period of 30 consecutive days.
6. The health and welfare of the individual cannot be reasonably assured through the provision of Community Choices Waiver services.
7. The individual fails to cooperate in the eligibility determination process or in the performance of the POC.
8. Failure on behalf of the individual to maintain a safe and legal home environment.
9. It is not cost effective or appropriate to serve the individual in the Community Choices Waiver.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 91. Waiver Cost Neutrality

§9101. Waiver Costs Limit

A. The annual service budget for each of the RUG-III/HC groups shall be reviewed to ensure that the costs of the Community Choices Waiver remain within applicable federal rules regarding the cost-effectiveness of the waiver. To ensure cost-effectiveness, the mean expenditures across all RUG-III/HC categories must be less than or equal to the average cost to the state of providing care in a nursing facility. If the waiver is not cost-effective, the annual service budgets for some or all RUG-III/HC groups shall be reduced to bring the waiver into compliance.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 93. Provider Responsibilities

§9301. General Provisions

A. Any provider of services under the Community Choices Waiver shall abide by and adhere to any federal or state laws, rules, policy, procedures, or manuals issued by the department. Failure to do so may result in sanctions.

B. The provider agrees to not request payment unless the participant for whom payment is requested is receiving services in accordance with the Community Choices Waiver Program provisions and the services have actually been provided.

C. Any provider of services under the Community Choices Waiver shall not refuse to serve any individual who chooses their agency unless there is documentation to support an inability to meet the individual's health, safety and welfare needs, or all previous efforts to provide service

and supports have failed and there is no option but to refuse services.

1. OAAS or its designee must be immediately notified of the circumstances surrounding a refusal by a provider to render services.

2. This requirement can only be waived by OAAS or its designee.

D. Providers must maintain adequate documentation as specified by OAAS, or its designee, to support service delivery and compliance with the approved POC and will provide said documentation at the request of the department, or its designee.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§9303. Reporting Requirements

A. Support coordinators and direct service providers are obligated to report any changes to the department that could affect the waiver participant's eligibility including, but not limited to, those changes cited in the denial or discharge criteria.

B. Support coordinators and direct service providers are responsible for documenting the occurrence of incidents or accidents that affect the health and welfare of the participant and for completing an incident report. The incident report shall be submitted to the department or its designee with the specified requirements.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Chapter 95. Reimbursement

§9501. Reimbursement Methodology

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

1. personal assistance services (except for the "a.m. and p.m." service delivery model);

a. personal assistance services furnished to one participant shall be reimbursed at 100 percent of the full rate for the participant;

b. personal assistance services furnished to two participants shall be reimbursed at 75 percent of the full rate for each participant;

c. personal assistance services furnished to three participants shall be reimbursed at 66 percent of the full rate for each participant;

2. in-home caregiver temporary support service when provided by a personal care services or home health agency; and

3. caregiver temporary support services when provided by an adult day health care center.

B. The following services shall be reimbursed at the cost of the assessment, inspection, installation/fitting, maintenance, repairs, adaptation, device, equipment, or supply item and when the service has been prior authorized by the plan of care:

1. environmental accessibility adaptations;

2. assistive devices and medical supplies;
3. home delivered meals (not to exceed the maximum limit set by OAAS); and
4. transition expenses up to a lifetime maximum of \$1500.

C. The following services shall be reimbursed at a per diem rate:

1. caregiver temporary support services when rendered by the following providers:
 - a. assisted living providers;
 - b. nursing facility; or
 - c. respite center.

D. The following services shall be reimbursed at an established monthly rate:

1. support coordination; and
2. transition intensive support coordination.

E. Non-medical transportation is reimbursed per one-way trip at a fee established by OAAS.

F. Certain nursing and skilled maintenance therapy procedures as well as personal assistance services furnished via "a.m. and p.m." delivery method will be reimbursed on a per-visit basis.

G. Certain environmental accessibility adaptation, nursing, and skilled maintenance therapy procedures will be reimbursed on a per-service basis.

H. Adult day health care services shall be reimbursed at a per quarter hour rate for services provided under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for all Community Choices Waiver participants by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

I. Reimbursement shall not be made for Community Choices Waiver services provided prior to the department's approval of the POC.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

§9503. Direct Support Professionals Wage Enhancement

A. An hourly wage enhancement payment in the amount of \$2 shall be reimbursed to providers for full-time equivalent (FTE) direct support professionals who provide home and community-based waiver services to Community Choices Waiver participants. Direct support professionals are persons who deliver direct care services such as assistance with the activities of daily living.

1. At least 75 percent of the wage enhancement shall be paid in the aggregate to the direct support professionals as wages. If less than 100 percent of the enhancement is paid in wages, the remainder, up to 25 percent shall be used to pay employer-related taxes, insurance and employee benefits.

B. The minimum hourly rate paid to direct support professionals shall be the federal minimum wage in effect on October 1, 2011 plus 75 percent of the wage enhancement or the current federal minimum wage, whichever is higher.

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, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 37:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by increasing the waiver service options available to participants.

Public Comments

Interested persons may submit written comments to Don Gregory, 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.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, October 26, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES
RULE TITLE: Home and Community-Based Services WaiversCommunity Choices Waiver**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12 since the cost for Community Choices Waiver services will be directly offset by savings realized in the Elderly and Disabled Adults (EDA) Waiver when waiver participants transition to the Community Choices Waiver upon termination of the EDA Waiver. It is anticipated that \$5,412 (\$2,706 SGF and \$2,706 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated that \$2,706 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule, which continues the provisions of the October 1, 2011 emergency rule, adopts provisions to establish the Community Choices Waiver which shall replace the Elderly

and Disabled Adults Waiver upon its termination (approximately 4,476 waiver participants). The Community Choices Waiver keeps all current services included in the current Elderly and Disabled Adult Waiver plus adds a few more to create a more comprehensive service package. The same individual cost limits currently in effect for the EDA Waiver will also apply in the Community Choices Waiver. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or non-governmental groups for FY 11-12, FY 12-13, and FY 13-14 since EDA Waiver participants will be transitioned to the Community Choices Waiver upon the EDA Waiver termination with no impact to waiver providers or participants.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1109#051

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health and Hospitals
Bureau of Health Services Financing
and**

Office for Citizens with Developmental Disabilities

Home and Community-Based Services Waivers
New Opportunities Waiver
Allocation of Waiver Opportunities for ICF-DD Transitions
(LAC 50:XXI.13707)

The Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities propose to amend LAC 50:XXI.13707 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 for Citizens with Developmental Disabilities (OCDD) amended the provisions governing the New Opportunities Waiver (NOW) to create an additional 100 emergency waiver opportunities (*Louisiana Register*, Volume 33, Number 11).

The department now proposes to amend the provisions governing the allocation of waiver opportunities in the NOW to establish provisions to prioritize allocation of waiver opportunities to people transitioning from private intermediate care facilities for persons with developmental disabilities. These facilities have entered into a cooperative endeavor agreement with OCDD.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XXI. Home and Community Based Services

Waivers

Subpart 11. New Opportunities Waiver

Chapter 137. General Provisions

§13707. Programmatic Allocation of Waiver

Opportunities

A. - C.2. ...

3. Except for those waiver opportunities addressed in Paragraphs C.1, 2, 6 and 7, waiver opportunities vacated during the waiver year shall be made available to persons residing in or leaving any publicly operated ICF-DD at the time the facility is transferred to any private ICF-DD under a cooperative endeavor agreement with OCDD, or their alternates.

C.4. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities, LR 31:2900 (November 2005), amended LR 33:2440 (November 2007), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities, LR 37:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability or autonomy as described in R.S. 49:972 by supporting the unification of families in a home setting.

Public Comments

Interested persons may submit written comments to Don Gregory, 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.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, October 26, 2011 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Bruce D. Greenstein
Secretary

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

**RULE TITLE: Home and Community-Based Services
Waivers New Opportunities Waiver Allocation of
Waiver Opportunities for ICF-DD Transitions**

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

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 11-12. It is anticipated that \$246 (\$123 SGF and \$123 FED) will be expended in FY 11-12 for the state's administrative expense for promulgation of this proposed rule and the final rule.

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

It is anticipated that the implementation of this proposed rule will not affect revenue collections other than the federal share of the promulgation costs for FY 11-12. It is anticipated

that \$123 will be collected in FY 11-12 for the federal share of the expense for promulgation of this proposed rule and the final rule.

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

This proposed rule amends the provisions governing the allocation of waiver opportunities in the New Opportunities Waiver (NOW) to establish provisions to prioritize allocation of waiver opportunities to people transitioning from private intermediate care facilities for persons with developmental disabilities. It is anticipated that implementation of this proposed rule will not have economic cost or benefits to directly affected persons or non-governmental groups for FY 11-12, FY 12-13, and FY 13-14.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Don Gregory
Medicaid Director
1109#052

H. Gordon Monk
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Louisiana Workforce Commission Office of Workers' Compensation

Electronic Billing (LAC 40:I.Chapter 3)

Notice is hereby given, in accordance with R.S. 49:950 et seq., that the Louisiana Workforce Commission, Office of Workers Compensation, pursuant to the authority vested in the director of the Office of Workers' Compensation by R.S. 23:1310.1 and in accordance with applicable provisions of the Administrative Procedures Act, proposes to enact LAC 40:I, to include Chapter 3 to add the following.

Title 40

LABOR AND EMPLOYMENT

Part 1. Workers' Compensation Administration

Chapter 3. Electronic Billing

§301. Purpose

A. The purpose of this Rule is to provide a legal framework for electronic billing, processing, and payment of medical services and products provided to an injured employee and data reporting subject to R.S. 23:1203.2. It is the goal of the OWCA that electronic billing in Louisiana will follow formats that adhere to national standards and industry practices so as to minimize any customization specific to Louisiana. However, electronic billing in the workers compensation environment requires additional consideration for the required medical records (electronic attachments). At the time of promulgation, electronic attachments are not commonly used outside of the workers compensation environment. While the purpose of R.S. 23:1203.2 and these accompanying rules are to implement electronic billing in Louisiana, it is recognized that not all healthcare providers will immediately have the systems and processes to accommodate electronic billing and electronic attachments; therefore, participation in electronic medical billing as established in these rules is consistent with R.S. 23:1203.2 and is voluntary for healthcare providers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§ 303. Definitions

A. For the purposes of this Rule the following definitions shall apply.

Agent—broadly construed to mean any person or entity that performs medical bill related processes for the insurance carrier responsible for the bill. These processes include, but are not limited to, reporting to government agencies, electronic transmission, forwarding, or receipt of documents, review of reports, adjudication of bill, and final payment.

Business Day—Monday through Friday, excluding days on which a holiday is observed by this state.

Clearinghouse—a public or private entity, including a billing service, re-pricing company, community health management information system or community health information system, and "value-added" networks and switches, that is an agent of either the insurance carrier or provider and may perform the following functions:

a. processes or facilitates the processing of medical billing information received from a client in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction for further processing of a bill related transaction; or

b. receives a standard transaction from another entity and processes or facilitates the processing of medical billing information into nonstandard format or nonstandard data content for a client entity.

Complete Electronic Medical Bill—a medical bill that meets all of the following criteria:

a. it is submitted in the correct uniform billing format, with the correct uniform billing code sets, transmitted in compliance with the format requirements described in this Rule;

b. the bill and electronic attachments provide all information required under R.S. 23:1203.2; and

c. the health care provider has provided all information that insurance carrier requested under Title 40 of the Louisiana Administrative Code for purposes of processing the bill.

CMS—the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services.

Electronic Medical Billing and Payment Companion Guide—a separate document which gives detailed information for electronic billing and payment. The guide outlines the workers' compensation industry national standards and Louisiana jurisdictional procedures necessary for engaging in electronic data interchange (EDI) and specifies clarifications where applicable.

Electronic—a communication between computerized data exchange systems that complies with the standards enumerated in this Rule.

Health Care Provider—is defined in R.S. 23:1021.

Health Care Provider Agent—a person or entity that contracts with a health care provider establishing an agency relationship to process bills for services provided by the health care provider under the terms and conditions of a contract between the agent and health care provider. Such contracts may permit the agent to submit bills, request reconsideration, and receive reimbursement for the health care provider services billed.

Implementation Guide—a published document for national electronic standard formats as defined in Section 305 of this Chapter that specifies data requirements and data transaction sets.

Insurance Carrier—the insurer legally responsible for paying the medical bills under workers' compensation, or an agent of this entity.

National Provider Identification Number or NPI—the unique identifier assigned to a health care provider or health care facility by the secretary of the United States Department of Health and Human Services.

Supporting Documentation—documents necessary for the insurance carrier or its agent to process a bill. These include, but are not limited to, any records as required by Title 40 of the Louisiana Administrative Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§305. Formats for Electronic Medical Bill Processing

A. Where mandated for insurance carriers, beginning July 1, 2013 for electronic transmissions, the following electronic medical bill processing standards shall be used.

1. Billing

a. Professional Billing—the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Professional (837), May 2006, ASC X12, 005010X222 and Type 3 Errata to Health Care Claim: Professional (837), June 2010, ASC X12, 005010X222A1.

b. Institutional/Hospital Billing—the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Institutional (837), May 2006, ASC X12N/005010X223, Type 1 Errata to Health Care Claim: Institutional (837), ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, October 2007, ASC X12N/005010X223A1, and Type 3 Errata to Health Care Claim: Institutional (837), June 2010, ASC X12, 005010X223A2.

c. Dental Billing—the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim: Dental (837), May 2006, ASC X12N/005010X224, Type 1 Errata to Health Care Claim: Dental (837), ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, October 2007, ASC X12N/005010X224A1, and Type 3 Errata to Health Care Claim: Dental (837), June 2010, ASC X12, 005010X224A2.

d. Retail Pharmacy Billing—the Telecommunication Standard Implementation Guide, Version D, Release 0 (Version D.0), August 2007, National Council for Prescription Drug Programs and the Batch Standard Batch Implementation Guide, Version 1, Release 2 (Version 1.2), January 2006, National Council for Prescription Drug Programs.

2. Acknowledgment

a. Electronic responses to ASC X12N 837 transactions:

i. the ASC X12 Standards for Electronic Data Interchange TA1 Interchange Acknowledgment contained in the standards adopted under Paragraph A.1 of this Section;

ii. the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Implementation Acknowledgment for Health Care Insurance (999), June 2007, ASC X12N/005010X231; and

iii. the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim Acknowledgment (277CA), January 2007, ASC X12N/005010X214.

b. Electronic responses to NCPDP transactions:

i. the response contained in the standards adopted under Paragraph A.1 of this Section.

3. Remittance—the ASC X12 Standards for Electronic Data Interchange Technical Report Type 3, Health Care Claim Payment/Advice (835), April 2006, ASC X12N/005010X221 and Type 3 Errata to Health Care Claim Payment/Advice (835), June 2010, ASC X12, 005010X221A1.

4. Documentation submitted with an electronic medical bill in accordance with Section 309 of this Chapter (relating to medical documentation): ASC X12N Additional Information to Support a Health Claim or Encounter (275), February 2008, ASC X12, 005010X210.

B. Nothing in this Section shall prohibit insurance carriers and health care providers from using a direct data entry methodology for complying with these requirements, provided the methodology complies with the data content requirements of the adopted formats and these rules.

C. Insurance carriers and health care providers may exchange electronic data in a non-prescribed format by mutual agreement. All data elements required in the OWCA-prescribed formats must be present in a mutually agreed upon format.

D. The implementation specifications for the ASC X12N and the ASC X12 Standards for Electronic Data Interchange may be obtained from the ASC X12, 7600 Leesburg Pike, Suite 430, Falls Church, VA 22043; telephone (703) 970-4480; and fax (703) 970-4488. They are also available through the Internet at <http://store.X12.org>. A fee is charged for all implementation specifications.

E. The implementation specifications for the retail pharmacy standards may be obtained from the National Council for Prescription Drug Programs, 9240 East Raintree Drive, Scottsdale, AZ 85260; telephone (480) 477-1000; fax (480) 767-1042. They are also available through the internet at <http://www.ncdp.org>. A fee is charged for all implementation specifications.

F. Whenever the formats enumerated in Subsection A of this Section, for billing, acknowledgement, remittance, and documentation are replaced with a newer version, the most recent standard should be used. The requirement to use a new version shall commence on the effective date of the new version as published in the Code of Federal Regulations.

G. The OWCA shall develop an "Electronic Medical Billing and Payment Companion Guide" by January 1, 2013.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§307. Billing Code Sets

A. Billing codes and modifier systems identified below are valid codes for these workers' compensation transactions, in addition to any code sets defined by the standards adopted in Section 305.

1. "CDT-4 Codes"—codes and nomenclature prescribed by the American Dental Association.

2. "CPT-4 Codes"—the procedural terminology and codes contained in the "Current Procedural Terminology,

Fourth Edition,” as published by the American Medical Association and as adopted in the appropriate fee schedule contained in Title 40 of the Louisiana Administrative Code.

3. "Diagnosis Related Group (DRG)"—the inpatient classification scheme used by CMS for hospital inpatient reimbursement. The DRG system classifies patients based on principal diagnosis, surgical procedure, age, presence of comorbidities and complications, and other pertinent data.

4. "HCPCS"—CMS' Healthcare Common Procedure Coding System, a coding system which describes products, supplies, procedures, and health professional services and which includes the American Medical Association's (AMA's) Physician "Current Procedural Terminology, Fourth Edition," (CPT-4) codes, alphanumeric codes, and related modifiers.

5. "ICD-9-CM Codes"—diagnosis and procedure codes in the International Classification of Diseases, Ninth Revision, Clinical Modification published by the United States Department of Health and Human Services.

6. "ICD-10-CM/PCS Codes"—diagnosis and procedure codes in the International Classification of Diseases, Tenth Edition, Clinical Modification/Procedure Coding System maintained and published by the United States Department of Health and Human Services.

7. "NDC"—National Drug Codes of the Food and Drug Administration.

8. "Physical Therapy"/"Occupational Therapy Codes"—(PT/OT Codes)—Codes specified in Title 40 of the LAC covering physical therapy and occupational therapy services.

9. "Revenue Codes"—the four digit coding system developed and maintained by the National Uniform Billing Committee for billing inpatient and outpatient hospital services, home health services, and hospice services.

10. "National Uniform Billing Committee codes"—code structure and instructions established for use by the National Uniform Billing Committee (NUBC), such as occurrence codes, condition codes, or prospective payment indicator codes. These are known as UB 04 Codes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§309. Electronic Medical Billing, Reimbursement, and Documentation

A. Applicability

1. This Section outlines the exclusive process to exchange electronic medical bill and related payment processing data for professional, institutional/hospital, pharmacy, and dental services. This Section does not apply to requests for reconsideration or judicial appeals concerning any matter related to medical compensation or requests for informational copies of medical records.

2. Unless exempted from this process in accordance with Subsection B of this Section, insurance carriers or their agents shall:

a. accept electronic medical bills submitted in accordance with the adopted standards;

b. transmit acknowledgments and remittance advice in compliance with the adopted standards in response to electronically submitted medical bills; and;

c. support methods to receive electronic documentation required for the adjudication of a bill, as described in Section 315 of this Chapter.

3. If a health care provider elects to utilize electronic medical bill submission, then the healthcare provider shall:

a. exchange medical bill data in accordance with the adopted standards;

b. submit medical bills as defined by Section 305.A of this Chapter, to insurance carriers that have established connectivity to the health care provider's system or clearinghouse;

c. submit required documentation in accordance with Subsection E of this Section; and

d. receive and process any acceptance or rejection acknowledgment from the insurance carrier.

4. Insurance carriers must be able to exchange electronic data by July 1, 2013 unless exempted from the process in accordance with Subsection B of this Section.

5. The insurance carrier's failure to comply with any requirements of this rule shall result in an administrative violation under LAC 40:109.A.

6. Health care providers who elect not to utilize electronic medical billing pursuant to Section 305.A.1 of this Chapter shall submit paper medical bills for payment pursuant to Title 40 of the Louisiana Administrative Code.

B. Waivers

1. An insurance carrier is waived from the requirement to receive medical bills electronically from health care providers if:

a. the insurance carrier processed 1200 or fewer medical bills for workers' compensation treatment or services in the previous calendar year;

b. written requests for waivers shall be submitted to the OWCA at least 90 days prior to the implementation date and renewed for each calendar year thereafter. Approved waivers shall be limited to the calendar year and must be requested in writing 90 days prior to each subsequent calendar year;

c. the OWCA may grant an exception on a case-by-case basis if the insurance carrier establishes that electronic billing will result in an unreasonable financial burden.

C. Notwithstanding any requirements in Section 305 of this Chapter, to be considered a complete electronic medical bill, the bill or supporting transmissions must:

1. include in legible text all medical reports and records, such as evaluation reports, narrative reports, assessment reports, progress report/notes, clinical notes, hospital records and diagnostic test results that are expressly required by Title 40 of the Louisiana Administrative Code;

2. identify the:

a. injured employee;

b. employer, if available;

c. insurance carrier, third party administrator, managed care organization or its agent;

d. health care provider;

e. medical service or product; and

f. any other requirements as presented in the electronic billing companion guide as promulgated by the OWCA.

3. Use current and valid codes and values as defined in the applicable formats defined in Sections 305 and 307 of this Chapter.

D. Acknowledgment

1. Interchange acknowledgment (TA1) notifies the sender of the receipt of, and certain structural defects associated with, an incoming transaction.

2. An Implementation. Acknowledgment (ASCX12N999), or the most currently accepted transaction format, is an electronic notification to the sender of the file has been received and has been:

a. accepted as a complete and structurally correct file; or

b. rejected with a valid rejection code.

3. An ASC X12N 277 health care claim status response or acknowledgment transaction (detail acknowledgment) is an electronic notification to the sender of an electronic transaction (individual electronic bill) that the transaction has been received and has been:

a. accepted as a complete, correct submission; or

b. rejected with a valid rejection code.

4. An insurance carrier must acknowledge receipt of an electronic medical bill by returning an implementation acknowledgment (ASCX12N999) within one business day of receipt of the electronic submission.

a. Notification of a rejected bill is transmitted using the appropriate acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.

b. A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 business days from the date originally submitted if an insurance carrier has acknowledged acceptance of the original complete electronic medical bill. A health care provider or its agent may submit a corrected electronic medical bill to the insurance carrier after receiving notification of a rejection. The corrected medical bill is submitted as a new, original bill.

5. An insurance carrier must acknowledge receipt of an electronic medical bill by returning an ASC X12N 277 health care claim status response or acknowledgment transaction (detail acknowledgment) within two business days of receipt of the electronic submission.

a. Notification of a rejected bill is transmitted in an ASC X12N 277 response or acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.

b. A health care provider or its agent may not submit a duplicate electronic medical bill earlier than 60 days from the date originally submitted if an insurance carrier has acknowledged acceptance of the original complete electronic medical bill.

6. Acceptance of a complete medical bill is not an admission of liability by the insurance carrier. An insurance carrier may subsequently deny an accepted electronic medical bill if the employer or other responsible party named on the medical bill is not legally liable for its payment.

a. Any subsequent denial of a complete medical bill must occur within the timeframe as provided in R.S.

23:1201(E) from the date of receipt of the complete electronic medical bill.

b. The remittance advice must clearly indicate the reason for the denial.

7. Acceptance of an incomplete medical bill does not satisfy the written notice of injury requirement from an employee or insurance carrier as required in RS 23:1306.

8. Functional acknowledgment under Section 309.D.3 of this Chapter, and acceptance of a complete, structurally correct file serves as proof of the received date for an electronic medical bill in Section 309.C of this Chapter.

E. Electronic Documentation

1. Electronic documentation must be submitted with the electronic medical bill.

2. Electronic documentation shall be provided pursuant to Section 309.C of this Chapter.

F. Remittance Notification

1. An electronic remittance notification is an explanation of medical benefits (EOMB) or explanation of review (EOR), submitted electronically regarding payment or denial of a medical bill.

2. Upon mutual agreement, an insurance carrier may provide an electronic remittance notification.

3. The electronic remittance notification must contain the appropriate group claim adjustment reason codes, claims adjustment reason codes (CARC) and associated remittance advice remark codes (RARC) as specified by ASC X12 835N implementation guide or for pharmacy charges, the National Council for Prescription Drugs Program (NCPDP) reject codes, denoting the reason for payment, adjustment, or denial.

4. The remittance notification must be released within one business day of the payment or denial.

G. A health care provider or its agent may not submit a duplicate paper medical bill earlier than 60 business days from the date originally submitted unless the insurance carrier has returned the medical bill as incomplete in accordance with Section 311 (employer, insurance carrier, managed care organization, or agents' receipt of medical bills from health care providers). A health care provider or its agent may submit a corrected electronic medical bill to the insurance carrier after receiving notification of a rejection. The corrected medical bill is submitted as a new, original bill.

H. An insurance carrier or its agent may not reject a standard transaction on the basis that it contains data elements not needed or used by the insurance carrier or its agent.

I. A health care provider that is not able to send a standard transaction may use an internet-based direct data entry system offered by an insurance carrier if the insurance carrier does not charge a transaction fee. A health care provider using an Internet-based direct data entry system offered by an insurance carrier or other entity must use the appropriate data content and data condition requirements of the standard transactions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§311. Employer, Insurance Carrier, Managed Care Organization, or Agents' Receipt of Medical Bills from Health Care Providers

A. Upon receipt of medical bills submitted in accordance with Sections 305, 307, and 309 of this Chapter, an insurance carrier shall evaluate each bill's conformance with the criteria of a complete medical bill.

B. The received date of an electronic medical bill is the date all of the contents of a complete electronic bill are successfully received by the insurance carrier.

C. The insurance carrier may contact the medical provider to obtain the information necessary to make the bill complete.

1. Any request by the insurance carrier or its agent for additional documentation to pay a medical bill shall:

a. be made by telephone or electronic transmission or through web portal access if available unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery;

b. be specific to the bill or the bill's related episode of care;

c. describe with specificity the clinical and other information to be included in the response;

d. be relevant and necessary for the resolution of the bill;

e. be for information that is contained in or in the process of being incorporated into the injured employee's medical or billing record maintained by the health care provider; and

f. indicate the specific reason for which the insurance carrier is requesting the information.

2. If the insurance carrier or its agent obtains the missing information and completes the bill to the point it can be adjudicated for payment, the insurance carrier shall document the name and telephone number of the person who supplied the information.

D. An insurance carrier shall not return a medical bill except as provided in Subsection A of this Section. When returning an ASC X12N 837 medical bill, the insurance carrier shall clearly identify the reason(s) for returning the bill by utilizing the appropriate reason and rejection code identified in the standards identified in Section 305.A of this Chapter.

E. The proper return of an incomplete medical bill in accordance with this Section fulfills the obligation of the insurance carrier to provide to the health care provider or its agent information related to the incompleteness of the bill.

F. Insurance carriers must timely reject bills or request additional information needed to reasonably determine the amount payable.

1. For bills submitted electronically, the rejection of all or part of the bill must be sent to the submitter within two business days of receipt.

2. If bills are submitted in a batch transmission, only the specific bills failing edits shall be rejected.

G. If an insurance carrier has reason to challenge the coverage or amount of a specific line item on a bill, but has no reasonable basis for objections to the remainder of the bill, the uncontested portion must be paid timely, as in Subsection H of this Section below.

H. Payment of all uncontested portions of a complete medical bill shall be made within 60 business days of receipt of the original bill, or receipt of additional information requested by the insurance carrier allowed under the law. Amounts paid after this 60 calendar day review period shall be subject to R.S. 23:1201.F

I. An insurance carrier shall not return a medical bill except as provided in Section 311.A of this Chapter. When returning a medical bill, the insurance carrier shall also communicate the reason(s) for returning the bill.

J. The insurance carrier's failure to comply with any requirements of this rule shall result in an administrative violation in accordance with LAC 40:109.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§313. Communication between Health Care Providers and Insurance Carriers

A. Any communication between the health care provider and the insurance carrier related to medical bill processing shall be of sufficient specific detail to allow the responder to easily identify the information required to resolve the issue or question related to the medical bill. Generic statements that simply state a conclusion such as "insurance carrier improperly reduced the bill" or "health care provider did not document" or other similar phrases with no further description of the factual basis for the sender's position do not satisfy the requirements of this Section.

B. Utilization of the ASC X12N Reason Codes, or as appropriate, the NCPDP Reject Codes, by the insurance carrier when communicating with the health care provider or its agent or assignee, provides a standard mechanism to communicate issues associated with the medical bill.

C. Communication between the health care provider and insurance carrier related to medical bill processing shall be made by telephone or electronic transmission unless the information cannot be sent by those media, in which case the sender shall send the information by mail or personal delivery.

D. The insurance carrier's failure to comply with any requirements of this Rule shall result in an administrative violation LAC 40:109.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§315. Medical Documentation Necessary for Billing Adjudication

A. Medical documentation includes all medical reports and records permitted or required in accordance with Title 40 of the Louisiana Administrative Code.

B. Any request by the insurance carrier for additional documentation to process a medical bill shall conform to the requirements of Section 311.C of this Chapter.

C. It is the obligation of insurance carriers to furnish its agents with any documentation necessary for the resolution of a medical bill.

D. Health care providers, health care facilities, third-party biller/assignees, and claims administrators and their agents must comply with all applicable federal and state rules related to privacy, confidentiality, and security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the La. Workforce Commission, Office of Workers' Compensation, LR 37:

§317. Compliance and Penalty

A. Any electronically submitted bill determined to be complete but not paid or objected to within 60 days shall be subject to penalties per R.S. 1201(F).

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

§319. Effective Date

A. This Chapter applies to all medical services and products provided on or after July 1, 2013 for medical services and products provided prior to July 1, 2013, medical billing and processing shall be in accordance with the rules in effect at the time the health care was provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1203.2.

HISTORICAL NOTE: Promulgated by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:

Family Impact Statement

1. The effect on the stability of the family. The proposed e-billing Rules for the Office of Workers' Compensation Administration 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. The proposed e-billing Rules for the Office of Workers' Compensation Administration 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. The proposed e-billing Rules for the Office of Workers' Compensation Administration will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. The proposed e-billing Rules for the Office of Workers' Compensation Administration will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. The proposed e-billing Rules for the Office of Workers' Compensation Administration 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. The family or a local government is not able to perform the functions contained in the proposed e-billing Rules for the Office of Workers' Compensation Administration.

Public Comments

Inquiries concerning the proposed enactment may be directed to Director, Office of Workers' Compensation Administration, Louisiana Workforce Commission, P.O. Box 94040, Baton Rouge, LA 70804-9040. Interested parties may submit data, views, arguments, information or comments on the proposed enactment in writing to the Louisiana Workforce Commission, P.O. Box 94040, Baton Rouge, LA 70804-9040, Attention: Director, Office of Workers' Compensation Administration. Written comments must be submitted and received by the Department within 20 days of publication of this notice.

Public Hearing

Additionally, a request pursuant to R.S. 49:953(A)(2) for oral presentation, argument or public hearing must be made in writing and received by the department within 20 days of the publication of this notice.

Curt Eysink
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Electronic Billing**

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

The estimated implementation costs to state government, specifically, the Office of Worker's Compensation Administration (OWCA), will be minimal. OWCA will incur costs associated with the publication of the rule in the Louisiana State Register. Additionally, OWCA will be required by this rule (Sec. 305 (G)) to develop a "companion guide" by January 1, 2013. Accordingly, OWCA will also incur expenses associated with the publication of the companion guide. Any expenses to the state due to the proposed rule will be absorbed in the current budget and not require an additional appropriation. The Office of Risk Management handles Worker's Compensation claims for the state and will also be affected by this rule. The Worker's Compensation Unit is currently outsourced to FARA, who already has electronic filing capabilities and will not require additional resources to comply with the proposed rule.

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

The implementation of the billing instruction rule change will have no effect on revenue collections of state or local governmental units.

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

The implementation electronic billing requires insurance carriers to accept medical bills electronically submitted by health care providers. Accordingly, insurance carriers will be required to obtain software and equipment and/or contract with a clearinghouse in order to be in compliance. An estimation of the costs associated with the process would be subjective to each entity and speculative. It is expected that most insurance companies are already capable of e-filing requirements.

Health care providers may participate in electronic billing and payment on a voluntary basis. They are only required to accept electronic payment from insurance carriers for medical claims they have submitted electronically. Therefore, any estimated costs affecting health care providers will be due to their voluntary participation in the process. All costs would be speculative and subjective to each entity.

Health care providers and insurance carriers will also receive economic benefits by virtue of electronic billing. Electronic billing will facilitate the speedy exchange of information between the two parties. It will also lessen the manpower needed to process paperwork. Accordingly, delays in payment will be lessened and claims will proceed more efficiently through the system.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Electronic billing should result in a more efficient method of processing an injured worker's claim. Accordingly, resolving an injured worker's claim in a timely manner may

result in a quicker return of the injured worker to the workforce.

Wes Hataway
Director
1109#040

Greg Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Hazardous Liquids Pipeline Safety (LAC 33:V.Chapters 301-313)

The Louisiana Office of Conservation proposes to amend LAC 33:V.301et 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 roles amend the minimum pipeline safety requirements for hazardous liquids pipelines.

There will be negligible cost to directly affected persons or hazardous liquids pipeline operators. Benefits will be realized by persons living and working near hazardous liquids pipelines through safer construction and operation standards imposed by the rule amendments. Moreover, Louisiana presently receives federal funds and pipeline inspection fees to administer the Hazardous Liquids Pipeline Safety Program. Failure to amend the Louisiana roles to make them consistent with federal regulations would cause the state to lose federal funding.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Wastes and Hazardous Materials Subpart 3. Natural Resources

Chapter 301. Transportation of Hazardous Liquids by Pipeline [49 CFR Part 195]

Subchapter A. General [Subpart A]

§30103. Which pipelines are covered by this Subpart? [49 CFR 195.1]

A. Covered. Except for the pipelines listed in Subsection B of this Section, this Subpart applies to pipeline facilities and the transportation of hazardous liquids or carbon dioxide associated with those facilities within the state of Louisiana, including the coastal zone limits. Covered pipelines include, but are not limited to: [49 CFR 195.1(a)]

1. any pipeline that transports a highly volatile liquid (HVL); [49 CFR 195.1(a)(1)]

2. any pipeline segment that crosses a waterway currently used for commercial navigation; [49 CFR 195.1(a)(2)]

3. except for a gathering line not covered by paragraph A.4 of this Section, any pipeline located in a rural or non-rural area of any diameter regardless of operating pressure; [49 CFR 195.1(a)(3)]

4. any of the following onshore gathering lines used for transportation of petroleum: [49 CFR 195.1(a)(4)]

a. a pipeline located in a non-rural area; [49 CFR 195.1(a)(4)(i)]

b. a regulated rural gathering line as provided in §30117; or [49 CFR 195.1(a)(4)(ii)]

c. a pipeline located in an inlet of the Gulf of Mexico as provided in §30413. [49 CFR 195.1(a)(4)(iii)]

B. Excepted. This Subpart does not apply to any of the following: [49 CFR 195.1(b)]

1. transportation of a hazardous liquid transported in a gaseous state; [49 CFR 195.1(b)(1)]

2. transportation of a hazardous liquid through a pipeline by gravity; [49 CFR 195.1(b)(2)]

3. transportation of a hazardous liquid through any of the following lowstress pipelines: [49 CFR 195.195.1(b)(3)]

a. a pipeline subject to safety regulations of the U.S. Coast Guard; or [49 CFR 195.1(b)(3)(i)]

b. a pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long (measured outside facility grounds) and does not cross an offshore area or a waterway currently used for commercial navigation; [49 CFR 195.1(b)(3)(ii)]

4. transportation of petroleum through an onshore rural gathering line that does not meet the definition of a “regulated rural gathering line” as provided in §30117. This exception does not apply to gathering lines in the inlets of the Gulf of Mexico subject to §30413; [49 CFR 195.1(b)(4)]

B.5. - C. ...

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 15:629 (August 1989), amended LR 18:861 (August 1992), LR 20:439 (1994), LR 21:814 (August 1995), LR 27:1523 (September 2001), LR 29:2804 (December 2003), LR 33:466 (March 2007), LR 35:2791 (December 2009), LR 37:

§30105. Definitions [49 CFR 195.2]

A. As used in this Subpart:

Alarm—an audible or visible means of indicating to the controller that equipment or processes are outside operator-defined, safety-related parameters.

Control Room—an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility.

Controller—a qualified individual who remotely monitors and controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility.

Supervisory Control and Data Acquisition (SCADA) System—a computer-based system or systems used by a controller in a control room that collects and displays information about a pipeline facility and may have the ability to send commands back to the pipeline facility.

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 15:629 (August 1989), amended LR 18:861 (August 1992), LR 21:815 (August 1995), LR 27:1523 (September 2001), LR 28:83 (January 2002), LR 29:2805 (December 2003), LR 31:675 (March 2005), LR 33:467 (March 2007), LR 37:

§30107. Matter Incorporated by Reference in Whole or in Part [49 CFR 195.3]

A. - B.7. ...

C. The full titles of publications incorporated by reference wholly or partially in this Subpart are as follows. Numbers in parentheses indicate applicable editions: [49 CFR 195.3(c)].

Source and Name of Referenced Material	Title 33 Reference
A. Pipeline Research Council International, Inc. (PRCI):	
(1) AGA Pipeline Research Committee, Project PR-3-805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§30452.H.4.a.ii; 30452.H.4.c.iv; 30587.
B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183 "Specification for Line Pipe" (44th edition, October 2007, including errata (January 2009) and addendum (February 2009)).	§§30161.B.1; 30161.E.
(2) API Recommended Practice 5L1, "Recommended Practice for Railroad Transportation of Line Pipe" (6th edition, July 2002).	§30207.A
(3) API Recommended Practice 5LW, "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, December 1996, effective March 1, 1997).	§30207.B
(4) ANSI/API Specification 6D, "Specification for Pipeline Valves" (23rd edition, April 2008, effective October 1, 2008) and errata 3 (includes 1 & 2 (2009)).	§30173.A.4.
(5) API Specification 12F "Specification for Shop Welded Tanks for Storage of Production Liquids" (11th edition, November 1, 1994, reaffirmed 2000, errata, February 2007).	§§30189.B.1; 30205.B.2; 30264.B.1; 30264.E.1; 30307.A; 30565; 30579.D.
(6) API Standard 510, "Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration" (9th edition, June 2006).	§§30205.B.3; 30432.C.
(7) API Standard 620 "Design and Construction of Large, Welded, Low-Pressure Storage Tanks" (11th edition, February 2008, addendum 1 March 2009).	§§30189.B.2; 30205.B.2; 30264.B.1; 30264.E.3; 30307.B.
(8) API Standard 650 "Welded Steel Tanks for Oil Storage" (11th edition, June 2007, addendum 1, November 2008).	§§30189.B.3; 30205.B.1; 30264.B.1; 30264.E.2; 30307.C; 30307.D; 30565; 30579.D.
(9) ANSI/API Recommended Practice 651 "Cathodic Protection of Aboveground Petroleum Storage Tanks" (3rd edition, January 2007).	§§30565; 30579.D.
(10) ANSI/API Recommended Practice 652 "Linings of Aboveground Petroleum Storage Tank Bottoms" (3rd edition, October 2005).	§30579.D.
(11) API Standard 653 "Tank Inspection, Repair, Alteration, and Reconstruction" (3rd edition, December 2001, includes addendum 1 (September 2003), addendum 2 (November 2005), addendum 3 (February 2008), and errata (April 2008)).	§§30205.B.1; 30432.B.
(12) API 1104 "Welding of Pipelines and Related Facilities" (20th edition, October 2005, errata/addendum (July 2007), and errata 2 (December 2008)).	§§30222.A; 30228.B.; 30214.A
(13) API Recommended Practice 1130, "Computational Pipeline Monitoring for Liquids: Pipeline Segment" (3rd edition, September 2007).	§§30191; 30444.

Source and Name of Referenced Material	Title 33 Reference
(14) API Recommended Practice 1162 "Public Awareness Programs for Pipeline Operators," (1st edition, December 2003)	§§30440.A; 30440.B; 30440.C.
(15) API Recommended Practice 1165, "Recommended Practice for Pipeline SCADA Displays," (API RP 1165) First Edition (January 2007).	§30446.C.1
(16) API Standard 2000, "Venting Atmospheric and Low-Pressure Storage Tanks Nonrefrigerated and Refrigerated" (5th edition, April 1998, errata, November 15, 1999).	§§30264.E.2; 30264.E.3.
(17) API Recommended Practice 2003 "Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents" (7th edition, January 2008).	§30405.A.
(18) API Publication 2026 "Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service" (2nd edition, April 1998, reaffirmed June 2006).	§30405.B.
(19) API Recommended Practice 2350 "Overfill Protection for Storage Tanks In Petroleum Facilities" (2nd edition, April 1998, reaffirmed June 2006).	§30428.C.
(20) PI Standard 2510 "Design and Construction of LPG Installations" (8th edition, 2001)	§§30189.B.3; 30205.B.3; 30264.B.2; 30264.E.4; 30307.E; 30428.C; 30432.C.
(21) API Recommended Practice 1168 "Pipeline Control Room Management," (API RP 1168) First Edition (September 2008).	§30446.C.5; 30446.F.1
C. ASME International (ASME):	
(1) ASME/ANSI B16.9-2007, "Factory-Made Wrought Butt Welding Fittings" (December 7, 2007).	§30175.A.
(2) ASME/ANSI B31.4-2006, "Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids" (October 20, 2006).	§30452.H.4.a.
(3) ASME /ANSI B31G-1991 (Reaffirmed; 2004) "Manual for Determining the Remaining Strength of Corroded Pipelines"	§§30452.H.4.a.ii; 30452.H.4.c.iv.
(4) ASME/ANSI B31.8-2007, "Gas Transmission and Distribution Piping Systems" (November 30, 2007).	§§30111.A.1.a; 30406.A.1.a.
(5) 2007 ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Rules for Construction of Pressure Vessels," (2007 edition, July 1, 2007).	§§30181; 30307.E.
(6) 2007 ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 "Alternate Rules for Construction for Pressure Vessels" (2007 edition, July 1, 2007).	§30307.E.
(7) 2007 ASME Boiler & Pressure Vessel Code, Section IX: "Qualification Standard for Welding and Brazing Procedures, Welders, Brazers, and Welding and Brazing Operators," (2007 edition, July 1, 2007).	§30222.A.
D. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP-75-2004 "Specification for High Test Wrought Butt Welding Fittings"	§30175.A.
(2) [Reserved]	
E. American Society for Testing and Materials (ASTM):	
(1) ASTM Designation: A53/A53M-07 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (September 1, 2007).	§30161.E.
(2) ASTM Designation: A106/A106M-08 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (July 15, 2008).	§30161.E.

Source and Name of Referenced Material	Title 33 Reference
(3) ASTM Designation: A 333/A 333M-05 "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service"	§30161.E.
(4) ASTM Designation: A 381-96 (Reapproved 2005) "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (October 1, 2005).	§30161.E.
(5) ASTM Designation: A 671-06 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (May 1, 2006).	§30161.E.
(6) ASTM Designation: A 672-08 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (May 1, 2008).	§30161.E.
(7) ASTM Designation: A 691 -98 (Reapproved 2007) "Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures"	§30161.E.
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 "Flammable and Combustible Liquids Code" (2008 edition, approved August 15, 2007).	§30264.B.1.
(2) [Reserved]	
G. NACE International (NACE):	
(1) NACE SP 0169-2007, Standard Practice, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems" (reaffirmed March 15, 2007).	§30571; 30571.A.2
(2) NACE RP SP0502-2008, Standard Practice, "Pipeline External Corrosion Direct Assessment Methodology" (reaffirmed March 20, 2008).	§30588.

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 15:629 (August 1989), amended LR 20:439 (1994), LR 21:815 (August 1995), LR 24:1313 (1998), LR 27:1523 (September 2001), LR 29:2806 (December 2003), LR 31:676 (March 2005), LR 33:467 (March 2007), LR 35:2792 (December 2009), LR 37:

§30118. What requirements apply to low-stress pipelines in rural areas? [49 CFR 195.12]

A. General. This Section sets forth the requirements for each category of lowstress pipeline in a rural area set forth in Subsection B of this Section. This Section does not apply to a rural lowstress pipeline regulated under this Subpart as a low-stress pipeline that crosses a waterway currently used for commercial navigation; these pipelines are regulated pursuant to §30103.A.2. [49 CFR 195.12(a)]

B. Categories. An operator of a rural low-stress pipeline must meet the applicable requirements and compliance deadlines for the category of pipeline set forth in Subsection C of this Section. For purposes of this Section, a rural low-stress pipeline is a Category 1, 2, or 3 pipeline based on the following criteria. [49 CFR 195.12(b)]

1. A Category 1 rural low-stress pipeline: [49 CFR 195.12(b)(1)]

a. has a nominal diameter of 85/8 inches (219.1 mm) or more; [49 CFR 195.12(b)(1)(i)]

b. is located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in §30112; and [49 CFR 195.12(b)(1)(ii)]

c. operates at a maximum pressure established under §30406 corresponding to: [49 CFR 195.12(b)(1)(iii)]

i. a stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or [49 CFR 195.12(b)(1)(iii)(A)]

ii. if the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage. [49 CFR 195.12(b)(1)(iii)(B)]

2. A Category 2 rural pipeline: [49 CFR 195.12(b)(2)]

a. has a nominal diameter of less than 85/8 inches (219.1mm); [49 CFR 195.12(b)(2)(i)]

b. is located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in §30112; and [49 CFR 195.12(b)(2)(ii)]

c. operates at a maximum pressure established under §30406 corresponding to: [49 CFR 195.12(b)(2)(iii)]

i. a stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or [49 CFR 195.12(b)(2)(iii)(A)]

ii. if the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage. [49 CFR 195.12(b)(2)(iii)(B)]

3. A Category 3 rural low-stress pipeline: [49 CFR 195.12(b)(3)]

a. has a nominal diameter of any size and is not located in or within one-half mile (.80 km) of an unusually sensitive area (USA) as defined in §30112; and [49 CFR 195.12(b)(3)(i)]

b. operates at a maximum pressure established under §30406 corresponding to a stress level equal to or less than 20-percent of the specified minimum yield strength of the line pipe; or [49 CFR 195.12(b)(3)(ii)]

c. if the stress level is unknown or the pipeline is not constructed with steel pipe, a pressure equal to or less than 125 psi (861 kPa) gage. [49 CFR 195.12(b)(3)(iii)]

C. Applicable Requirements and Deadlines for Compliance. An operator must comply with the following compliance dates depending on the category of pipeline determined by the criteria in Subsection B. [49 CFR 195.12(c)]

1. An operator of a Category 1 pipeline must: [49 CFR 195.12(c)(1)]

a. identify all segments of pipeline meeting the criteria in Paragraph B.1 of this Section before April 3, 2009. [49 CFR 195.12(c)(1)(i)]

b. Beginning no later than January 3, 2009, comply with the reporting requirements of Subchapter B of Chapter 301. for the identified segments. [49 CFR 195.12(c)(1)(ii)]

c. IM requirements— [49 CFR 195.12(c)(1)(iii)]

i. establish a written program that complies with §30452 before July 3, 2009, to assure the integrity of the pipeline segments. Continue to carry out such program in compliance with §30452. [49 CFR 195.12(c)(1)(iii)(A)]

ii. an operator may conduct a determination per §30452.A in lieu of the one-half mile buffer; [49 CFR 195.12(c)(1)(iii)(B)]

iii. complete the baseline assessment of all segments in accordance with §30452.C before July 3, 2015, and complete at least 50-percent of the assessments, beginning with the highest risk pipe, before January 3, 2012. [49 CFR 195.12(c)(1)(iii)(C)]

d. Comply with all other safety requirements of this Subpart, except Subchapter B of Chapter 305., before July 3, 2009. Comply with the requirements of Subchapter B of Chapter 305. before July 3, 2011. [49 CFR 195.12(c)(1)(d)]

2. An operator of a Category 2 pipeline must: [49 CFR 195.12(c)(2)]

a. identify all segments of pipeline meeting the criteria in Paragraph B.2 of this Section before July 1, 2012. [49 CFR 195.12(c)(2)(i)]

b. beginning no later than January 3, 2009, comply with the reporting requirements of Subchapter B of Chapter 301. for the identified segments; [49 CFR 195.12(c)(2)(ii)]

c. IM— [49 CFR 195.12(c)(2)(iii)]

i. establish a written IM program that complies with §30452 before October 1, 2012 to assure the integrity of the pipeline segments. Continue to carry out such program in compliance with §30452; [49 CFR 195.12(c)(2)(iii)(A)]

ii. an operator may conduct a determination per §30452.A in lieu of the one-half mile buffer; [49 CFR 195.12(c)(2)(iii)(B)]

iii. complete the baseline assessment of all segments in accordance with §30452.C before October 1, 2016 and complete at least 50-percent of the assessments, beginning with the highest risk pipe, before April 1, 2014; [49 CFR 195.12(c)(2)(iii)(C)]

d. comply with all other safety requirements of this Subpart, except Subchapter B of Chapter 305., before October 1, 2012. Comply with Subchapter B of Chapter 305. before October 1, 2014. [49 CFR 195.12(c)(2)(iv)]

3. An operator of a Category 3 pipeline must: [49 CFR 195.12(c)(3)]

a. identify all segments of pipeline meeting the criteria in Paragraph B.3 of this Section before July 1, 2012. [49 CFR 195.12(c)(3)(i)]

b. beginning no later than January 3, 2009, comply with the reporting requirements of Subchapter B of Chapter 301. for the identified segments. [49 CFR 195.12(c)(3)(ii)]

c. comply with all safety requirements of this Subpart, except the requirements in §30452, Subchapter B of Chapter 301. , and the requirements in Subchapter B of Chapter 305., before October 1, 2012. Comply with Subchapter B of Chapter 305. before October 1, 2014. [49 CFR 195.12(c)(3)(iii)]

D. Economic Compliance Burden [49 CFR 195.12(d)]

1. An operator may notify PHMSA in accordance with §30452.M of a situation meeting the following criteria: [49 CFR 195.12(d)(1)]

a. the pipeline is a Category 1 rural low-stress pipeline; [49 CFR 195.12(d)(1)(i)]

b. the pipeline carries crude oil from a production facility; [49 CFR 195.12(d)(1)(ii)]

c. the pipeline, when in operation, operates at a flow rate less than or equal to 14,000 barrels per day; and [49 CFR 195.12(d)(1)(iii)]

d. the operator determines it would abandon or shut-down the pipeline as a result of the economic burden to comply with the assessment requirements in §§30452.D or 30452.J. [49 CFR 195.12(d)(1)(iv)]

2. A notification submitted under this provision must include, at minimum, the following information about the

pipeline: Its operating, maintenance and leak history; the estimated cost to comply with the integrity assessment requirements (with a brief description of the basis for the estimate); the estimated amount of production from affected wells per year, whether wells will be shut in or alternate transportation used, and if alternate transportation will be used, the estimated cost to do so. [49 CFR 195.12(d)(2)]

3. When an operator notifies PHMSA in accordance with Paragraph D.1 of this Section, PHMSA will stay compliant with §§30452.D and 30452.J.3 until it has completed an analysis of the notification. PHMSA will consult the Department of Energy (DOE), as appropriate, to help analyze the potential energy impact of loss of the pipeline. Based on the analysis, PHMSA may grant the operator a special permit to allow continued operation of the pipeline subject to alternative safety requirements. [49 CFR 195.12(d)(3)]

E. Changes in unusually sensitive areas. [49 CFR 195.12(e)]

1. If, after June 3, 2008, for Category 1 rural low-stress pipelines or October 1, 2011 for Category 2 rural low-stress pipelines, an operator identifies a new USA that causes a segment of pipeline to meet the criteria in Subsection B of this Section as a Category 1 or Category 2 rural low-stress pipeline, the operator must: [49 CFR 195.12(e)(1)]

a. comply with the IM program requirement in Clause C.2.c.i or C.2.c.i of this Section, as appropriate, within 12 months following the date the area is identified regardless of the prior categorization of the pipeline; and [49 CFR 195.12(e)(1)(i)]

b. complete the baseline assessment required by clause C.1.c.iii or C.2.c.iii of this Section, as appropriate, according to the schedule in §39452.D.3. [49 CFR 195.12(e)(1)(ii)]

2. If a change to the boundaries of a USA causes a Category 1 or Category 2 pipeline segment to no longer be within one-half mile of a USA, an operator must continue to comply with Subparagraph C.1.c or Subparagraph C.2.c of this section, as applicable, with respect to that segment unless the operator determines that a release from the pipeline could not affect the USA. [49 CFR 195.12(e)(2)]

F. Record Retention. An operator must maintain records demonstrating compliance with each requirement applicable to the category of pipeline according to the following schedule. [49 CFR 195.12(f)]

1. An operator must maintain the segment identification records required in Subparagraph C.1.a, C.2.a or C.3.a of this Section for the life of the pipe. [49 CFR 195.12(f)(1)]

2. Except for the segment identification records, an operator must maintain the records necessary to demonstrate compliance with each applicable requirement set forth in Subsection C of this Section according to the record retention requirements of the referenced Section, Subpart or Subchapter.

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 35:2794 (December 2009), amended LR 37:

Subchapter B. Reporting Accidents and Safety-Related Conditions [Subpart B]

§30123. Scope [49 CFR 195.48]

A. This Subchapter prescribes requirements for periodic reporting and for reporting of accidents and safety-related conditions. This Subchapter applies to all pipelines subject to this Subpart. An operator of a Category 3 rural low-stress pipeline meeting the criteria in §30118 is not required to complete those parts of the hazardous liquid annual report form PHMSA F 7000-1.1 associated with IM or high consequence areas. [49CFR 195.48]

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 35:2795 (December 2009), amended LR 37:

§30124. Annual Report [49 CFR 195.49]

A. Each operator must annually complete and submit DOT Form PHMSA F 7000-1.1 for each type of hazardous liquid pipeline facility operated at the end of the previous year. An operator must submit the annual report by June 15 each year, except that for the 2010 reporting year the report must be submitted by August 15, 2011. A separate report is required for crude oil, HVL (including anhydrous ammonia), petroleum products, carbon dioxide pipelines, and fuel grade ethanol pipelines. For each state a pipeline traverses, an operator must separately complete those sections on the form requiring information to be reported for each state. [49 CFR 195.49]

B. For intrastate facilities subject to the jurisdiction of the Office of Conservation, must be sent to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94275 Baton Rouge, LA 70804-9275.

1. Annual report information must only include data for intrastate facilities subject to the jurisdiction of the Office of Conservation.

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 37:

§30127. Telephonic Notice of Certain Accidents [49 CFR 195.52]

A. Notice Requirements. At the earliest practicable moment within two hours following discovery of a release of the hazardous liquid or carbon dioxide transported resulting in an event described in §30125, the operator of the system shall give notice, in accordance with §30127.B of any failure that: [49 CFR 195.52(a)]

1. - 5. ...

B. Information Required. Each notice required by subsection A of this section must be made to the National Response Center either by telephone to 800-424-8802 (in Washington, DC, 202-267-2675) or electronically at <http://www.nrc.uscg.mil> and by telephone to the State of Louisiana to (225) 342-5585 (day) or (225) 342-5505 (after working hours) and must include the following information: [49 CFR 195.52(b)]

1. name, address and identification number of the operator; [49 CFR 195.52(b)(1)]

2. name and telephone number of the reporter; [49 CFR 195.52(b)(2)]

3. the location of the failure; [49 CFR 195.52(b)(3)]
4. the time of the failure; [49 CFR 195.52(b)(4)]
5. the fatalities and personal injuries if any; [49 CFR 195.52(b)(5)]

6. initial estimate of amount of product released in accordance with Subsection C of this Section—[49 CFR 195.52(b)(6)]

7. all other significant facts known by the operator that are relevant to the cause of the failure or extent of the damages. [49 CFR 195.52(b)(7)]

C. Calculation. A pipeline operator must have a written procedure to calculate and provide a reasonable initial estimate of the amount of released product. [49 CFR 195.52(c)]

D. New Information. An operator must provide an additional telephonic report to the NRC and for intrastate facilities subject to the jurisdiction of the Office of Conservation, to the Office of Conservation if significant new information becomes available during the emergency response phase of a reported event at the earliest practicable moment after such additional information becomes known. [49 CFR 195.52(d)]

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 15:629 (August 1989), amended LR 18:863 (August 1992), LR 20:440 (April 1994), LR 21:816 (August 1995), LR 29:2811 (December 2003), LR 35:2795 (December 2009), LR 37:

§30131. Accident Reports [49 CFR 195.54]

A. Each operator that experiences an accident that is required to be reported under §30125 must, as soon as practicable, but not later than 30 days after discovery of the accident, file an accident report on DOT Form 7000-1. For intrastate facilities subject to the jurisdiction of the Office of Conservation, must be sent concurrently to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94275 Baton Rouge, LA 70804-9275. [49 CFR 195.54(a)]

B. Whenever an operator receives any changes in the information reported or additions to the original report on DOT Form 7000-1, it shall file a supplemental report within 30 days. For intrastate facilities subject to the jurisdiction of the Office of Conservation, must be sent concurrently to the Commissioner of Conservation, Office of Conservation, Pipeline Safety Section, P.O. Box 94275 Baton Rouge, LA 70804-9275. [49 CFR 195.54(b)]

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 15:629 (August 1989), LR 20:440 (April 1994), LR 29:2811 (December 2003), amended LR 37:

§30137. Annual Report

Repealed

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 15:629 (August 1989), amended LR 29:2812 (December 2003), LR 35:2795 (December 2009), 37:

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 29:2812 (December 2003), amended LR 33:468 (March 2007), LR 35:2795 (December 2009), LR 37:

§30140. Report Submission Requirements
[49 CFR 195.58]

A. General. Except as provided in Subsection B of this Section, an operator must submit each report required by this part electronically to PHMSA at <http://opsweb.phmsa.dot.gov> unless an alternative reporting method is authorized in accordance with subsection D of this Section. [49 CFR 195.58(a)]

1. Each report required by §30140.A, for intrastate facilities subject to the jurisdiction of the Office of Conservation, must also be submitted to Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275.

a. Annual report information must only include data for intrastate facilities subject to the jurisdiction of the Office of Conservation.

B. Exceptions. An operator is not required to submit a safety-related condition report (§30135) or an offshore pipeline condition report (§30139) electronically. [49 CFR 195.58 (b)]

C. Safety-Related Conditions. An operator must submit concurrently to the applicable State agency a safety-related condition report required by §30133 for an intrastate pipeline or when the state agency acts as an agent of the secretary with respect to interstate pipelines. [49 CFR 195.58(c)]

D. Alternate Reporting Method. If electronic reporting imposes an undue burden and hardship, the operator may submit a written request for an alternative reporting method to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE., Washington DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at 202-366-8075, or electronically to informationresourcesmanager@dot.gov to make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received. [49 CFR 195.58(d)]

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 29:2812 (December 2003), amended LR 33:469 (March 2007), LR 35:2795 (December 2009), LR 37:

§30144. Supplies of Accident Report DOT Form 7000-1
[49 CFR 195.62]

Repealed

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

29:2813 (December 2003), amended LR 35:2796 (December 2009), LR 37:

§30145. OMB Control Number Assigned to Information Collection [49 CFR 195.63]

A. The control number assigned by the Office of Management and Budget to the hazardous liquid pipeline information collection pursuant to the Paperwork Reduction Act are 2137-0047, 2137-0601, 2137-0604, 2137-0605, 2137-0618, and 2137-0622. [49 CFR 195.63]

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 29:2813 (December 2003), amended LR 37:

§30146. National Registry of Pipeline and LNG Operators [49 CFR 195.64]

A. OPID Request. Effective January 1, 2012, each operator of a hazardous liquid pipeline or pipeline facility must obtain from PHMSA an operator identification number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain an OPID or a change to an OPID, an operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with §30140. [49 CFR 195.64(a)]

B. OPID Validation. An operator who has already been assigned one or more OPID by January 1, 2011 must validate the information associated with each such OPID through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, and correct that information as necessary, no later than June 30, 2012. [49 CFR 195.64(b)]

C. Changes. Each operator must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, of certain events. [49 CFR 195.64(c)]

1. An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs: [49 CFR 195.64(c)(1)]

a. construction or any planned rehabilitation, replacement, modification, upgrade, uprate, or update of a facility, other than a section of line pipe, that costs \$10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable; [49 CFR 195.64(c)(1)(i)]

b. construction of 10 or more miles of a new hazardous liquid pipeline; or [49 CFR 195.64(c)(1)(ii)]

c. construction of a new pipeline facility. [49 CFR 195.64(c)(1)(iii)]

2. An operator must notify PHMSA of any following event not later than 60 days after the event occurs: [49 CFR 195.64(c)(2)]

a. a change in the primary entity responsible (i.e., with an assigned OPID) for managing or administering a safety program required by this Subpart covering pipeline facilities operated under multiple OPIDs. [49 CFR 195.64(c)(2)(i)]

b. a change in the name of the operator; [49 CFR 195.64(c)(2)(ii)]

c. a change in the entity (e.g., company, municipality) responsible for operating an existing pipeline, pipeline segment, or pipeline facility; [49 CFR 195.64(c)(2)(iii)]

d. the acquisition or divestiture of 50 or more miles of pipeline or pipeline system subject to this subpart; or [49 CFR 195.64(c)(2)(iv)]

e. the acquisition or divestiture of an existing pipeline facility subject to this Subpart. [49 CFR 195.64(c)(2)(v)]

D. Reporting. An operator must use the OPID issued by PHMSA for all reporting requirements covered under this Subpart and for submissions to the National Pipeline Mapping System. [49 CFR 195.64(d)]

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 37:

Subchapter C. Design Requirements [Subpart C]

§30173. Valves [49 CFR 195.116]

A. - A.3. ...

4. Each valve must be both hydrostatically shell tested and hydrostatically seat tested without leakage to at least the requirements set forth in Section 11 of API Standard 6D (incorporated by reference, see §30107). [49 CFR 195.116(d)]

5. - 6.d. ...

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 15:629 (August 1989), amended LR 18:864 (August 1992), LR 29:2816 (December 2003), LR 33:469 (March 2007), LR 35:2796 (December 2009), LR 37:

Chapter 302. Transportation of Hazardous Liquids by Pipeline—Construction [49 CFR Part 195 Subpart D]

§30207. Transportation of Pipe [49 CFR 195.207]

A. Railroad. In a pipeline 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 the transportation is performed in accordance with API Recommended Practice 5L1 (incorporated by reference, see §30107). [49 CFR 195.207(a)]

B. Ship or Barge. In a pipeline 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 ship or barge on both inland and marine waterways, unless the transportation is performed in accordance with API Recommended Practice 5LW (incorporated by reference, see §30107). [49 CFR 195.207(b)]

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 37:

§30264. Impoundment, Protection against Entry, Normal/Emergency Venting or Pressure/Vacuum Relief for Aboveground Breakout Tanks [49 CFR 195.264]

A. - E. ...

1. Normal/emergency relief venting installed on atmospheric pressure tanks built to API Specifications 12F (incorporated by reference, see §30107) must be in accordance with Section 4, and Appendices B and C, of API Specification 12F (incorporated by reference, see §30107). [49 CFR 195.264(e)(1)]

2. Normal/emergency relief venting installed on atmospheric pressure tanks (such as those built to API Standard 650 or its predecessor Standard 12C) must be in accordance with API Standard 2000 (incorporated by reference, see §30107). [49 CFR 195.264(e)(2)]

3. Pressure-relieving and emergency vacuum relieving devices installed on low pressure tanks built to API Standard 620 (incorporated by reference, see §30107) must be in accordance with Section 9 of API Standard 620 (incorporated by reference, see §30107) and its references to the normal and emergency venting requirements in API Standard 2000 (incorporated by reference, see §30107). [49 CFR 195.264(e)(3)].

4. Pressure and vacuum-relieving devices installed on high pressure tanks built to API Standard 2510 (incorporated by reference, see §30107) must be in accordance with Sections 7 or 11 of API Standard 2510 (incorporated by reference, see §30107). [49 CFR 195.264(e)(4)].

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 29:2821 (December 2003), amended LR 33:470 (March 2007), LR 35:2797 (December 2009), LR 37:

Chapter 303. Transportation of Hazardous Liquids by Pipeline—Pressure Testing [49 CFR Part 195 Subpart E]

§30307. Pressure Testing Aboveground Breakout Tanks [49 CFR 195.307]

A. For aboveground breakout tanks built to API Specification 12F and first placed in service after October 2, 2000, pneumatic testing must be in accordance with Section 5.3 of API Specification 12 F (incorporated by reference, see §30107). [49 CFR 195.307(a)]

B. For aboveground breakout tanks built to API Standard 620 and first placed in service after October 2, 2000, hydrostatic and pneumatic testing must be in accordance with Section 7.18 of API Standard 620 (incorporated by reference, see §30107) [49 CFR 195.307(b)].

C. For aboveground breakout tanks built to API Standard 650 (incorporated by reference, see §30107) and first placed in service after October 2, 2000, testing must be in accordance with Section 5.2 of API Standard 650 (incorporated by reference, see §30107). [49 CFR 195.307(c)]

D. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2823 (December 2003), amended LR 33:470 (March 2007), LR 37:

Chapter 304. Transportation of Hazardous Liquids by Pipeline—Operation and Maintenance
[49 CFR Part 195 Subpart F]

§30401. General Requirements [49 CFR 195.401]

A. No operator may operate or maintain its pipeline systems at a level of safety lower than that required by this Chapter and the procedures it is required to establish under §30402.A. [49 CFR 195.401(a)]

B. An operator must make repairs on its pipeline system according to the following requirements. [49 CFR 195.401(b)]

1. Non Integrity Management Repairs. Whenever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition. [49 CFR 195.401(b)(1)]

2. Integrity Management Repairs. When an operator discovers a condition on a pipeline covered under §30452, the operator must correct the condition as prescribed in §30452.H. [49 CFR 195.401(b)(2)]

C. - C.5. ...

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 29:2824 (December 2003), amended LR 37:

§30402. Procedural Manual for Operations, Maintenance, and Emergencies
[49 CFR 195.402]

A. - C.14. ...

15. Implementing the applicable control room management procedures required by §30446. [49 CFR 195.402(c)(15)]

D. - E.9. ...

10. Actions required to be taken by a controller during an emergency, in accordance with §30446. [49 CFR 195.402(e)(10)]

F. ...

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 29:2824 (December 2003), amended LR 37:

§30432. Inspection of In-Service Breakout Tanks [49 CFR 195.432]

A. ...

B. Each operator must inspect the physical integrity of in-service atmospheric and low-pressure steel aboveground breakout tanks according to API Standard 653 (incorporated by reference, see §30107). However, if structural conditions prevent access to the tank bottom, the bottom integrity may be assessed according to a plan included in the operations and maintenance manual under 30402.C.3. [49 CFR 195.432(b)]

C. - D. ...

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 29:2829 (December 2003), amended LR 37:

§30440. Public Awareness [49 CFR 195.440]

A. ...

B. The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities, except as stated in Paragraph B.1. [49 CFR 195.440(b)]

1. Regulatory inspections are not an acceptable alternative to conducting an annual audit for measuring program implementation as mentioned in API RP 1162 Section 8.3.

C. Changes. Each operator must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, of certain events. For intrastate facilities subject to the jurisdiction of the Office of Conservation, a copy must also be submitted to Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. [49 CFR 195.64(c)]

D. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2829 (December 2003), amended LR 33:470 (March 2007), LR 35:2797 (December 2009), LR 37:

§30446. Control Room Management [49 CFR 195.446]

A. General. This Section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this Section. The procedures required by this Section must be integrated, as appropriate, with the operator's written procedures required by §30402. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by Subsections and Paragraphs B, C.5, D.2, D.3, F and G of this Section must be implemented no later than October 1, 2011. The procedures required by Paragraphs C.1 through C.4, D.1, D.4, and E must be implemented no later than August 1, 2012. The training procedures required by Subsection H must be implemented no later than August 1, 2012, except that any training required by another Paragraph of this Section must be implemented no later than the deadline for that Paragraph. [49 CFR 195.446(a)]

B. Roles and Responsibilities. Each operator must define the roles and responsibilities of a controller during normal, abnormal, and emergency operating conditions. To provide for a controller's prompt and appropriate response to operating conditions, an operator must define each of the following: [49 CFR 195.446(b)]

1. a controller's authority and responsibility to make decisions and take actions during normal operations; [49 CFR 195.446(b)(1)]

2. a controller's role when an abnormal operating condition is detected, even if the controller is not the first to detect the condition, including the controller's responsibility to take specific actions and to communicate with others; [49 CFR 195.446(b)(2)]

3. a controller's role during an emergency, even if the controller is not the first to detect the emergency, including the controller's responsibility to take specific actions and to communicate with others; and [49 CFR 195.446(b)(3)]

4. a method of recording controller shift-changes and any hand-over of responsibility between controllers. [49 CFR 195.446(b)(4)]

C. Provide Adequate Information. Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following: [49 CFR 195.446(c)]

1. implement API RP 1165 (incorporated by reference, see §30107) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of API RP 1165 are not practical for the SCADA system used; [49 CFR 195.446(c)(1)]

2. conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays; [49 CFR 195.446(c)(2)]

3. test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months; [49 CFR 195.446(c)(3)]

4. test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and [49 CFR 195.446(c)(4)]

5. implement Section 5 of API RP 1168 (incorporated by reference, see §30107) to establish procedures for when a different controller assumes responsibility, including the content of information to be exchanged. [49 CFR 195.446(c)(5)]

D. Fatigue Mitigation. Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined: [49 CFR 195.446(d)]

1. establish shift lengths and schedule rotations that provide controllers off-duty time sufficient to achieve eight hours of continuous sleep; [49 CFR 195.446(d)(1)]

2. educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue; [49 CFR 195.446(d)(2)]

3. train controllers and supervisors to recognize the effects of fatigue; and [49 CFR 195.446(d)(3)]

4. establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility. [49 CFR 195.446(d)(4)]

E. Alarm Management. Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to: [49 CFR 195.446(e)]

1. review SCADA safety-related alarm operations using a process that ensures alarms are accurate and support safe pipeline operations; [49 CFR 195.446(e)(1)]

2. identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or

that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities; [49 CFR 195.446(e)(2)]

3. verify the correct safety-related alarm set-point values and alarm descriptions when associated field instruments are calibrated or changed and at least once each calendar year, but at intervals not to exceed 15 months; [49 CFR 195.446(e)(3)]

4. review the alarm management plan required by this subsection at least once each calendar year, but at intervals not exceeding 15 months, to determine the effectiveness of the plan; [49 CFR 195.446(e)(4)]

5. monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not exceeding 15 months, that will assure controllers have sufficient time to analyze and react to incoming alarms; and [49 CFR 195.446(e)(5)]

6. address deficiencies identified through the implementation of Paragraphs E.1 through E.5 of this Section. [49 CFR 195.446(e)(6)]

F. Change Management. Each operator must assure that changes that could affect control room operations are coordinated with the control room personnel by performing each of the following: [49 CFR 195.446(f)]

1. implement Section 7 of API RP 1168 (incorporated by reference, see §30107) for control room management change and require coordination between control room representatives, operator's management, and associated field personnel when planning and implementing physical changes to pipeline equipment or configuration; and [49 CFR 195.446(f)(1)]

2. require its field personnel to contact the control room when emergency conditions exist and when making field changes that affect control room operations. [49 CFR 195.446(f)(2)]

G. Operating Experience. Each operator must assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures by performing each of the following. [49 CFR 195.446(g)]

1. Review accidents that must be reported pursuant to §30125 and 30127 to determine if control room actions contributed to the event and, if so, correct, where necessary, deficiencies related to: [49 CFR 195.446(g)(1)]

a. controller fatigue; [49 CFR 195.446(g)(1)(i)]

b. field equipment; [49 CFR 195.446(g)(1)(ii)]

c. the operation of any relief device; [49 CFR 195.446(g)(1)(iii)]

d. procedures; [49 CFR 195.446(g)(1)(iv)]

e. SCADA system configuration; and [49 CFR 195.446(g)(1)(v)]

f. SCADA system performance. [49 CFR 195.446(g)(1)(vi)]

2. Include lessons learned from the operator's experience in the training program required by this Section. [49 CFR 195.446(g)(2)]

H. Training. Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry

out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements: [49 CFR 195.446(h)]

1. responding to abnormal operating conditions likely to occur simultaneously or in sequence; [49 CFR 195.446(h)(1)]

2. use of a computerized simulator or non-computerized (tabletop) method for training controllers to recognize abnormal operating conditions; [49 CFR 195.446(h)(2)]

3. training controllers on their responsibilities for communication under the operator's emergency response procedures; [49 CFR 195.446(h)(3)]

4. training that will provide a controller a working knowledge of the pipeline system, especially during the development of abnormal operating conditions; and [49 CFR 195.446(h)(4)]

5. for pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application. [49 CFR 195.446(h)(5)]

I. Compliance Validation. Upon request, operators must submit their procedures to PHMSA or, in the case of an intrastate pipeline facility regulated by a state, to the appropriate state agency. [49 CFR 195.446(i)]

J. Compliance and Deviations. An operator must maintain for review during inspection: [49 CFR 195.446(j)]

1. records that demonstrate compliance with the requirements of this Section; and [49 CFR 195.446(j)(1)]

2. documentation to demonstrate that any deviation from the procedures required by this Section was necessary for the safe operation of the pipeline facility. [49 CFR 195.446(j)(2)]

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 37:

§30452. Pipeline Integrity Management in High Consequence Areas [49 CFR 195.452]

A. - H.3. ...

4. Special Requirements for Scheduling Remediation [49 CFR 195.452(h)(4)]

a. Immediate Repair Conditions. An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formula in Section 451.6.2.2 (b) of ASME/ANSI B31.4 (incorporated by reference, see §30107); An operator must treat the following conditions as immediate repair conditions: [49 CFR 195.452(h)(4)(i)]

H.4a.i. - M.3. ...

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 30:1216 (June 2004), LR 33:471 (March 2007), LR 35:2797 (December 2009), LR 37:

Subchapter B. Corrosion Control [49 CFR Part 195 Subpart H]

§30571. What criteria must I use to determine the adequacy of cathodic protection?

[49 CFR 195.571]

A. Cathodic protection required by this Subchapter must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in Paragraphs 6.2 and 6.3 of NACE SP 0169 (incorporated by reference, see §30107) [49 CFR 195.571].

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2838 (December 2003), amended LR 33:472 (March 2007), LR 37:

§30573. What must I do to monitor external corrosion control? [49 CFR 195.573]

A. - A.1. ...

2. Identify not more than two years after cathodic protection is installed, the circumstances in which a close-interval survey or comparable technology is practicable and necessary to accomplish the objectives of Paragraph 10.1.1.3 of NACE SP 0169 (incorporated by reference, see §30107). [49 CFR 195.573(a)(2)]

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2838 (December 2003), amended LR 33:472 (March 2007), LR 35:2798 (December 2009), LR 37:

§30588. What standards apply to direct assessment? [49 CFR 195.588]

A. If you use direct assessment on an onshore pipeline to evaluate the effects of external corrosion, you must follow the requirements of this Section for performing external corrosion direct assessment. This Section does not apply to methods associated with direct assessment, such as close interval surveys, voltage gradient surveys, or examination of exposed pipelines, when used separately from the direct assessment process. [49 CFR 195.588(a)]

B. The requirements for performing external corrosion direct assessment are as follows. [49 CFR 195.588(b)]

1. General. You must follow the requirements of NACE SP0502 (incorporated by reference, see §30107). Also, you must develop and implement a External Corrosion Direct Assessment (ECDA) plan that includes procedures addressing pre-assessment, indirect examination, direct examination, and post-assessment. [49 CFR 195.588(b)(1)]

2. Pre-Assessment. In addition to the requirements in Section 3 of NACE SP0502 (incorporated by reference, see §30107), the ECDA plan procedures for pre-assessment must include: [49 CFR 195.588(b)(2)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment; [49 CFR 195.588(b)(2)(i)]

b. the basis on which you select at least two different, but complementary, indirect assessment tools to assess each ECDA region; and [49 CFR 195.588(b)(2)(ii)]

c. if you utilize an indirect inspection method not described in Appendix A of NACE Standard SP0502 (incorporated by reference, see §30107), you must demonstrate the applicability, validation basis, equipment

used, application procedure, and utilization of data for the inspection method. [49 CFR 195.588(b)(2)(iii)]

3. Indirect examination. In addition to the requirements in Section 4 of NACE SP0502 (incorporated by reference, see §30107), the procedures for indirect examination of the ECDA regions must include: [49 CFR 195.588(b)(3)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment; [49 CFR 195.588(b)(3)(i)]

b. criteria for identifying and documenting those indications that must be considered for excavation and direct examination, including at least the following: [49 CFR 195.588(b)(3)(ii)]

i. the known sensitivities of assessment tools; [49 CFR 195.588(b)(3)(ii)(A)]

ii. the procedures for using each tool; and [49 CFR 195.588(b)(3)(ii)(B)]

iii. 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 195.588(b)(3)(ii)(C)]

c. for each indication identified during the indirect examination, criteria for: [49 CFR 195.588(b)(3)(iii)]:

i. defining the urgency of excavation and direct examination of the indication; and [49 CFR 195.588(b)(3)(iii)(A)]

ii. defining the excavation urgency as immediate, scheduled, or monitored; and [49 CFR 195.588(b)(3)(iii)(B)]

d. criteria for scheduling excavations of indications in each urgency level. [49 CFR 195.588(b)(3)(iv)]

4. Direct Examination. In addition to the requirements in Section 5 of NACE SP0502 (incorporated by reference, see §30107), the procedures for direct examination of indications from the indirect examination must include: [49 CFR 195.588(b)(4)]

a. provisions for applying more restrictive criteria when conducting ECDA for the first time on a pipeline segment; [49 CFR 195.588(b)(4)(i)]

b. criteria for deciding what action should be taken if either: [49 CFR 195.588(b)(4)(ii)]

i. corrosion defects are discovered that exceed allowable limits (Section 5.5.2.2 of NACE SP0502 (incorporated by reference, see §30107), provides guidance for criteria); or [49 CFR 195.588(b)(4)(ii)(A)]

ii. root cause analysis reveals conditions for which ECDA is not suitable (Section 5.6.2 of NACE SP0502 (incorporated by reference, see §30107), provides guidance for criteria); [49 CFR 195.588(b)(4)(ii)(B)]

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 195.588(b)(4)(iii)]

d. criteria that describe how and on what basis you will reclassify and re-prioritize any of the provisions specified in Section 5.9 of NACE SP0502 (incorporated by reference, see §30107). [49 CFR 195.588(b)(4)(iv)]

5. Post Assessment and Continuing Evaluation. In addition to the requirements in Section 6 of NACE SP0502 (incorporated by reference, see §30107), the procedures for

post assessment of the effectiveness of the ECDA process must include: [49 CFR 195.588(b)(5)]

a. measures for evaluating the long-term effectiveness of ECDA in addressing external corrosion in pipeline segments; and [49 CFR 195.588(b)(5)(i)]

b. criteria for evaluating whether conditions discovered by direct examination of indications in each ECDA region indicate a need for reassessment of the pipeline segment at an interval less than that specified in Sections 6.2 and 6.3 of NACE SP0502 (see Appendix D of NACE SP0502) (incorporated by reference, see §30107). [49 CFR 195.588(b)(5)(ii)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 33:472 (March 2007), amended LR 35:2799 (December 2009), LR 37:

Chapter 309. Transportation of Hazardous Liquids by Pipeline—Appendices [49 CFR Part 195]

§30901. Reserved.

§30903. Reserved.

§30905. Appendix C to Subpart 3—Guidance for Implementation of Integrity Management Program [49 CFR Part 195 Appendix C]

A. This appendix gives guidance to help an operator implement the requirements of the integrity management program rule in §30450 and §30452. Guidance is provided on:

1. information an operator may use to identify a high consequence area and factors an operator can use to consider the potential impacts of a release on an area;

2. risk factors an operator can use to determine an integrity assessment schedule;

3. safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category;

4. types of internal inspection tools an operator could use to find pipeline anomalies;

5. measures an operator could use to measure an integrity management program's performance;

6. types of records an operator will have to maintain; and

7. types of conditions that an integrity assessment may identify that an operator should include in its required schedule for evaluation and remediation.

I. Identifying a High Consequence Area and Factors for Considering a Pipeline Segment's Potential Impact on a High Consequence Area

A. The rule defines a high consequence area as a high population area, another populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping System (NPMS). An operator, member of the public, or other government agency may view and download the data from the NPMS home page <http://www.npms.phmsa.gov/>. OPS will maintain the NPMS and update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically

evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to §30452.D.3.) For more information to help in identifying high consequence areas, an operator may refer to:

I.A.1. - VII.F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2840 (December 2003), repromulgated LR 30:260 (February 2004), amended LR 30:1217 (June 2004), LR 37:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. This Rule will have no known effect on the stability of the family.

2. This Rule will have no known effect on the authority and rights of parents regarding the education and supervision of their children.

3. This Rule will have no known effect on the functioning of the family.

4. This Rule will have no known effect on family earnings and family budget.

5. This Rule will have no known effect on the behavior and personal responsibility of children.

6. This Rule will have no known effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at said public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., Thursday, November 3, 2011. If accommodations are required under the Americans with Disabilities Act, please contact the Pipeline Division at (225) 342-5505 within ten working days of the hearing date. Direct comments to: James H. Welsh, Commissioner of Conservation, Post Office Box 94275, Baton Rouge, LA 70804-9275, RE: Docket No. PL 11-062

Public Hearing

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950, a public hearing will be held in the La Belle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA, at 9 a.m. on October 27, 2011.

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 are no additional costs or savings to state or local governmental units. The U.S. Office of Pipeline Safety adopts amendments to pipeline safety regulations every year. The purpose of this rule is to adopt these federal amendments to

pipeline safety regulations pertaining to hazardous liquids pipelines.

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

There is no anticipated effect on revenue collections of state or local governmental units as a result of this rule change.

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

Benefits will be realized by persons living and working near hazardous liquids pipelines through safer construction and operation standards imposed by the rule amendments. There will be negligible costs to hazardous liquids pipeline operators. Any costs associated with compliance with the safety regulations should have already been absorbed by the regulated companies, since all of the requirements have been implemented by federal laws.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition and employment as a result of this rule change.

James H. Welsh
Commissioner
1109#042

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Natural Resources Office of Conservation

Natural Gas Pipeline Safety
(LAC 43:III.Chapters 3-51)

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 natural gas pipelines.

There will be negligible cost to directly affected persons or natural gas pipeline operators. Benefits will be realized by persons living and working near natural gas pipelines through safer construction and operation standards imposed by the rule amendments. Moreover, Louisiana presently receives federal funds and pipeline inspection 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.

Title 43

NATURAL RESOURCES

Part VIII. Office of Conservation-Pipeline Safety Subpart 2. Transportation of Natural Gas 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. - B.3. ...

4. Onshore Gathering of Gas— [49 CFR 191.1 (b)(4)]

a. through a pipeline that operates at less than 0 psig (0 kPa); [49 CFR 191.1(b)(4)(i)]

b. through a pipeline that is not a regulated onshore gathering line (as determined in §508 of this Part); and [191.(b)(4)(ii)]

c. within inlets of the Gulf of Mexico, except for the requirements in §2712. [191.1(b)(4)(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, LR 9:218 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 18:854 (August 1992), LR 27:1536 (September 2001), LR 30:1220 (June 2004), LR 33:473 (March 2007), LR 37:

§303. Definitions

[49 CFR 191.3]

A. As used in Part XIII and in the PHMSA Forms referenced in this Part [49 CFR 191.3]:

* * *

Incident—any of the following events:

a. an event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:

i. a death, or personal injury necessitating in-patient hospitalization;

ii. estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;

iii. unintentional estimated gas loss of three million cubic feet or more;

b. an event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident;

c. an event that is significant in the judgment of the operator, even though it did not meet the criteria of Subparagraphs a or b of this definition.

* * *

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 30:1221 (June 2004), LR 33:473 (March 2007), LR 37:

§305. Immediate Notice of Certain Incidents

[49 CFR 191.5]

A. ...

B. Each notice required by Subsection A of this Section must be made to the National Response Center either by telephone to (800) 424- 8802 (in Washington, DC, 202 267-2675) or electronically at [http:// www.nrc.uscg.mil](http://www.nrc.uscg.mil) and by telephone to the State of Louisiana to (225) 342-5585 (day) or (225) 342-5505 (after working hours) and must include the following information: [49 CFR 191.5(b)]

1 - 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 30:1221 (June 2004), LR 37:

§307. Report Submission Requirements

[49 CFR 191.7]

A. General. Except as provided in Subsection B of this Section, an operator must submit each report required by this part electronically to the Pipeline and Hazardous Materials Safety Administration at <http://opsweb.phmsa.dot.gov> unless an alternative reporting method is authorized in accordance with Subsection D of this Section. [49 CFR 191.7(a)]

1. Each report required by §307.A, for intrastate facilities subject to the jurisdiction of the Office of Conservation, must also be submitted to Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275.

a. Annual report information must only include data for intrastate facilities subject to the jurisdiction of the Office of Conservation.

B. Exceptions. An operator is not required to submit a safety-related condition report (§325) or an offshore pipeline condition report (§327) electronically. [49 CFR 191.7(b)]

C. Safety-Related Conditions. An operator must submit concurrently to the applicable State agency a safety-related condition report required by §323 for intrastate pipeline transportation or when the State agency acts as an agent of the secretary with respect to interstate transmission facilities. [49 CFR 191.7(c)]

D. Alternative Reporting Method. If electronic reporting imposes an undue burden and hardship, an operator may submit a written request for an alternative reporting method to the Information Resources Manager, Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, PHP-20, 1200 New Jersey Avenue, SE, Washington DC 20590. The request must describe the undue burden and hardship. PHMSA will review the request and may authorize, in writing, an alternative reporting method. An authorization will state the period for which it is valid, which may be indefinite. An operator must contact PHMSA at (202) 366-8075, or electronically to informationresourcesmanager@dot.gov or make arrangements for submitting a report that is due after a request for alternative reporting is submitted but before an authorization or denial is received. [49 CFR 191.7(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 9:219 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 20:442 (April 1994), LR 27:1536 (September 2001), LR 30:1221 (June 2004), LR 31:679 (March 2005), LR 33:473 (March 2007), LR 35:2800 (December 2009), LR 37:

§309. Distribution System: Incident Report

[49 CFR 191.9]

A. - B. ...

C. Master meter operators are not required to submit an incident report as required by this Section. [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 9:219 (April 1983), amended LR 10:510 (July 1984), LR 11:255 (March 1985), LR 30:1222 (June 2004), LR 37:

§311. Distribution System: Annual Report [49 CFR 191.11]

A. General. Except as provided in Subsection B of this Section, each operator of a distribution pipeline system must submit an annual report for that system on DOT Form PHMSA 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. Not Required. The annual report requirement in this Section does not apply to a master meter system or to a petroleum gas system that serves fewer than 100 customers from a single source. [49 CFR 191.11(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 11:255 (March 1985), LR 30:1222 (June 2004), LR 37:

§312. Distribution Systems: Mechanical Fitting Failure Reports [49 CFR 191.12]

A. Each mechanical fitting failure, as required by §3509 of this part, must be submitted on a Mechanical Fitting Failure Report Form PHMSA F- 7100.1-2. An operator must submit a mechanical fitting failure report for each mechanical fitting failure that occurs within a calendar year not later than March 15 of the following year (for example, all mechanical failure reports for calendar year 2011 must be submitted no later than March 15, 2012). Alternatively, an operator may elect to submit its reports throughout the year. In addition, an operator must also report this information to the State pipeline safety authority if a state has obtained regulatory authority over the operator's pipeline. [49 CFR 191.12]

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 37:

§315. Transmission Systems; Gathering Systems; and Liquefied Natural Gas Facilities: Incident Report [49 CFR 191.15]

A. Transmission or Gathering. Each operator of a transmission or a gathering pipeline system must submit DOT Form PHMSA F 7100.2 as soon as practicable but not more than 30 days after detection of an incident required to be reported under §305 of this Chapter. [49 CFR 191.15(a)]

B. LNG. Each operator of a liquefied natural gas plant or facility must submit DOT Form PHMSA F 7100.3 as soon as practicable but not more than 30 days after detection of an incident required to be reported under §305 of this Chapter. [49 CFR 191.15(b)]

C. Supplemental Report. Where additional related information is obtained after a report is submitted under Subsection A or B of this Section, the operator must make a supplemental report as soon as practicable with a clear reference by date to the original report. [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 30:1222 (June 2004), LR 37:

§317. Transmission Systems; Gathering Systems; and Liquefied Natural Gas Facilities: Annual Report [49 CFR 191.17]

A. Transmission or Gathering. Each operator of a transmission or a gathering pipeline system must submit an annual report for that system on DOT Form PHMSA 7100.2.1. This report must be submitted each year, not later than March 15, for the preceding calendar year, except that for the 2010 reporting year the report must be submitted by June 15, 2011. [49 CFR 191.17(a)]

B. LNG. Each operator of a liquefied natural gas facility must submit an annual report for that system on DOT Form PHMSA 7100.3-1 This report must be submitted each year, not later than March 15, for the preceding calendar year, except that for the 2010 reporting year the report must be submitted by June 15, 2011. [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 30:1222 (June 2004), LR 37:

§319. Report Forms [49 CFR 191.19]

Repealed.

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 30:1222 (June 2004), repealed LR 37:

§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 information collection requirements in Part 191. The Paperwork Reduction Act requires agencies to 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	PHMSA7100.1, PHMSA7100.3
191.11	PHMSA7100.1-1, PHMSA7100.3-1
191.15	PHMSA7100.2
191.17	PHMSA7100.2-1
191.22	PHMSA1000.1

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 30:1222 (June 2004), LR 37:

§ 322. National Registry of Pipeline and LNG Operators [49 CFR 191.22]

A. OPID Request. Effective January 1, 2012, each operator of a gas pipeline, gas pipeline facility, LNG plant or

LNG facility must obtain from PHMSA an Operator Identification Number (OPID). An OPID is assigned to an operator for the pipeline or pipeline system for which the operator has primary responsibility. To obtain an OPID, an operator must complete an OPID Assignment Request DOT Form PHMSA F 1000.1 through the National Registry of Pipeline and LNG Operators in accordance with §307. [49 CFR 191.22(a)]

B. OPID Validation. An operator who has already been assigned one or more OPID by January 1, 2011, must validate the information associated with each OPID through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov>, and correct that information as necessary, no later than June 30, 2012. [49 CFR 191.22(b)]

C. Changes. Each operator of a gas pipeline, gas pipeline facility, LNG plant or LNG facility must notify PHMSA electronically through the National Registry of Pipeline and LNG Operators at <http://opsweb.phmsa.dot.gov> of certain events. For intrastate facilities subject to the jurisdiction of the Office of Conservation, a copy must also be submitted to Office of Conservation, P.O. Box 94275, Baton Rouge, LA 70804-9275. [49 CFR 191.22(c)]

1. An operator must notify PHMSA of any of the following events not later than 60 days before the event occurs: [49 CFR 191.22(c)(1)]

a. construction or any planned rehabilitation, replacement, modification, upgrade, update, or update of a facility, other than a section of line pipe, that costs \$10 million or more. If 60 day notice is not feasible because of an emergency, an operator must notify PHMSA as soon as practicable; [49 CFR 191.22(c)(1)(i)]

b. construction of 10 or more miles of a new pipeline; or [49 CFR 191.22(c)(1)(ii)]

c. construction of a new LNG plant or LNG facility. [49 CFR 191.22(c)(1)(iii)]

2. An operator must notify PHMSA of any of the following events not later than 60 days after the event occurs: [49 CFR 191.22(c)(2)]

a. a change in the primary entity responsible (i.e., with an assigned OPID) for managing or administering a safety program required by this part covering pipeline facilities operated under multiple OPIDs. [49 CFR 191.22(c)(2)(i)]

b. a change in the name of the operator; [49 CFR 191.22(c)(2)(ii)]

c. a change in the entity (e.g., company, municipality) responsible for an existing pipeline, pipeline segment, pipeline facility, or LNG facility; [49 CFR 191.22(c)(2)(iii)]

d. the acquisition or divestiture of 50 or more miles of a pipeline or pipeline system subject to Subpart 3 of this Part; or [49 CFR 191.22(c)(2)(iv)]

e. the acquisition or divestiture of an existing LNG plant or LNG facility subject to Part 193. [49 CFR 191.22(c)(2)(v)]

D. Reporting. An operator must use the OPID issued by PHMSA for all reporting requirements covered under this subchapter and for submissions to the National Pipeline Mapping System. [49 CFR 191.22(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 37:

Subpart 3. Transportation of Natural Gas or Other Gas by Pipeline: Minimum Safety Standards

[49 CFR Part 192]

Chapter 5. General [Subpart A]

§503. Definitions [49 CFR 192.3]

A. As used in this Part:

Abandoned—permanently removed from service.

Active Corrosion—continuing corrosion that, unless controlled, could result in a condition that is detrimental to public safety.

Administrator—the administrator, Pipeline and Hazardous Materials Safety Administration or his or her delegate.

Alarm—an audible or visible means of indicating to the controller that equipment or processes are outside operator-defined, safety-related parameters.

Control Room—an operations center staffed by personnel charged with the responsibility for remotely monitoring and controlling a pipeline facility.

Controller—a qualified individual who remotely monitors and controls the safety-related operations of a pipeline facility via a SCADA system from a control room, and who has operational authority and accountability for the remote operational functions of the pipeline facility.

Electrical Survey—a series of closely spaced pipe-to-soil readings over pipelines which are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

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.

Supervisory Control and Data Acquisition (SCADA) System—a computer-based system or systems used by a controller in a control room that collects and displays information about a pipeline facility and may have the ability to send commands back to the pipeline facility.

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 30:1224 (June 2004), amended LR 31:679 (March 2005), LR 33:474 (March 2007), LR 35:2800 (December 2009), LR 37:

§507. What Documents are Incorporated by Reference Partly or Wholly in this Part? [49 CFR 192.7]

A. ...

B. All incorporated materials are available for inspection in the Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC, 20590-0001, 202-366-4595, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030 or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html. 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 Paragraph C.1 of this Section. [49 CFR 192.7(b)]

C. - C.1.i. ...

2. Documents Incorporated by Reference (numbers in parentheses indicate applicable editions). [49 CFR 192.7(c)(2)]

Source and Name of Referenced Material	Title 43 Reference
A. Pipeline Research Council International (PRCI):	
(1) AGA Pipeline Research Committee, Project PR-3-805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe"(December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§§ 2137.C; 3333.A.1; 3333.D.1.a;
B. American Petroleum Institute (API):	
(1) ANSI/API Specification 5L/ISO 3183 "Specification for Line Pipe" (43rd edition and errata, 2004, and 44th edition, 2007), includes errata (January 2009) and addendum (February 2009)	§§ 705.E; 912; 913; §5103 Item I
(2) API Recommended Practice 5L1 "Recommended Practice for Railroad Transportation of Line Pipe" (6th edition, July 2002)	§715.A.1
(3) API Recommended Practice 5LW, "Transportation of Line Pipe on Barges and Marine Vessels" (2nd edition, December 1996, effective March 1, 1997)	§715.B
(4) API Specification 6D "Pipeline Valves" (23rd edition (April 2008, effective October 1, 2008) and errata 3 (includes 1 and 2, February 2009)).	§1105.A
(5) API Recommended Practice 80 (API RP 80) "Guidelines for the Definition of Onshore Gas Gathering Lines" (1st edition, April 2000)	§508.A; 508.A.1; 508.A.2; 508.A.3; 508.A.4
(6) API 1104 "Welding of Pipelines and Related Facilities" (20th edition, October 2005, errata/addendum, (July 2007) and errata 2 (2008))	§§1305; 1307.A; 1309.C.1; 1321.C; 5103 Item II
(7) API Recommended Practice 1162 "Public Awareness Programs for Pipeline Operators," (1st edition, December 2003)	§2716.A; 2716.B; 2716.C
(8) API Recommended Practice 1165 "Recommended Practice for Pipeline SCADA Displays," (API RP 1165) First edition (January 2007)	§2731.C.1
C. American Society for Testing and Materials (ASTM):	
(1) ASTM Designation: A 53/A53M-07"Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc Coated, Welded and Seamless" (September 1, 2007	§§913; 5103 Item I
(2) ASTM Designation: A106/A106M-08"Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (July 15, 2008)	§§913; 5103 Item I
(3) ASTM A333/A333M-05 (2005) "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service"	§§913; 5103 Item I
(4) ASTM A372/A372M-03 (reapproved 2008),"Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (March 1, 2008)	§1137.B.1
(5) ASTM A381-96 (Reapproved 2005 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (October 1, 2005).	§§ 913; 5103 Item I
(6) ASTM A 578/A578M-96 (Re- approved 2001) "Standard Specification for Straight-Beam Ultrasonic Examination of Plain and Clad Steel Plates for Special Applications"	§ 912.C.2.iii

Source and Name of Referenced Material	Title 43 Reference
(7) ASTM A671-06 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (May 1, 2006)	§§ 913; 5103 Item I
(8) ASTM A672-08 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (May 1, 2008)	§§ 913; 5103 Item I
(9) ASTM A691-98 (Reapproved 2007)"Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High- Pressure Service at High Temperatures" (November 1, 2007)	§§ 913; 5103 Item I
(10) ASTM D638-03 "Standard Test Method for Tensile Properties of Plastics"	§§ 1513.A.3; 1513.B.1
(11) ASTM D2513-87 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings"	§ 713.A.1
(12) ASTM D2513-99 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings	§§ 923.E.2; 1151.B; 1511.B.2; 1513.A.1.a; 5103 Item I
(13) ASTM D 2517-00 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings"	§§ 1151.A; 1511.D.1; 1513.A.1.b; 5103 Item I
(14) ASTM F1055-1998 "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controller Polyethylene Pipe and Tubing"	§ 1513.A.1.c
D. ASME International (ASME):	
(1) ASME/ANSI B16.1-2005 "Gray Iron Pipe Flanges and Flanged Fittings" (Classes 25, 125, and 250)" (August 31, 2006)	§ 1107.C
(2) ASME/ANSI B16.5-2003 "Pipe Flanges and Flanged Fittings" (October 2004)	§§ 1107.A; 1509
(3) ASME/ANSI B31G-1991 (Reaffirmed 2004)"Manual for Determining the Remaining Strength of Corroded Pipelines"	§§ 2137.C; 3333.A
(4) ASME/ANSI B31.8-2007 "Gas Transmission and Distribution Piping Systems" (November 30, 2007)	§2719.A.1.a.
(5) ASME/ANSI B31.8S-2004 "Supplement to B31.8 on Managing System Integrity of Gas Pipelines"	§§ 3303.C; 3307.B; 3311.A; 3311.A.9; 3311.A.11; 3311.A.12; 3311.A.13; 3313.A; 3313.B.1; 3317.A; 3317.B; 3317.C; 3317.E.1; 3317.E.4; 3321.A.1; 3323.B.1; 3323.B.2; 3323.B.3; 3325.B; 3325.B.1; 3325.B.2; 3325.B.3; 3325.B.4; 3327.B; 3327.C.1.a; 3329.B.1; 3329.B.2; 3333.A; 3333.D.1; 3333.D.1.a; 3335.A; 3335.B.1.d; 3337.C.1; 3339.A.1.a.i; 3339.A.1.a.ii; 3339.A.1.c; 3345.A
(6) 2007 ASME Boiler and Pressure Vessel Code, Section I, "Rules for Construction of Power Boilers 2007" (2007 edition July 1, 2007)	§ 1113.A
(7) 2007 ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, "Rules for Construction of Pressure Vessels 2" (2007 edition, July 1, 2007)	§§ 1113.A; 1113.B; 1113.D; 1125.B.3
(8) 2007 ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, "Alternative Rules, Rules for Construction of Pressure Vessels" (2007 edition, July 1, 2007)	§§1113.B; 1125.B.3

Source and Name of Referenced Material	Title 43 Reference
(9) 2007 ASME Boiler and Pressure Vessel Code, Section IX, "Welding and Brazing, Procedures, Welders, Brazers, and Welding and Brazing Operators" (2007 edition, July 1, 2007)	§§ 1307.A; 5103 Item II
E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP-44-2006 Standard Practices, "Steel Pipe Line Flanges" (2006 edition)	§ 1107.A
(2) [Reserved]	
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 (2008 edition, August 15, 2007) "Flammable and Combustible Liquids Code" (2008 edition; approved August 15, 2007)	§2935.B
(2) NFPA 58 (2004) "Liquefied Petroleum Gas Code (LP-Gas Code)"	§§ 511.A; 511.B; 511.C
(3) NFPA 59 (2004) "Utility LP-Gas Plant Code"	§§ 511.A; 511.B; 511.C
(4) NFPA 70 (2008) "National Electrical Code" (NEC 2008) (Approved August 15, 2007)	§§ 1123.E; 1149.C
G. Plastics Pipe Institute, Inc. (PPI):	
(1) PPI TR-3/2008 HDB/HDS/PDB/SDB/MRS Policies (2008), "Policies and Procedures for Developing Hydrostatic Design Bases (HDB), Pressure Design Bases (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe" (May 2008)	§921
H. NACE International (NACE):	
(1) NACE Standard SP0502-2008, Standard Practice, "Pipeline External Corrosion Direct Assessment Methodology" (reaffirmed March 20, 2008)	§§ 3323.B.1; 3325.B; 3325.B.1; 3325.B.1.b; 3325.B.2; 3325.B.3; 3325.B.3.b; 3325.B.3.d; 3325.B.4; 3325.B.4.b; 3331.D; 3335.B.1.d; 3339.A.2
I. Gas Technology Institute (GTI):	
(1) GRI 02/0057 (2002) "Internal Corrosion Direct Assessment of Gas Transmission Pipelines Methodology"	§ 3327.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 30:1226 (June 2004), amended LR 31:680 (March 2005), LR 33:474 (March 2007), LR 35:2801 (December 2009), LR 37:

Chapter 7. Materials [Subpart B]

§713. Marking of Materials [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 2513-87 (incorporated by reference, see §507; [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. - 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 30:1229 (June 2004), LR 37:

§715. Transportation of Pipe [49 CFR 192.65]

A. Railroad. 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(a)]

1. the transportation is performed in accordance with API Recommended Practice 5L1 (incorporated by reference, see §507); [49 CFR 192.65(a)(1)]

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(a)(2)]

B. Ship or Barge. 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 ship or barge on both inland and marine waterways unless the transportation is performed in accordance with API Recommended Practice 5LW (incorporated by reference, see §507). [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 30:1229 (June 2004), LR 37:

Chapter 9. Pipe Design [Subpart C]

§912. Additional Design Requirements for Steel Pipe Using Alternative Maximum Allowable Operating Pressure. [49 CFR 192.112]

A. - A.1.c.ii. ...

(a). An ultrasonic test of the ends and at least 35 percent of the surface of the plate/coil or pipe to identify imperfections that impair serviceability such as laminations, cracks, and inclusions. At least 95 percent of the lengths of pipe manufactured must be tested. For all pipelines designed after December 22, 2008, the test must be done in accordance with ASTM A578/A578M Level B, or API 5L paragraph 7.8.10 (incorporated by reference, see §507) or equivalent method, and either [49 CFR 192.112(c)(2)(i)]

c.ii.(b). - e.i. ...

ii. Pipe in operation prior to December 22, 2008, must have been hydrostatically tested at the mill at a test pressure corresponding to a hoop stress of 90 percent SMYS for 10 seconds. [49 CFR 192.112(e)(2)]

f. - h.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, LR 35:2802 (December 2009), amended LR 37:

§921. Design of Plastic Pipe [49 CFR 192.121]

A. Subject to the limitations of §923, the design pressure for plastic pipe is determined by either of the following formulas:

$$P = 2S \frac{t}{D - t} (DF)$$

$$P = \frac{2S}{(SDR - 1)} (DF)$$

where:

P = Design pressure, gauge, psig (kPa)

S = For thermoplastic pipe, the HDB is 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). In the absence of an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part D.2 of PPI TR-3/2008, HDB/PDB/SDB/MRS Policies”, (incorporated by reference, see §507). For reinforced thermosetting plastic pipe, 11,000 psig (75,842 kPa). [Note: Arithmetic interpolation is not allowed for PA-11 pipe.]

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.

DF = 0.32 or = 0.40 for PA-11 pipe produced after January 23, 2009 with a nominal pipe size (IPS or CTS) 4-inch or less, and a SDR of 11 or greater (i.e. thicker pipe wall) [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 30:1231 (June 2004), LR 31:682 (March 2005), LR 33:478 (March 2007), LR 35:2804 (December 2009), LR 37:

§923. Design Limitations for Plastic Pipe [49 CFR 192.123]

A. - D ...

E. The design pressure for thermoplastic pipe produced after July 14, 2004 may exceed a gauge pressure of 100 psig (689 kPa) provided that: [49 CFR 192.123(e)]

1. the design pressure does not exceed 125 psig (862 kPa); [49 CFR 192.123(e)(1)]

2. the material is a PE2406 or a PE3408 as specified within ASTM D2513-99 (incorporated by reference, see §507) [49 CFR 192.123(e)(2)];

E.3. - F.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 9:222 (April 1983), amended LR 10:515 (July 1984), LR 24:1308 (July 1998), LR 27:1538 (September 2001), LR 30:1231 (June 2004), LR 31:682 (March 2005), LR 33:478 (March 2007), LR 35:2804 (December 2009), LR 37:

Chapter 11. Design of Pipeline Components [Subpart D]

§1105. Valves [49 CFR 192.145]

A. - C. ...

D. No valve having shell (body, bonnet, cover, and/or end flange) 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. - 2. ...

E. No valve having shell (body, bonnet, cover, and/or end flange) components made of cast iron, malleable iron, or 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 30:1232 (June 2004), LR 31:682 (March 2005), LR 33:479 (March 2007), LR 37:

§1151. Design Pressure of Plastic Fittings [49 CFR 192.191]

A. Thermosetting fittings for plastic pipe must conform to ASTM D 2517, (incorporated by reference, see §507). [49 CFR 192.191(a)]

B. Thermoplastic fittings for plastic pipe must conform to ASTM D 2513-99, (incorporated by reference, see §507). [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 30:1238 (June 2004), LR 37:

Chapter 15. Joining of Materials Other Than by Welding [Subpart F]

§1511. Plastic Pipe [49 CFR 192.281]

A. - B.1. ...

2. The solvent cement must conform to ASTM D 2513-99, (incorporated by reference, see §5077). [49 CFR 192.281(b)(2)]

B.3. - 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 30:1243 (June 2004), LR 37:

§1513. Plastic Pipe: Qualifying Joining Procedures [49 CFR 192.283]

A. - A.1. ...

a. in the case of thermoplastic pipe, Paragraph 6.6 (sustained pressure test) or Paragraph 6.7 (Minimum Hydrostatic Burst Test) or Paragraph 8.9 (Sustained Static pressure Test) of ASTM D2513-99 (incorporated by reference, see §507) [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 (incorporated by reference, see §507) or [49 CFR 192.283(a)(1)(ii)];

c. in the case of electrofusion fittings for polyethylene pipe (PE) 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) of ASTM Designation F1055 (incorporated by reference, see §507) [49 CFR 192.283(a)(1)(iii)].

A.2. - 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 30:1244 (June 2004), LR 31:683 (March 2005), LR 33:479 (March 2007), LR 37:

Chapter 19. Customer Meters, Service Regulators, and Service Lines [Subpart H]

§1933. Excess Flow Valve Customer Installation [49 CFR 192.383]

A. Definitions. As used in this Section: [49 CFR 192.383(a)]

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 Serving Single-family Residence—a natural gas service line that begins at the fitting that connects the service line to the main and serves only one single-family residence.

B. Installation Required. An excess flow valve (EFV) installation must comply with the performance standards in §1931. The operator must install an EFV on any new or replaced service line serving a single-family residence after February 2, 2010, unless one or more of the following conditions is present: [49 CFR 192.383(b)]

1. the service line does not operate at a pressure of 10 psig or greater throughout the year; [49 CFR 192.383(b)(1)]

2. the operator has prior experience with contaminants in the gas stream that could interfere with the EFV's operation or cause loss of service to a residence; [49 CFR 192.383(b)(2)]

3. an EFV could interfere with necessary operation or maintenance activities, such as blowing liquids from the line; or [49 CFR 192.383(b)(3)]

4. an EFV meeting performance standards in §1931 is not commercially available to the operator. [49 CFR 192.383(b)(4)]

C. Reporting. Each operator must report the EFV measures detailed in the annual report required by §311 of this Part. [49 CFR 192.383(c)]

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 30:1251 (June 2004), LR 37:

Chapter 21. Requirements for Corrosion Control [Subpart I]

§2117. External Corrosion Control: Monitoring [49 CFR 192.465]

A. - 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, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. [49 CFR 192.465(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 27:1545 (September 2001), LR 30:1253 (June 2004), LR 37:

Chapter 27. Operations [Subpart L]

§2705. Procedural Manual for Operations, Maintenance, and Emergencies [49 CFR 192.605]

A. - B.11. ...

12. implementing the applicable control room management procedures required by §2731. [49 CFR 192.605(b)(12)]

C. - 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 30:1260 (June 2004), LR 37:

§2715. Emergency Plans [49 CFR 192.615]

A. - A.10. ...

11. actions required to be taken by a controller during an emergency in accordance with §2731. [49 CFR 192.615(a)(11)]

B. - 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 30:1263 (June 2004), LR 37:

§2716. Public Awareness [49 CFR 192.616]

A. ...

B. The operator's program must follow the general program recommendations of API RP 1162 and assess the unique attributes and characteristics of the operator's pipeline and facilities, Except as stated in Paragraph B.1 [49 CFR 192.616(b)].

1. Regulatory inspections are not an acceptable alternative to conducting an annual audit for measuring program implementation as mentioned in API RP 1162 section 8.3.

C. - J.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 21:823 (August 1995), amended LR 30:1264 (June 2004), LR 33:480 (March 2007), LR 35:2807 (December 2009), LR 37:

§2720 Alternative Maximum Allowable Operating Pressure for Certain Steel Pipelines [49 CFR 192.620]

A. - A.1. ...

a. For facilities installed prior to December 22, 2008, for which §911.B, C, or D applies, use the following design factors as alternatives for the factors specified in those Subsections: §911.B–0.67 or less; 911.C and D–0.56 or less. [49 CFR 192.620(a)(1)(i)]

2. The alternative maximum allowable operating pressure is the lower of the following: [49 CFR 192.620(a)(2)]

a. the design pressure of the weakest element in the pipeline segment, determined under Chapters 9 and 11 of this Subpart; [49 CFR 192.620(a)(2)(i)]

b. the pressure obtained by dividing the pressure to which the pipeline segment was tested after construction by a factor determined in the following table: [49 CFR 192.620(a)(2)(ii)]

Class Location	Alternative Test Factor
1	1.25
2	11.50
3	1.50

1 For Class 2 alternative maximum allowable operating pressure segments installed prior to December 22, 2008, the alternative test factor is 1.25.

B. - B.2. ...

3. A supervisory control and data acquisition system provides remote monitoring and control of the pipeline segment. The control provided must include monitoring of pressures and flows, monitoring compressor start-ups and shut-downs, and remote closure of valves per Subparagraph D.1.c of this Section; [49 CFR 192.620(b)(3)]

4. - 6. ...

7. At least 95 percent of girth welds on a segment that was constructed prior to December 22, 2008, must have been non-destructively examined in accordance with §1323.B and C. [49 CFR 192.620(b)(7)]

C. - C.4.a ...

b. for a pipeline segment in existence prior to December 22, 2008, certify, under Paragraph C.2 of this Section, that the strength test performed under §2305 was conducted at a test pressure calculated under Subsection A of this Section, or conduct a new strength test in accordance with Subparagraph C.4.a of this Section. [49 CFR 192.620(c)(4)(ii)]

5. Comply with the additional operation and maintenance requirements described in Subsection D of this Section. [49 CFR 192.620(c)(5)]

6. If the performance of a construction task associated with implementing alternative MAOP that occurs after December 22, 2008, can affect the integrity of the pipeline segment, treat that task as a “covered task”, notwithstanding the definition in §3101.B and implement the requirements of Chapter 31 as appropriate. [49 CFR 192.620(c)(6)]

C.7. - D.1.c. ...

i. ensure that the identification of high consequence areas reflects the larger potential impact circle recalculated under Clause D.1.b.i of this Section; [49 CFR 192.620(d)(3)(i)]

c.ii. - e.iii. ...

iv. use cleaning pigs and sample accumulated liquids. Use inhibitors when corrosive gas or liquids are present. [49 CFR 192.620(d)(5)(iv)]

e.v. - g.ii. ...

iii. within six months after completing the baseline internal inspection required under Subparagraph D.1.i of this Section, integrate the results of the indirect assessment required under Clause D.1.g.i of this Section with the results of the baseline internal inspection and take any needed remedial actions; [49 CFR 192.620(d)(7)(iii)]

iv. for all pipeline segments in high consequence areas, perform periodic assessments as follows: [49 CFR 192.620(d)(7)(iv)]

(a). conduct periodic close interval surveys with current interrupted to confirm voltage drops in association with periodic assessments under Chapter 33 of this Subpart: [49 CFR 192.620(d)(7)(iv)(A)]

(b). locate pipe-to-soil test stations at half-mile intervals within each high consequence area ensuring at least one station is within each high consequence area, if practicable; [49 CFR 192.620(d)(7)(iv)(B)]

(c). integrate the results with those of the baseline and periodic assessments for integrity done under Subparagraphs D.1.i and D.1.j of this Section; [49 CFR 192.620(d)(7)(iv)(C)]

h. controlling external corrosion through cathodic protection: [49 CFR 192.620(d)(8)]

i. if an annual test station reading indicates cathodic protection below the level of protection required in Chapter 21 of this Subpart, complete remedial action within six months of the failed reading or notify each PHMSA pipeline safety regional office where the pipeline is in service demonstrating that the integrity of the pipeline is not compromised if the repair takes longer than 6 months. An operator must also notify a state pipeline safety authority when the pipeline is located in a state where PHMSA has an interstate agent agreement, or an intrastate pipeline is regulated by that state; and [49 CFR 192.620(d)(8)(i)]

ii. after remedial action to address a failed reading, confirm restoration of adequate corrosion control by a close interval survey on either side of the affected test station to the next test station unless the reason for the failed reading is determined to be a rectifier connection or power input problem that can be remediated and otherwise verified; [49 CFR 192.620(d)(8)(ii)]

iii. if the pipeline segment has been in operation, the cathodic protection system on the pipeline segment must have been operational within 12 months of the completion of construction; [49 CFR 192.620(d)(8)(iii)]

i. conducting a baseline assessment of integrity; [49 CFR 192.620(d)(9)]

i. except as provided in Clause D.1.i.iii of this Section, for a new pipeline segment operating at the new alternative maximum allowable operating pressure, perform a baseline internal inspection of the entire pipeline segment as follows: [49 CFR 192.620(d)(9)(i)]

(a). assess using a geometry tool after the initial hydrostatic test and backfill and within six months after placing the new pipeline segment in service; and [49 CFR 192.620(d)(9)(i)(A)]

(b). assess using a high resolution magnetic flux tool within three years after placing the new pipeline segment in service at the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(9)(i)(B)]

ii. except as provided in Clause D.1.i.iii of this Section, for an existing pipeline segment, perform a baseline

internal assessment using a geometry tool and a high resolution magnetic flux tool before, but within two years prior to, raising pressure to the alternative maximum allowable operating pressure as allowed under this Section; [49 CFR 192.620(d)(9)(ii)]

iii. if headers, mainline valve by-passes, compressor station piping, meter station piping, or other short portion of a pipeline segment operating at alternative maximum allowable operating pressure cannot accommodate a geometry tool and a high resolution magnetic flux tool, use direct assessment (per §3325, §3327 and/or §3329) or pressure testing (per Chapter 23 of this Subpart) to assess that portion; [49 CFR 192.620(d)(9)(iii)]

j. conducting periodic assessments of integrity: [49 CFR 192.620(d)(10)]

i. determine a frequency for subsequent periodic integrity assessments as if all the alternative maximum allowable operating pressure pipeline segments were covered by Chapter 33 of this Subpart; and [49 CFR 192.620(d)(10)(i)]

ii. conduct periodic internal inspections using a high resolution magnetic flux tool on the frequency determined under Clause D.1.j.i of this Section, or [49 CFR 192.620(d)(10)(ii)]

iii. use direct assessment (per §3325, §3327 and/or §3329) or pressure testing (per Chapter 23 of this Subpart) for periodic assessment of a portion of a segment to the extent permitted for a baseline assessment under Clause D.1.i.iii of this Section;

k. making repairs: [49 CFR 192.620(d)(11)]

i. perform the following when evaluating an anomaly: [49 CFR 192.620(d)(11)(i)]

(a). use the most conservative calculation for determining remaining strength or an alternative validated calculation based on pipe diameter, wall thickness, grade, operating pressure, operating stress level, and operating temperature: and [49 CFR 192.620(d)(11)(i)(A)]

(b). take into account the tolerances of the tools used for the inspection; [49 CFR 192.620(d)(11)(i)(B)]

ii. repair a defect immediately if any of the following apply: [49 CFR 192.620(d)(11)(ii)]

(a). the defect is a dent discovered during the baseline assessment for integrity under Subparagraph D.1.i of this Section and the defect meets the criteria for immediate repair in §1709.B; [49 CFR 192.620(d)(11)(ii)(A)]

(b). the defect meets the criteria for immediate repair in §3333.D; [49 CFR 192.620(d)(11)(ii)(B)]

(c). the alternative maximum allowable operating pressure was based on a design factor of 0.67 under Subsection A of this Section and the failure pressure is less than 1.25 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(ii)(C)]

(d). the alternative maximum allowable operating pressure was based on a design factor of 0.56 under Subsection A of this Section and the failure pressure is less than or equal to 1.4 times the alternative maximum allowable operating pressure; [49 CFR 192.620(11)(ii)(D)]

iii. if Clause D.1.k.ii of this Section does not require immediate repair, repair a defect within one year if any of the following apply: [49 CFR 192.620(d)(11)(iii)]

(a). the defect meets the criteria for repair within one year in §3333.D; [49 CFR 192.620(d)(11)(iii)(A)]

(b). the alternative maximum allowable operating pressure was based on a design factor of 0.80 under Subsection A of this Section and the failure pressure is less than 1.25 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(B)]

(c). the alternative maximum allowable operating pressure was based on a design factor of 0.67 under Subsection A of this Section and the failure pressure is less than 1.50 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(C)]

(d). the alternative maximum allowable operating pressure was based on a design factor of 0.56 under Subsection A of this Section and the failure pressure is less than or equal to 1.80 times the alternative maximum allowable operating pressure; [49 CFR 192.620(d)(11)(iii)(D)]

iv. evaluate any defect not required to be repaired under Clause D.1.k.ii or iii of this Section to determine its growth rate, set the maximum interval for repair or re-inspection, and repair or re-inspect within that interval. [49 CFR 192.620(d)(11)(iv)]

E. Is there any change in overpressure protection associated with operating at the alternative maximum allowable operating pressure? Notwithstanding the required capacity of pressure relieving and limiting stations otherwise required by §1161, if an operator establishes a maximum allowable operating pressure for a pipeline segment in accordance with Subsection A of this Section, an operator must: [49 CFR 192.620(e)]

1. provide overpressure protection that limits mainline pressure to a maximum of 104 percent of the maximum allowable operating pressure; and [49 CFR 192.620(e)(1)]

2. develop and follow a procedure for establishing and maintaining accurate set points for the supervisory control and data acquisition system. [49 CFR 192.620(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 35:2807 (December 2009), amended LR 37:

§2731. Control room management. [49 CFR 192.631]

A. General [49 CFR 192.631(a)]

1. This Section applies to each operator of a pipeline facility with a controller working in a control room who monitors and controls all or part of a pipeline facility through a SCADA system. Each operator must have and follow written control room management procedures that implement the requirements of this Section, except that for each control room where an operator's activities are limited to either or both of: [49 CFR 192.631(a)(1)]

a. distribution with less than 250,000 services; or [49 CFR 192.631(a)(1)(i)]

b. transmission without a compressor station, the operator must have and follow written procedures that implement only Subsections D (regarding fatigue), I (regarding compliance validation), and J (regarding compliance and deviations) of this Section. [49 CFR 192.631(a)(1)(ii)]

2. The procedures required by this Section must be integrated, as appropriate, with operating and emergency

procedures required by §§2705 and 2715. An operator must develop the procedures no later than August 1, 2011, and must implement the procedures according to the following schedule. The procedures required by Subsections and Paragraphs B, C.5, D.2, D.3, F and G of this Section must be implemented no later than October 1, 2011. The procedures required by Paragraphs C.1 through C.4, D.1, D.4, and E must be implemented no later than August 1, 2012. The training procedures required by Subsection H must be implemented no later than August 1, 2012, except that any training required by another Paragraph of this Section must be implemented no later than the deadline for that Paragraph. [49 CFR 192.631(a)(2)]

B. Roles and responsibilities. Each operator must define the roles and responsibilities of a controller during normal, abnormal, and emergency operating conditions. To provide for a controller's prompt and appropriate response to operating conditions, an operator must define each of the following: [49 CFR 192.631(b)]

1. a controller's authority and responsibility to make decisions and take actions during normal operations; [49 CFR 192.631(b)(1)]

2. a controller's role when an abnormal operating condition is detected, even if the controller is not the first to detect the condition, including the controller's responsibility to take specific actions and to communicate with others; [49 CFR 192.631(b)(2)]

3. a controller's role during an emergency, even if the controller is not the first to detect the emergency, including the controller's responsibility to take specific actions and to communicate with others; and [49 CFR 192.631(b)(3)]

4. a method of recording controller shift-changes and any hand-over of responsibility between controllers. [49 CFR 192.631(b)(4)]

C. Provide Adequate Information. Each operator must provide its controllers with the information, tools, processes and procedures necessary for the controllers to carry out the roles and responsibilities the operator has defined by performing each of the following: [49 CFR 192.631(c)]

1. implement sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 (incorporated by reference, see §507) whenever a SCADA system is added, expanded or replaced, unless the operator demonstrates that certain provisions of sections 1, 4, 8, 9, 11.1, and 11.3 of API RP 1165 are not practical for the SCADA system used; [49 CFR 192.631(c)(1)]

2. conduct a point-to-point verification between SCADA displays and related field equipment when field equipment is added or moved and when other changes that affect pipeline safety are made to field equipment or SCADA displays; [49 CFR 192.631(c)(2)]

3. test and verify an internal communication plan to provide adequate means for manual operation of the pipeline safely, at least once each calendar year, but at intervals not to exceed 15 months; [49 CFR 192.631(c)(3)]

4. test any backup SCADA systems at least once each calendar year, but at intervals not to exceed 15 months; and [49 CFR 192.631(c)(4)]

5. establish and implement procedures for when a different controller assumes responsibility, including the content of information to be exchanged. [49 CFR 192.631(c)(5)]

D. Fatigue Mitigation. Each operator must implement the following methods to reduce the risk associated with controller fatigue that could inhibit a controller's ability to carry out the roles and responsibilities the operator has defined: [49 CFR 192.631(d)]

1. establish shift lengths and schedule rotations that provide controllers off-duty time sufficient to achieve eight hours of continuous sleep; [49 CFR 192.631(d)(1)]

2. educate controllers and supervisors in fatigue mitigation strategies and how off-duty activities contribute to fatigue; [49 CFR 192.631(d)(2)]

3. train controllers and supervisors to recognize the effects of fatigue; and [49 CFR 192.631(d)(3)]

4. establish a maximum limit on controller hours-of-service, which may provide for an emergency deviation from the maximum limit if necessary for the safe operation of a pipeline facility. [49 CFR 192.631(d)(4)]

E. Alarm Management. Each operator using a SCADA system must have a written alarm management plan to provide for effective controller response to alarms. An operator's plan must include provisions to: [49 CFR 192.631(e)]

1. review SCADA safety-related alarm operations using a process that ensures alarms are accurate and support safe pipeline operations; [49 CFR 192.631(e)(1)]

2. identify at least once each calendar month points affecting safety that have been taken off scan in the SCADA host, have had alarms inhibited, generated false alarms, or that have had forced or manual values for periods of time exceeding that required for associated maintenance or operating activities; [49 CFR 192.631(e)(2)]

3. verify the correct safety-related alarm set-point values and alarm descriptions at least once each calendar year, but at intervals not to exceed 15 months; [49 CFR 192.631(e)(3)]

4. review the alarm management plan required by this paragraph at least once each calendar year, but at intervals not exceeding 15 months, to determine the effectiveness of the plan; [49 CFR 192.631(e)(4)]

5. monitor the content and volume of general activity being directed to and required of each controller at least once each calendar year, but at intervals not to exceed 15 months, that will assure controllers have sufficient time to analyze and react to incoming alarms; and [49 CFR 192.631(e)(5)]

6. address deficiencies identified through the implementation of Paragraphs E.1 through E.5 of this Section. [49 CFR 192.631(e)(6)]

F. Change Management. Each operator must assure that changes that could affect control room operations are coordinated with the control room personnel by performing each of the following: [49 CFR 192.631(f)]

1. establish communications between control room representatives, operator's management, and associated field personnel when planning and implementing physical changes to pipeline equipment or configuration; [49 CFR 192.631(f)(1)]

2. require its field personnel to contact the control room when emergency conditions exist and when making field changes that affect control room operations; and [49 CFR 192.631(f)(2)]

3. seek control room or control room management participation in planning prior to implementation of significant pipeline hydraulic or configuration changes. [49 CFR 192.631(f)(3)]

G. Operating Experience. Each operator must assure that lessons learned from its operating experience are incorporated, as appropriate, into its control room management procedures by performing each of the following: [49 CFR 192.631(g)]

1. review incidents that must be reported pursuant to Subpart 2 of this Part to determine if control room actions contributed to the event and, if so, correct, where necessary, deficiencies related to: [49 CFR 192.631(g)(1)]

- a. controller fatigue; [49 CFR 192.631(g)(1)(i)]
- b. field equipment; [49 CFR 192.631(g)(1)(ii)]
- c. the operation of any relief device; [49 CFR 192.631(g)(1)(iii)]
- d. procedures; [49 CFR 192.631(g)(1)(iv)]
- e. SCADA system configuration; and [49 CFR 192.631(g)(1)(v)]
- f. SCADA system performance; [49 CFR 192.631(g)(1)(vi)]

2. include lessons learned from the operator's experience in the training program required by this Section. [49 CFR 192.631(g)(2)]

H. Training. Each operator must establish a controller training program and review the training program content to identify potential improvements at least once each calendar year, but at intervals not to exceed 15 months. An operator's program must provide for training each controller to carry out the roles and responsibilities defined by the operator. In addition, the training program must include the following elements: [49 CFR 192.631(h)]

1. responding to abnormal operating conditions likely to occur simultaneously or in sequence; [49 CFR 192.631(h)(1)]

2. use of a computerized simulator or non-computerized (tabletop) method for training controllers to recognize abnormal operating conditions; [49 CFR 192.631(h)(2)]

3. training controllers on their responsibilities for communication under the operator's emergency response procedures; [49 CFR 192.631(h)(3)]

4. training that will provide a controller a working knowledge of the pipeline system, especially during the development of abnormal operating conditions; and [49 CFR 192.631(h)(4)]

5. for pipeline operating setups that are periodically, but infrequently used, providing an opportunity for controllers to review relevant procedures in advance of their application. [49 CFR 192.631(h)(5)]

I. Compliance Validation. Upon request, operators must submit their procedures to PHMSA or, in the case of an intrastate pipeline facility regulated by a state, to the appropriate state agency. [49 CFR 192.631(i)]

J. Compliance and Deviations. An operator must maintain for review during inspection: [49 CFR 192.631(j)]

1. records that demonstrate compliance with the requirements of this Section; and [49 CFR 192.631(j)(1)]

2. documentation to demonstrate that any deviation from the procedures required by this Section was necessary

for the safe operation of a pipeline facility. [49 CFR 192.631(j)(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 37:

Chapter 29. Maintenance [Subpart M]

§2911. Transmission Lines: General Requirements for Repair Procedures [49 CFR 192.711]

A. Temporary Repairs. 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. [49 CFR 192.711(a)(2)]

B. Permanent Repairs. An operator must make permanent repairs on its pipeline system according to the following. [49 CFR 192.711(b)]

1. Non Integrity Management Repairs. The operator must make permanent repairs as soon as feasible. [49 CFR 192.711(b)(1)]

2. Integrity Management Repairs. When an operator discovers a condition on a pipeline covered under Chapter 33-Gas Transmission Pipeline Integrity Management, the operator must remediate the condition as prescribed by §3333.D. [49 CFR 192.711(b)(2)]

C. Welded Patch. Except as provided in §2917.A.2.c, no operator may use a welded patch as a means of repair. [49 CFR 192.711(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 30:1268 (June 2004), LR 37:

Chapter 33. Gas Transmission Pipeline Integrity Management [Subpart O]

§3323. How Is Direct Assessment Used and for What Threats? [49 CFR 192.923]

A. - B. ...

1. ASME/ANSI B31.8S (incorporated by reference, see §507), section 6.4; NACE SP0502-2008 NACE RP0502-2002 (incorporated by reference, see §507); and §3325 addressing external corrosion (ECDA); [49 CFR 192.923(b)(1)]

B.2. - 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 30:1278 (June 2004), LR 37:

§3325. What Are the Requirements for Using External Corrosion Direct Assessment (ECDA)? [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 (incorporated by reference, see §507), section 6.4,

and in NACE SP0502-2008 (incorporated by reference, see §507). An operator must develop and implement a direct assessment plan that has procedures addressing preassessment, indirect examination, direct examination, and post-assessment. If the ECDA detects pipeline coating damage, the operator must also integrate the data from the ECDA with other information from the data integration (§3317.B) to evaluate the covered segment for the threat of third party damage, and to address the threat as required by §3317.E.1 [49 CFR 192.925(b)].

1. Preassessment. In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE SP0502-2008, 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 SP0502-2008, 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 SP0502-2008, 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 SP0502-2008, 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: [49 CFR 192.925(b)(3)(ii)]

i. corrosion defects are discovered that exceed allowable limits (section 5.5.2.2 of NACE SP0502-2008; or [49 CFR 192.925(b)(3)(ii)(A)]

ii. root cause analysis reveals conditions for which ECDA is not suitable (section 5.6.2 of NACE SP0502-2008); [49 CFR 192.925(b)(3)(ii)(B)]

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 SP0502-2008. [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 SP0502-2008, 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 on 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 SP0502-2008). [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 30:1278 (June 2004), amended LR 31:687 (March 2005), LR 33:484 (March 2007), amended by the Department of Natural Resources, Office of Conservation, LR 37:

§3331. How May Confirmatory Direct Assessment (CDA) Be Used? [49 CFR 192.931]

A. - A.3. ...

4. Defects Requiring Near-Term Remediation. If an assessment carried out under Paragraphs 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 SP0502-2008 (incorporated by reference, see §507), sections 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 30:1281 (June 2004), amended by the Department of Natural Resources, Office of Conservation, LR 37:

§3335. What Additional Preventive and Mitigative Measures Must an Operator Take? [49 CFR 192.935]

A. - B.1.c. ...

d. monitoring of excavations conducted on covered pipeline segments by pipeline personnel. If an operator finds physical evidence of encroachment involving excavation that the operator did not monitor 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 SP0502-2008 (incorporated by reference, see §507). An operator must excavate, and remediate, in accordance with ANSI/ASME B31.8S and §3333 any indication of coating holidays or discontinuity warranting direct examination [49 CFR 192.935(b)(1)(iv)].

B.2. - 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 30:1282 (June 2004), amended LR 31:688 (March 2005), LR 33:485 (March 2007), amended by the Department of Natural Resources, Office of Conservation, LR 37:

§3339. What Are the Required Reassessment Intervals?
[49 CFR 192.939]

A. - A.1.a.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 SP0502-2008 (incorporated by reference, see §507) [49 CFR 192.939(a)(2)].

A.1.c. - A.2.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, Pipeline Division, LR 30:1283 (June 2004), amended LR 31:688 (March 2005), LR 33:486 (March 2007), LR 37:

§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 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 (incorporated by reference, see §507 of this Subpart), section 9.4, and the specific measures for each identified threat specified in ASME/ANSI B31.8S, Appendix A. An operator must submit the four overall performance measures as part of the annual report required by §317 of this Part. [49 CFR 192.945(a)].

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 30:1285 (June 2004), amended LR 31:689 (March 2005), LR 33:487 (March 2007), LR 37:

§3351. Where Does an Operator File a Report?
[49 CFR 192.951]

A. An operator must file any report required by this Chapter electronically to the Pipeline and Hazardous Materials Safety Administration in accordance with § 307 of this Part. [49 CFR 192.951]

B. Any report required by §3351.A, for intrastate facilities subject to the jurisdiction of the Office of Conservation, 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 30:1286 (June 2004), amended LR 33:487 (March 2007), LR 35:2812 (December 2009), amended by the Department of Natural Resources, Office of Conservation, LR 37:

Chapter 35. Gas Distribution Pipeline Integrity Management (IM) [Subpart P]

§3501. What definitions apply to this chapter?
[49 CFR 192.1001]

A. The following definitions apply to this Subpart. [49 CFR 192.1001]

Excavation Damage—any impact that results in the need to repair or replace an underground facility due to a weakening, or the partial or complete destruction, of the facility, including, but not limited to, the protective coating, lateral support, cathodic protection or the housing for the line device or facility.

Hazardous Leak—a leak that represents an existing or probable hazard to persons or property and requires immediate repair or continuous action until the conditions are no longer hazardous.

Integrity Management Plan or *IM Plan*—a written explanation of the mechanisms or procedures the operator will use to implement its integrity management program and to ensure compliance with this chapter.

Integrity Management Program or *IM Program*—an overall approach by an operator to ensure the integrity of its gas distribution system.

Mechanical Fitting—a mechanical device used to connect sections of pipe. The term “Mechanical fitting” applies only to:

- a. stab type fittings;
- b. nut follower type fittings;
- c. bolted type fittings; or
- d. other compression type fittings.

Small LPG Operator—an operator of a liquefied petroleum gas (LPG) distribution pipeline that serves fewer than 100 customers from a single source.

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 37:

§3503. What do the regulations in this chapter cover?
[49 CFR 192.1003]

A. General. This Chapter prescribes minimum requirements for an IM program for any gas distribution pipeline covered under this subpart, including liquefied petroleum gas systems. A gas distribution operator, other than a master meter operator or a small LPG operator, must follow the requirements in §§3505-3513 of this Chapter. A master meter operator or small LPG operator of a gas distribution pipeline must follow the requirements in §3515 of this Chapter. [49 CFR 192.1003]

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 37:

§3505. What must a gas distribution operator (other than a master meter or small LPG operator) do to implement this chapter? [49 CFR 192.1005]

A. No later than August 2, 2011 a gas distribution operator must develop and implement an integrity management program that includes a written integrity management plan as specified in §3507. [49 CFR 192.1005]

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 37:

§3507. What are the required elements of an integrity management plan? [49 CFR 192.1007]

A. A written integrity management plan must contain procedures for developing and implementing the following elements. [49 CFR 192.1007]

1. Knowledge. An operator must demonstrate an understanding of its gas distribution system developed from reasonably available information. [49 CFR 192.1007(a)]

a. Identify the characteristics of the pipeline's design and operations and the environmental factors that are necessary to assess the applicable threats and risks to its gas distribution pipeline. [49 CFR 192.1007(a)(1)]

b. Consider the information gained from past design, operations, and maintenance. [49 CFR 192.1007(a)(2)]

c. Identify additional information needed and provide a plan for gaining that information over time through normal activities conducted on the pipeline (for example, design, construction, operations or maintenance activities). [49 CFR 192.1007(a)(3)]

d. Develop and implement a process by which the IM program will be reviewed periodically and refined and improved as needed. [49 CFR 192.1007(a)(4)]

e. Provide for the capture and retention of data on any new pipeline installed. The data must include, at a minimum, the location where the new pipeline is installed and the material of which it is constructed. [49 CFR 192.1007(a)(5)]

2. Identify Threats. The operator must consider the following categories of threats to each gas distribution pipeline: corrosion, natural forces, excavation damage, other outside force damage, material, or welds, equipment failure, incorrect operations, and other concerns that could threaten the integrity of its pipeline. An operator must consider reasonably available information to identify existing and potential threats. Sources of data may include, but are not limited to, incident and leak history, corrosion control records, continuing surveillance records, patrolling records, maintenance history, and excavation damage experience. [49 CFR 192.1007(b)]

3. Evaluate and Rank Risk. An operator must evaluate the risks associated with its distribution pipeline. In this evaluation, the operator must determine the relative importance of each threat and estimate and rank the risks posed to its pipeline. This evaluation must consider each applicable current and potential threat, the likelihood of failure associated with each threat, and the potential consequences of such a failure. An operator may subdivide its pipeline into regions with similar characteristics (e.g., contiguous areas within a distribution pipeline consisting of mains, services and other appurtenances; areas with common

materials or environmental factors), and for which similar actions likely would be effective in reducing risk. [49 CFR 192.1007(c)]

4. Identify and Implement Measures to Address Risks. Determine and implement measures designed to reduce the risks from failure of its gas distribution pipeline. These measures must include an effective leak management program (unless all leaks are repaired when found). [49 CFR 192.1007(d)]

5. Measure Performance, Monitor Results, and Evaluate Effectiveness [49 CFR 192.1007(e)]

a. Develop and monitor performance measures from an established baseline to evaluate the effectiveness of its IM program. An operator must consider the results of its performance monitoring in periodically re-evaluating the threats and risks. These performance measures must include the following: [49 CFR 192.1007(e)(1)]

i. number of hazardous leaks either eliminated or repaired as required by §2903.C of this Subpart (or total number of leaks if all leaks are repaired when found), categorized by cause; [49 CFR 192.1007(e)(1)(i)]

ii. number of excavation damages; [49 CFR 192.1007(e)(1)(ii)]

iii. number of excavation tickets (receipt of information by the underground facility operator from the notification center); [49 CFR 192.1007(e)(1)(iii)]

iv. total number of leaks either eliminated or repaired, categorized by cause; [49 CFR 192.1007(e)(1)(iv)]

v. number of hazardous leaks either eliminated or repaired as required by §2903.C (or total number of leaks if all leaks are repaired when found), categorized by material; and [49 CFR 192.1007(e)(1)(v)]

vi. any additional measures the operator determines are needed to evaluate the effectiveness of the operator's IM program in controlling each identified threat. [49 CFR 192.1007(e)(1)(vi)]

6. Periodic Evaluation and Improvement. An operator must re-evaluate threats and risks on its entire pipeline and consider the relevance of threats in one location to other areas. Each operator must determine the appropriate period for conducting complete program evaluations based on the complexity of its system and changes in factors affecting the risk of failure. An operator must conduct a complete program re-evaluation at least every five years. The operator must consider the results of the performance monitoring in these evaluations. [49 CFR 192.1007(f)]

7. Report Results. Report, on an annual basis, the four measures listed in Clauses 5.a.i through 5.a.iv of this Section, as part of the annual report required by §311 of this Part. An operator also must report the four measures to the state pipeline safety authority if a state exercises jurisdiction over the operator's pipeline. [49 CFR 192.1007(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 37:

§3509. What must an operator report when compression couplings fail? [49 CFR 192.1009]

A. Except as provided in Subsection B of this Section, each operator of a distribution pipeline system must submit a report on each mechanical fitting failure, excluding any failure that results only in a nonhazardous leak, on a

Department of Transportation Form PHMSA F-7100.1-2. The report(s) must be submitted in accordance with §312 of this Part. [49 CFR 192.1009(a)]

B. The mechanical fitting failure reporting requirements in Subsection A of this Section do not apply to the following: [49 CFR 192.1009(b)]

1. master meter operators; [49 CFR 192.1009(b)(1)]

2. small LPG operator as defined in §3501; or [49 CFR 192.1009(b)(2)]

3. LNG facilities. [49 CFR 192.1009(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 37:

§3511. What records must an operator keep? [49 CFR 192.1011]

A. An operator must maintain records demonstrating compliance with the requirements of this chapter for at least 10 years. The records must include copies of superseded integrity management plans developed under this chapter. [49 CFR 192.1011]

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 37:

§3513. When may an operator deviate from required periodic inspections under this subpart? [49 CFR 192.1013]

A. An operator may propose to reduce the frequency of periodic inspections and tests required in this Subpart on the basis of the engineering analysis and risk assessment required by this Chapter. [49 CFR 192.1013(a)]

B. An operator must submit its proposal to the PHMSA Associate Administrator for Pipeline Safety or, in the case of an intrastate pipeline facility regulated by the State, the appropriate state agency. The applicable oversight agency may accept the proposal on its own authority, with or without conditions and limitations, on a showing that the operator's proposal, which includes the adjusted interval, will provide an equal or greater overall level of safety. [49 CFR 192.1013(b)]

C. An operator may implement an approved reduction in the frequency of a periodic inspection or test only where the operator has developed and implemented an integrity management program that provides an equal or improved overall level of safety despite the reduced frequency of periodic inspections. [49 CFR 192.1013(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 37:

§3515. What must a master meter or small liquefied petroleum gas (LPG) operator do to implement this chapter? [49 CFR 192.1015]

A. General. No later than August 2, 2011 the operator of a master meter system or a small LPG operator must develop and implement an IM program that includes a written IM plan as specified in Subsection B of this Section. The IM program for these pipelines should reflect the relative simplicity of these types of pipelines. [49 CFR 192.1015(a)]

B. Elements. A written integrity management plan must address, at a minimum, the following elements. [49 CFR 192.1015(b)]

1. Knowledge. The operator must demonstrate knowledge of its pipeline, which, to the extent known, should include the approximate location and material of its pipeline. The operator must identify additional information needed and provide a plan for gaining knowledge over time through normal activities conducted on the pipeline (for example, design, construction, operations or maintenance activities). [49 CFR 192.1015(b)(1)]

2. Identify Threats. The operator must consider, at minimum, the following categories of threats (existing and potential): corrosion, natural forces, excavation damage, other outside force damage, material or weld failure, equipment failure, and incorrect operation. [49 CFR 192.1015(b)(2)]

3. Rank Risks. The operator must evaluate the risks to its pipeline and estimate the relative importance of each identified threat. [49 CFR 192.1015(b)(3)]

4. Identify and Implement Measures to Mitigate Risks. The operator must determine and implement measures designed to reduce the risks from failure of its pipeline. [49 CFR 192.1015(b)(4)]

5. Measure Performance, Monitor Results, and Evaluate Effectiveness. The operator must monitor, as a performance measure, the number of leaks eliminated or repaired on its pipeline and their causes. [49 CFR 192.1015(b)(5)]

6. Periodic Evaluation and Improvement. The operator must determine the appropriate period for conducting IM program evaluations based on the complexity of its pipeline and changes in factors affecting the risk of failure. An operator must re-evaluate its entire program at least every five years. The operator must consider the results of the performance monitoring in these evaluations. [49 CFR 192.1015(b)(6)]

C. Records. The operator must maintain, for a period of at least 10 years, the following records: [49 CFR 192.1015(c)]

1. a written IM plan in accordance with this Section, including superseded IM plans; [49 CFR 192.1015(c)(1)]

2. documents supporting threat identification; and [49 CFR 192.1015(c)(2)]

3. documents showing the location and material of all piping and appurtenances that are installed after the effective date of the operator's IM program and, to the extent known, the location and material of all pipe and appurtenances that were existing on the effective date of the operator's program. [49 CFR 192.1015(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 37:

Chapter 51. Appendices

§5101. Reserved.

Editor's Note: The text of this Section (§5101) has been moved to §507 of this Part.

§5103. Appendix B—Qualification of Pipe

I. Listed Pipe Specifications

ASTM D 2513-99—"Thermoplastic pipe and tubing, "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (incorporated by reference, see §507)

* * *

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 10:541 (July 1984), amended LR 18:859 (August 1992), LR 27:1551, 1552 (September 2001), LR 30:1287 (June 2004), LR 31:689 (March 2005), LR 33:487 (March 2007), LR 35:2813 (December 2009), amended by the Department of Natural Resources, Office of Conservation, LR 37:

Family Impact Statement

In accordance with RS 49:972, the following statements are submitted after consideration of the impact of the proposed Rule on family as defined therein.

1. This Rule will have no known effect on the stability of the family.
2. This Rule will have no known effect on the authority and rights of parents regarding the education and supervision of their children.
3. This Rule will have no known effect on the functioning of the family.
4. This Rule will have no known effect on family earnings and family budget.
5. This Rule will have no known effect on the behavior and personal responsibility of children.
6. This Rule will have no known effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Public Comments

All interested parties will be afforded the opportunity to submit data, views, or arguments, orally or in writing at said public hearing in accordance with R.S. 49:953. Written comments will be accepted until 4:30 p.m., Thursday, November 3, 2011. If accommodations are required under the Americans with Disabilities Act, please contact the Pipeline Division at (225) 342-5505 within 10 working days of the hearing date. Direct comments to James H. Welsh, Commissioner of Conservation, Post Office Box 94275, Baton Rouge, LA 70804-9275, RE: Docket No. PL 11-061

Public Hearing

In accordance with the laws of the state of Louisiana, and with reference to the provisions of Title 30 of the Louisiana Revised Statutes of 1950, a public hearing will be held in the La Belle Room located on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA at 9 a.m. on October 27, 2011.

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 are no additional costs or savings to state or local governmental units. The U.S. Office of Pipeline Safety adopts amendments to pipeline safety regulations every year. The purpose of this rule is to adopt these federal amendments to pipeline safety regulations pertaining to natural gas pipelines.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

- There is no anticipated effect on revenue collections of state or local governmental units as a result of this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Benefits will be realized by persons living and working near natural gas pipelines through safer construction and operation standards imposed by the rule amendments. There will be negligible costs to natural gas pipeline operators. Any costs associated with compliance with the safety regulations should have already been absorbed by the regulated companies, since all of the requirements have been implemented by federal laws.
 - IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition and employment as a result of this rule change.

James H. Welsh
Commissioner
1109#041

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of State Police**

Operator Qualifications
(LAC 55:I.503)

Under the authority of R.S. 37:3270 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of State Police hereby proposes to amend Section 503 under Chapter 5 as it relates to the qualifications for individuals to conduct breath analysis. In addition to the re-promulgation, the amendments remove the requirement that they be a resident of the state of Louisiana at the time of the application. The proposed Rule would also amend the qualifications to require the operator be a POST or FLETC certified law enforcement officer, which is not currently a requirement.

Title 55

**PUBLIC SAFETY
Part I. State Police**

**Chapter 5. Breath and Blood Alcohol Analysis
Methods and Techniques**

Subchapter A. Analysis of Breath

- A. At the time of application for certification as an operator, an individual must:
 1. be an employee of a Louisiana or federal law enforcement agency;
 2. have successfully completed training established by and be certified by the Peace Officer Standards and Training Council (POST) or the Federal Law Enforcement Training Center (FLETC);
 3. be at least 18 years of age;
 4. be a high school graduate or satisfactorily pass the General Education Development (GED) test or an equivalent or higher educational background;
 5. attain a score of 75 percent or better on a 16-hour operator's training course conducted by the applied technology unit or any other course approved by the applied technology unit. Course material to be covered will be taken from the *Chemical Test for Intoxication Training Manual* and/or the *Training Manual for the Intoxilyzer 5000*.

However, if an individual has already successfully completed a training course in chemical testing, the individual may attend a specified course in the operation of the Intoxilyzer 5000. To successfully complete a 16-hour training course and be certified to conduct breath analysis, the individual must:

- a. obtain a 75 percent score on the written examination covering course material;
- b. obtain a 75 percent score on the actual operation of the instrument and practical examination (running of an unknown alcohol solution). Both the written and the practical examination will be made up by the instructors of the applied technology unit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3270, et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 4:390 (October 1978), amended LR 6:663 (November 1980), amended by the Department of Public Safety and Corrections, Office of State Police, LR 11:256 (March 1985), LR 14:362 (June 1998), re-promulgated LR 14:442 (July 1998), amended LR 17:672 (July 1991), re-promulgated LR 17:796 (August 1991), amended LR 27:1929 (November 2001), LR 32:1906 (October 2006), LR 37:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.
2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.
3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.
4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.
5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.
6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed rules.

Public Comments

Interested persons may submit written comments or requests for public hearing on this proposed Rule change to Allison McLeary, Department of Public Safety & Corrections, Public Safety Services, Office of Legal Affairs, at 7979 Independence Blvd., Suite 302, Baton Rouge, LA 70806. Comments will be accepted through close of business October 10, 2011.

Jill P. Boudreaux
Undersecretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Operator Qualifications

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

There are no anticipated implementation costs or savings to state or local governmental units resulting from the proposed rule. The proposed rule modifies the qualifications for the certification of individuals who conduct breath analysis by eliminating the state residency requirement and additionally requiring that all operators of a blood/breath alcohol testing device be certified by the Peace Officer Standards and Training Council (POST) or the Federal Law Enforcement Training Center (FLETC).

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

There is no anticipated effect on revenue collections for state or local governmental units.

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

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

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed administrative rule change removes the Louisiana residency requirement as a condition of blood/breath alcohol testing. Law enforcement officers who work in Louisiana and who are POST certified but live out of state will now meet the operator qualifications.

Jill Boudreaux
Undersecretary
1109#071

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Transportation and Development Office of Highways/Engineering

Advertising on Department of
Transportation-Owned Assets
(LAC 70:III.Chapter 8)

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 8 of Part III of Title 70, entitled "Advertising on Department of Transportation-Owned Assets," in accordance with R.S. 48:21-26 and 48:274.2.

Title 70

TRANSPORTATION

Part III. Outdoor Advertising

Chapter 8. Advertising on Department of Transportation and Development-Owned Assets

§801. Purpose

A. The purpose of this rule is to establish a policy within the Department of Transportation and Development for allowing certain limited types of advertising on high-

visibility assets owned by the Department of Transportation and Development for the sole purpose of raising revenue to defray some costs of departmental services.

B. The establishment of this policy is not for the purpose of creating a public forum, but is for the purpose of allowing tasteful, visually appealing and inoffensive content for the department's customers while simultaneously supplementing departmental revenues.

C. The display of advertising on departmental assets will not constitute an endorsement by the department of any of the products, services or messages advertised.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:

§803. Requests for Proposals

A. The department may issue requests for proposals in order to secure bidders for advertisement spaces on state-owned assets.

B. The requests for proposals will be reviewed by a committee appointed by the secretary and the most suitable proposal, as determined by the committee, shall be selected.

C. The committee has the discretion to make reasonable choices concerning the types of advertising that may be displayed and shall utilize the criteria which follow in this rule.

D. The department may limit the number of assets available for advertising displays.

E. The department may limit the term of the contract with the advertiser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:

§805. Guidelines for Content of Advertising

A. Only commercial advertising will be accepted. It should have content which promotes a commercial transaction.

B. No content promoting illegal activity or obscene, vulgar or offensive conduct shall be allowed.

C. No content that demeans or disparages individuals or groups shall be allowed.

D. No political advertising shall be allowed.

E. No advertising of adult oriented products shall be allowed. Exception: advertising of gambling facilities shall be allowed.

F. The advertising should not be so controversial that it can promote vandalism of advertising materials and associated departmental property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:

§807. Guidelines for Placement of Advertising on Assets

A. For advertising which requires a power source, such as electronics or LED lighting, the advertiser will be required by the department to submit and maintain detailed plans and provisions. The use of the powered advertising

devices shall not have any adverse effect on the safety and functionality of the asset. If the safety and functionality of the asset is compromised after installation, the advertising shall be removed.

B. On ferries or vehicles, advertising may be placed on the inside or the outside of the ferry or vehicle. However, the advertising shall not be erected in such a manner that it impedes current lines of sight.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:

§809. Advertising Standards Committee

A. The secretary shall establish a three member Advertising Standards Committee. Such committee shall be independent and its determinations shall constitute final departmental determinations.

B. The committee shall review all requests for proposals and shall review all content of advertisement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:21-26 and 48:274.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 37:

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.

Public Comments

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, Department of Transportation and Development, P. O. Box 94245, Baton Rouge, LA 70804-9245, Telephone (225)242-4659.

Sherryl H. Lebas, P.E.
Secretary

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

**RULE TITLE: Advertising on Department of
Transportation-Owned Assets**

Title 16

COMMUNITY AFFAIRS

Part II. Housing Programs

Chapter 7. Turnkey Mortgage Origination Program

§701. Introduction

A. The Turnkey Mortgage Origination Program is designed to provide citizens of the state of Louisiana additional opportunities to obtain funds for down payment and closing costs toward the purchase of single family homes in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 37:

§703. Definitions

A. Notwithstanding the definitions set forth in LAC 16:I.301, the following terms, when used in this Chapter, are defined as follows.

Annual Family Income—the gross annual income, from all sources and before taxes or withholding, of all members of a family living in a housing unit.

Borrower—an individual or family applying to receive down payment assistance under the Turnkey Mortgage Origination Program.

Housing Unit—living accommodations intended for occupancy by a single family, consisting of one to four units, and which will be owned by the occupant thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 37:

§705. Eligible Borrowers

A. Borrowers will be determined to be eligible for assistance if they meet the following criteria.

1. The applicant is seeking assistance towards the purchase of a housing unit in the state, whether purchasing as a first time homebuyer or a non-first time homebuyer.

2. The applicant will occupy the property as his primary residence. Applicants seeking to purchase properties for use as recreational homes, second homes, vacation homes, and/or investment properties are not eligible to receive assistance.

3. The applicant's annual household income must not exceed established income limits as defined by the provisions set forth in the LAC 16:I.303.B, which limit is currently a maximum of \$99,000 per year.

4. The applicant meets the minimum credit score determined by the lender as based upon the product selected for assistance, but in no instance shall be lower than 620.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 37:

§707. Processing and Qualifications of Borrowers

Applications

A. An application for a mortgage loan shall be processed by a lending institution on behalf of the agency on the basis of the agency's evaluation criteria. The lending institution shall undertake its own due diligence and other matters as

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

There will be no costs to state or local governmental units to implement the proposed Rule. The Department initially plans to offer advertising venues on ten Motorist Assistance Patrol (MAP) vehicles and six of the ferries located in the New Orleans area. The vendor will pay to install, maintain and remove any and all advertising placed on DOTD-owned assets. The department will generate requests for proposals with existing personnel.

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

The proposed rule is anticipated to increase revenue collections for the Department of Transportation and Development. It is estimated, based upon data from other states, that approximately \$50,000 should be generated from this advertising activity the first fiscal year, and that approximately \$100,000 should be generated each fiscal year thereafter.

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

The allowance for advertising on DOTD-owned assets should help to expand the market for advertising by making new opportunities and venues available. Both the private advertising companies and their advertisers should experience a positive benefit.

In the case of advertising on Motorist Assistance Patrol (MAP) vehicles, safety should be enhanced because all materials in the advertising will be reflective.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule is anticipated to have a positive effect on competition and employment not only in the advertising industry, but should encourage patronage of businesses which advertise in this manner.

Rhett A. Desselle
Assistant Secretary
1107#044

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Treasury
Louisiana Housing Finance Agency**

**Turnkey Mortgage Origination Program
(LAC 16:II.Chapter 7)**

Under the authority of R.S. 40:600.6(4)(a), and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Louisiana Housing Finance Agency hereby proposes to adopt the Turnkey Mortgage Origination Program. The proposed program will allow the Louisiana Housing Finance Agency to extend down payment and closing cost assistance to a broad spectrum homebuyers in the state.

may be determined to be appropriate to insure that the proposed loan is consistent in all respects with the agency's evaluation factors.

B. When processing mortgage loan applications lenders must adhere to the published acquisition cost limits and or maximum loan sizes as defined by the Federal Housing Administration, Veterans Administration, Rural Development.

C. Upon completion of the processing and approval of the application, the lending institution shall initiate a loan closing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 37:

§709. Interest Rates

A. The interest rates charged by the lending institution for a borrowers mortgage loan shall be monitored and adjusted as needed based on the current market rates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 37:

§711. Types of Assistance and Proscribed Use

A. Down payment assistance will be available at loan closing by the mortgage lender.

1. The maximum down payment assistance is 5 percent

2. Borrowers will pay a 1 percent origination fee and 1 percent discount point.

B. The assistance will be in the form of a non-repayable grant with no cash back to the borrower.

C. Assistance may be applied toward down payment, closing costs and pre-paid items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:600.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Louisiana Housing Finance Agency, LR 37:

Family Impact Statement

This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Public Comments

Any interested person may submit written comments regarding the contents of the proposed Rule to Brenda Evans, Single Family Program Administrator, Louisiana Housing Finance Agency, 2415 Quail Drive, Baton Rouge, LA 70808, or to fax (225) 763-8710, or via e-mail at bevans@lhfa.state.la.us. All comments must be received by 4:30 p.m., October 10, 2011.

Alesia Y. Wilkins-Braxton
Vice President

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Turnkey Mortgage Origination Program

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

The proposed administrative rules will result in minimal implementation costs and the Louisiana Housing Finance Agency (LHFA) anticipates utilizing existing resources and three existing staff members for program management. Self-

generated revenues (fees) from the program will be utilized to pay a portion (\$38,078) of the staff's personal services in FY 12 and beyond. The proposed administrative rule changes places the Turnkey Mortgage Origination Program in the Louisiana Housing Finance Agency's administrative rules. This will allow the agency to extend down payment and closing cost assistance to non first-time homebuyers and those with income limits that may exceed the income limits required for homebuyers served by tax-exempt bonds.

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

The estimated effect of the proposed rule on revenue collections, based upon previous production from similar programs, may result in an approximately \$250,000 increase in gross revenue each year.

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

The program will provide approximately \$3,750 in assistance to each qualifying family for down payment and closing costs.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule will have no measurable effect on competition and employment.

Alesia Y. Wilkins-Braxton
Vice-President
1109#043

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Removal of Abandoned Crab Traps (LAC 76:VII.367)

The Wildlife and Fisheries Commission does hereby give notice of its intent to amend a rule, LAC 76:VII.367, which provides for an abandoned crab trap removal program. Authority to establish these regulations is vested in the commission by R.S. 56:332(N). Said Rule is attached and made a part of this Notice of Intent.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§367. Removal of Abandoned Crab Traps

A. The use of crab traps shall be prohibited from 6 a.m., February 25, 2012 through 6 a.m., March 5, 2012 within that portion of St. Bernard Parish and Plaquemines Parish as described below:

1. From a point originating along the southern shoreline of the Mississippi River Gulf Outlet (MRGO) at 89 degrees 36 minutes 00 seconds west longitude; thence southward along 89 degrees 36 minutes 00 seconds west longitude to 29 degrees 39 minutes 00 seconds north latitude; thence westward along 29 degrees 39 minutes 00 seconds north latitude to 89 degrees 38 minutes 30 seconds west longitude; thence southward along 89 degrees 38 minutes 30 seconds west longitude to 29 degrees 38 minutes 00 seconds north latitude; thence westward along 29 degrees 38 minutes 00 seconds north latitude to 89 degrees 40 minutes 30 seconds west longitude; thence southward along 89 degrees 40 minutes 30 seconds west longitude to 29 degrees 34 minutes 00 seconds north latitude; thence

westward along 29 degrees 34 minutes 00 seconds north latitude to the eastern shore of the Mississippi River; thence northward along the eastern shore of the Mississippi River to 89 degrees 54 minutes 00 seconds west longitude; thence northward along 89 degrees 54 minutes 00 seconds west longitude to the southern shoreline of the MRGO; thence eastward along the southern shoreline of the MRGO terminating at the point of beginning.

B. The use of crab traps shall be prohibited from 6 a.m., March 17, 2012 through 6 a.m., March 26, 2012 within that portion of Terrebonne Parish as described below:

1. From a point originating from the intersection of LA Highway 57 and Dulac Canal; thence east along LA Highway 57 to its intersection with LA 56; thence due east to the western shoreline of Bayou Little Caillou; thence north along the western shoreline of Bayou Little Caillou to its intersection with Lapeyrouse Canal; thence east along the northern shoreline of Lapeyrouse Canal to its intersection with Bayou Terrebonne; thence south along the eastern shoreline of Bayou Terrebonne to its intersection with Seabreeze Pass; thence southwest to channel marker number 17 of the Houma Navigation Channel at 29 degrees 11 minutes 11.3 seconds north latitude 90 degrees 36 minutes 44.5 seconds west longitude; thence southwest to the northern most point on Pass la Poule Island at 29 degrees 08 minutes 33.5 seconds north latitude 90 degrees 39 seconds 01.3 seconds west longitude; thence west to Bayou Sale channel marker at 29 degrees 06 minutes 31.8 seconds north latitude 90 degrees 44 minutes 34.2 seconds west longitude; thence north to the western shoreline of Bayou Sale; thence north along the western shoreline of Bayou Sale to its intersection with Four Point Bayou; thence north along the western shoreline of Four Point Bayou its intersection with the Houma Navigation Channel; thence north along the western shoreline of the Houma Navigation Channel to its intersection with Bayou Grand Caillou; thence north along the western shoreline of Bayou Grand Caillou to its intersection with Dulac Canal; thence east along the northern shoreline of Dulac Canal and terminating at the point of beginning.

C. All crab traps remaining in the closed area during the specified period shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Anyone is authorized to remove these abandoned crab traps within the closed area. No person removing crab traps from the designated closed areas during the closure periods shall possess these traps outside of the closed area. The Wildlife and Fisheries Commission authorizes the Secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 34:97 (January 2008), LR 36:77 (January, 2010), LR 37:

Family Impact Statement

In accordance with Act No. 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).

Public Comments

Interested persons may submit written comments relative to the proposed Rule to Mr. Martin Bourgeois, Marine Fisheries Biologist DCL-B, Marine Fisheries Section, Box 98000, Baton Rouge, LA 70898-9000, prior to Thursday, November 3, 2011.

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 final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Stephen W. Sagraera
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Removal of Abandoned Crab Traps

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

There are no implementation costs or savings to state or local governmental units as a result of the proposed rule amendments

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

There is no anticipated effect on revenue collections of state or local governmental units as a result of this rule change.

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

The proposed rule would prohibit the use of crab traps in portions of St. Bernard and Plaquemines Parishes from 6:00 a.m., February 25, 2012 through 6:00 a.m., March 5, 2012 and in a portion of Terrebonne Parish from 6:00 a.m., March 17, 2012 through 6:00 a.m., March 26, 2012. Crab fishermen who utilize the areas proposed for closure will incur lost fishing time during the designated period and be subjected to additional costs from having to temporarily remove their traps. These impacted crab fishermen will have to either move their traps to adjacent open fishing areas or remove their traps from the water for the duration of the closure.

Local seafood dealers, processors and consumers may experience a slight decrease in the availability of fresh crabs during the closure, resulting in a slightly higher price for fresh crabs in the short term. The crab resource, however, will not be lost or harmed in any way and will be available for harvest when the closed areas are reopened.

Recreational saltwater anglers, commercial fishermen and individuals who operate vessels within the designated areas may realize slight positive benefits from the removal of abandoned crab traps, since encounters with abandoned traps often result in lost fishing time and damage to the vessel's

lower unit and/or fishing gear. The removal of abandoned crab traps will reduce the mortality of and injuries to crabs and by-catch which become trapped and die in these traps. Thus, the removal of abandoned crab traps should provide improved fishing and reduced fishing costs.

The overall impact of the proposed area closures is anticipated to be slight, since the duration of the closures is only for nine days each during the lowest harvest time of the year, and adjacent waters will remain open for crab fishermen to continue to fish

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Effects on competition and employment are expected to be negligible, since waters adjacent to the closure area will remain open for crab harvest and fishermen who fish during this time period are expected to relocate their traps.

Lois Azzarello
Undersecretary
1109#019

Evan Brasseaux
Staff Director
Legislative Fiscal Office

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given December 5-6, 2011, beginning at 7:45 a.m. at the Nelson Memorial Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates:	September 2, 2011
Re-Take Candidates:	September 23, 2011
Reciprocity Candidates:	November 4, 2011

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to September 23, 2011. Questions may be directed to (225) 952-8100.

Mike Strain, DVM
Commissioner

1109#006

POTPOURRI

Department of Natural Resources Office of the Secretary Fishermen's Gear Compensation Fund

Loran Coordinatates

In accordance with the provisions of R.S. 56:700.1 et seq., notice is given that 7 claims in the amount of \$22,377.29 were received for payment during the period August 1, 2011-August 31, 2011.

There were 5 paid and 2 denied.

Latitude/Longitude Coordinates of reported underwater obstructions are:

2908.907	9106.937	Terrebonne
2914.776	9013.580	LaFourche
2917.948	8944.189	Plaquemines
2919.771	8957.653	Jefferson
2936.316	8938.615	Plaquemines
2942.108	8947.348	Saint Bernard
2956.353	8922.710	Saint Bernard

A list of claimants and amounts paid can be obtained from Gwendolyn Thomas, Administrator, Fishermen's Gear

Compensation Fund, P.O. Box 44277, Baton Rouge, LA 70804 or you can call (225) 342-9388.

Scott A. Angelle
Secretary

1109#028

POTPOURRI

Workforce Commission Office of Workers' Compensation Administration

Public Hearing—Substantive Changes to Proposed Rules (LAC 40:I:2915)

The Office of Workers' Compensation published a Notice of Intent to amend its rules in the August 20, 2011 edition of the *Louisiana Register*. The notice solicited written comments.

In accordance with R.S. 49:968(H)(2), a public hearing will be held on October 21, 2011 at 9 a.m. at the LWC Training Center, 2155 Fuqua St., Baton Rouge, LA 70802.

As a result of its analysis of the written comments received, the OWCA proposes to amend §2915 to read as follows:

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 2. Medical Guidelines

Chapter 29. Pharmacy Reimbursement Schedule, Billing Instruction and Maintenance Procedures

§2915. Billing Instructions

A. Pharmaceutical billing must occur on either the CMS 1500, company invoice or NCPDP universal claim form (UCF) or their electronic equivalents. Whenever the formats of the preceding forms are replaced with newer versions, the most recent standard should be used. Billing document will include the following minimum information:

1. claimant name;
2. claimant address;
3. unique claimant identifier;
4. date prescription was filled;
5. national drug code;
6. drug name;
7. drug quantity;
8. total charge;
9. number of days prescribed;
10. prescribing providers name;
11. prescribing providers NPI;
12. pharmacists name;
13. dispensing facility address;
14. dispensing facility phone number;
15. medication charge; and;
16. dispensing fee charge.

B. Entities issuing reimbursement documentation will include the following information:

1. claimant name;
2. claimant address;
3. unique claimant identifier;
4. date prescription was filled;
5. national drug code;
6. drug name;
7. amount charged per prescription;
8. total amount charged;
9. individual drug reimbursement;
10. total bill reimbursement;
11. individual tax reimbursement;
12. total tax reimbursement;

13. total amount reimbursed;

14. payor name;

15. payor address; and;

16. payor phone number.

C. - C.35. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1034.2.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation, LR 19:54 (January 1993), repromulgated LR 19:212 (February 1993), amended LR 20:1299 (November 1994), LR 37:

Curt Eysink
Workforce Commission Director

1109#072

CUMULATIVE INDEX
(Volume 37, Number 9)

2011	
Pages	Issue
1-437	January
438-759	February
760-1069	March
1070-1324	April
1325-1476	May
1477-2044	June
2045-2320	July
2321-2551	August
2552-2903	September

EO—Executive Order
PPM—Policy and Procedure Memoranda
ER—Emergency Rule
R—Rule
N—Notice of Intent
CR—Committee Report
GR—Governor's Report
L—Legislation
P—Potpourri

ADMINISTRATIVE CODE UPDATE

Cumulative

January 2010-December 2010, 428
January 2011-March 2011, 1301

AGRICULTURE AND FORESTRY

Agricultural Commodities Commission

Aflatoxin, 441ER
Agricultural commodity dealer and warehouse law, 494R
Giant salvinia, 269R, 809R
Labeling of coated seeds, 269R
Landscape architect registration exam, 751P
Louisiana strawberries, 270R
Structural pest control commission, 272R

Agriculture and Environmental Sciences

Annual quarantine listing for 2011, 1304P
Bulk pesticide facilities, 2060ER
Quarantine rescissions for formosan termites, Hurricanes Katrina and Rita, 1060P

Commissioner, Office of

Aflatoxin, 441ER

Feed, Fertilizer, and Agriculture Commission

Definition of small package, 809R

Forestry, Office of

Forestry commission
Timber harvesting records, 2233N
Tree seedling prices, 2234N

Horticulture Commission

Landscape architect registration exam, 432P, 2541P, 2893P
Retail florist exam, 2762N

Seed Commission, Office of

Agriculture chemistry lab fees, 809R
Cotton acreage reporting and collection of assessments, 923N, 2583R

Laboratory testing and seed sampling fees, 356N, 1373R
Seed labeling; seed certifications; fees, 2226N

**AMITE RIVER BASIN AND WATER
CONSERVATION DISTRICT**

Expropriation of property, 2755N

CHILDREN AND FAMILY SERVICES

Formerly Department of Social Services.

Child Welfare Section

Annual progress and services report, 1305P
Daycare services—residential licensing, 513R
Social services block grant intended use report, 1306P

Division of Programs

Child care assistance program
Employment and training (E and T) hours, 605N, 1373R
Child support enforcement
Securing and enforcing medical support obligation, 810R
Exempt earned income tax credit (EITC) payments, 1071ER, 1421N, 2324ER, 2368R
Portability of criminal history, religious exemption, and sex offender rule, 441ER, 811R

Economic Stability and Self-Sufficiency Section

Child care assistance program and quality start, 2789N
Daycare services—residential licensing, 513R
TANF caseload reduction report, 432P

Licensing Section

Child placing agencies, 816R
Class "A" regulations, 607N

Secretary, Office of

Community and family support system
Flexible family fund, 2584R

CIVIL SERVICE

Civil Service Commission

Civil service rule 2.10—rule promulgation, 2795N
Temporary suspension of merit increase authority, 924N

Ethics, Board of

Local government lobbying, 1374R
Statements filed pursuant to section 1111(e) of the code of governmental ethics, 357N, 1376R
Third party ethics training, 2442N

ECONOMIC DEVELOPMENT

Business Development Services, Office of

Enterprise zone program, 296R, 2368R
Industrial ad valorem tax exemption program, 304R, 2376R
Industry assistance program, 2795N

ECONOMIC DEVELOPMENT (continued)

Louisiana filmmakers grant fund program, 515R
Motion picture investor tax credit program, 514R
Quality jobs program, 2587R
Retention and modernization act, 514R
Sound recording production and infrastructure tax credit programs, 309R
Tax equalization program, 2799N

Entertainment Industry Development, Office of

Louisiana filmmakers grant fund program, 515R
Motion picture investor tax credit program, 514R
Sound recording production and infrastructure tax credit programs, 309R

Louisiana Economic Development Corporation

Retention and modernization act, 514R

Secretary, Office of

Angel investor tax credit program, 23274ER, 2806N

EDUCATION

Elementary and Secondary Education, Board of

Bulletin 103—Louisiana Health Education Content Standards, 1178N, 2094R
Bulletin 105—Louisiana Content Standards for Programs Serving Four-Year Old Children, 518R
Bulletin 111—The Louisiana School, District, and State Accountability System, 639N, 1122R, 1202N, 1864N, 2118R, 2120R, 2381R, 2445N, 2595R, 2809N
9-12 Transition from 2010 to 2012, 857R
Bulletin 118—Statewide Assessment Standards and Practices, 858R, 1123R
Bulletin 119—Louisiana School Transportation Specifications and Procedures, 1205N, 2122R, 2449N
Bulletin 125—Standards for Educational Leaders in Louisiana, 861R
Bulletin 126—Charter Schools, 867R, 1124R, 1422N
Board of director composition, 641N, 1376R, 2382R
Bulletin 129—The Recovery School District, 310R, 642N, 876R, 1125R, 1377R
Bulletin 131—Alternative Education Schools/Programs Standards, 925N, 2126R
Bulletin 741—Louisiana Handbook for School Administrators, 645N, 2450N, 2459N
Approval for alternative schools/programs, 933N, 2128R
Assignment and transfer of students, 1125R
Attendance, 1126R
Building and maintenance, 1128R
Carnegie credit for middle school students, 929N, 2128R, 2456N
Classroom management training, 646N, 1380R
College and career diploma; career diploma, 1210N, 2129R
Compulsory attendance, 931N, 2132R
Connections process, 932N, 2131R
Curriculum instruction, 547R, 1128R, 1212N, 2132R
Disciplinary regulations, 1132R, 1133R
Dropout prevention and recovery, 879R
Electronic telecommunication devices, 1134R
Elementary program of studies, 1134R

Eligibility to participate in high school interscholastic athletics, 1135R
Family and consumer sciences education, 880R
General powers of local educational governing authorities, 1136R
High schools, 1137R
Home study program, 1137R
Immunizations, 934N, 2134R
Physical abuse of teachers and school employees by students, 1138R
Red tape reduction waiver and local empowerment program, 1866N
Religious studies, 935N, 2134R
Staff misconduct, 1138R
Student biometric information, 1139R
Teachers' retirement system, part-time, seasonal or temporary classroom teacher, 1140R
Textbooks, 1141R
Uniform grading policy, 936N, 2390R
Written policies and procedures, 936N, 1141R, 1380R
Nonpublic Bulletin 741—Louisiana Handbook for Nonpublic School Administrators, 940N, 1218N, 1869N, 2142R, 2144R, 2390R, 2597R
Distance learning, 2457N
School approval, 1221N, 2145R
Bulletin 746—Louisiana Standards for State Certification of School Personnel, 549R
Alternate teacher preparation programs, 556R
Certificate endorsements, 647N, 1381R
Early interventionist, 648N, 1381R
Elementary mathematics specialist, 1214N, 2135R
Louisiana teacher assistance and assessment program (LaTAAP)
Mental health professional counselor, 880R
Middle school specialty area endorsements, 881R
Out-of-state (OS) certificate, 882R
Out-of-state principal level 2 (OSP2), 882R
Overview, 1215N, 2135R
Requirements to add early childhood, 883R, 1561R
School nurse, 883R
School therapists, 884R
Supervisor of student teaching, 1216N, 2136R
Bulletin 996—Standards for Approval of Teacher and/or Educational Leader Preparation Programs
Bulletin 1179—Driver Education, Traffic Safety, and Administrative Guide for Louisiana Schools
Driver education; required, 1217N, 2136R
Bulletin 1196—Louisiana Food and Nutrition Programs, Policies of Operation, 566R, 927N, 1141R, 2137R
Bulletin 1929—Louisiana Accounting and Uniform Governmental Handbook, 649N
Bulletin 1530—Louisiana's IEP Handbook for Students with Exceptionalities, 885R
Bulletin 1706—Regulations for Implementation of the Children with Exceptionalities Act
Regulations for students with disabilities, 937N
Bulletin 1929—Louisiana Accounting and Uniform Governmental Handbook, 1382R
Bulletin 1922—Compliance Monitoring Procedures, 2467N
Minimum foundation program, student membership definition, 1142R, 2471N

EDUCATION (continued)

Organization, operations, 941N, 2139R
Regulatory documents—rulemaking, 2472N
State superintendent, 886R

Student Financial Assistance Commission

Student Financial Assistance, Office of

Bylaws of the advisory committee to the student financial assistance commission, 1081ER, 1430N, 2598R

Scholarship/grant programs

Academic year, 2ER, 654N, 1561R

Applications, federal grant aid and ACT test, 588R

Award amount, 358N, 1386R, 2814N

Establishing eligibility, 1327ER, 2554ER

GO grant summer billing, 1388R

John R. Justice grant program, 359N, 1387R

LASFAC committees, 1871N

LTC early start payments, 2062ER

Student financial assistance commission bylaws, 1328ER

TOPS equivalent courses, 1872N

Tuition, 3ER, 655N, 1562R

Tuition Trust Authority

Student Financial Assistance, Office of

LATTA committees, 1873N

Tuition trust authority bylaws, 1329ER

ENVIRONMENTAL QUALITY

Environmental Protection Agency

Secretary, Office of

Legal Affairs Division

2010 annual incorporation by reference of certain federal air quality regulations, 2235N

Control of emissions of smoke, 1143R

Denial of petition for rulemaking under LAC 33:I.909.B.2, 2541P

Emergency response for solid waste facilities, 1563R

Greenhouse gases, 361N, 1144R, 1147R, 1389R

Louisiana engineering review activity form, 1307P

Non-road engines, 656N, 1391R

Organic solvents; emissions, 365N, 1150R

Permit review, 2817N

Permit term or condition referencing 40 CFR Part 63, Subpart DDDD, 2473N

Pm2.5 NSR implementation, 658N, 1568R, 2145R

Pollutant discharge elimination system exclusions, pesticide application, 1307P

Regulatory permit for rock, concrete, and asphalt crushing facilities, 2815N

Removal of pesticide application exemption from LPDES permitting requirements, 588R

Solid waste, 944N

Standards for the use or disposal of sewage sludge and biosolids, 751N, 1223N

Toxic air pollutant emission control program, 1222N

Waste expedited permitting, 972N

EXECUTIVE ORDERS

- BJ 10-20 Gulf Opportunity Zone Advance Refunding Bond Allocation—Louisiana Local Government Environmental Facilities and community Development Authority, 1EO
- BJ 11-01 Carry Forward Bond Allocation 2010, 438EO
- BJ 11-02 Bond Allocation—Local Government Environmental Facilities and Community Development Authority, 439EO
- BJ 11-03 Bond Allocation—Local Government Environmental Facilities and Community Development Authority, 439EO
- BJ 11-04 State of Emergency—Extension of Qualifying in the Parish of Union, 440EO
- BJ 11-05 Coordinated System of Care Governance Board, 760EO
- BJ 11-06 Executive Branch—Personal Services Expenditure Freeze, 1070EO
- BJ 11-07 Executive Branch—Expenditure Freeze, 1325EO
- BJ 11-08 Executive Branch—DOTD Guidelines for Vehicles, Trucks and Loads which haul Hay from Louisiana to Texas, 1477EO
- BJ 11-09 Merit Increase Freeze—Merit Increase Freeze, 1477EO
- BJ 11-10 Flags at Half Staff—Flags at Half Staff, 1478EO
- BJ 11-11 Executive Branch—Bright Start, 2045EO
- BJ 11-12 Executive Department—Limited Hiring Freeze, 2046EO
- BJ 11-13 Bond Allocation—Louisiana Public Facilities Authority, 2321EO
- BJ 11-14 Bond Allocation—Calcasieu Parish Public Trust Authority, 2321EO
- BJ 11-15 Bond Allocation—Local Government Environmental Facilities and Community Development Authority, 2322EO
- BJ 11-16 Flags at Half Staff, 2322EO
- BJ 11-17 Amended Executive Order BJ 2011-16—Flags at Half Staff, 2323EO

FIREFIGHTERS PENSION AND RELIEF FUND

Firefighters' Pension and Relief Fund for the City of New Orleans and Vicinity

Tax qualification provisions, 662N, 1392R

GOVERNOR

Administration, Division of

Cosmetology, Board of

Exam ineligibility and alternative hair design, 366N, 1150R

Facility Planning and Control

Louisiana building code, 1228N

Information Technology, Office of

OIT bulletin published, 2541P

GOVERNOR (continued)

Racing Commission

Corrupt and prohibited practices, 1393R
Mandatory health screening, 3ER, 1393R

State Travel, Office of

General travel PPM, 2048PPM

Tax Commission

Ad valorem taxation, 1071ER, 1394R
Public hearing, substantive changes to proposed rule
oil and gas properties, 1308P

Architectural Examiners, Board of

Licensing; examination procedure; fees; qualifications
as apprentice; bonds; funds; advertising violations;
continuing education, 2147R

Titles, firm names, and assumed names, 663N, 2402R

Auctioneers Licensing Board

Public hearing, substantive change to proposed rules,
1308P

Coastal Protection and Restoration Authority

2012 draft annual plan hearing, 432P
Prohibition of activities on levees and flood control
structures, 1479ER

Crime Victims Reparations Board

Compensation to victims, 976N, 1605R

Elderly Affairs, Office of

State plan on aging, 319R

Financial Institutions, Office of

Broker-Dealer and investment adviser recordkeeping
requirements, 666N, 2148R
Residential mortgage lending program, 589R
Supervision of salesmen and investment adviser
representatives, 983N, 2149R

Home Inspectors, Board of

Licensing, education, standards of practice and code of
ethics, 973N, 2404R

Homeland Security and Emergency Preparedness

Homeland security and emergency preparedness, 2822N

Law Enforcement and Administration of Criminal Justice, Commission on

Peace officer training, 319R, 976N, 1606R

Motor Vehicle Commission

Automotive industry, 2474N

Public Defender Board

Trial court performance standards for attorneys
representing parents in child in need of care and
termination of parental rights cases, 321R
Trial court performance standards for attorneys
representing children in delinquency, 984N, 1445N,
2599R

Real Estate Appraisers Board

Appraisers, 332R
Appraisal management companies, 368N, 2406R

Real Estate Commission

Real estate, 2238N

Shorthand Reporters, Board of Examiners

Examinations, 2819N
General requirements for certified digital reporters, 317R

State Uniform Payroll, Office of

403(b) tax shelter annuity program, 366N, 1404R
Payroll deduction, 2820N

Used Motor Vehicle Commission

Licensure and established place of business, 1405R,
1612R

Veterans Affairs, Department of

Military family assistance program, 978N, 1606R

HEALTH AND HOSPITALS

Adult Protective Services, Division of

Definition of abuse and sexual abuse, 904R

Aging and Adult Services, Office of

All inclusive care for the elderly, reimbursement rate
reduction, 761ER, 1003N, 1082ER, 1572R

Definition of abuse and sexual abuse, 904R

Home and community-based services waivers

Adult day health care, 1334ER, 1883N, 2624R

Reimbursement rate reduction 765ER, 1095ER,

1232N, 2157R

Community choices waiver, 2842N

Elderly and disabled adults

Personal assistance services, 899R

Reimbursement rate reduction, 766ER, 1235N

Louisiana physician order for scope of treatment, 709N,
1603R

Nursing facilities

Standards for payment level of care determinations,
341R

Personal care services—long-term

Policy clarifications and service limit reduction,
2082ER

Reimbursement rate reduction, 806ER, 1112ER,
1116ER, 2086ER, 2087ER

Chiropractic Examiners, Board of

Specialty advertising, unethical conduct, code of ethics,
1875N

Certified Social Worker Examiners, Board of

Social work, 1431N, 2615R

Citizens with Developmental Disabilities, Office of

Home and community-based services waivers

Active duty military families, 2840N

Children's choice, service cap and reimbursement rate
reduction, 1233N, 2157R

New opportunities waiver, reimbursement rate
reduction, 774ER, 1244N, 2157R

Allocation of waiver opportunities for ICF-DD
transitions, 2852N

Residential options waiver, 775ER, 1337ER

Supports waiver, reimbursement rate reduction
790ER, 1245N

Dentistry, Board of

Administration of botox and dermal fillers, 2264N

Administration of nitrous oxide inhalation analgesia,
1082ER

Advertising; license renewal fees; anesthesia/
analgesia administration; continuing education; and
dental hygienists examination, 1229N, 2150R

Automated external defibrillator; botox and dermal
fillers; licensure; portable and mobile dentistry;
nitrous oxide; sanctions; examination of dentist,
hygienists, 667N, 1405R

HEALTH AND HOSPITALS (continued)

- Dentistry requirements, 2826N
 - Licenses; authorized duties; nitrous oxide inhalation, 590R
 - Dietetics and Nutrition, Board of Examiners in**
 - Registered dietitians, 372N, 2152R
 - Emergency Response Network Board**
 - Interregional transfer protocol, 751N
 - LERN entry criteria: trauma, LERN destination protocol: trauma, 1466P
 - Health Services Financing, Bureau of**
 - Adult day health care (ADHC)
 - Minimum licensing standards, 1106ER, 2076ER
 - All inclusive care for the elderly, reimbursement rate reduction, 4ER, 761ER, 1003N, 1082ER, 1572R
 - Ambulatory surgical centers, reimbursement rate reduction, 5ER, 761ER, 1004N, 1083ER, 1572R
 - CommunityCARE program
 - Primary care providers
 - Referral exemptions, 338R
 - Program redesign, 6ER, 1084ER, 2063ER
 - Coordinated care network, 680N, 1573R
 - Coordinated system of care, behavioral health services, 1060P
 - Direct service worker registry, 1088ER, 2067ER
 - Disproportionate share hospitals payments, 1481ER, 2555ER
 - Low income and needy care collaborations, 10ER, 1090ER, 2328ER
 - Non-Rural Community Hospitals, 446ER
 - EPSDT
 - Dental program
 - Covered services and reimbursement rate reduction, 762ER, 1005N, 1598R
 - Reimbursement rate reduction, 12ER, 1092ER
 - Substance abuse services, 2327ER
 - Health services, EarlySteps reimbursement rate reduction, 13ER, 1007N, 1094ER, 1599R
 - Substance abuse services, 1330ER
 - End stage renal disease facilities, reimbursement rate reduction, 14ER, 763ER, 1008N, 1094ER, 1599R
 - Estate recovery, 339R
 - Facility need review—nursing facilities, 2478N
 - Family planning clinics, reimbursement rate reduction, 764ER, 1010N, 1600R
 - Family planning waiver, reimbursement rate reduction, 765ER, 1231N, 2156R
 - Recipient qualifications, 2265N
 - Federally qualified health centers diabetes self-management training, 448ER, 1483ER, 1880N, 2629R
 - Forensic supervised transitional residential and aftercare facilities, minimum licensing standards, 380N, 1154R
 - Greater New Orleans community health connection waiver, 15ER, 1331ER, 2330ER,
 - Home and community-based service providers
 - Minimum licensing standards, 1500ER, 1888N
 - Home and community-based services waivers
 - Active duty military families, 2840N
 - Adult day health care, 1334ER, 1485ER, 1883N, 2624R
 - Reimbursement rate reduction 765ER, 1095ER, 1232N, 2157R
 - Children's choice,
 - Allocation of waiver opportunities, 1336ER, 2333ER
 - Money follows the person rebalancing demonstration extension, 2557ER
 - Service cap and reimbursement rate reduction, 1096ER, 1233N, 2157R
 - Community choices waiver, 2558ER, 2842N
 - Elderly and disabled adults,
 - Personal assistance services, 18ER, 899R
 - Reimbursement rate reduction, 766ER, 1235N
 - Elderly and disabled adult waiver
 - Emergency opportunities and reimbursement methodology, 1490ER
 - New opportunities waiver
 - Allocation of waiver opportunities for ICF-DD transitions, 2852N
 - Reimbursement rate reduction, 774ER, 1244N, 2158R
 - Supports waiver, reimbursement rate reduction, 1245N
 - Residential options waiver, 775ER, 1337ER, 2334ER
 - Supports waiver, reimbursement rate reduction 790ER
- Home health program
 - Durable medical equipment, provider accreditation, 1246N, 2159R
 - Extended nursing services, reimbursement rate reduction, 21ER, 1097ER, 1247N, 2159R
- Hospital licensing standards
 - Outpatient off-site campuses, 2266N
- Inpatient hospital services
 - Low income and needy care collaboration, supplemental payments, 1308P
- Major teaching hospitals,
 - Qualifying criteria, 449ER, 1533ER
 - Supplemental payments, 1532ER
- Neonatal and pediatric intensive care units and outlier payment methodologies, 790ER, 1535ER
- Non-rural, non-state hospitals
 - Children's specialty hospitals, 597R
 - Low income and needy care collaboration, 22ER, 1098ER, 2349ER
 - Major teaching hospitals, 1099ER
 - Outlier payment methodology, 23ER, 452ER
 - Reimbursement methodology, 2350ER
 - Reimbursement rate reduction, 24ER, 1100ER
- Non-rural, non-state public hospitals, reimbursement methodology, 1352ER
- Pre-admission certification, 25ER, 1353ER, 2567ER
- Reimbursement methodology, 793ER, 1248N, 2159R
- Small rural hospitals upper payment limit, 796ER, 2069ER, 2479N
- State hospitals, supplemental payments, 452ER, 1353ER, 2351ER
- Intermediate care facilities for persons with developmental disabilities
 - Non-state facilities
 - Reimbursement methodology, 797ER, 2070ER

HEALTH AND HOSPITALS (continued)

- Public facilities
 - Reimbursement methodology, 797ER, 1538ER
 - Reimbursement rate reduction, 1101ER, 2071ER, 2267N
- Laboratory and radiology services, reimbursement rate reduction, 26ER, 799ER, 1102ER, 2071ER, 2268N, 2352ER
- Medicaid program
 - Reimbursement rate and prescription limit reductions, 453ER
- Medical necessity criteria, 341R
- Medical transportation program
 - Emergency ambulance services, reimbursement rate reduction, 27ER, 1103ER, 2270N, 2353ER
 - Supplemental payments, 1539ER, 2073ER, 2354ER, 2568ER
 - Non-emergency ambulance services, reimbursement rate reduction, 28ER, 1104ER, 2271N, 2356ER
 - Non-emergency medical transportation, reimbursement rate reduction, 29ER, 800ER, 1105ER, 2074ER, 2273N, 2357ER
- Mental health rehabilitation program,
 - Provider participation requirements. 399N, 1173R
 - Reimbursement rate reduction, 29ER, 1105ER, 2358ER
 - Termination of parent/family intervention (intensive) services and continued treatment clarifications, 800ER, 2075ER
 - Termination of parent/family intervention (intensive) services and reimbursement rate reduction, 2480N
- Multi-systemic therapy
 - reimbursement rate reduction, 30ER, 802ER, 1108ER, 2078ER, 2358ER, 2482N
- Nursing facilities
 - Minimum licensing standards
 - Approval of facility plans, 1541ER, 1921N, 2630R
 - Nurse aide training and competency evaluation program, 2274N
 - Per diem rate reduction, 401N, 1174R
 - Reimbursement methodology
 - Direct care multiplier and fair rental value component, 1011N, 1541ER, 1922N, 2631R
 - Minimum data set assessments, 31ER, 1354ER, 2571ER
 - Reimbursement rate reduction, 34ER, 902R
 - Standards for payment, level of care determinations, 341R
 - Transition of state-owned or operated nursing facility, 903R
- Outpatient hospital services
 - Diabetes self-management training, 454ER, 1542ER, 2574ER
 - Duration of outpatient status, 1012N, 1600R
 - Hospital provider-based outpatient clinics, 2284N
 - Non-rural, non-state hospitals and children's specialty hospitals, reimbursement rate reduction, 35ER, 803ER, 1109ER, 2079ER, 2359ER, 2484N
 - Non-rural, non-state hospitals, major teaching hospitals, 1111ER
 - Small rural hospitals, upper payment limit, 805ER, 2081ER, 2486N
- Personal care services—long-term, policy clarifications and service limit reduction, 2082ER
- Personal care services—long-term, reimbursement rate reduction, 37ER, 806ER, 1112ER, 1116ER, 2086ER, 2087ER, 2489N
- Pharmacy benefits management program
 - Lock-in program, 2490N
 - Maximum allowable costs, 1357ER, 2575ER
 - Medication administration, influenza vaccinations, 1117ER, 2361ER
 - Minimum allowable costs, 38ER
 - Prescription limit reduction, 455ER, 1358ER, 2493N, 2576ER
- Pregnant women extended services
 - Dental services, reimbursement rate reduction, 39ER, 807ER, 1117ER, 2087ER, 2362ER, 2494N
 - Substance abuse screening and intervention services, 1119ER, 2088ER
- Professional services program
 - Diabetes self-management training, 456ER, 1543ER, 2577ER
 - Physician services
 - Obstetrics rate increase, 904R
 - Reimbursement methodology, supplemental payments, 457ER, 1544ER
- Prosthetics and orthotics
 - Osteogenic bone growth stimulators, 1013N, 1600R
- Rural health clinics
 - Diabetes self-management training, 458ER, 1546ER, 1924N
 - Hospital-based rural health clinics, wrap-around payments, 2496N
- Licensed Professional Counselors, Board of Examiners**
 - License of title for marriage and family therapy, 706N, 1601R, 2162R
 - Practice of mental health counseling for serious mental illnesses, 2089ER
 - Professional assistance program, 344R
- Medical Examiners, Board of**
 - Clinical laboratory personnel, licensure and certification, 596R, 1439N, 2401R
 - Enforcement terms; unprofessional conduct, 336R
 - Licensure and certification; reciprocity, 337R
 - Medical psychologists, general, licensure, certification and practice, 888R, 1150R
 - Physician assistants—practice, 2285N, 2541P
 - Physician consultation or collaboration with medical psychologists, 897R
 - Respiratory therapists, licensure, certification and practice, 2828N
- Nursing, Board of**
 - Administration of anesthetic agents, 898R
 - Alternative to disciplinary proceedings, 1877N
 - Paperless licensing revisions, 1878N
- Nursing Facility Administrators, Board of Examiners**
 - Nursing facility administrators, 590R, 887R
- Physical Therapy Board**
 - Public hearing, substantive changes to proposed rules, comprehensive revision, 1060P, 2304P

HEALTH AND HOSPITALS (continued)

Public Health, Office of

Added controlled dangerous substances, 41ER, 1015N, 1359ER
Added use of vital records in program administration, 2578ER
Maternal and child health section
Public notice of MCH block grant, 2033P
Milk code, 1930N, 2633R
Nutrition services, special supplemental nutrition program for women, infants and children, 2542P
Preventive health and health services block grant hearing, 433P, 2304P
Public buildings, schools and other institutions, 1252N, 1440N, 2165R
Tuberculosis control program
Inmate health, 597R
Mandatory testing, 598R

Radiologic Technology Board of Examiners

Fusion technology, 2287N

Secretary, Office of

Community and family support system—flexible family fund, 1926N, 2584R

Speech-Language Pathology and Audiology, Board of Examiners for

Speech pathology and audiology, 671N, 2392R, 2622R

Veterinary Medicine, Board of

Continuing veterinary medicine education, 377N, 1152R
Fall/winter examination dates, 2304P
Prescribing and dispensing drugs
Preceptorship program, 1001N, 1571R

Wholesale Drug Distributors, Board of

Exemptions, 899R

INSURANCE

Commissioner, Office of

Rule number 9—prelicensing education, 1257N, 2168R
Rule number 10—continuing education, 1262N, 2172R
Regulation number 47—actuarial opinion and memorandum regulation, 598R

Health, Office of

Annual HIPAA assessment rate, 1468P

LEGISLATION

House Committee on Ways and Means

Ad valorem taxation, 1303CR

Senate Committee on Health And Welfare

Legislative oversight review, physical therapy, 2035P

LOUISIANA LOTTERY CORPORATION

On-Line Lottery Games

Mega millions, 2289N

NATURAL RESOURCES

Conservation, Office of

Advanced notice of rulemaking and solicitation of comments on emergency action plans, 2309P
Advanced notice of rulemaking and solicitation of comments on water well registration, construction and closure, 1313P
Fees, 2497N
Hazardous liquids pipeline safety, 2859N
Hearing notice, CCS Midstream Services, LLC (docket No. Env 2011-04), 1061P
Hydraulic fracture stimulation operations, 2290N
Legal notice, docket no. ENV 2011-05, 1317P
Natural gas pipeline safety, 2870N
Orphaned oilfield sites, 433P, 755P, 1062P, 2033P, 2310P, 2542P
Public hearing, docket No. ENV 2011-08, 2033P
Public hearing, docket No. ENV 2011-09, 2311P
Statewide order no. 29-B—general provisions, 1268N
Statewide orders no. 29-B and 29-B-a, 460ER, 1547ER
Surface Mining—Statewide Order 29-O-1, 2025N, 2729R
Vanguard Environmental, LLC public hearing, 433P
Water well construction, location, 2501N
Water well notification requirements, 711N, 2410R
Water wells, 905R

Environmental Division

Public hearing—application of Heckmann water resources corporation (docket ENV 2011-07), 1538P
Public hearing—docket no. ENV 2011-10, 2312P
Water well registration, construction and closure, 2502N

Mineral Resources, Office of

Mineral resources, alternative energy leasing and dry hole credit, 2508N

Secretary, Office of

Fishermen's Gear Compensation Fund

Loran Coordinates, 755P, 1064P, 1317P, 1318P, 1469P, 2034P, 2312P, 2542P, 2893P

PUBLIC SAFETY AND CORRECTIONS

Corrections Services

Administrative remedy procedure, 2528N
Disaster remediation program, 403N, 1174R
Judicial agency residential referral facilities, 41ER, 712N, 1360ER, 1408R
Non-Medical furloughs, 720N, 1415R
Offender visitation, 1269N, 2177R
Special agents, 1276N, 2184R
Supervised release of sex offenders upon expiration of sentence, 404N, 1176R
Telephone use and policy on monitoring of calls, 599R

Gaming Control Board

Casino gaming payment interception, 406N, 1415R
Definition of Louisiana business, 1462N, 2410R

Liquefied Petroleum Gas Commission

Storage and handling of liquefied petroleum gases, 913R

PUBLIC SAFETY AND CORRECTIONS (continued)

Private Investigators, Board of

Little Lake crude oil discharge draft settlement agreement, 2034P

Private Security Examiners, Board of

Security officer—definition; registration; insignia, 2291N

State Fire Marshal, Office of the

Commercial building energy conservation code, 1279N, 2185R

Property protection licensing, 408N

State uniform construction code, 601R, 2187R

State Police, Office of

Applicability of regulations, 1278N, 2187R

Breath and blood alcohol analysis methods and techniques, 720N, 721N, 1416R, 1417R

Collection, submission, receipt, identification, storage and disposal of DNA samples, 471ER, 722N, 1417R

Federal motor carrier regulations, 1016N, 1613R

Operator qualifications, 2886N

State Uniform Construction Code Council

State uniform construction code, 913R, 2090ER, 2736R

Wood structural panel standards, 2293N

REVENUE

Policy Services Division

Electronic filing mandate for reports and returns related to the sports facility assistance fund, 914R

Electronic filing requirements for oil or gas severance tax, 474ER, 1017N, 1613R

Income tax credits for wind or solar energy systems, 2579ER

Natural gas severance tax rate, 2035P

New markets tax credit, 914R

Advanced notice of proposed rulemaking and solicitation of comments on mandatory electronic filing of corporate and individual income tax extensions and extension payments, 1469P

TRANSPORTATION AND DEVELOPMENT

Highway Construction

Access connection permits and driveway permits, 347R

Highways/Engineering, Office of

Advertising on department of transportation-owned assets, 2887N

Outdoor Advertising

Outdoor advertising, 916R

Tourist oriented directional signs, 920R

Professional Engineering and Land Surveying Board

General provisions, 1019N, 2411R, 2752R

Public hearing—substantive changes to proposed rules—general provisions, 2035P

Transportation Research Center

LTRC transportation training and education fund, 354R

TREASURY

Deferred Compensation Commission

Public employees deferred compensation plan, 723N, 1617R

Housing Finance Agency

Turnkey mortgage origination program, 2889N

Treasurer, Office of

Permissible investments, 1367ER, 2091ER

Trustees of the Louisiana State Employees' Retirement System, Board of

Election to the board of trustees, 1029N, 1614R

WILDLIFE AND FISHERIES

Wildlife and Fisheries Commission

2011 Commercial amberjack season reopens, 2579ER

2011 Fall inshore shrimp season opening, 2364ER

2011-12 Deer seasons on kisatchie national forest, 2580ER

2011-12 Early migratory bird seasons, 2363ER

2011-12 Oyster season, 2580ER

2011-2012 Commercial king mackerel season, 48ER

2011-2012 Waterfowl season, 2581ER

Alligator regulations, 1281N, 2121R

Assignment of HINs to undocumented vessels manufactured in Louisiana, 922R

Calcasieu lake oyster harvester permit, 2294N, 2542P

Calcasieu lake public oyster area closure, 1120ER

Civil fish and wildlife values, threatened and endangered species, 1294N, 2434R

Coastal sharks commercial fishery opening, 49ER

Commercial fisheries opening, 1367ER

Crab trap closure and derelict crab trap clean-up, 475ER

Deer hunting season, revisions, 2092ER

Deer management assistance program, 1033N, 2187R, 2752R

Fall inshore shrimp season extension in Breton and Chandeleur Sounds, 1120ER

Fall inshore shrimp season extension in portions of zone 1, 49ER

Gag grouper, 2011-2012 recreational season, 2091ER

General and wildlife management area hunting rules and regulations, 728N

General and WMA turkey hunting regulations, 2295N

Greater amberjack commercial season closure, 1368ER

Greater amberjack recreational season closure, 1368ER

King mackerel commercial season, 476ER

Large coastal shark commercial season closure, 2365ER

Methods of payment for commercial licenses and oyster tags, 745N, 1622R

Mullet harvest rules, 2532N

Oyster Bedding Season—CSA 1, 1560ER

Oyster leases, 1622R

Public seed grounds east of the Mississippi river and oyster lease relocation, 424N, 1624R

Recreational and commercial fisheries closure, 1369ER

Recreational and commercial fisheries opening, 1369ER

WILDLIFE AND FISHERIES (continued)

Red snapper recreational season closure, 1370ER
Reef fish—harvest regulations, 2011-2012 commercial reef fish season, 50ER
Reef fish—harvest regulations, 2011-2012 recreational reef fish season, 50ER
Reef fish—harvest regulations, gag grouper recreational season closure, 51ER
Removal of abandoned crab traps, 2890N
Resident game hunting season, 746N, 2206R
Rules of the road for vessels, 2538N
Shrimp season closure in additional portions of zone, 2366ER
Shrimp season closure—Zone 1, 476ER
Special shrimp season in portion of state inside waters, 1371ER
Spring inshore shrimp season
 Additional season closure, 2092ER, 2364ER
 Opening dates, 1371ER
 Partial zone 2 closure, 2093ER
 Zone 3 closure, 2366ER
Spotted seatrout management measures, 354R
State outside waters
 Partial opening of shrimp season, 1120ER
Texas border waters, reciprocal agreement and black bass regulations, 1035N, 2439R
Triploid grass carp, 2536N

Tuna harvest regulations, 2535N
Turkey seasons, 2299N
Wildlife rehabilitation program, 602R
Use of yo-yo's and trotlines in Lake Lafourche, 355R

Secretary, Office of

Atchafalaya Basin closure continuation, 1559ER
Atchafalaya Basin flooding closure, 1559ER

WORKFORCE COMMISSION**State Plumbing Board**

Continuing professional education programs, 905R, 1463N, 2440R

Workers' Compensation Administration, Office of

Average weekly wage rate, 2543P
Electronic billing, 2853N
Hearing rules, 1053N, 1625R
Medical guidelines, 51ER, 426N, 477ER, 1631R
Pharmaceutical billing, 2539N
Public hearing—substantive changes to proposed rule, 2893P
Weekly compensation benefits limits, 2543P

Workforce Development

Apprenticeship law, 1037N, 2209R
Hearing notice and comment period revision labor and employment, apprenticeship law, 1318P