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This public document was published at a total cost of \$6,613.18. Nine hundred, fifty copies of this public document were published in this monthly printing at a cost of \$4,613.18. The total cost of all printings of this document including reprints is \$6,613.18. This document was published by Bourque Printing, Inc., 13112 South Choctaw Drive, Baton Rouge, LA 70815, as service to the state agencies in keeping them cognizant of the new rules and regulations under the authority of R.S. 49:950-971 and R.S. 981-999. This material was printed in accordance with standards for printing by state agencies established pursuant to R.S. 43:31. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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Executive Orders

EXECUTIVE ORDER MJF 98-10

Interstate 49 South Project Task Force

WHEREAS, Executive Order No. MJF 97-38, signed on September 18, 1997, created and established the Interstate 49 South Project Task Force (hereafter "Task Force"), and ordered the Task Force to submit a comprehensive report to the governor by April 1, 1998; and

WHEREAS, it is necessary to extend the time period in which the Task Force shall submit its report to the governor;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The non-lettered paragraph of Section 2 of Executive Order Number MJF 97-38, is amended to provide as follows:

The primary duty of the Task Force shall be to submit to the governor, by June 1, 1998, a comprehensive report which includes research, analyses, and recommendations addressing the following non-exclusive list of issues:

SECTION 2: All other sections and subsections of Executive Order Number MJF 97-38 shall remain in full force and effect.

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of this Order are effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the City of Baton Rouge, on this 11th day of March, 1998.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9804#012

EXECUTIVE ORDER MJF 98-11

Abstinence Education Project

WHEREAS, the state of Louisiana has consistently ranked above the national average in rates of teenage pregnancy and sexually transmitted diseases;

WHEREAS, some citizens of the state of Louisiana are concerned that the youth education programs presently available throughout the state have failed to comprehensively

and adequately address, warn, and advise about the negative consequences of premarital sexual activity, teen pregnancy, sexually transmitted diseases, and alcohol and drug abuse;

WHEREAS, through a program established pursuant to Title V of the Social Security Act at 42 U.S.C. §710, states may apply for allotments from the federal government, through the secretary of the United States Department of Health and Human Services, to enable the state to provide abstinence education and to provide appropriate mentoring, counseling, and adult supervision to youths to promote abstinence from premarital sexual activity, focusing on those groups which have a higher premarital pregnancy rate; and

WHEREAS, the interests of the citizens of the state of Louisiana would be best served by the creation of an abstinence education project which establishes programs throughout the state with an emphasis in those areas with elevated rates among youths of sexually transmitted diseases and/or premarital pregnancies, that are administered in a manner that educates, encourages, and supports the youth of this state regarding the benefits of sexual abstinence;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The Louisiana Abstinence Education Project (hereafter "Abstinence Project") is established within the executive branch, Department of Health and Hospitals.

SECTION 2: The goals of the Abstinence Project shall include, but are not limited to, the following:

A. Reducing the incidence of premarital sexual activity among the youth of this state;

B. Reducing the rate of sexually transmitted diseases among the youth of this state; and

C. Lowering the premarital pregnancy rate among the youth of this state, especially among females between the ages of 15 and 17.

SECTION 3: The duties of the Abstinence Project shall include, but are not limited to, the following:

A. Applying for and receiving funding for the development and administration of the Abstinence Project from public and private sources including, but not limited to, funding and allotments available under 42 U.S.C. §710;

B. Establishing and administering community-based abstinence education programs state-wide with an emphasis in those communities with elevated rates of premarital pregnancies and/or sexually transmitted diseases;

C. Providing to youths medically accurate and age-appropriate family life education and skills which emphasize abstinence from sexual activity;

D. Providing to parents family life education and skills which emphasize and support their role as the primary educator of family values;

E. Promoting community awareness of the dangers of premarital sexual activity for the purpose of encouraging a more socially acceptable dialogue between youths and adults about abstinence from sexual activity; and

F. Promoting character qualities and human skills that are beneficial to marriage and to raising responsible and productive children.

SECTION 4: As used in this Order, "Abstinence Education Program" is defined in accordance with 42 U.S.C. §710(b)(2).

"Abstinence education program" means an educational or motivational program which:

A. Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

B. Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

C. Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

D. Teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity;

E. Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

F. Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

G. Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and

H. Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

SECTION 5: The Abstinence Project shall be directed by a state coordinator who shall be appointed by, and serve at the pleasure of, the governor. The state coordinator shall be responsible for administering, overseeing, and evaluating the programs of the Abstinence Project in a manner which facilitates the accomplishment of the project's goals, as set forth in Section 2 of this Order, and its duties, as defined in Section 3 of this Order.

The state coordinator shall submit to the governor and the secretary of the Department of Health and Hospitals (hereafter "secretary"), by May 15, 1998, a preliminary report that describes the manner in which the Abstinence Project and its programs shall be administered, identifies the specific communities where the programs will be established, and provides the rates of premarital pregnancies and sexually transmitted diseases among youths in those communities.

The state coordinator shall annually submit to the governor and the secretary, by January 1, a comprehensive report which addresses the fulfillment of the Abstinence Project's goals, as set forth in Section 2 of this Order, and its duties, as defined in Section 3 of this Order. Annual reports shall include all relevant comparative data and information relating to the effectiveness of the Abstinence Project and, based on available data and information, to the comparative effectiveness of the Abstinence Project to the abstinence education projects and/or programs of other states.

SECTION 6: The office of the state coordinator of the Abstinence Project shall be located in, and operated from, a state owned facility. The Abstinence Project shall be permitted staff and resources to fulfill the goals, duties, and responsibilities specified in this Order. It shall be permitted to

accept the efforts of volunteers in accordance with state law.

SECTION 7: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Abstinence Project in implementing the provisions of this Order.

SECTION 8: Upon signature of the governor, the provisions of this Order shall be effective retroactive to October 29, 1997. This Order shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the City of Baton Rouge, on this 13th day of March, 1998.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9804#010

EXECUTIVE ORDER MJF 98-12

Governor's Arson Strike Force

WHEREAS, Executive Order No. MJF 96-46, signed on October 16, 1996, created and established the Governor's Arson Strike Force (hereafter "Strike Force"); and

WHEREAS, it is necessary to amend the composition of the membership of the Task Force;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: Section 3 of Executive Order No. MJF 96-46 is amended to provide as follows:

The Strike Force shall consist of no more than 20 members who shall be appointed by, and serve at, the pleasure of the governor. The composition of the membership of the Strike Force shall be as follows:

- A. The state fire marshal, or the state fire marshal's designee;
- B. The superintendent of the Department of Public Safety, or the superintendent's designee;
- C. The attorney general, or the attorney general's designee;
- D. The commissioner of insurance, or the commissioner's designee;
- E. The assistant secretary of the Department of Agriculture and Forestry, or the assistant secretary's designee;

- F. The assistant secretary of the Department of Environmental Quality, or the assistant secretary's designee;
- G. The superintendent of the Orleans Parish Fire Department, or the superintendent's designee;
- H. The executive director of the Louisiana District Attorneys Association, or the executive director's designee;
- I. The executive director of the Louisiana Sheriffs Association, or the executive director's designee;
- J. The executive director of the Chiefs of Police Association, or the executive director's designee;
- K. At least one arson investigator from a private insurance company;
- L. At least one arson investigator and/or other representative from the Bureau of Alcohol, Tobacco, and Firearms;
- M. At least one arson investigator and/or other representative from the Federal Bureau of Investigation;
- N. At least two arson investigators from municipal fire departments within the state of Louisiana; and
- O. At least one member at-large.

SECTION 2: All other section and subsections of Executive Order No. MJF 96-46 shall remain in full force and effect.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the city of Baton Rouge, on this 20th day of March, 1998.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9804#011

EXECUTIVE ORDER MJF 98-13

SECURE Review Commission

WHEREAS, the Select Council on Revenues and Expenditures in Louisiana's Future (hereafter "SECURE"), an independent body of 27 members representing a broad cross-section of the state, including leaders in business and labor, public and higher education, state and local government, and civic and community organizations, was established pursuant to Senate Concurrent Resolution 192 of the 1993 Regular Session of the Legislature, and charged "to develop

recommendations to improve the financial future of the state and the general quality of life of its citizens";

WHEREAS, the final report for SECURE's two year study project, completed in April 1995, recommended bold and practical strategies to reduce the cost of government, improve government services, and devise a plan to carry the state of Louisiana into the twenty-first century; and

WHEREAS, the best interests of the citizens of the state of Louisiana would be served by the creation of a commission charged with reviewing, evaluating, and updating the recommendations set forth in SECURE's final report, and researching and recommending the most effective manner to continue the implementation of the recommendations made by SECURE;

NOW THEREFORE I, M. J. "MIKE" FOSTER, JR., Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The "SECURE" Review Commission (hereafter "Commission") is established within the Executive Department, Office of the Governor.

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

- reviewing SECURE's recommendations pertaining to government expenditures and organization;

- analyzing SECURE's recommended strategies to reduce the cost of government;

- reviewing SECURE's recommendations to improve government services;

- where appropriate, updating SECURE's recommendations;

- researching and evaluating the most efficient means to continue to implement SECURE's recommendations and to implement the Commission's updated recommendations; and

- evaluating the progress the state has made in implementing SECURE's recommendations.

SECTION 3: The Commission shall prepare a comprehensive written report which addresses the issues set forth in Section 2 and submit it to the governor, the speaker of the Louisiana House of Representatives, and the president of the Louisiana Senate by January 1, 1999.

SECTION 4: The Commission shall be composed of 18 members appointed by and serving at the pleasure of the governor. Commission members shall be selected as follows:

- A. the commissioner of administration, or the commissioner's designee;

- B. the president of the Louisiana Senate, or the president's designee;

- C. the speaker of the Louisiana House of Representatives, or the speaker's designee;

- D. two members of the Louisiana Senate designated by the president of the Senate;

- E. two members of the Louisiana House of Representatives designated by the speaker of the House of Representatives;

- F. the chair of the Committee of 100 for Economic Development, or the chair's designee;

- G. five members recommended by the chair of the Committee of 100 for Economic Development; and

- H. five members at-large.

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

SECTION 6: The Commission shall meet at regularly scheduled intervals and at the call of the chair.

SECTION 7: Support staff for the Commission and facilities for its meetings shall be provided by the Division of Administration.

SECTION 8: The members of the Commission shall not receive compensation or a per diem. Nonetheless, contingent upon the availability of funds, members who are not an employee of the state of Louisiana or one of its political subdivisions, or an elected official, may receive reimbursement from the Office of the Governor for actual travel expenses incurred in accordance with state guidelines and procedures with the prior approval of the commissioner of administration.

SECTION 9: All departments, commissions, boards, agencies, and officers of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Commission in implementing the provisions of this Order.

SECTION 10: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 23rd day of March, 1998.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9804#025

EXECUTIVE ORDER MJF 98-14

Louisiana Stadium and Exposition District (LSED)

WHEREAS, pursuant to Act No. 541 of the 1976 Regular Legislative Session, as amended (hereafter "Act No. 541 of 1976"), the state of Louisiana, through the governor, holds all power and authority over the management of the properties which now or hereafter belong to or are under the control of the Louisiana Stadium and Exposition District (hereafter "LSED");

WHEREAS, the Board of Commissioners of the LSED (hereafter "the board") is required by Act No. 541 of 1976 to serve in an advisory capacity to the governor, to assist the governor in all matters incidental to the performance of any property management contract or agreement, and to perform such other functions, powers, or duties as the governor requires or delegates to the board or as prescribed or required by bond resolution;

WHEREAS, from 1976 through 1993, the LSED's amount of significant property was limited to the Louisiana

Superdome; however, since 1993, the quantity of significant properties in the LSED has dramatically increased due to a recent upsurge in construction projects, including the New Orleans Saints practice facility in the parish of Jefferson, the John Alario, Sr. Recreation Center in the parish of Jefferson, and the multi-sports arena in the parish of Orleans;

WHEREAS, although the management of the Louisiana Superdome has been performed by a professional management organization since 1977, and the management of the multi-sports arena in the parish of Orleans will soon be delegated to a professional management organization, neither the board nor the LSED has employees or staff to assist it in fulfilling its obligations and duties; and

WHEREAS, the ability of the board to continue to properly fulfill its duties which are incidental to the performance of LSED contracts and agreements, and to perform all the duties, obligations, and responsibilities which are required of it by law, the governor, and bond resolutions, is severely impeded by its lack of administrative officers;

NOW THEREFORE I, M.J. "MIKE" FOSTER, JR., Governor of the state of Louisiana, by virtue of the authority vested by the Constitution and laws of the state of Louisiana, do hereby order and direct as follows:

SECTION 1: The offices of administrative assistant and deputy administrative assistant to the Board of Commissioners of the Louisiana Stadium and Exposition District are hereby created.

SECTION 2: The Board of Commissioners of the Louisiana Stadium and Exposition District shall submit to the governor for approval and appointment the names of the persons it recommends to fill the offices of administrative assistant and deputy administrative assistant. The appointees shall serve at the pleasure of the governor.

SECTION 3: The duties and salaries of the administrative assistant and deputy administrative assistant shall be determined by the Board of Commissioners of the Louisiana Stadium and Exposition District.

SECTION 4: All departments, commissions, boards, agencies, and offices of the state, or any political subdivision thereof, are authorized and directed to cooperate with the Board of Commissioners of the Louisiana Stadium and Exposition District in implementing the provisions of this Order.

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

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of the state of Louisiana, at the Capitol, in the City of Baton Rouge, on this 30th day of March, 1998.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
9804#026

Emergency Rules

DECLARATION OF EMERGENCY

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

Medicaid—Eligibility of Aliens

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) significantly changed Medicaid eligibility for individuals who are not citizens of the United States. Medicaid must be provided to eligible citizens or nationals, but certain noncitizens may be eligible to receive only treatment for an emergency medical condition. Effective January 1, 1997, the department promulgated an emergency rule which adopted the mandatory provisions of P.L. 104-193. This rule addressed only the citizenship requirement: every applicant for Medicaid under any classification addressed in this rule must meet all requirements for eligibility (*Louisiana Register*, Volume 23, Numbers 1, 4, and 9). Previous regulations for Medicaid eligibility of lawful Permanent Residents and aliens permanently residing in the United States under Color Of Law (PRUCOL) no longer apply and were replaced by the January 1997 rule.

Effective August 5, 1997, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 was amended by sections 5301-5306 and 5562-5563 of the Balanced Budget Act of 1997 as follows:

1. the eligibility period of refugees and asylees (includes those whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act and Cuban or Haitian entrants) increased from five to seven years; and

2. the definition of *qualified alien* was expanded to include aliens granted status as Cuban or Haitian entrants.

All noncitizens are classified as *qualified aliens* or *nonqualified aliens*. *Nonqualified aliens* include both illegal and ineligible persons.

Definitions

Illegal Aliens—aliens who were never legally admitted to the United States for any period of time or were admitted for a limited period of time and did not leave the United States when their period of time expired. *Illegal aliens* are eligible only for emergency services if they meet all eligibility criteria other than citizenship.

Ineligible Aliens—aliens lawfully admitted to the United States but only for a temporary or specified period of time as legal nonimmigrants. The following categories of individuals are *ineligible aliens*:

1. foreign government representatives on official business and their families and servants;
2. visitors for business or pleasure, including exchange visitors;
3. aliens in travel status while traveling directly through the U.S.;
4. crewmen on shore leave;
5. treaty traders and investors and their families;
6. foreign students;
7. international organization representation and personnel and their families and servants;
8. temporary workers including agricultural contract workers; and
9. members of foreign press, radio, film, or other information media and their families.

Ineligible aliens are eligible only for emergency services if they meet all eligibility criteria other than citizenship.

Qualified Aliens—aliens who:

1. are lawful permanent residents;
2. are refugees, including Amerasian immigrants;
3. are asylees;
4. have had deportation withheld under section 243(h) of the Immigration and Nationality Act (INA);
5. are granted parole for at least one year by the Immigration and Naturalization Services (INS);
6. are granted conditional entry under immigration law in effect before April 1, 1980;
7. are granted status as a Cuban or Haitian entrant; or
8. are battered immigrants, who meet certain requirements.

Qualified aliens who are otherwise eligible for Medicaid, are eligible for regular Medicaid coverage.

Emergency Medical Services—services necessary for treatment of an emergency medical condition as follows. The alien has, after sudden onset, a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. *Emergency Medical Services* do not include any organ transplant procedure or routine prenatal or postpartum care.

Mandatory Qualified Aliens—aliens who are:

1. *qualified aliens* who were in the United States prior to August 22, 1996, and are members of these groups:
 - a. lawful permanent residents to whom 40 qualifying quarters of Social Security can be credited;
 - b. refugees, including Amerasian immigrants, until seven years after the date of the alien's entry into the United States;
 - c. asylees until seven years after the grant of asylum;
 - d. aliens who have had deportation withheld under section 243(h) of the INA until seven years after the grant of withholding;

e. honorably discharged veterans who fulfill the minimum active-duty service requirements; aliens on active duty in the United States armed forces; the spouse or unmarried dependent child(ren) of such individuals; and the unremarried surviving spouse of a deceased honorably discharged veteran;

f. aliens granted status as Cuban or Haitian entrants until seven years after status granted.

2. *qualified aliens* entering the United States on or after August 22, 1996, who are members of the groups below:

a. refugees, including Amerasian immigrants, for seven years from date of entry;

b. asylees for seven years from date of entry;

c. aliens whose deportation has been withheld under section 243(h) of the INA for seven years from grant of withholding;

d. honorably discharged veterans who fulfill the minimum active-duty service requirements; aliens on active duty in the United States armed forces; the spouse or unmarried dependent child(ren) of such individuals; and the unremarried surviving spouse of a deceased honorably discharged veteran;

e. aliens with Cuban or Haitian entrance status until seven years from grant of status.

3. Native Americans born in Canada who have at least 50 percent Native American blood who enter and reside in the United States.

Optional Qualified Aliens—persons who meet the definition of *qualified aliens* but who are not *mandatory qualified aliens*. Effective December 21, 1997, the state elected to provide regular Medicaid coverage to *optional qualified aliens* who were in the United States prior to August 22, 1996.

Qualified aliens entering the United States on or after August 22, 1996 (those not described as *mandatory qualified aliens* above), are not eligible for Medicaid benefits for five years after entry into the United States. Such *qualified aliens* are eligible for emergency services only. Upon expiration of the five-year period, coverage for regular Medicaid services shall be considered if the *qualified alien* meets all eligibility criteria.

Effective December 21, 1997, the department adopted an emergency rule (*Louisiana Register*, Volume 23, Number 12) in order to avoid sanctions or penalties from the federal government arising from failure to adopt appropriate regulations related to amendments to the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) contained in the Balanced Budget Act of 1997 (P.L. 105-33). The above provisions will remain in force as a result of this subsequent emergency rule.

Emergency Rule

Effective April 20, 1998 and after, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of section 401 of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193) as amended by the Balanced Budget Act of 1997 (P.L. 105-33) regarding Medicaid eligibility for noncitizens.

The state elects to provide regular Medicaid coverage to *optional qualified aliens* who were in the United States prior to August 22, 1996, who meet all eligibility criteria.

Qualified aliens entering the United States on or after August 22, 1996 are not eligible for Medicaid for five years after entry into the United States. Such *qualified aliens* are eligible for emergency services only. Upon expiration of the five-year period, coverage for regular Medicaid services shall be considered if the *qualified alien* meets all eligibility criteria.

David W. Hood
Secretary

9804#057

DECLARATION OF EMERGENCY

Department of Public Safety and Corrections Board of Parole

Board Administration: Meetings, Decisions and Code of Ethics; Parole: Eligibility, Types, Conditions, Violations, Time Served and Suspension/Termination (LAC 22:XI.Chapters 1-19)

The Department of Public Safety and Corrections, Board of Parole has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B), in order to implement and amend its rules and procedures. The Board of Parole hereby adopts the following emergency rule, effective May 1, 1998.

This emergency rule is necessary so that the Board of Parole will be in compliance with all state laws regarding parolees and sex offenders. These rules will insure that the Board of Parole will have published guidelines in place to regulate compliance with the required victim notification, public information and actions authorized by the Board of Parole.

Without such rules, the Board of Parole will continue to suffer from the misconception by the public that the Board of Parole is not operating in compliance with all state laws. Without such provisions in place, the Board of Parole will continue operating by its present rules and practices.

This emergency rule shall remain in effect for 120 days or until a final rule is promulgated, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XI. Board of Parole

Chapter 1. Administration

§101. Authority

The Louisiana Board of Parole, hereinafter referred to as "the board," has the authority to release on parole any statutorily eligible inmate convicted of a felony and sentenced to the Louisiana Department of Public Safety and Corrections and to detain or revoke any parolee for violation of parole conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§103. Composition of the Board

A.1. The board shall be composed of seven members appointed by the governor, who shall designate one member as chairman and one member as vice-chairman.

2. All members shall serve at the pleasure of the governor and each appointment shall be confirmed by the Senate.

3. One member shall be appointed from a list of at least three names submitted by Victims and Citizens Against Crime, Inc.

4. Each member shall devote full time to the duties of the office and shall not engage in any other business or profession or hold any other public office.

B. The chairman of the board shall be the chief administrative officer for the board and shall be responsible for assuring that all meetings, hearings and administrative matters for the board are properly conducted in accordance with law and with these rules or executive order.

C. The vice-chairman of the board shall act in place of the chairman in his or her absence and shall be responsible for any other administrative duties as directed by the chairman or as provided by law or executive order. In the event that the vice-chairman is incapacitated or otherwise unable to perform his or her duties for any reason, the chairman shall perform such duties until the vice-chairman is able to resume performance of his or her duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113, (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§105. Headquarters

A. The domicile of the board shall be in the parish of East Baton Rouge, City of Baton Rouge, Louisiana. The board's physical address is 504 Mayflower Street, Baton Rouge, LA 70802 and the mailing address is Box 94304, Baton Rouge, LA 70804.

B. Venue in any action in which an individual committed to the Department of Public Safety and Corrections contests any action of the board is East Baton Rouge Parish. Venue in a suit contesting the actions of the board shall be controlled by R.S. 15:571.15 and not the *Code of Criminal Procedure*, Title XXXI-A, Post Conviction Relief, or Title IX, Habeas Corpus, regardless of the captioned pleadings stating otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:113 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§107. Powers and Duties of the Board

A. to determine the time and conditions of release on parole of any eligible inmate who has been convicted of a felony and sentenced to the Louisiana Department of Public Safety and Corrections; the release date:

1. shall be fixed by the board; and
2. shall not be later than six months after the inmate's parole hearing or the most recent consideration of the case;

B. to determine and impose sanctions for violation of the conditions of parole;

C. to keep a record of its acts and to notify each institution of its decision relating to the persons who are or have been confined therein;

D. to transmit annually, on or before the first day of February, a report to the secretary of the Department of Public Safety and Corrections as set forth in R.S. 15:574.2(C)(4);

E. to apply to a district court to issue subpoenas, compel the attendance of witnesses, and the production of books, papers, and other documents pertinent to the subject of its inquiry; to take testimony under oath, either at a hearing or by deposition; and to pay all costs in connection with board hearings;

F. to consider all pertinent information necessary for parole consideration with respect to each inmate who is incarcerated in any adult penal or correctional institution in the state at least one month prior to the parole eligibility date, when possible, provided the file has been completed by the Department of Public Safety and Corrections, and thereafter at such other intervals as the board may determine; such information shall be the inmate's consolidated summary record and pre-parole report and shall include but not be limited to the following:

1. circumstances of the instant offense;
2. reports filed under Articles 875 and 876 of the Louisiana *Code of Criminal Procedure*;
3. detainers issued or outstanding;
4. previous social history and criminal record;
5. conduct, employment and attitude in prison;
6. participation in vocational training, adult education, literacy, or reading programs;
7. reports of physical and mental examinations which have been made;
8. residence plan; and
9. employment plan;

G. to adopt rules not inconsistent with law as the board deems necessary and proper with respect to the eligibility of inmates for parole and the conditions imposed upon inmates who are released on parole;

H. when requested, to notify the chief of police, sheriff and district attorney of the parish where the inmate will reside and where the conviction(s) occurred of the inmate's pending release; the notification:

1. shall be in writing; and
2. shall be issued at least seven days prior to the inmate's release;

I. to adopt rules and regulations to encourage voluntary participation by inmates committed to the Department of Public Safety and Corrections in vocational training, adult education, literacy, and reading programs, through programs established by the department pursuant to R.S. 15:828(B); the rules and regulations may include provisions for accelerated parole release time, in addition to the provisions of R.S. 15:574.4(A)(1), for inmates who are not otherwise ineligible, but no inmate shall receive more than 10 additional

days per month or 180 days total accelerated parole release time for program participation;

J. to sanction an inmate's disorderly, threatening, or insolent behavior, or use of insulting, abusive, or obscene language at a hearing or in written communications in connection with the inmate's parole application:

1. a decision to sanction the inmate may result in the immediate and unfavorable termination of the proceedings, and the inmate's right to make future application for parole may be suspended for not more than two years;

2. the applicant shall be informed of the sanction process and the possible consequences at the commencement of the proceedings.

[See R.S. 15:574.2(A)(11)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:114 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§109. Restrictions on the Representation of Offenders

A. The following persons shall not represent any offender, directly or indirectly, before the board:

1. the executive counsel to the governor;
2. the executive secretary to the governor;
3. any member of the immediate staff of the governor;
4. any member of a law firm, law partnership, or law corporation of which a member, associate, or partner is the executive counsel to the governor, the executive secretary to the governor, or a member of the immediate staff of the governor.

B. If an executive counsel, executive secretary, or member of the immediate staff of the governor violates the provisions of this Section, such person shall forfeit the office or position held and all emoluments of the office or position. In addition, if a member of a law firm, partnership, or corporation of which such a person is a member, associate, or partner violates the provisions of this Section, the office or position held with the governor and all emoluments of said office shall be forfeited.

[See R.S. 15:572.7(A)(2)].

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:114 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§111. Communications Between Board Members

There shall be no informal, off-the-record communications regarding the merits or the substance of an offender's case between board members for the purpose of influencing a decision of the board outside of an official administrative meeting or public hearing. Any attempt by a board member to discuss cases in an effort to persuade another board member or members outside of an official administrative meeting or public hearing shall be documented as set forth in §113.D.1 - 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by

the Department of Public Safety and Corrections, Board of Parole, LR 24:

§113. Communications With Board Members

A.1. No member of the board shall transmit any correspondence to, or otherwise confer with, a judge before whom a convicted offender is awaiting sentencing to request or recommend any action relating to the sentence to be imposed upon the offender.

2. The board shall notify the governor of its finding of a violation of this Section. However, no decision of the board shall be nullified or otherwise affected by the participation of a member who has violated this Section, except a decision that involves the offender on whose behalf the request or recommendation was made.

B. Notwithstanding the provisions of R.S. 15:574.12(A), or any other provision of law to the contrary, no person shall contact or communicate with the board or any of its members urging parole, or otherwise regarding any offender, except in an open hearing/meeting or by written letter addressed to the board.

1. Any written communication with the board regarding an offender as provided in this Section shall be deemed a public record and subject to public inspection as provided by R.S. 44:1 et seq.

2. Letters written by or on behalf of any victim of a crime committed by the offender, or any letter written in opposition to the inmate being placed on parole shall not be deemed a public record. However, this exception shall not apply to any written communication by an elected or appointed official.

C. Any member of the board improperly contacted by an individual shall immediately cease the inappropriate communication with the individual, notify the individual in writing, return receipt requested, accompanied by a copy of this rule, that such contact was illegal and inappropriate, and report the contact to the other board members.

1. Any person who persists in violating the provisions of this Section, after being informed of the inappropriate contact as provided in this Section, shall be reported to the appropriate district attorney for prosecution.

2. If convicted, the violator shall be fined not more than \$500 or imprisoned for not more than six months, or both.

D. A monthly contact sheet for oral communication will be kept by each board member, and any communication received by the board member with the intent to affect the outcome of any offender's case shall be entered on the form.

1. The form shall include the name of the individual making the contact, date and time of the contact, type of communication, name of offender, nature of the request and board member's action.

2. A copy of the monthly contact sheet shall be kept in a central registry at the board office and shall be subject to public inspection.

3. Copies of written communications shall be given to all board members.

E. Any public records' request directed to the board or its staff should be made in writing. The chairman or his or her designee and/or the board's attorney shall review and approve

or disapprove the request in accordance with R.S. 15:574.12 and R.S. 44:1 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§115. Conflicts of Interest

A. Any member of the board who has a conflict of interest must recuse himself or herself from a matter pending before the board. A conflict of interest may include, but not be limited to the following:

1. the board member is a witness;
2. the board member has been employed as an attorney for the offender;
3. the attorney for the offender is the spouse of a board member or is related to a board member;
4. the offender is a relative of a board member;
5. the board member is biased, prejudiced, or interested in the case or its outcome, or biased or prejudiced toward or against the offender or the offender's attorney to the extent that he/she would be unable to fairly and impartially participate in the hearing.

B. If a board member fails to recuse himself or herself, any interested person may request in writing to the chairman of the board that a member be recused. This request should include detailed reasons why a member should be recused.

C. If the member fails to recuse himself or herself, the matter shall be referred to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§117. Rules and Procedures Manual

Each board member shall be issued a *Rules and Procedures Manual* and shall sign a statement to acknowledge receipt of the manual. Such statement shall include the board member's agreement to completely and thoroughly familiarize himself or herself with the information contained therein and to conduct himself at all times in a manner which will strictly adhere to the letter of the law, as well as the spirit and intent. The manual shall contain, but not be limited to, a copy of the following:

1. Louisiana Board of Parole Rules and Procedures;
2. *Code of Governmental Ethics*;
3. R.S. 42:1 et seq. (Public Policy for Open Meetings Law);
4. all department regulations and/or statutes with particular reference to the operations of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:115 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§119. Legislative Briefing

A. Ninety days prior to a legislative session, the chairman shall appoint a committee consisting of:

1. at least two board members,;
2. the board's legal counsel;
3. executive counsel to the governor; and/or
4. an alternate member if requested by the board, which may be the legislative liaison of the Department of Public Safety and Corrections.

B. The committee shall present its recommendations to the board and the board shall determine if any legislation should be recommended by the board.

C. Following each legislative session, if necessary, a meeting will be held to brief all board members concerning those legislative acts which affect the operations of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:116 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§121. Board Spokesperson

Only the chairman of the board or, in the absence of the chairman, the vice-chairman shall be authorized to speak on behalf of the entire board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:116 (April 1976), amended by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§123. Authority of the Parole Board

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:116 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§125. Specific Conditions Under Which Parole is Granted

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:117 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§127. Suspension of Supervision Parole

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:118 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§129. Confidential Nature of Parole Files

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:118 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§131. Changes or Revisions

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.

15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Board of Parole, LR 2:118 (April 1976), repealed by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 3. Parole—Eligibility and Types

§301. General Information

A. The authority for determining parole eligibility dates, offender class, good time release dates and full term dates will be the official master prison record computed by the Louisiana Department of Public Safety and Corrections. The board will accept changes in the offender class and parole eligibility dates when recommended by the Division of Probation and Parole and verified by the records custodian.

B. No inmate may be paroled while there is pending against him any indictment or bill of information for any crimes suspected of having been committed by him while a prisoner.

C. Third and subsequent offenders, offenders sentenced to imprisonment without benefit of parole, and inmates serving a life sentence are not eligible for parole. Those inmates who have a parole eligibility date, but who may be ineligible for release, will be reviewed by a single-member as set forth in §513.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§303. Regular Parole

A. An inmate whose offense was committed prior to July 1, 1982, and who is not otherwise ineligible for parole, shall be eligible for parole consideration after serving one-third of the sentence imposed.

B. Except as otherwise provided by law, an inmate whose offense was committed on or after July 1, 1982, shall be eligible for parole consideration as follows:

1. first offenders are eligible after serving one-third of the sentence imposed;
2. second offenders are eligible after serving one-half of the sentence imposed.

C. An inmate convicted a first time for a *crime of violence* committed on or after January 1, 1997, and not otherwise ineligible for parole, shall serve at least 85 percent of the sentence imposed prior to parole consideration. In addition to the offenses enumerated in R.S. 14:2(13), a *crime of violence* is an offense that has, as an element, the use, attempted use or threatened use of physical force against the person or property of another, and that by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense or an offense that involves the possession or use of a dangerous weapon. [See R.S. 14:2(13)]

D. Except for those inmates serving a life sentence and those inmates convicted of a *crime of violence* committed on or after January 1, 1997, an inmate who is 45 years of age who has served 20 years of a sentence of 30 years or more, is eligible for parole consideration.

E.1. Within three months prior to an inmate's parole eligibility date, all pertinent information will be compiled concerning the inmate's case, including but not limited to:

- a. the nature and circumstances of the offense;
- b. prison records;
- c. the pre-sentence investigation report;
- d. the pre-parole report including recommendations from the Division of Probation and Parole; and
- e. any other information (including correspondence), reports, or data as may be generated.

2. If appropriate, a public hearing shall be scheduled.

F. The board will not schedule a parole hearing or rehearing when there is less than 90 days between the parole eligibility date and the diminution of sentence/parole supervision release date, or when there is less than 90 days between the earliest possible hearing date and diminution of sentence/parole supervision release date. A hearing will not be held if the pre-parole report has not been received by the board from the Division of Probation and Parole or if the victim has not been notified prior to the scheduled public hearing.

G. In the event an inmate chooses to withdraw from parole consideration, he may reapply for a hearing in accordance with §705.

H. Parole hearings may be held during the month prior to the parole eligibility date.

I. No inmate who is the parent, stepparent, or has legal and physical custody of a child who is the victim, shall be released on parole unless the victim has received psychological counseling prior to the inmate's release if the inmate is returning to the residence or community in which the child resides. [See R.S. 15:574.4(H)(5)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§305. Impact Parole

A. A person otherwise eligible for parole, convicted of a nonviolent first felony offense or of a nonviolent second felony offense, but never having served time in a state prison, may be eligible for intensive parole supervision upon successful completion of intensive incarceration.

1. The intensive incarceration and parole supervision program shall be established and administered by the Department of Public Safety and Corrections.

2. The duration of the intensive incarceration shall not be less than 180 calendar days.

3. The offender may be considered for participation in the program if all of the following considerations are met:

a. the offender is sentenced to be committed to the Department of Public Safety and Corrections to serve seven years or less;

b. the Department, through the Division of Probation and Parole within the Office of Adult Services, recommends to the sentencing court that the offender is particularly likely to respond affirmatively to participation in the program;

c. the court at sentencing recommends that the offender be considered for participation in the program;

d. the secretary of the department, or his designee, finds, after an evaluation, that the offender is particularly likely to respond affirmatively to participation in the program;

e. the offender voluntarily enrolls in the program after having been advised by the Department of Public Safety and

Corrections of the rules and regulations governing the participation in the program.

B. An offender who is otherwise eligible for intensive incarceration and intensive parole supervision, but who has not been recommended for participation in the intensive incarceration and intensive parole supervision program by the Division of Probation and Parole of the Office of Adult Services and the sentencing judge, may additionally be placed in the intensive incarceration and intensive parole supervision program if all of the following conditions are met:

1. the staff at the Adult Reception and Diagnostic Center, after a thorough evaluation, determines that the offender is suitable and appropriate for participation;
2. the warden at the Adult Reception and Diagnostic Center concurs with the staff recommendation;
3. the warden of the facility where the offender would be placed concurs with the recommendation of the staff and the warden of the Adult Reception and Diagnostic Center;
4. the offender meets other conditions set forth in R.S. 15:474.4.

C. The court may sentence an offender directly to the program if the court commits the offender to the Department of Public Safety and Corrections to serve seven years or less.

D.1. When an inmate completes intensive incarceration, the board shall review the case in a public hearing in accordance with §511 to determine whether the inmate should be released on intensive parole supervision or serve the remainder of his sentence as provided by law. Such review shall include:

- a. an evaluation of the inmate's performance while incarcerated;
- b. the likelihood of successful adjustment on parole; and
- c. other factors deemed relevant by the board.

2. The board may defer any final decision and reschedule the consideration for the next scheduled hearing at the Elayn Hunt Correctional Center.

E. When the inmate is released to intensive parole supervision by the board, the board shall require the inmate to comply with conditions of intensive parole supervision in accordance with R.S. 15:574.4(A)(2)(h), in addition to any other conditions of parole ordered by the board.

Note: See Department Regulation No. B-02-005 "Intensive Incarceration/Intensive Parole Supervision (IMPACT)-Adult and Alternative Correctional Treatment Program for Juveniles" for additional information concerning the IMPACT program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§307. Medical Parole

A. An inmate determined by the secretary of the Department of Public Safety and Corrections to be *permanently incapacitated* or *terminally ill* may be eligible for release consideration.

1. Upon referral by the Department of Public Safety and Corrections, the board may schedule the inmate for a hearing for medical parole consideration.

2. Inmates who are serving a sentence for first or second degree murder, who are awaiting execution, or who have a

contagious disease are not eligible.

B. *Permanently incapacitated inmate* means any inmate who, by reason of an existing physical or medical condition, is so permanently and irreversibly physically incapacitated that he does not constitute a danger to himself or to society.

C. *Terminally ill inmate* means any inmate who, because of an existing medical condition, is irreversibly terminally ill, and who by reason of the condition does not constitute a danger to himself or to society.

D. Public hearings for medical parole consideration will be held at a location convenient to the board and the inmate. The board may request that additional medical information be provided or that further medical examinations be conducted.

E. The authority to grant medical parole shall rest solely with the board.

1. The board shall not grant medical parole unless advised that the inmate is permanently disabled or incapacitated.

2. The board, if it grants medical parole, may establish any additional conditions of medical parole as it may deem necessary to monitor the inmate's physical condition and to assure that the inmate is not a danger to himself and society.

F. Parolee must sign a medical release form.

G. Supervision of an inmate released on medical parole shall consist of periodic medical evaluations at intervals to be determined by the board at the time of release.

1. An inmate released on medical parole may have his parole revoked if his medical condition improves to such a degree that he is no longer eligible for medical parole.

2. Medical parole may also be revoked for violation of any condition of parole as established by the board.

Note: See Department Regulation No. C-03-004 "Medical Parole" and R.S. 15:574.20 for additional information concerning medical parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§309. Diminution of Sentence (Good Time/Parole Supervision Release)

An inmate whose offense was committed on or after July 1, 1982, and who is not otherwise ineligible for diminution of sentence, shall be released on his diminution of sentence/parole supervision release date as if on parole.

1. Each inmate released on diminution of sentence/parole supervision shall be subject to conditions of parole pursuant to R.S. 15:574.4(H) and Chapter 5 of these rules.

2. If an inmate violates a condition of his diminution of sentence/parole supervision release or other conditions imposed by the board, the board shall proceed in the same manner as in revocation matters pertaining to those granted regular parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§311. Work Release

A. The board may recommend to the secretary of the Department of Public Safety and Corrections that an inmate

be placed on work release at any time that the inmate is within two years of discharge by diminution of sentence, diminution of sentence/parole supervision, or full term release date.

1. The inmate must not be serving a sentence for one of the enumerated offenses specified in R.S. 15:1111 or Department Regulation No. B-02-001 Assignment and Transfer of Inmates. In this case, he would only be eligible in the last six months of his term.

2. The board may elect to grant parole to an eligible inmate and then recommend to the secretary of the Department of Public Safety and Corrections that the inmate be placed in work release for six months; however, the actual parole release date fixed by the board must be within six months of the date of the hearing pursuant to R.S. 15:574.4(G).

B. Inmates who are serving a sentence for an enumerated offense as specified in R.S. 15:1111 or Department Regulation No. B-02-001 "Assignment and Transfer of Inmates," are eligible for work release only during the last six months of their term. Therefore, before the board recommends work release to the Secretary of the Department of Public Safety and Corrections for these inmates, the board must render a decision which grants parole on a specific date that is no more than six months from the date of the hearing. This formally establishes that the inmate is within the last six months of his term and validates the work release recommendation.

C. Pursuant to R.S. 15:574.7(B)(2)(b), parole violators may be committed to a work release facility by the board as a condition of parole in lieu of revocation. Such commitment may be for a period of time not to exceed six months, without benefit of good time, provided that such commitment does not extend the period of parole beyond the full parole term.

D. Except as provided in §311.C, all assignments to work release must be approved by the secretary of the Department of Public Safety and Corrections or his designee.

Note: See Department Regulation No. B-02-001 "Assignment and Transfer of Inmates" for additional information concerning the work release program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 5. Meetings and Hearings of the Board of Parole

§501. Types of Meetings

All meetings and hearings of the board shall be open to the public. For the purpose of convenience and in order to differentiate between the different types of forums for conducting business, the following designation or title has been given, depending upon the nature of the matters or actions to be considered:

1. a *business meeting* is a meeting of the full board to discuss all general business matters as set forth in §507;

2. an *administrative meeting* is a meeting of randomly selected, three-member panels to consider administrative matters, as set forth in §509;

3. a *public hearing* is a meeting of randomly selected, three-member panels with offenders present, as set forth in §511.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§503. Selection of Three-Member Panels

A. The board shall operate in a minimum of three-member panels, except as otherwise provided in these rules.

B. The vice-chairman of the board shall randomly assign all three-member panels. Each panel shall appoint the chairperson of that three-member panel.

C. The random selection of panels shall be by institutional groupings and shall be done in such a manner as to result in the smallest probability of having a panel constituted by the same three members at the same prison for two consecutive months.

1. The random selection process will involve six "circuits" each month.

2. There will be one circuit of four prisons, two circuits of three prisons, and three circuits of two prisons.

3. The six circuits will be visited each month by six panels.

D. In the event that a board member requests a change in the composition of the panel, the reason for such request must be made in writing to the vice-chairman of the board for approval. This does not include emergencies, illness, etc. on the day of the hearings/meetings.

1. When an emergency request is made on the date of the hearing/meeting, the explanation for such emergency must be submitted in writing upon the panel member's return to work as promptly as practical.

2. There will be no substitutions of panel members except in cases of either illness or emergencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§505. General Procedures

A. The board will conduct its business meetings, administrative meetings, and public hearings in accordance with the provisions of R.S. 42:1 et seq. (Public Policy for Open Meetings Law) and *Robert's Rules of Order*.

1. At business meetings, detailed minutes indicating time of commencement, persons present (including visitors and witnesses), adoption of previous minutes, motions and seconds, and time of adjournment shall be kept.

2. The board's minutes of public hearings and administrative meetings shall include the following information as applicable:

a. name and Department of Corrections (DOC) number of the offender;

b. name of counsel representing the offender;

c. the vote of each member; and

d. the decision of the board.

B.1. The vote of each panel member shall be recorded by name and date on the vote sheet.

2. Only those members present shall vote; voting by proxy is prohibited.

3. No vote shall be taken while the panel is in executive session.

4. The panel shall not rescind the original vote without

conducting a new hearing, except as provided in §505.P, §513.A.1 - 3, and §711.

5. The original vote sheet shall remain in the inmate's DOC file and a copy shall be attached to the minutes and maintained in a separate locked file in the board office.

C. The chairperson of the panel shall appoint a member of each three-member panel, other than the chair, to review case records subsequent to voting to assure the accuracy of all documents.

D. A majority vote is required to continue or recess a meeting or hearing. Generally, the matter will be rescheduled for the next month, but may be rescheduled for an earlier date if deemed appropriate by the panel.

E. A panel may go into executive session to discuss each offender's case prior to a decision pursuant to the provisions of R.S. 42:6, 42:6.1 and 15:574.12. No vote shall be taken while the panel is in executive session.

F.1. The victim, spouse, or next of kin of a deceased victim shall be advised in writing no less than 30 days prior to the hearing date when the inmate is scheduled for a parole hearing.

2. The notice shall advise the victim, spouse, or next of kin of a deceased victim that:

- a. the hearing is open to the public;
- b. he or she may remain in the hearing room during the entire hearing (except during executive session); and
- c. he or she may speak to the panel prior to its making a decision in the case.

3. The board has delegated the responsibility for this notice to the Department of Public Safety and Corrections.

4. The written notice is not required when the victim, the spouse, or next of kin of a deceased victim, advises the board in writing that such notification is not desired.

5. Notification is not required when the victim cannot be located despite the exercise of due diligence.

6. For purposes of §505.F, a *victim* is defined as an individual, business entity, or corporation against whom a crime has been perpetrated.

G. Pursuant to R.S. 15:574.2(C)(12) the panel may exclude anyone from the hearing to protect the privacy of the victim or victims.

H. The board may extend invitations to individuals to observe board proceedings.

I. The board may direct questions to and/or request statements from anyone appearing before the board.

J. It is generally inappropriate for children under the age of 12 years, except when the child is a victim and chooses to appear, to be present during any public meeting or hearing of the board.

K. The number of people supporting or opposing the granting of parole, including victims and/or family members of victims will be limited only by space and security considerations.

L. The victim or victim's family shall have the right to make a written or oral statement as to the impact of the crime. The victim or the victim's family, a victim advocacy group, and the district attorney or his representative may also appear before the panel by means of telephone communication from the office of the local district attorney.

M. An inmate can apply for a rehearing six months from release from lockdown, if the inmate was placed in lockdown for disciplinary reasons.

N. The vice chairman shall be responsible for schedules of administrative meetings and public hearings.

1. Such schedules may be changed, only upon prior notice, provided that such changes are made in a timely manner in order to notify all concerned.

2. Such meetings may be rescheduled without notice due to inclement weather, or any other emergency or unforeseen situation.

O. The vice-chairman of the board or his or her designee shall develop a duty calendar and shall designate one board member as the daily duty officer.

1. The duty officer shall be available and present to act on behalf of the board concerning both routine office and administrative matters as authorized by these rules.

2. If the duty officer must substitute for another member at a hearing or is absent for any other reason, he or she need not be replaced by another duty officer.

P. Upon notification by the secretary of the Department of Public Safety and Corrections that an inmate has violated the terms of work release granted under §311 or has engaged in misconduct prior to the inmate's release, the board may rescind its decision to grant parole. In such cases, the inmate shall promptly receive another parole hearing.

Q. The board shall cause a complete record to be kept of every inmate released on parole. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there always will be immediate availability of complete information about such inmate.

R. In case of video conferencing, the family, friends, and attorney of the inmate shall be at the location of the inmate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§507. Business Meetings

A. The full board shall meet once each quarter when called by the chairman of the board. Additional meetings may be called as needed by either the chairman of the board or a majority vote of the board.

B. The agenda for business meetings of the board may include, but shall not be limited to, the following topics:

1. board rules;
2. personnel matters;
3. litigation; and
4. any other matters the board deems necessary.

C. Business meetings should be tape recorded and copies of the taped and/or written minutes shall be available upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§509. Administrative Meetings

A. The vice-chairman shall schedule administrative meetings. A copy of the schedule shall be available for public inspection at the board office.

B. The panel may consider the following actions:

1. to add or remove conditions relative to parolees;
2. to consider rehearing requests; and
3. to consider those matters referred by a member from single-member action (see §513); the member who makes such a referral may not serve on the panel.

C. A unanimous vote will be necessary in order to grant the actions stated in §509.B.1 - 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§511. Public Hearings

A. The vice-chairman shall schedule public hearings. A copy of the schedule shall be available for public inspection at the board office.

B.1 The panel may consider the following actions with the offender present:

- a. parole;
- b. revocation; and
- c. recommendations for work release.

2. In the case of IMPACT parole, the offender need not be present unless requested by the panel.

C.1. A unanimous vote is required to grant parole or to recommend work release regardless of the number of board members at the parole hearing.

2. Once the panel votes to grant or deny parole at a particular hearing, the vote may not be rescinded at that hearing.

3. If a member of a panel moves that a particular condition of parole be considered and determined prior to the vote to grant or deny parole, that issue shall be determined prior to the vote on parole.

D. Otherwise, following a vote granting parole, the panel shall consider whether to impose special conditions of release. All special conditions of release, including special conditions of diminution of sentence/parole supervision release, shall be approved by a unanimous vote of the panel.

E. A majority vote is required to revoke parole.

F. An inmate docketed for a public hearing may be represented by counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§513. Single-Member Action

A.1. A single board member may act upon the following matters which have been reviewed and recommended by the Division of Probation and Parole:

- a. Activity Reports (see §1103); and
- b. Violation Reports (see §1109).

2. A single board member may also review the file of those inmates who have a parole eligibility date but who are ineligible for release, including inmates whose parole eligibility hearing date falls within 90 days of the inmate's release on diminution of sentence/parole supervision.

3. The duty officer may rescind parole as provided in §505.P, pending another parole hearing.

B. Written documentation must be placed in the offender's file in the event the board member fails to follow a recommendation of the Division of Probation and Parole. In

such case, the matter shall be automatically scheduled for consideration by a three-member panel at the next available administrative meeting date.

C. Under no circumstances should a board member sign a blank form concerning single-member action matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 7. Parole Decisions

§701. Policy Statement

It shall be the policy of the board to consider the following guidelines in determining whether to grant or deny parole.

1. Nature and Circumstances of the Crime

a. The board will evaluate and consider the circumstances of the crime based upon the official version of the offense, as well as the victim's and offender's versions of the offense, to determine, if possible, whether the particular conditions that contributed to the commission of the crime are likely to reoccur.

b. The board shall also consider the seriousness of the offense, the offender's role in the offense and the degree of his involvement, whether the offender was the instigator of the crime, and whether the crime was premeditated.

c. Particular consideration will be given to those cases which involved the use of a weapon and/or caused injury to the victim.

2. Prior Criminal Record

a. The board will evaluate and consider any available prior adult and/or juvenile records and the number and seriousness of prior convictions including the length of time between any prior convictions and the commitment of the instant offense to determine the seriousness of the offender's prior criminal history.

b. A pattern of continuous encounters with law enforcement may evidence the likelihood that the offender will not succeed on parole.

c. The board may also consider whether the instant offense was committed while the offender was on probation or parole, and the offender's response to prior community supervision, if any.

3. Character, Social Background, and Emotional and Physical Condition

a. The board will evaluate and consider information pertaining to the offender's work record, level of education, occupational skills, and evidence of emotional stability.

b. A history of chronic drug and alcohol abuse may evidence the likelihood that the offender will not succeed on parole.

4. Institutional Adjustment

a. The board will evaluate and consider information concerning the offender's attitude while incarcerated, including the offender's participation in available programs and his overall compliance with institutional regulations.

b. Obedience to institutional rules may evidence that the offender will comply with parole conditions, while a disciplinary record consisting of major and/or minor infractions may be viewed negatively.

c. A decidedly poor disciplinary record will weigh heavily against the offender.

d. Offenders assigned to working cellblock or disciplinary detention/extended lockdown or otherwise assigned to cellblock areas for disciplinary reasons would generally not be considered a good risk.

5. Police, Judicial and Community Attitudes Toward the Offender

a. The board will evaluate and consider information concerning the offender from the community and public officials who are acquainted with the case.

b. This factor is given greater weight because the probability that an offender will succeed on parole is greatly diminished if he will return to a community which has expressed hostility toward him and is lacking support for him.

c. Evidence of official and/or community support may increase the likelihood of parole.

6. Parole Plan

a. The board will evaluate and consider the strength of the offender's social ties, including whether he has a supportive family, resources available to him in the community, and employment opportunities.

b. The board will place emphasis on the appropriateness of the parole plan; therefore, it is important for the offender to have secure employment plans and a stable living arrangement available upon parole.

c. Lack of an acceptable parole plan may decrease the likelihood of parole.

7. Self Help Programs. The board will evaluate and consider an offender's participation in recovery groups such as Alcoholics Anonymous and Narcotics Anonymous, as well as educational and vocational programs. Such participation is considered beneficial.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§703. Result of Decision to Grant or Deny Parole

A. The board's decision to grant or deny parole will be made and disclosed to the inmate at the time of the parole hearing and he will be furnished with a copy of the Parole Decision Form. The Parole Decision Form shall also be made available to the administration at the facility housing the inmate.

1. The original Parole Decision Form will be placed in the inmate's DOC record and will serve as the authority for the Certificate of Parole to be prepared.

2. The certificate will then be forwarded to the Division of Probation and Parole District Office where the inmate will be supervised while on parole.

B. No physical release from custody shall be authorized by the granting of a parole eligibility date that extends beyond six months from the date of the hearing; nor shall release be authorized until all notice requirements, if any, have been timely made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§705. Reapplication for Parole Hearing

A. An inmate must utilize a Reapplication for Parole Form in order to apply for a parole rehearing, when available.

B. The reapplication form may be submitted by the inmate and/or his attorney.

C. Reapplication for a parole hearing will be allowed only under the following conditions.

1. An inmate convicted of a nonviolent crime, except as otherwise restricted, may apply six months after the original denial, and if denied on reapplication, every six months thereafter.

2. Except as provided in §705.C.3, an inmate convicted of a *crime of violence* as enumerated in R.S. 14:2 or as set forth by the court at the time of sentencing, and/or a crime against persons as enumerated in R.S. 14:29-47, may apply one year after the original denial, and if denied on reapplication, every two years thereafter.

3. An inmate convicted of a sex offense as defined in §903, of first or second degree murder (if commuted to a fixed term of years and otherwise eligible for parole), or of manslaughter may reapply two years after the original denial, and if denied on reapplication, every two years thereafter.

4. A parole eligible inmate who was previously released on parole or diminution of sentence/parole supervision and who was revoked for any reason, may reapply one year after the revocation. If denied on reapplication, the offender may reapply every year thereafter, excluding inmates convicted of a sex offense, or first or second degree murder (if commuted to a fixed term of years and otherwise eligible for parole) or of manslaughter, who may reapply as set forth in §705.C.3.

5. Even if otherwise eligible in accordance with this Section, an inmate who is permanently assigned to maximum custody status for disciplinary adjustment reasons will be ineligible to make reapplication until he has been released from such status for a minimum of six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§707. Parole Plans

A. In-State Parole

1. The board will not issue a Certificate of Parole to anyone granted parole until the residence plan has been approved by the Division of Probation and Parole. The board has authority to waive employment plans for a specified amount of time. These plans should be given to the classification officer at the correctional facility at the pre-parole interview or mailed directly to the board four months prior to the parole eligibility date.

2. A parole hearing may be held as docketed without approved residence or employment plans. Parole may be granted at the hearing, subject to the plans being approved through the Division of Probation and Parole. Approved employment plans may enhance the possibility for a favorable parole decision.

B. Out-of-State Parole

1. Out-of-state parole plans may be considered when the state in question issues a written statement expressing its willingness to accept the parolee under specific residential and employment conditions. Release will be deferred until such approval is received by the board.

2. Before any parolee can be considered for a plan of supervision in another state, the offender shall sign an

Application for Interstate Compact Services Agreement to Return (waiver of extradition).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§709. Parole to Detainer

When the board determines that it would be in the best interest of the public and the inmate, parole may be granted subject to any outstanding detainers or notices that are held by local authorities. Once the parolee is released from the detaining authority, he must report to the Division of Probation and Parole District Office where he will be supervised while on parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§711. Parole Contingent on Completion of Substance Abuse Program

When the board determines that it would be in the best interest of the public and the inmate, the board may require successful completion of a board-approved drug rehabilitation program as a prerequisite to release on parole. The board may specify which programs are board-approved.

1. In no event, however, may the physical release from custody on parole extend beyond six months from the hearing date.

2. If the inmate has not successfully completed the program in six months from the hearing date, the board shall rescind or reconsider his parole and schedule a subsequent hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§713. Parole Supervision

Field supervision of parolees will be the responsibility of the Department of Public Safety and Corrections, Division of Probation and Parole.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 9. Conditions of Parole

§901. Certificate of Parole

A. The Certificate of Parole will not become operative until specific conditions of release have been acknowledged and agreed to in writing by the inmate.

1. The inmate shall be advised orally and in writing of the conditions of parole prior to his release from incarceration.

2. The conditions of parole shall include, but not be limited to, those conditions contained in the Certificate of Parole, as approved by the board and the Division of Probation and Parole pursuant to the provisions of R.S. 15:574.4(H). (See the Certificate of Parole in the Rules and Procedures Manual.)

B. Special conditions of parole, in addition to those required by R.S. 15:574.4(H), may be imposed and may include one or more of the following:

1. attendance at AA/NA meetings (the board may specify the number of meetings to attend weekly);
2. mental health evaluation and treatment;
3. substance abuse evaluation and treatment;
4. payment of restitution for a direct pecuniary loss other than damage to or loss of property;
5. payment of fines and/or costs of court;
6. prohibited contact with the victim(s);
7. prohibited contact with co-defendant(s);
8. required GED, vo-tech or other educational plan;
9. compliance with treatment plan as ordered in the Substance Abuse Discharge Summary;
10. any other special conditions the board may deem appropriate.

C. The board shall impose special conditions of parole as set forth below.

1. When the victim's loss consists of damage to or loss of property, payment of restitution, either in a lump sum amount or in monthly installments based on the offender's earning capacity and assets. If the victim has been paid for such damage to or loss of property with monies from the Crime Victims Reparations Fund, the board shall order the parolee to make payments as reimbursement to the fund in the same amount as was paid from the fund to the victim. The Department of Public Safety and Corrections shall verify that prior payment has not been made by the parolee.

2. If the offender has not paid and is liable for any costs of court or costs of the prosecution or proceeding in which he was convicted or any fine imposed as a part of his sentence, the board shall require the payment of such costs or fine, either in a lump sum or according to a schedule of payments established by the board and based upon the offender's ability to pay.

3.a. If the offender does not have a high school degree or its equivalent, the board shall require the offender to enroll in and attend an adult education or reading program until he obtains a GED, or until he completes such educational programs required by the board, and has attained a sixth grade reading level, or until his term of parole expires, whichever occurs first. All costs shall be paid by the offender.

b. If it is determined that there are no adult education or reading programs in the parish in which the offender will be residing, or that the offender is unable to afford such a program, or attendance would create an undue hardship, this condition may be suspended.

c. The provisions of §901 shall not apply to those offenders who are mentally, physically, or by reason of age, infirmity, dyslexia, or other such learning disorders, unable to participate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§903. Sex Offenders; General

A. The term *sex offender* shall refer to an inmate/parolee who has been convicted for the commission or attempted commission of any of the following offenses, or the equivalent, if committed in another jurisdiction:

1. aggravated rape, forcible rape, simple rape;

2. sexual battery, aggravated sexual battery, oral sexual battery, aggravated oral sexual battery;
3. intentional exposure of AIDS virus;
4. bigamy, abetting in bigamy;
5. incest, aggravated incest;
6. carnal knowledge of a juvenile, indecent behavior with a juvenile, pornography involving a juvenile, molestation of a juvenile;
7. crime against nature, aggravated crime against nature; or
8. contributing to the delinquency of juveniles by the performance of any sexual immoral act.

B. No sex offender whose offense involved a minor child shall be eligible for parole unless, as a condition of parole, the offender is prohibited from engaging in any business or volunteer work activity which provides goods, services, instruction, or care to and requires the offender to engage in a significant amount of direct contact with minor children.

C. No sex offender shall be eligible for parole unless, as a condition of parole, the offender is prohibited from engaging in any unsupervised business or volunteer activity which provides goods, services, instruction, or care to minor children and/or requires the offender to engage in a significant amount of direct contact with potential victims who are minor children.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§905. Notification and Registration

A.1. In addition to any other notification requirement imposed by law, any sex offender residing in this state must notify, within 15 days of being released on parole, or within 30 days of establishing residence in Louisiana, the sheriff's office in the parish in which he will reside, and the police department in the area in which he will reside (if the population of the parish in which he will reside is in excess of 450,000) of his:

- a. name;
- b. address;
- c. place of employment;
- d. crime for which he was convicted and the date and place of such conviction;
- e. any alias used by him; and
- f. Social Security number.

2. In addition, a sex offender changing his residence must send written notice to the above referenced agencies within 10 days of the change in an address.

B. In addition to any other notification requirement imposed by law, sex offenders shall be required to provide, within 30 days of placement in probation or release on parole (if returning to a previously established residence) or 21 days of placement in probation or released on parole (when setting up a new residence):

1. the crime for which he was convicted; and
2. his name and address:
 - a. to all persons residing within a three square block area, or a one square mile area if in a rural area;
 - b. to the heads of all public, parochial and private schools in the area in which he will reside; and

c. to the lessor, landlord, or owner of the residence or property on which he will reside.

C.1. In addition to any other notification requirement imposed by law, a sex offender shall publish notice of his name, address and crime for which he was convicted and paroled, on two separate days in the official journal of the governing authority of the parish where the sex offender will reside and in a newspaper which meets the requirements of R.S. 43:140(3) for qualification as an official journal and has a larger or smaller circulation in the parish than the official journal.

2. If the offender will reside in St. Tammany Parish, the board may, in lieu of the above, order the offender to publish notice in a specified newspaper which meets the qualification as an official journal and has a larger circulation than the official journal of St. Tammany Parish. Notice shall be published without cost to the state.

D.1. In addition to any other notification requirement imposed by law, the Department of Public Safety and Corrections shall send written notice at least 10 days prior to parole, community placement or work release placement, to the chief of police of the city and the sheriff of the parish in which a sex offender will reside or be placed for work release.

2. If requested in writing, the board shall also send notice to:

- a. the victim of the crime, or if the victim is under 16 years of age, to the parents, tutor or legal guardian of the child;
- b. any witnesses who testified against the sex offender; or
- c. any person specified in writing by the prosecuting attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§907. Additional Notification and Registration Requirements if Victim is Under Age 18

A. In addition to any other notification requirement imposed by law, within three days of its decision to release a sex offender whose victim was under 18 years of age at the time of the commission of the offense, the board shall mail notice by registered or certified letter to the victim or the victim's parent or guardian if they were not present at the parole hearing, unless the victim or relative has signed a written waiver of notification, with a statement indicating:

1. that the sex offender will be released on parole;
2. the date the sex offender will be released; and
3. the address where the sex offender will reside.

B. In addition to any other notification requirement imposed by law, the sex offender shall make written notification to:

1. the superintendent of public, private and parochial schools;
2. the superintendent of parks and recreation districts; and
3. the official journal or other newspaper accompanied by two recent photographs or clear black and white photocopies of the offender's photograph. The photograph shall have been taken after the offender's release.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§909. Special Conditions

In addition to the requirements and conditions as set forth in this Chapter, all sex offenders shall be subject to any special conditions as required by the board including, but not limited to signs, handbills, bumper stickers, or clothing labeled to that effect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§911. Release of Information

A.1. The board is authorized to release to the public the following information regarding sex offenders:

- a. name and address;
- b. crime of conviction and date of conviction;
- c. date of release on parole or diminution of sentence;
- d. most recent photograph available; and
- e. any other information that may be necessary and relevant for public protection.

2. Verbal requests for such information are acceptable.

3. The chairman of the board or his or her designee may require a written request before releasing any information.

4. The board cannot release any information regarding victims or witnesses of sex crimes to the sex offender or the general public.

B.1. In addition to any other information authorized to be released, the board may, pursuant to R.S. 15:546, release information concerning any inmate under the jurisdiction of the board who is convicted of any sex offense or criminal offense against a victim who is a minor, or who has been determined to be a sexually violent predator. The board may disseminate information regarding an offender's criminal convictions without restriction.

2. Other information regarding an offender's criminal history records, including nonconviction history may only be released subject to the restrictions outlined in R.S. 15:548. Unless the request is made by a representative of a criminal justice agency or a juvenile justice agency, such information shall, under normal circumstances, be released only pursuant to a written request.

3. The board shall be immune from liability for the release of information concerning any sex offender, sexually violent predator, or child predator.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 11. Violations of Parole

§1101. Types

A. New Felony Conviction—Statutory

1. Parole will be automatically revoked when a parolee is convicted and sentenced in Louisiana for a new felony and the appeal process has been exhausted. Prior to documented proof that the appeal process has been exhausted, the board may revoke a parolee for technical violations at a public hearing.

2. A parolee who is convicted of a new felony in another state, or of a misdemeanor which if committed in this state would be a felony, shall have his parole revoked.

a. Upon his release, he shall be returned to the state of Louisiana to begin serving the remainder of his original sentence.

b. If a prerevocation hearing is conducted in the state in which the new offense is committed a final revocation hearing in Louisiana is not required.

c. If a prerevocation hearing is not conducted in the state in which the new conviction was obtained, when returned to Louisiana the parolee should appear before the board for identification purposes and for notification of the automatic revocation.

B. Technical Violations

1. Technical violations include any violations of the conditions of parole which are not felony convictions. Engaging in conduct constituting a felony or misdemeanor offense, even if not adjudicated, may be considered a technical violation for revocation purposes.

2. When a parolee has been detained in jail by the Division of Probation and Parole, a prerevocation on-site hearing will be scheduled as soon as possible. Subsequent to the prerevocation hearing, bond may be permitted, but only with authorization of the board.

C. Absconders

1. A parolee may be considered to have absconded supervision if he absents himself from his approved place of residence without permission from the Division of Probation and Parole.

2. When apprehended, absconders will be immediately returned to the custody of the Department of Public Safety and Corrections for a revocation hearing.

a. Absconders will not be entitled to a prerevocation hearing.

b. Extradition or waiver of extradition shall be considered as probable cause for absconders apprehended out-of-state.

c. Upon return to the department, a parole revocation questionnaire shall be completed and forwarded to the board. (See Louisiana Board of Parole—Parole Revocation Questionnaire in the Rules and Procedures Manual.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1103. Activity Report

A. The Division of Probation and Parole shall notify the board within five days of an offender's initial violation utilizing an Activity Report. Such report shall give a brief summary of the circumstances of the violation and shall include a recommendation for action based upon the facts of the case and the seriousness of the violation.

B.1. The Activity Report will normally be used to recommend the following:

- a. issuance of an arrest warrant;
- b. issuance of a reprimand (usually not in custody);
- c. removal of a detainer to allow bond;
- d. suspension of supervision;

- e. unsatisfactory termination of parole;
- f. addition or deletion of special parole conditions;
- g. recalling a warrant.

2. The Activity Report may also be used to advise the board of an offender's actions for informational purposes which require no action by the board.

C. Upon receipt of the Activity Report, the case will be placed on the single-member action docket for a decision utilizing the Parole Board Action/Parole Violators form.

D. After the case has been acted upon, a decision notice will be forwarded to the Probation and Parole District Office where the parolee is assigned for supervision. The notice will be delivered to the parolee and a copy retained in the district office case record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1105. Prerevocation Hearing for Detained Parole Violators

A. The purpose of the prerevocation hearing is to determine if there is probable cause that the parolee has violated the conditions of his parole.

1. A finding of probable cause may support the continued detention of the parolee pending a final revocation hearing.

2. The *prerevocation hearing* is a preliminary due process administrative hearing which is conducted by a hearing officer designated from the Probation and Parole District Office. The hearing officer will have no direct prior knowledge of the parolee and the circumstances surrounding the allegations.

3. The allegations and findings presented in the preliminary hearing documents will be the foundation for revocation or other specified action.

B.1. The U.S. Supreme Court has stated that parolees detained for violations of the conditions of parole be afforded a prerevocation hearing; however, certain absconders and offenders convicted of new offenses may not be entitled to a prerevocation hearing.

2. The U.S. Supreme Court requires that the prerevocation hearing be conducted within a reasonable time following detention and in the locale or vicinity close to where the alleged violation occurred so that the offender has access to both favorable and adverse witnesses.

C.1. Prior to the prerevocation hearing, written notification will be furnished to the parolee advising him of:

- a. the charges pending against him;
- b. his rights at the hearing; and
- c. the date, time, and place of the hearing.

2. The parolee may request deferral of the prerevocation hearing pending disposition of felony charges.

D.1. The parolee may retain an attorney, or, if eligible, be represented by appointed counsel.

2. Documentary evidence and oral testimony may be taken from all participants present at the hearing, including witnesses and the parolee's friends and family.

3. At the conclusion of the hearing, the hearing officer will issue a ruling as to probable cause.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1107. Findings

A. The hearing officer will issue a finding of probable cause or no probable cause.

1. If no probable cause is found, the hearing officer shall order the parole violation detainer to be lifted and the alleged violator released from custody.

2. If probable cause is found, the Division of Probation and Parole will make one of the following recommendations to the board:

- a. that the parole violator be detained;
- b. that the parole violator be allowed to make bond, if new charges are pending, while awaiting a final decision from the board;
- c. that the parole violator remain incarcerated, without bond, pending disposition of the charge;
- d. that the parole violator be reprimanded and continued under parole supervision.

3. If probable cause is found, the parole revocation questionnaire will be completed and forwarded to the board. (See the Louisiana Board of Parole-Parole Revocation Questionnaire in the Rules and Procedures Manual.)

B. A copy of the finding will be given to the parolee and a copy forwarded to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1109. Violation Report

A.1. The Violation Report is used to:

- a. formally advise the board of a parolee's current violations;
- b. summarize his conduct on supervision to date; and
- c. make recommendations to the board for action on the violations of parole conditions.

2. The action requested may be of an interim nature or for final disposition.

B. The Violation Report will normally be used to recommend the following:

- 1. automatic revocation;
- 2. hold pending disposition of charges;
- 3. revocation of parole;
- 4. allow bond pending disposition of charges;
- 5. impose special conditions of parole;
- 6. reprimand; and
- 7. unsatisfactory termination of parole.

C. The Division of Probation and Parole will prepare the Violation Report within five working days following receipt of the prerevocation decision from the hearing officer or five working days from the date the parolee waived or deferred the prerevocation hearing. The report, along with the prerevocation hearing forms and other documents, shall be forwarded to the board.

D. Upon receipt of the Violation Report and other documentation, the case will be placed on the single-member action docket utilizing the Parole Board Action/Parole Violators form.

E. After the case has been acted upon, a decision notice will be forwarded to the Probation and Parole District Office where the parolee is assigned for supervision. The notice will be delivered to the parolee and a copy retained in the district office case record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1111. Scheduling Parolees for Revocation Hearing

A. An offender ordered returned for consideration of final revocation will be scheduled for a public hearing.

B. The offender's detention location will determine the facility in which the revocation hearing will take place.

C. An Order/Letter of Return-Notice of Revocation Hearing and Transportation Request will be forwarded to the Division of Probation and Parole District Office assigned supervision of the offender. That office will deliver the:

1. Order to the parolee (thereby advising him of the charges pending against him, his rights at the hearing, and the date, time, and place of the hearing); and

2. Transportation Request to the local jail administrator having custody of the parolee. Generally, the local jail administrator will transport the parolee to the facility for the revocation hearing on the day of the hearing when such transportation is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1113. Revocation Hearing

A. The purpose of the final revocation hearing is to determine if one or more conditions of parole have been violated by the offender, and if such violation(s) are serious enough to warrant reincarceration of the offender to serve the balance of his sentence.

B. The revocation hearing is a public hearing and shall be conducted as outlined in Chapter 3 of these rules.

C.1. The parolee:

- a. must be present for the hearing;
- b. may be represented by an attorney; and
- c. may normally have one witness testify on his behalf.

2. For good cause shown, the panel may permit the parolee to present additional witnesses. Reliable documentary evidence is admissible at the hearing.

D. A copy of the Violation Report with attachments and the Order/Letter of Return-Notice of Revocation Hearing will be provided to each panel member prior to the hearing, along with any other pertinent documents which may be submitted to the panel prior to or at the hearing.

E.1. The chairman of the panel, or his designee, shall:

- a. ensure the identification of the parolee; and
- b. obtain an acknowledgment that the parolee understands his rights related to the hearing.

2. The alleged violations will be read and the parolee will be asked to respond to each with "guilty" or "not guilty."

F.1. The parolee will be encouraged to speak for himself and to make a statement on his own behalf.

2. The parolee's attorney may speak on his behalf and/or advise him at any time throughout the hearing.

3. The district attorney or his or her representative may speak on behalf of the prosecution.

4. The board may request oral testimony from all participants present who have specific knowledge of the revocation violation(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1115. Decision of the Panel

A. The panel may make one of the following decisions:

1. revocation of parole;
2. reprimand and restore to parole supervision with or without special conditions imposed;
3. unsatisfactory termination of parole if full term date of parole supervision has passed; or
4. work release for up to six months in lieu of revocation [see R.S. 15:574:7(B)(2)(b)].

B.1. The panel may elect to vote to continue or recess the hearing until certain testimony which was not available at the prerevocation hearing can be heard or further evidence can be verified and presented.

2. The panel may also vote to recess and defer a decision until the outcome of pending charges. In this case, the parolee may be allowed to make bond on pending charges if so ordered by the panel. The board may then render a decision after receipt of additional evidence or after the disposition of the pending charge(s).

C.1. At the conclusion of the hearing, the panel will advise the offender orally of its decision and he will be furnished with a copy of the Parole Revocation Decision form.

2. A copy of each Parole Revocation Decision form will also be forwarded to the Probation and Parole District Office assigned supervision of the offender.

3. At the end of each month, a copy of all revocation dockets reflecting the results of the hearings will be forwarded to all Probation and Parole District Offices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1117. Automatic Revocation for New Felony Conviction

A final revocation hearing will not be held if the parolee has been convicted of a new felony while on parole, except as stipulated in §1101.A. The board may, however, have the offender appear before them for identification purposes only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 13. Time Served

§1301. Time Must be Served if Revoked

A.1. An offender returned to incarceration for a parole violation that does not include a new sentence for a felony offense will be returned to serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits.

2. A parolee, who has been revoked for violating the terms of parole granted by the board, shall forfeit all good time earned on that portion of the sentence served prior to the granting of parole.

B. An offender returned to incarceration as a parole violator who has received a new sentence for a felony offense while on parole shall serve the remainder of the original sentence as of the date of his release on parole, subject to applicable commutation statutes or good time credits. The new sentence shall be served consecutively to the previous sentence unless a concurrent term of imprisonment is expressly directed by the court.

C. The board accepts the official master prison record as issued by the Louisiana Department of Public Safety and Corrections in determining when sentences are concurrent or consecutive.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 15. Parole Suspension and Termination

§1501. Suspension of Supervised Parole

A. After a minimum of two years supervised parole and upon the recommendation of the Division of Probation and Parole, the board may determine that a parolee merits unsupervised parole and may suspend a parolee's supervision.

B. A parolee may be subject to revocation for parole violations committed prior to the expiration of his full term discharge date. The parolee may be returned to maximum supervision any time prior to the expiration of his full term discharge date if the Division of Probation and Parole makes a report showing that such supervision is in the interest of either the public or the parolee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1503. Termination of Parole

When a parolee has completed his sentence, he will be given a Certificate of Discharge from the Department of Public Safety and Corrections. The board cannot terminate parole prior to the parolee's full term discharge date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 17. Grievance Procedure

§1701. Right to File a Grievance

A. Any person may file a grievance under this procedure. However, no offender or parolee shall have the right to file a grievance against the board or board members for the decisions enumerated in R.S. 15:574.11.

B. A grievance must be based upon a violation of the Louisiana Board of Parole Rules and Procedures, Department of Public Safety and Corrections Regulations, or the Louisiana Revised Statutes.

C. A person against whom a grievance is filed is entitled to be represented by counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1703. Complaint Process

A. All grievances must be made in writing and submitted to the chairman of the board. Upon receipt, the chairman shall review the grievance and, if appropriate, forward it to the proper agency or authority for further action.

B. If the grievance relates to the board, or a member of the board, or the department staff assigned to the board, the chairman or his or her designee will investigate to determine if it has a basis in fact.

1. If the complaint is determined to have a basis in fact, the chairman will attempt to resolve the grievance.

2. If the chairman is unable to resolve the grievance, it shall be referred to a Grievance Committee. The committee shall consist of:

a. the chairman of the board;

b. the vice chairman (unless the chairman or vice chairman is the subject of the grievance); and

c. any other person or persons jointly selected by the chairman and vice chairman.

C. If the Grievance Committee is unable to resolve the grievance, the matter will be forwarded together with any supporting documentation to the governor's executive counsel for resolution. Supporting documentation shall include the following information:

1. a reference to the relevant statute, rules, regulations and/or code of ethics, etc.;

2. a written summary of the attempts made to resolve the complaint; and

3. any other pertinent documentation.

D.1. In the event the grievance is against the chairman of the board, the complaint shall be submitted directly to the vice chairman. In this instance, the chairman will recuse himself or herself and shall not appoint a designee to the committee.

2. If the grievance is against the vice chairman, the vice chairman shall recuse himself or herself and shall not appoint a designee to the committee.

3. The remaining member of the Grievance Committee shall select a member of the board to serve in place of the recused member.

4. If the complaint is against a board member, that member shall not be selected to serve on the Grievance Committee.

E. The decision of the chairman, the Grievance Committee, or the executive counsel, whichever may apply, is final and not subject to appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1705. Resolution of Grievance

A. A written response to the grievance shall be mailed to the complaining party.

B. If it is determined that a board member has violated the Louisiana Board of Parole Rules and Procedures, Department of Public Safety and Corrections Regulations, or the Louisiana Revised Statutes, a letter shall be issued notifying the board member of the violation and a copy forwarded to the governor for disposition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Chapter 19. Board of Parole Code of Ethics

§1901. General

A. All board members are governed by the *Code of Governmental Ethics* (R.S. 42:15 et seq.), as well as this Code of Ethics (LAC 22:XI.Chapter 19).

B. Since board members are in a position of public trust, they are not to engage in any activities, either privately or officially, where a conflict of interest may exist.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1902. Prohibitions

A. Board members are prohibited from accepting or giving gifts, gratuities or rewards for doing any service or thing pertaining to the duties expected in the performance of their jobs.

B. Board members are prohibited from using their positions to influence other decision-makers in the criminal justice system.

C. Board members are prohibited from allowing political influence to color their decisions.

D. The *Code of Governmental Ethics* prohibits board members from "serving two masters" (conflict of interest). Board members shall devote themselves full time to the duties of their office and shall not engage in any other business or profession or hold any other public office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

§1903. Integrity

A. Operational weaknesses and failure to achieve satisfactory performances are serious matters, but compromising integrity to achieve or report satisfactory performance is infinitely more serious.

B. Board members must set a good example at every opportunity. Their actions and direction should leave no avenue for doubt that they have completely and honestly performed their duties.

C. Board members must eliminate any appearance of impropriety, no matter how minor, toward violations or compromises of integrity. To achieve and maintain their objective, it is absolutely essential that board members be continuously conscious of their personal responsibility to practice integrity as they conduct their daily activities.

D. From time to time, infractions of integrity may be uncovered. There is no excuse for such infractions and they will not be condoned. Personal integrity must be complete and above reproach. If and when detected, infractions shall be reported to the appropriate authorities, and those responsible should be dealt with, in the most severe manner possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Board of Parole, LR 24:

Fred Y. Clark
Chairman

9804#060

DECLARATION OF EMERGENCY

Department of Social Services Office of Family Support

Support Enforcement—Distribution (LAC 67:III.2514)

The Department of Social Services, Office of Family Support has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to adopt the following rule in Support Enforcement Services (SES), the child support enforcement program, effective April 2, 1998. It is necessary to extend emergency rulemaking since the emergency rule of December 3, 1997 was effective for a maximum of 120 days and will expire before the final rule takes effect.

Public Law 105-33, the Balanced Budget Act of 1997, signed into law on August 5, 1997, amended §457 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which governs the distribution of support collected under Title IV-D of the Social Security Act. The Department of Health and Human Services, Administration for Children and Families, issued Action Transmittal OCSE-AT-97-17 on October 21, 1997 directing states to take immediate action. Failure to implement the change in distribution would subject the state of Louisiana to sanctions since the state must pay the federal share of assigned support collected.

Additionally, P.L. 104-193, as clarified by the Action Transmittal, mandated that state tax intercepts be distributed as all other collections, so the words "and/or state tax" are being deleted from LAC 67:III.2514.B.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter D. Collection and Distribution of Support Payments

§2514. Distribution of Child Support Collections

A. Effective December 3, 1997, the agency will distribute child support collections in the following manner:

1. In cases in which the Applicant/Recipient (AR) currently receives Family Independence Temporary Assistance Program (FITAP) benefits, collections received in a month will be retained by the state to reimburse previous and current assistance amounts. If the collection amount exceeds the amount of reimbursed grant, the excess will be refunded to the AR up to the current arrearage amount.

2. - 4. ...

B. There are general exceptions to distribution. Any collections received through intercept programs or income assignments are subject to refund to the noncustodial parent based on federal and state laws and regulations. Effective December 3, 1997, amounts collected through IRS intercepts will be applied to arrears in this order:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:304 (March 1997), amended LR 24:

Madlyn B. Bagneris
Secretary

9804#074

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Apprentice Fisherman License (LAC 76:VII.409)

The Wildlife and Fisheries Commission does hereby exercise the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B), and pursuant to its authority under R.S. 56:303.8 adopts the rule set forth below. This emergency rule is necessary to implement the provisions of R.S. 56:303.8 enacted by Act 1413 of the 1997 Regular Session of the Louisiana Legislature. This Act became effective on July 15, 1997 and it is necessary to promulgate this rule as a declaration of emergency in order to expedite the mandate of this Act.

This declaration of emergency is effective May 7, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 4. License and License Fees

§409. Apprentice Fisherman License

A. Definitions

Apprentice—a real person who engages in the taking of finfish for a period of two years only with and aboard the vessel of a validly-licensed commercial fisherman who also holds a valid and appropriate permit/license issued by the department and who is engaged in the commercial taking of saltwater finfish by approved methods.

B. Application

1. At the time of application for an apprentice license, the applicant must provide a notarized affidavit, signed by both the applicant and the mentor, providing the Social Security Number, name, address and commercial fisherman's license number of his mentor and stating the intent to participate in the apprenticeship program.

2. The cost for the apprentice license shall be one half the cost of a commercial fisherman's license.

C. Seasons. A person who holds an apprentice license shall be aboard the vessel with and in the presence of his mentor while engaged in the taking of finfish under this "special apprentice license." The apprentice license shall authorize, under the same conditions as the regular license or permit, the commercial taking of saltwater finfish by the apprentice while in the presence of his mentor during the period for which it is valid. The special apprentice license shall be valid from January 1 through December 31. An apprentice license must be purchased prior to January 31 to qualify for one full year as an apprentice for the following license year.

D. Eligibility

1. Having held a valid apprentice license for two full years may substitute for the requirement of having held a gill net gear license in two of the years 1993, 1994 and 1995 when applying for a spotted seatrout permit, mullet permit, or rod and reel license. In addition to providing all commercial license application information, the applicant shall be required to show that he derived more than 50 percent of his earned income from the legal capture and sale of seafood species for the two years in which he held the apprentice license. Proof of such income shall be provided by the apprentice using one of the methods listed in the appropriate permit or license section that has been approved by the commission.

2. In addition to all other requirements, any applicant applying for a rod and reel license must provide a signed copy of his/her state income tax return for the years in which an apprentice license was held, or a notarized affidavit certifying that he/she was not required to file a state tax return.

3. The Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance, will review the submitted tax return information and determine if applicant meets the income eligibility requirement.

E. General Provision. Any person who previously held a commercial fisherman's license, or who has been convicted of a class three or greater violation, shall not be eligible to purchase an apprentice license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:303.8.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:

Thomas H. Gattle, Jr.
Chairman

9804#028

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Commercial Fisherman's Assistance Program (LAC 76:XVII.101)

The Wildlife and Fisheries Commission and the Department of Wildlife and Fisheries are exercising the emergency provisions of the Administrative Procedure Act, R.S. 49:953(B). Promulgation of this rule as a declaration of

emergency is necessary to expedite the provisions of Act 1413 of the 1997 Regular Session of the Legislature which established October 1, 1998 as the deadline for making applications for assistance under this program.

This declaration of emergency is effective April 2, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 76

WILDLIFE AND FISHERIES

Part XVII. Commercial Fisherman's Assistance Program

Chapter 1. Proof of Income

§101. Criteria for Establishing Proof of Income and Procedures

A. The eligibility of applicants for economic assistance under R.S. 56:13.1, Commercial Fisherman's Assistance Program, shall be determined in accordance with the following criteria:

1. the applicant shall have purchased a saltwater gill net license in at least two of the years 1993, 1994, and 1995; and
2. the applicant shall have derived more than 50 percent of his earned income from the legal capture and sale of seafood species in at least two of the years 1993, 1994, and 1995; and
3. the applicant shall have suffered a loss of income due to the enactment of the Louisiana Marine Resources Conservation Act of 1995; and
4. applicant must have been a bona fide resident of Louisiana on June 30, 1995 and must provide proof of such as defined under R.S. 56:8(12)(a); and
5. the applicant must have submitted his/her application not later than October 1, 1998.

B. Proof of such income for any of the years 1993, 1994, and 1995 shall be provided by the applicant using any of the methods listed below.

1. Method 1. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return including all attachments (e.g., Schedule C of federal form 1040, form W-2, etc.), which has been certified by the Internal Revenue Service (IRS).

2. Method 2. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a copy of his federal income tax return including all attachments (e.g., Schedule C of federal form 1040, form W-2, etc.), which has been filed and stamped received at a local IRS office accompanied with a signed cover letter acknowledging receipt by the IRS.

3. Method 3. Applicant shall submit to the Department of Wildlife and Fisheries (Licensing Section) a signed copy of his federal tax return including all attachments (e.g., Schedule C of federal form 1040, form W-2, etc.), along with IRS stamped transcripts and IRS signed cover letter. Transcripts are available at local IRS offices.

C. The Socioeconomic Section of the Department of Wildlife and Fisheries, Office of Management and Finance will review the submitted tax return information and determine applicant's income eligibility as defined by R.S.

56:13.1.B(1). Proof of loss of income by the applicant shall be provided in the form of federal tax returns as specified in §101.B and determined by using the method below.

1. Proof of income loss will be determined by comparing the applicant's average earned income from the legal capture and sale of seafood species for two of the years 1993, 1994, and 1995 and the earned income for tax years 1996 or 1997 as reported on their federal income tax returns. Proof of such income shall be provided by the applicant using any of the methods listed in §101.B.

2. The criteria for providing economic assistance shall be determined by the Department of Wildlife and Fisheries, and shall be based on an individual's loss of income due to the enactment of the Louisiana Marine Resources Conservation Act of 1995.

D. Applicants who receive economic assistance under the Commercial Fisherman's Assistance Program (R.S. 56:13.1) shall be disqualified from receiving any mullet license permit pursuant to R.S. 56:333.

E. The Department of Labor will provide to the Department of Wildlife and Fisheries Licensing Section a quarterly status report containing the name, address, social security number, type of training with beginning date and estimated ending date, the anticipated cost and actual cost as incurred, for each fisherman receiving economic assistance under the Commercial Fisherman's Assistance Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:13.1.D.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 22:235 (March 1996), amended LR 24:

Thomas M. Gattle, Jr.
Chairman

9804#031

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Hunting Seasons—Farm-Raised White-Tailed Deer and Exotics (LAC 76:XIX.109)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of the Louisiana Constitution, Article IX, Section 7, R.S. 36:601 et seq., R.S. 56:115, R.S. 56:171 et seq., and R.S. 56:651 et seq., the Wildlife and Fisheries Commission hereby adopts the following emergency rule.

A declaration of emergency is necessary to allow for regulation of hunting of farm-raised white-tailed deer and exotics until permanent rules take effect. Permanent rules are being developed. This declaration of emergency will provide continuous regulation of farm-raised white-tailed deer and exotic hunting until the ratification of permanent rules.

This emergency rule will supplant any prior declaration of emergency adopted by the Wildlife and Fisheries Commission

pertaining to hunting of farm-raised deer and exotics that is in effect on April 2, 1998, the effective date of this declaration of emergency.

Title 76
WILDLIFE AND FISHERIES
Part XIX. Hunting

Chapter 1. Resident Game Hunting Seasons

§109. Farm-Raised White-Tailed Deer and Exotics

A. Definitions

Exotics—any animal of the family *Bovidae* (except the Tribe *Bovini* [cattle]) or *Cervidae* which is not indigenous to Louisiana and which is introduced and kept within an enclosure for which a current Farm-Raising License has been issued by the Department of Agriculture and Forestry. Exotics shall include, but are not limited to, fallow deer, red deer, elk, sika deer, axis deer, and black buck antelope.

Farm-Raised White-Tailed Deer—any animal of the species *Odocoileus virginianus* which is introduced and kept within an enclosure for which a current Farm-Raising License has been issued by the Department of Agriculture and Forestry.

Same as Outside—hunting within an enclosure must conform to applicable statutes and rules governing hunting and deer hunting, as provided for in Title 56 of the Louisiana Revised Statutes and as established annually by the Wildlife and Fisheries Commission for the specific geographic area in which the enclosure is located.

B. Hunting Seasons

1. Farm-Raised White-tailed Deer: Same as outside, except still hunt only during all segments.

2. Exotics: Year round.

3. A Farm-Raising licensee may kill farm-raised white-tailed deer within the enclosure for which he is licensed at any time during daylight hours after proper notice is given as required by the Department of Agriculture and Forestry Alternative Livestock Rules.

C. Methods of Take

1. Farm-Raised White-Tailed Deer: Same as outside.

2. Exotics: Exotics may be taken with longbow (including compound bow) and arrow; shotguns not larger than 10 gauge, loaded with buckshot or rifled slug; handguns and rifles no smaller than .22 caliber center fire; or muzzle loading rifles or pistols, .44 caliber minimum, or shotguns 10 gauge or smaller, all of which must load exclusively from the muzzle or cap and ball cylinder, using black powder or an approved substitute only, and using ball or bullet projectile, including sabot bullets only.

D. Shooting Hours

1. Farm-Raised White-Tailed Deer: Same as outside.

2. Exotics: One-half hour before sunrise to one-half hour after sunset.

E. Bag Limit

1. Farm-Raised White-Tailed Deer: Same as outside.

2. Exotics: No limit.

F. Hunting Permit and Licenses

1. Farm-Raised White-Tailed Deer: Same as outside.

2. Exotics: No person shall take or attempt to take any exotic without possessing an Exotic Hunting Permit issued by the Department of Wildlife and Fisheries. An administrative

fee of \$50 shall be assessed for each Exotic Hunting Permit. Permits are valid only on the deer farm indicated on the face of the permit. Permits shall be issued on a fiscal year basis beginning July 1 of each calendar year and shall expire on June 30 of the following calendar year.

G. Tagging

1. Farm-Raised White-Tailed Deer: Same as outside.

2. Exotics: Each exotic shall be tagged in the left ear or left antler immediately upon being killed and before being moved from the site of the kill with a tag provided by the Department of Agriculture and Forestry. The tag shall remain with the carcass at all times.

H. Additional Restrictions. Except as otherwise specified herein, all of the provisions of Title 56 of the Louisiana Revised Statutes and the Wildlife and Fisheries Commission rules pertaining to the hunting and possession of white-tailed deer shall apply to farm-raised white-tailed deer and exotics.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 36:601, R.S. 56:115, R.S. 56:171 et seq., and R.S. 56:651 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:

Thomas M. Gattle, Jr.
Chairman

9804#030

DECLARATION OF EMERGENCY

Department of Wildlife and Fisheries
Wildlife and Fisheries Commission

Offshore Shrimp Closure

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967 of the Administrative Procedure Act, which allow the Wildlife and Fisheries Commission to use emergency procedures to set shrimp seasons, and R.S. 56:497 which provides that the Wildlife and Fisheries Commission shall have the authority to open or close the state's offshore waters to shrimping, the Wildlife and Fisheries Commission hereby orders a closure to shrimping in that portion of the state's Territorial Waters, south of the Inside/Outside Shrimp Line as described in R.S. 56:495, from the Atchafalaya River Ship Channel at Eugene Island as delineated by the River Channel buoy line to the eastern shore of Freshwater Bayou. This closure is effective at 6:01 a.m., Monday, April 6, 1998.

R.S. 56:498 provides that the minimum legal count on white shrimp is 100 (whole shrimp) count per pound after the third Monday in December. Current biological sampling conducted by the Department of Wildlife and Fisheries has indicated that white shrimp in this portion of the state's outside waters do not average 100 count minimum legal size or larger and are present in significant numbers. This action is being taken to protect these small white shrimp and allow them the opportunity to grow to a more valuable size.

The Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to close to shrimping, if necessary to protect small white shrimp, any

part of the remaining Territorial Waters, if biological and technical data indicates the need to do so, and to reopen any area closed to shrimping when the closure is no longer necessary; and hereby authorizes the secretary of the Department of Wildlife and Fisheries to open special seasons for the harvest of white shrimp in any portion of the state's inshore waters where such a season would not detrimentally impact small brown shrimp.

Thomas M. Gattle, Jr.
Chairman

9804#029

DECLARATION OF EMERGENCY

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

**Reef Fish Daily Take and
Size Limits (LAC 76:VII.335)**

The Wildlife and Fisheries Commission does hereby exercise the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) and 49:967(D), and pursuant to its authority under R.S. 56:6(25)(a), 56:326.1 and 56:326.3 adopts the rule set forth below. This emergency rule is necessary to expedite the enforceability and effectiveness of federal regulations on commercial reef fish fisheries for red snapper and greater amberjack, which became effective December 30, 1997, and require action before February 1, 1998 and March 1, 1998 respectively. It is therefore in the best interest of the state, and appropriate that these regulations be enacted concurrently, thereby requiring emergency action.

This emergency rule is effective May 7, 1998 and shall remain in effect for the maximum period allowed under the Administrative Procedure Act or until adoption of the final rule, whichever occurs first.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

**§335. Daily Take, Possession and Size Limits Set by
Commission, Reef Fish**

* * *

E. All persons who do not possess a "Class 1" or "Class 2" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to the recreational bag limit for red snapper. Those persons possessing a "Class 2" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico Reef Fish resources are limited to a daily take and possession limit of 200 pounds of red snapper per vessel.

F. Those persons possessing a "Class 1" red snapper license issued by the National Marine Fisheries Service under the Federal Fishery Management Plan for the Gulf of Mexico

Reef Fish resources are limited to a daily take and possession limit of 2,000 pounds of red snapper per vessel.

* * *

J. The season for the commercial harvest of greater amberjack shall be closed during the months of March through May of each year. Possession of greater amberjack in excess of the daily bag limit while on the water is prohibited during the closed season. Any greater amberjack harvested during the closed season shall not be purchased, sold, traded, bartered or exchanged or attempted to be purchased, sold, traded, bartered or exchanged. The provisions of §335.J apply to fish taken within or without Louisiana's territorial waters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(25)(a), 56:326.1 and 326.3.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 16:539 (June 1990), amended LR 19:1442 (November 1993), LR 20:797 (July 1994), LR 21:1267 (November 1995), LR 22:860 (September 1996), LR 24:

Thomas M. Gattle, Jr.
Chairman

9804#027

DECLARATION OF EMERGENCY

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

Trapping Season Extension—1997-98

In accordance with the emergency provisions of R.S. 49:953(B) and R.S. 49:967(D) of the Administrative Procedure Act, which allows the Wildlife and Fisheries Commission to use emergency provisions to extend seasons; and R.S. 56:259(A), which allows the commission to extend trapping in any area of the state each year; and under the authority of a declaration of emergency adopted by the commission on September 4, 1997, which gives the secretary of the Department of Wildlife and Fisheries authority to extend or shorten the trapping season, the secretary does hereby extend the 1997/1998 trapping season until official sunset on March 31, 1998.

James H. Jenkins, Jr.
Secretary

9804#007

DECLARATION OF EMERGENCY

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

White-Tailed Deer Importation (LAC 76:V.117)

In accordance with the emergency provisions of R.S. 49:953(B) of the Administrative Procedure Act, and under authority of the Louisiana Constitution, Article IX,

Section 7, R.S. 56:6(10), (13) and (15), R.S. 56:20 and R.S. 56:171 et seq., the Wildlife and Fisheries Commission hereby adopts the following emergency rule.

A declaration of emergency is necessary to regulate the importation of white-tailed deer into Louisiana past the April 2, 1998 expiration of the current declaration of emergency. Permanent rules regulating importation have been developed. These new rules and this declaration of emergency will allow regulated importation of white-tailed deer in a manner which will allow monitoring and tracking of imports and will minimize threats of disease introduction into Louisiana. This declaration of emergency will provide for regulated importation until the permanent rule is adopted.

This emergency rule shall become effective on April 2, 1998, and shall remain effective for a maximum of 120 days or until promulgation of the final rule, whichever occurs first.

This emergency rule will supplant any prior declaration of emergency adopted by the Wildlife and Fisheries Commission pertaining to importation of white-tailed deer in effect on April 2, 1998, the effective date of this declaration of emergency.

Title 76

WILDLIFE AND FISHERIES

Part V. Wild Quadrupeds and Wild Birds

Chapter 1. Wild Quadrupeds

§117. White-Tailed Deer Importation

A. Definitions

White-Tailed Deer—any animal of the species *Odocoileus virginianus*.

B. Permits. No person shall import, or cause to be imported, white-tailed deer into the state of Louisiana without first notifying the Department of Agriculture and Forestry and obtaining a current permit number. The permit number shall be included on the certificate of veterinary inspection and shall accompany the shipment of white-tailed deer. The permit number and certificate of veterinary inspection shall be made available to Department of Wildlife and Fisheries personnel upon request.

C. Import Restrictions

1. No person shall import or cause to be imported any white-tailed deer from the states of California, Colorado, Connecticut, Delaware, Michigan, New Jersey, New York, Pennsylvania, Rhode Island, South Dakota, or Wyoming. This shall include any white-tailed deer that have been confined within these states, or have been in direct contact with deer of any species from these states, within 180 days of entry into Louisiana.

2. No person shall import or cause to be imported any white-tailed deer without written proof of a negative test for tuberculosis in accordance with the *Tuberculosis Eradication in Cervidae Uniform Methods and Rules*, as published by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service.

3. No person shall import, or cause to be imported, white-tailed deer without written proof of a negative test for brucellosis in accordance with the *Brucellosis Eradication in Cervidae Uniform Methods and Rules* once published by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service. Until such time as the *Brucellosis Eradication in Cervidae Uniform Methods and Rules* are published, all white-tailed deer 6 months of age and older entering Louisiana shall be tested negative for brucellosis within 30 days prior to entry into Louisiana, and written proof thereof shall be provided, unless the white-tailed deer originate from a herd which has been officially declared a certified brucellosis-free herd by the state of origin.

4. No person shall import, or cause to be imported, any white-tailed deer for release into the wild or into any enclosure not specifically licensed for the possession of white-tailed deer.

AUTHORITY NOTE: Promulgated in accordance with the Louisiana Constitution, Article IX, Section 7, R.S. 56:6(10), (13) and (15), R.S. 56:20 and R.S. 56:171 et seq.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:

Thomas M. Gattle, Jr.
Chairman

9804#034

Rules

RULE

Department of Agriculture and Forestry Office of the Commissioner

Agricultural Commodity Dealer and Warehouse Law
(LAC 7:XXVII.101-149) and
Self-Insurance Program (LAC 37:IX.101-123)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of the Commissioner amends regulations governing the Agricultural Commodities Commission to reflect changes necessary due to the passage of Act 1034 of the Regular Session of 1997.

The amendments correct technical and typographical errors and integrate necessary changes in the existing rules to reflect the passage of Act 1034 of 1997 to include "cotton" as a regulated "agricultural commodity" and "cotton merchant" as a regulated entity under the Agricultural Commodity Dealer and Warehouse Law. Additionally, changes to Title 37, Insurance, Part IX, "Agricultural Commodity Commission" require revisions to reflect the addition of "cotton merchants" as possible participants in the "Agricultural Commodity Commission Self-Insurance Program."

Title 7

AGRICULTURE AND ANIMALS

Part XXVII. Agricultural Commodity Dealer and Warehouse Law

Chapter 1. Agricultural Commodities Commission

Subchapter A. General Provisions

§101. Definitions

* * *

Agricultural Commodities—sugar, all agricultural products commonly classed as grain (rice, corn, wheat, oats, rye, soybeans, barley, milo, and grain sorghum), and any other agricultural commodity which the commission may declare to be an agricultural commodity subject to regulation under the Act.

* * *

Cotton Agent—every person, firm, corporation, association, or other legal entity which purchases or contracts to purchase cotton grown or to be grown by producers in this state for or on behalf of a cotton merchant and which is required to be a party to a notarized written agency agreement.

Cotton Merchant—every person, firm, corporation, association, or other legal entity which purchases or contracts to purchase, either directly or through a cotton agent, cotton grown or to be grown by producers in this state.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3403, R.S. 3:3404, R.S. 3:3406 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:287 (May 1983), amended LR

12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1299 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998).

§103. Administration of the Affairs of the Commission

A. The officers of the commission shall be a chairman and a vice-chairman, who shall serve for terms concurrent with the commissioner, but may be elected for an indefinite number of terms.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3403, R.S. 3:3404, R.S. 3:3406 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:287 (May 1983), amended LR 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998).

§105. Agricultural Commodities and Other Farm Products Regulated by the Commission

A. The following agricultural commodities shall be regulated by the commission at all times.

* * *

3. Cotton

* * *

D. Warehouses storing cotton are not required to be governed by these regulations.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3402 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:288 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1300 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998).

Subchapter B. Application for Warehouse, Cotton Merchant, and Grain Dealer License

§107. Application for License (Initial and Renewal); Time for Filing; Contents; Fees; Style of Document

A. Applications for renewal of warehouse, cotton merchant and grain dealer licenses must be filed no later than April 30 of each year. Applications for initial license may be filed at any time during the year. For both initial and renewal licenses, the following information must be furnished on the application form provided by the commission:

* * *

25. Cotton applicants only:

a. name and written, notarized agency agreements of cotton agents buying cotton in the state.

b. application for acceptance into the self-insurance fund, if applicable.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3408, R.S. 3:3409, R.S. 3:3410, R.S. 3:3411 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:289 (May 1983), amended LR 10:75 (February 1984), LR 11:229 (March 1985), LR 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1300 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:624 (April 1998).

§109. Grounds for Refusal to Issue or Renew a Warehouse, Cotton Merchant, or Grain Dealer License

A. The commission may refuse to issue or renew a warehouse, cotton merchant, or grain dealer license in any of the following circumstances:

* * *

3. the applicant cannot demonstrate a \$100,000 net worth.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3412, and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:293 (May 1983), amended LR 12:287 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

§141. Records Required to be Maintained

Each grain dealer, cotton merchant and warehouse shall maintain the following records, when applicable to the commodity stored or traded, on a current basis in the company's principal office in this state at all times:

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3419, R.S. 3:3414.3 and R.S. 3:3405.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:309 (May 1983), amended LR 12:288 (May 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

§145. Access Requirements

* * *

B. The warehouseman, cotton merchant, or grain dealer shall provide the necessary assistance required for any inspection, examination, and/or audit made in accordance with the Act.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3406, R.S. 3:3414.3, R.S. 3:3405 and R.S. 3:3419.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:310 (May 1983), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

§149. Adjudication Required Prior to Suspension/Revocation of License or Imposition of Other Penalties; Amount of Penalties; Surrender of License

* * *

I. Whenever the commission suspends or revokes a warehouse, cotton merchant, or grain dealer license, the former licensee must immediately surrender the original and all copies of the license.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3405 and R.S. 3:3422.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 9:312 (May 1983), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

Title 37

INSURANCE

Part IX. Agricultural Commodity Commission

Chapter 1. Self-Insurance Fund

§101. Definitions

As used in this Part:

Applicant—any person, firm, corporation, or other legal entity seeking the issuance of a warehouse license, cotton merchant, or grain dealer license from the commission or a renewal thereof.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

§105. Purpose

The self-insurance fund is established to guarantee the faithful performance of all duties and obligations of licensed grain dealers, cotton merchants, and licensed warehouses to agricultural producers and holders of state warehouse receipts for agricultural commodities and previous holders of state warehouse receipts released in trust in order to have commodity shipped (open storage), included but not limited to Commodity Credit Corporation, banks and lien holders, provided however that this fund does not apply to federal warehouses with regard to the requirements for federal warehouse license and bond.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1303 (October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:625 (April 1998).

§107. Fees

* * *

B. Each applicant for a warehouse license and/or cotton merchant and/or a grain dealer license who participates in the self-insurance fund shall be assessed an annual fee for participation in the self-insurance program. Said fee must accompany the application for a license, and is not refundable unless the license application or renewal is denied and, in that event, the fee will be refunded on a pro rata basis with the

commission retaining a proportionate amount for any period during which coverage was provided to the applicant.

* * *

D. The amount of the annual fee shall be \$500 for a grain dealer or cotton merchant licensee. The annual fee for a warehouse licensee shall be determined first by calculating the amount of bond required of a license under R.S. 3:34010(C) and (D). If the required bond is \$25,000, then the fee shall be \$135. If the required bond is over \$25,000, then the fee shall be \$135 plus \$4 per each additional \$1,000 of coverage required.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1304 (October 1993), amended by the Department of Agriculture, Office of the Commissioner, LR 24:625 (April 1998).

§109. Insurance Coverage

* * *

1. Each licensed grain dealer or cotton merchant shall be insured in the total aggregate amount of \$50,000 for all claims in each licensed year;

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:626 (April 1998).

§123. Prohibited Acts; Criminal Penalties

* * *

B. Any warehouse, cotton merchant or grain dealer licensee who intentionally provides the commission with false information regarding a claim, or regarding any other matters pertaining to the self-insurance program, shall be subject, upon conviction, to penalties for perjury established under R.S. 14:123.

C. Any warehouse, cotton merchant, or grain dealer licensee who intentionally provides the commission with false information regarding a claim, or regarding any other matters pertaining to the self-insurance fund, shall be subject to a fine of up to \$10,000, imprisonment for not more than 10 years, or both, for each occurrence proven at a hearing conducted in accordance with Chapter 13 of Title 49 of the Revised Statutes.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3410.1.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 13:234 (April 1987), amended by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 19:1305

(October 1993), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:626 (April 1998).

Bob Odom
Commissioner

9804#017

RULE

**Department of Agriculture and Forestry
Office of the Commissioner**

Registration Fee Rebates (LAC 7:I.201-205)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of the Commissioner adopts regulations governing rebates of registration fees on pesticides for pesticide manufacturers.

The commissioner finds that in order to promote and protect Louisiana agriculture and products it is appropriate and expedient to permit pesticide manufacturers to apply for a rebate of the pesticide registration fee and to receive such rebate under those circumstances provided for in these rules.

Title 7

AGRICULTURE AND ANIMALS

Part I. Administration

Chapter 2. Rebates of Registration Fees

§201. Findings

The commissioner of Agriculture and Forestry has the duty and authority to promote, protect, and advance Louisiana agriculture and to promote the building of Louisiana using Louisiana products. The constitution and laws of Louisiana grant the commissioner this authority both generally and particularly. Among the particular subject matters entrusted to the commissioner for the foregoing objectives is the regulation of pesticides. The preservation of a safe supply of pesticides and of the local capacity to manufacture pesticides is essential to maintain agricultural production year after year while some pestilences subside as new ones arise. Although registering labels of pesticides serves the above stated objectives, the pesticide registration fees the Department of Agriculture and Forestry charges for such registration may in some cases impose a burden that impairs the above stated objectives. The commissioner finds that in order to promote and protect Louisiana agriculture and Louisiana products it is appropriate and expedient to permit pesticide manufacturers to apply for a rebate of the pesticide registration fee and to receive such rebate under those circumstances provided for in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. 4 §10; and R.S. 3:2(A), 3(B), 14(B), 1652, 1732, and 3203 (A).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 24:626 (April 1998).

§203. Application

A pesticide manufacturer having paid the pesticide registration fee required by R.S. 3:3221(A) may make written application to the Department of Agriculture and Forestry on a form provided by said department for a rebate of not more than 50 percent of each pesticide registration fee paid by the pesticide manufacturer. This application must be submitted:

1. at the time of registration; or
2. at any time on or before December 31 of the year of registration, or
3. prior to July 1, 1998 where the application is for a rebate of a pesticide registration fee paid in 1997.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. 4 §10; and R.S. 3:2(A), 3(B), 14(B), 1652, 1732, and 3203(A).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner LR 24:627 (April 1998).

§205. Issuance of Rebates

Upon receipt of a written application for a rebate of the pesticide registration fee, the commissioner may grant a rebate of not more than 50 percent of each pesticide registration fee and thereafter may rebate same to the pesticide manufacturer if the commissioner finds, based upon the application submitted by the pesticide manufacturer, public records and facts subject to official notice, that:

1. the pesticide registration fee is likely to impose a hardship or undue burden on the pesticide manufacturer; and
2. the operations of the pesticide manufacturer substantially benefit the economy of Louisiana and employment therein; and
3. the pesticide manufacturer maintains and utilizes an active Environmental Protection Administration pesticide producer establishment number which shall be exhibited on each label of pesticide for which a rebate is being requested; and
4. the pesticide manufacturer registered 20 or more products in the current year or registered the same number of products as in the previous year plus two or more new registrations.

AUTHORITY NOTE: Promulgated in accordance with La. Const. Art. 4 §10; and R.S. 3:2(A), 3(B), 14(B), 1652, 1732, and 3203(A).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner LR 24:627 (April 1998).

Bob Odom
Commissioner

9804#019

RULE

**Department of Agriculture and Forestry
Office of Marketing
Market Commission**

Meat, Poultry and Seafood Grading and
Certification (LAC 7:V.Chapter 16)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of

Agriculture and Forestry, Office of Marketing, Market Commission adopts regulations governing certification and inspection of all meat, poultry and seafood products at state institutions and local school districts. These rules comply with and are enabled by R.S. 3:3101 et seq.

No preamble concerning the rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part V. Advertising, Marketing and Processing

Chapter 16. Meat, Poultry and Seafood Grading and Certification Program

§1601. Authority

The Market Commission adopts the following regulations under the authority of R.S. 3:405 and R.S. 3:410 for the purpose of implementing the provisions of R.S. 39:2101 enacted by Act 749 of the Louisiana Legislature, 1997 Regular Session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:627 (April 1998).

§1603. Definitions

The terms defined in §1603 have the meaning given to them herein, for purposes of these regulations, except where the context expressly indicates otherwise.

Certification—a document or a stamp applied to any package containing any meat, poultry or seafood food product, which verifies that the food product meets the specification requirements established by the department.

Commission—the State Market Commission.

Commissioner—commissioner of the Department of Agriculture and Forestry.

Department—the Department of Agriculture and Forestry.

Food Product—any edible item which includes, 3 percent or more by weight, meat, poultry or seafood, and, regardless of whether it is raw, precooked or fully cooked, is capable of use as human food.

Food Service Facility—any place where a food product is prepared, packaged or served in portions designed for individual consumption by people. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food.

Grade—the combined group of standards that a food product must meet to be in accordance with the appropriate certification requirements.

Local School District—any elementary or secondary school system operated by any parish, city or other public school board and any public charter school or any other independent public school authorized by the Louisiana Department of Education.

Meat—any part of any cattle or other bovine, swine, sheep, or goat capable of use as human food.

Person—any individual, corporation, partnership, association, or any other legal entity, whether for profit or nonprofit, who, through contract with the state of Louisiana, any state agency, any state institution or local school district operates a food service facility that supplies, provides or serves food products available for consumption by any student,

resident, patient or inmate of any state agency, state institution or local school district.

Poultry—any part of any chicken, turkey, duck, goose or other domesticated fowl, quail, pheasant, ostrich, emu, or other ratites, or any other type of bird, eggs and domesticated rabbits capable of use as human food.

Public Entity—any state agency, state institution, local school district or person operating one or more food service facility that supplies, provides or serves food products available for consumption by any student, resident, patient or inmate of any state agency, state institution or local school district.

Seafood—any fresh or salt water finfish, farm-raised catfish, shrimp, crawfish, lobsters, oysters and all other edible shellfish, crustaceans, and mollusks, alligators, frogs, turtles and any other form of edible aquatic animal life regardless of whether farm raised or caught in privately owned waters or public waters including the sea, streams and lakes.

State Agency—any board, commission, department, agency, special district, authority or other entity performing a state function.

State Institution—any university, college or center of higher learning, hospital, clinic, veterans or geriatric home, mental institution, juvenile facility, prison or any other facility operated by a state agency, or through a contract with the state of Louisiana or any state agency, by any private, whether for profit or nonprofit, individual, corporation, association or other legal entity for the purpose of teaching, treating, incarcerating, maintaining or housing students, residents, patients or inmates.

Vendor—any individual, corporation, partnership, association or other legal entity that sells any type of food product to any state agency, state institution, local school district or person operating a food service facility, as defined herein, that supplies, provides or serves food products available for consumption by any student, resident, patient or inmate of any state agency, state institution or local school district.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:627 (April 1998).

§1605. Use of Certified Food Products; Issuance of Certification; Exemptions

A. All public entities shall utilize only the following food products:

1. meat and meat products governed by the grading and certification requirements set out in Title 7, Part V, Chapter 5 of the *Louisiana Administrative Code*;

2. poultry and eggs governed by the grading and certification requirements set out in Title 7, Part V, Chapter 9 of the *Louisiana Administrative Code*;

3. all other food products that meet the certification standards set out in these regulations.

B. Any public entity may request from the department the authority to conduct the inspection and certification (self-certification) required by these regulations of food products received by that public entity.

C. The department shall inspect and certify food products subject to these regulations purchased or received by a public entity unless that public entity has authorization from the department to conduct self-certification.

D. Neither the department nor any public entity shall certify any food product unless and until the food product meets all the requirements for certification under these regulations.

E. Meat and meat products governed by the grading and certification requirements set out in Title 7, Part V, Chapter 5 of the *Louisiana Administrative Code* and poultry and eggs governed by the grading and certification requirements set out in Title 7, Part V, Chapter 9 of the *Louisiana Administrative Code* are exempt from the provisions of these regulations.

F. These regulations shall not affect or change any other grading or certification program operated by the department under any other provision of law or any other regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:628 (April 1998).

§1607. Grading and Certification Standards and Specifications

A. Meat and meat food products, other than those governed by the grading and certification requirements set out in Title 7, Part V, Chapter 5 of the *Louisiana Administrative Code* shall meet the following grading and certification standards and specifications:

1. fresh meat should not have any offensive odor or be slick to the touch;

2. frozen meat should be hard frozen at the time of delivery; and

3. the bid specifications or purchase order issued by the public entity.

B. Eggs shall meet the following grading and certification standards and specifications:

1. The following information must be on all egg cases if eggs are packed loose and on all cartons when eggs are packed in cartons:

a. name of producer or packer;

b. grade and size;

c. date of pack;

e. Louisiana license number [La 001];

f. keep refrigerated 45EF or below.

2. Eggs cannot be used if more than 30 days of age from pack date. Pack date can be either Julian or calendar date.

3. Eggs must be delivered in refrigerated trucks capable of maintaining an ambient temperature of 45EF stored in coolers that maintain an ambient temperature of 45EF.

4. If eggs are not USDA or state graded, or if more than 10 days have elapsed between the time of inspection and delivery, the public entity must ascertain that the eggs meet all requirements set forth in Title 7, Part V, Chapter 9 of the *Louisiana Administrative Code*.

C. Poultry and poultry food products, other than those governed by the grading and certification requirements set in Title 7, Part V, Chapter 9 of the *Louisiana Administrative Code*, shall meet following grading and certification standards and specifications:

1. frozen poultry must be hard frozen at time of delivery;
2. fresh poultry should not have any offensive odors and should not be slick to the touch;
3. if grade is implied or stated, the USDA shield must be used; and
4. the bid specifications or purchase order issued by the public entity.

D. Seafood food products shall meet one or more of the following grading and certification standards and specifications:

1. United States Department of Commerce standards for any type of aquatic animal life defined as seafood in these regulations;
2. State of Louisiana, Division of Administration, State Purchasing general requirements for fish and fishery product;
3. standards and specifications set by the appropriate division of the department's grading and certification service for the particular seafood product;
4. the bid specifications or purchase order issued by the public entity;
5. fresh seafood shall not have any offensive odors or be slick to the touch.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:628 (April 1998).

§1609. Procurement of Food Products

- A. No public entity shall procure any food products unless and until it has fully complied with the provisions of R.S. 38:2184 and R.S. 38:2251-2261.
- B. Neither the department nor any public entity shall issue a certification for any food product purchased by such public entity unless and until the public entity provides proof of full compliance with the provisions of R.S. 38:2184 and R.S. 38:2251-2261.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:629 (April 1998).

§1611. Inspection and Certification by a Public Entity; Procedures

Any public entity that has authorization from the department to conduct self-certifications under these regulations shall do so in the following manner:

1. All food products shall be inspected and certified by the public entity at the time of delivery.
2. The public entity shall provide sufficient trained or experienced personnel to ensure that all products are inspected and certified in accordance with these regulations.
3. The public entity shall maintain certification logs, in a form acceptable to the department, showing the self-certification of all food products received by the public entity. Each delivery of a food product shall be logged at the time of self-certification. Each log book shall be made available for inspection when requested by authorized representatives of the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:629 (April 1998).

§1613. Inspection and Certification by the Department; Procedures

Inspections and certifications performed by the department under these regulations shall proceed in the following manner.

1. Vendors, both in state and out of state, shall make all food products available to the department's grading and certification service in an approved facility for certification prior to shipment to the place of final destination, except for out-of-state shipments made directly to a storage facility owned and operated by a public entity. Such direct out-of-state shipments shall be inspected at the receiving storage facility before distribution to any food service facility.
2. Any vendor, public entity needing certification services shall notify the department at least 24 hours in advance of need and shall provide such services as necessary to expedite the examination and certification of the food product and the taping of containers, including providing the necessary tape.
3. The department shall receive a purchase order at least seven working days prior to the department's inspection for the purposes of issuing a final certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:629 (April 1998).

§1615. Fees and Costs

- A. The commission may collect fees for the inspection and certification of food products. The fees shall not exceed the actual cost necessary to provide for the proper inspection, grading, classification and certification of the food products.
- B. Any vendor delivering a food product inspected and certified under these regulations shall pay an inspection fee of \$.025 per pound for each such meat, poultry or seafood product, or in the case of eggs, a fee of \$.025 per dozen. All fees and costs shall be immediately due and payable to the department upon presentation to the vendor by the department of the statement for services rendered.
- C. Any public entity performing self-certification under these regulations shall receive compensation from the department for such services in the amount of \$.02 per pound for each meat, poultry or seafood product, or in the case of eggs, a fee of \$.02 per dozen for each food product inspected and certified by the public entity. Payment to the public entity shall be made by the department promptly upon the department's receipt of payment from the vendor.

D. Any vendor, state agency, state institution, local school district or person needing certification services from the department and failing to notify the department at least 24 hours in advance of need shall be subject to a penalty of \$50, regardless of the time required for the services or the fees assessed by the department.

E. Fees charged and collected by the department under any other grading or certification program operated by the department shall not be affected by these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, R.S. 3:410 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:629 (April 1998).

§1617. Enforcement

A. The department or its authorized representative shall have the right to enter any place where any food product is kept to inspect the food product and to inspect any records pertaining to the sale, procurement, movement, distribution, preparation or serving of any food product subject to self-certification under these regulations.

B. If the department finds that a public entity authorized to inspect and certify food products under these regulations is not inspecting and certifying each delivery of food products received by the public entity or if the department finds that the public entity has, on three or more occasions, improperly inspected or certified food products then the department may, by written order, take over inspection and certification duties from the public entity until the department determines that the public entity will properly inspect and certify food products in accordance with these regulations.

C. If a vendor is found to be out-of-compliance more than three times during a given quarter, then that vendor's products must be inspected for compliance by the Louisiana Department of Agriculture before delivery of any product. Once the vendor has proven to the satisfaction of the department that his product will be in compliance, then the vendor may deliver directly to the institution for certification by the institution.

D. The department or its authorized representative may, while enforcing the provisions of these regulations, issue and enforce a written, printed or stamped stop order to prevent the purchase, procurement, movement, distribution, preparation or serving of any food product if:

1. authorized representative of the department has been refused the right to enter the premises where the food product is kept or the right to inspect the food product or records;

2. the food product does not meet the grading and certification standards established by these regulations; or

3. the food product was procured in violation of §1609.A.

E. Upon issuance of a stop order the department may cause the food product to:

1. remain where it is located at the time the stop order is issued; or

2. be returned to the distributor or vendor of the food product.

F. The stop order may be released by the commissioner when:

1. the food product is found to meet the certification standards set out in these rules if the stop order was issued because the department had not certified the food product;

2. proof of compliance with §1609.A is furnished to the department if the stop order was issued because of noncompliance or failure to produce proof of compliance;

3. authorized representative of the department has been allowed to enter the premises where the food product is stored and inspect the food product or the records if the stop order was issued based on refusal to allow entry or inspection;

4. written proof acceptable to the department is supplied showing that the food product has been returned to the distributor or seller and that the full purchase price of the food product has been refunded to the purchaser; or

5. the department determines that circumstances warrant the release of the stop order, upon such terms and conditions that the department deems necessary or proper.

G. Nothing in these regulations shall prevent the commissioner or the department from seizing, selling or destroying the food product if the department finds that the food product violates any other state law or regulation allowing any such action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, 410, 413 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:630 (April 1998).

§1619. Penalty for Violations; Injunctive Relief; Costs; Notification

A. Whoever violates R.S. 39:2101 or the regulations promulgated thereunder shall be fined not less than \$25 nor more than \$500 or imprisoned for not less than 10 days nor more than six months, or both as provided by R.S. 3:419.

B. Each violation of these rules and regulations, any stop order or other orders issued by the commissioner in the enforcement of these rules and regulations and every day of a continuing violation shall be considered a separate and distinct violation chargeable under these rules and regulations.

C. The commission, through the commissioner, may apply for injunctive relief restraining violations of R.S. 39:2101 or the regulations promulgated thereunder or institute necessary actions for failure to pay accounts due the commission. The person condemned in any such proceeding shall be liable for the costs of court and for any additional costs incurred by the commission in gathering the necessary evidence, including reasonable attorney fees and expert witness fees.

D. In addition to the penalties stated in §1619.A and B the commission may withhold certification services from any vendor, or the right of a public entity to conduct self-certification based on an adjudicatory hearing held in accordance with the Administrative Procedure Act and presided over by a hearing officer appointed by the commissioner.

E. If any food product cannot be certified by the department for any reason or if certification services are withheld then notification of the noncertification or withholding of the services and the reasons therefor shall be sent by the department to all appropriate entities including, but not limited to, the affected public entity, the purchasing agent, appointing authority, Division of Administration, inspector general, legislative auditor or district attorney.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:405, 410, 413 and R.S. 39:2101.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Marketing, Market Commission, LR 24:630 (April 1998).

Bob Odom
Commissioner

9804#013

RULE

**Department of Agriculture and Forestry
Structural Pest Control Commission**

Wood Destroying Insect Report (LAC 7:XXV.121)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Structural Pest Control Commission amends regulations regarding completing the Wood Destroying Insect Report form. These rules comply with and are enabled by R.S. 3:3370.

This amendment changes the word "adjacent" to a definitive "12" inches around a structure being inspected. The minimum specifications now require that wood infested with wood destroying insects under or within 12 inches of the structure be noted on the form.

No preamble regarding these rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§121. Wood Destroying Insect Report

* * *

C. Regulations for completing wood destroying insect reports (LPCA-142). The following numbered sections correspond to the numbered sections on WDIR Form LPCA-142. LPCA-142 shall be completed as follows:

* * *

13. Make no marks in this section.

a. If any of the conditions listed in this paragraph on the WDIR (LPCA-142) are present under or to within 12 inches of the inspected structure(s), list them in section #10 of this report.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3366.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 12:285 (May 1986), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 23:856 (July 1997), LR 24:631 (April 1998).

Bob Odom
Commissioner

9804#018

4.19 Competitive Foods

Grades K-6. Reimbursement for lunch, special milk, and/or breakfast may be withheld from schools if concessions, canteens, snack bars, or vending machines are operated on a profit basis before the end of the last lunch period. Such services are operated for profit if the income is not deposited to the nonprofit school food service program, and expended only for the purpose of the Child Nutrition Program(s).

Grades 7-12. Reimbursement for lunch, breakfast, and/or special milk may be withheld from schools if concessions, canteens, snack bars, vending machines or other food sales are operated on a profit basis before the last 10 minutes of each lunch period. The official school schedule shall indicate the time for each lunch period and should allow sufficient time for each student to receive and consume a meal. Such services are operated for profit if the income is not deposited to the nonprofit school food service program account, and expended only for the purpose of the Child Nutrition Program(s).

However, grades 7-12 (not allowed in K-6) with multiple lunch periods may operate concessions, canteens, snack bars, vending machines, or other food sales between lunch periods if the following guidelines are implemented:

1. No food item shall be sold before the last 10 minutes in each lunch period.

2. Lunch periods shall be divided by a period of time so that students from one period do not come into contact with students from another period.

3. A system shall be in place to ensure that students do not have access to competitive foods before the last 10 minutes of each lunch period.

The School Food Authority shall be required to reimburse the School Food Service account for any funds withheld for violation(s) of the Competitive Foods Policy. Under no circumstances can foods in competition be sold to children in food service areas during the lunch period(s).

This policy will be managed and monitored by both the local school food service director as well as the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:6.

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 24:631 (April 1998).

Weegie Peabody
Executive Director

9804#068

RULE

Board of Elementary and Secondary Education

**Bulletin 1196—Food and Nutrition
Programs—Sale of Snack Concessions**

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended Bulletin 1196, Section 4.19. The bulletin is referenced in LAC 28:I.913. The amendment concerns the sale of snack food concessions during the lunch period.

RULE

**Student Financial Assistance Commission
Office of Student Financial Assistance**

**Tuition Opportunity Program for Students
(TOPS) (LAC 28:IV.Chapters 1-21)**

The Louisiana Student Financial Assistance Commission (LASFAC) adopts rules for the Tuition Opportunity Program for Students (TOPS). In accordance with R.S. 17:3021-3036,

the Louisiana Student Financial Assistance Commission adopts the following rule governing the Scholarship and Grant Programs administered by the commission. The purpose of this rule is to govern the allocation and award of scholarship and grant funds under these programs.

**Title 28
EDUCATION**

Part IV. Higher Education Scholarship and Grant Programs

Chapter 1. Scope

§101. Introduction

A. Statutory Authority. The Louisiana Student Financial Assistance Commission (LASFAC) was created by Chapter 20, Higher Education Assistance, Louisiana Revised Statutes of 1950, comprised of R.S. 17:3021-3036, for the purpose of supervising, controlling, directing and administering state and federal programs to provide loans to assist persons in meeting the expenses of higher education, and state and federal scholarship and grant programs for higher education. The Louisiana Office of Student Financial Assistance (LOSFA), under authority of the commission, administers state and federal postsecondary student scholarship, grant and loan programs.

B. Agency's Mission Statement. The mission of LOSFA is to provide resources to Louisiana residents for the pursuit of postsecondary education.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998).

§103. Purpose

A. LAC 28:IV provides the rules and regulations governing participation in the scholarship and grant programs administered by LASFAC, including, but not limited to:

1. applicants and recipients;
2. high school counselors;
3. principals and headmasters;
4. superintendents;
5. college and university financial aid directors and staff; and
6. federal and state authorities.

B. LAC 28:IV was developed to meet the following objectives:

1. establish scholarship and grant policies and procedures that implement and explain or interpret statutes;
2. define the program responsibilities of participants (applicants, recipients, and high school, school board and postsecondary institution officials);
3. ensure that scholarships and grants are awarded in accordance with statute and legislative intent;
4. establish procedures to monitor the performance of scholarship and grant recipients;
5. ensure compliance with statutory and regulatory provisions governing the administered programs.

C. Since these rules and regulations can neither anticipate nor address every situation that might be encountered in the administration of the scholarship and grant programs included herein, participants in doubt about the applicability or

interpretation of a rule or regulation in LAC 28:IV are advised to contact LOSFA for guidance.

D. LAC 28:IV shall be amended and updated as necessary. Such updates will be forwarded to institutions in the form of Scholarship and Grant Program Memoranda (SGPM). SGPM will cover additions, deletions, revisions and clarifications to the rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Louisiana Student Financial Assistance Commission, Louisiana Office of Student Financial Assistance, LR 24:632 (April 1998).

§105. Effective Date

These rules and regulations are effective for awards beginning with the 1998-99 academic year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998).

§107. Authority to Audit

By participating in the scholarship and grant programs administered by LASFAC and described in LAC 28:IV, all participants, including high schools and postsecondary institutions, grant LASFAC and the Louisiana legislative auditor the right to inspect records and perform on-site audits of each institution's administration of the programs for the purpose of determining the institution's compliance with state law and LASFAC's rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998).

§109. Discrimination Prohibition

The exclusion of a person from equal opportunity for a Louisiana scholarship and/or grant program administered by LASFAC because of race, religion, sex, handicap, national origin or ancestry is prohibited. No policy or procedure of this agency shall be interpreted as superseding or contradicting this prohibition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998).

§111. Criminal Penalties

All certifications of student performance which are submitted to LASFAC for the purpose of determining a student's eligibility for an award under a student aid program administered by LASFAC shall be by sworn affidavit of the certifying official and such official shall be subject to criminal law applicable to false swearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998).

Chapter 3. Definitions

§301. Definitions

Where the masculine is used, in these rules, it includes the feminine, and vice versa; where the singular is used, it includes

the plural, and vice versa.

Academic Year (College)—the two- and four-year college and university academic year begins with the fall term of the award year, includes the winter term, if applicable, and culminates with the completion of the spring term of the award year. The two- and four-year college and university academic year does not include summer sessions or intersessions. The Louisiana Technical College academic year begins with the fall quarter, includes the winter and spring quarters and culminates with the summer quarter.

Academic Year (High School)—the annual academic year for high school begins with the summer session, includes the fall and winter terms and ends at the conclusion of the spring term, in that order. For example, for a high school graduate to be considered for award of a scholarship to attend college in the 1998 fall semester, he or she must have graduated by the spring term 1998 (usually May or June), but may have graduated during the summer term 1997 (usually June or July) or midterm 1997 (usually December). This definition is not to be confused with the Louisiana Department of Education's definition of *school year*, which is found in Louisiana Department of Education Bulletin 741.

Average Public Tuition—the amount of a TOPS tuition award (Opportunity, Performance and Honors) that will be received by a student attending a private college or university that is a member of the Louisiana Association of Independent Colleges and Universities (LAICU), calculated using the program's prior year average annual tuition amount received by students attending public two- and four-year institutions in the prior award year.

Basic Course Enrollment Charges—those institutional tuition and mandatory fees universally charged to all full-time students for purposes of enrollment.

Core Curriculum—

a. at the time of high school graduation, an applicant must have successfully completed 16.5 units of high school course work constituting a core curriculum as follows:

Units	Course
1	English I
1	English II
1	English III
1	English IV
1	Algebra I
1	Algebra II
1	Geometry, Trigonometry, Calculus or Comparable Advanced Math
1	Biology I
1	Chemistry I
1	Earth Science, Environmental Science, Physical Science, Biology II, Chemistry II or Physics
1	American History
1	World History, World Culture, Western Civilization or World Geography

1	Civics and/or Economics/Free Enterprise
1	Fine Arts Survey; (or substitute two units Performance courses in Music, Dance and/or Theater; or two units of Studio Art; or one elective from among the other subjects listed in this core curriculum)
2	In the Same Foreign Language
½	Computer Science, Computer Literacy or Data Processing (or substitute at least one-half unit of an elective from among the other subjects listed in this core curriculum)

b. Core units are waived upon sworn affidavit by the school board superintendent for public schools or by the principal or headmaster for nonpublic high schools that the course was not available to the student at the school attended.

Cost of Education—the total amount it will cost a student to go to school, usually expressed as an academic year figure. This cost is determined by the school in compliance with Title IV of the Higher Education Act of 1965, as amended, and is annually updated and adopted by the institution. The cost of education covers tuition and fees, on-campus room and board (or a housing and food allowance for off-campus students) and allowances for books, supplies, transportation, child care, costs related to a disability, and miscellaneous expenses. Also included are reasonable costs for eligible programs of study abroad. An allowance (determined by the school) is included for reasonable costs connected with a student's employment as part of a cooperative education program.

Dependent Student—a student who is dependent on his or her parents or legal guardian for support and therefore is required to include parental information on the FAFSA or renewal FAFSA.

Eligible Noncitizen—an individual who can provide documentation from the Immigration and Naturalization Service (INS) that he or she is in the U.S. for other than a temporary purpose with the intention of becoming a citizen or permanent resident. Including, but not limited to, refugees, persons granted asylum, Cuban-Haitian entrants, temporary residents under the recent Immigration Reform and Control Act of 1986, and others. A permanent resident of the U.S. must provide documentation from the INS to verify permanent residency.

Expected Family Contribution (EFC)—an amount, determined by a formula established by Congress, that indicates how much of a family's financial resources should be available to help pay for the dependent's cost of education. Factors such as taxable and nontaxable income, assets (such as savings and checking accounts), and benefits (for example, unemployment or Social Security) are all considered in this calculation.

Fee Schedule—a listing of the actual tuition and mandatory fees for attendance at a postsecondary school as defined by the institution.

First-Time Freshman—a student is a first-time freshman the first fall, winter or spring semester or quarter, subsequent to high school graduation, in which a student enrolls as a full-time student and continues to be enrolled full time on the fourteenth class day (ninth class day for Louisiana Tech). A student who begins postsecondary or university attendance in

a summer session will be considered a first-time enrollee for the immediately succeeding fall term.

Full-Time Student—

a. a student enrolled in an institution of higher education who is carrying a full-time academic workload as determined by the school under the standards applicable to all students enrolled;

b. for continuation purposes, a student is considered to have met the full-time requirement if by the completion of the spring term he or she has earned at least 24 hours of total credit during the fall, winter and spring terms at an institution defining 12 semester or eight quarter hours as the minimum for full-time undergraduate status.

c. for programs which permit graduate study, a graduate student must have earned at least 18 hours of total credit during the fall, winter and spring terms;

d. a workload of at least 30 clock hours per week is the full-time equivalent at a technical college.

Graduate (High School)—for the purposes of this Chapter, a *high school graduate* is defined as a student certified by award of a high school diploma to have satisfactorily completed the required units at a Louisiana public- or BESE-approved nonpublic high school or certified by award of a high school diploma from an eligible non-Louisiana high school.

Independent Student—those students required to report only student information on the FAFSA, or if married, student and spouse information, and information on any dependent children. An independent student is a student who meets at least one of the criteria listed in Subparagraphs a.-f or has been determined independent by a financial aid officer exercising professional judgment in accordance with applicable provisions of the Higher Education Act of 1965, as amended:

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

c. is a veteran of the U.S. Armed Forces, including a student who was activated to serve in Operation Desert Storm;

c. is an orphan or a ward of the court or was a ward of the court until age 18;

d. has legal dependents other than a spouse;

e. is a graduate or professional student;

f. is married.

Louisiana Resident—any person who has manifested intent to remain in this state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

a. has continuously resided in Louisiana during the 24 months preceding college or university enrollment, except for Rockefeller and SSIG recipients who must have continuously resided in Louisiana for the previous 12 months; and

b. unless designated as an independent student, as defined in LAC 28:IV, has a parent or legal guardian who is domiciled in Louisiana; and

c. if registered to vote, is registered to vote in Louisiana; and

d. if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license; and

e. if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle; and

f. if earning an income, has complied with Louisiana state income tax laws and regulations.

Merit Ranking Formula—an index incorporating selected merit factors which is used to rank eligible applicants in the priority by which competitive scholarships are to be awarded. As of July 1, 1997, the TOPS Teacher Award and Rockefeller Scholarship are the only programs in which applicants are competitively ranked. The following formulas for the merit ranking of scholarship applicants provide for the equating of scores for high school graduating seniors and college students.

a. Formula I—utilized for applicants with less than 24 hours of graded college credit:

$$\text{Merit Score} = \left(\left(\frac{\text{HSGPA}}{4.00} \right) \times 60 \right) \% \left(\left(\frac{\text{ACT}}{36} \right) \times 40 \right)$$

b. Formula II—utilized for applicants with 24 or more hours of graded college credit:

$$\text{Merit Score} = \left(\left(\text{College} \frac{\text{GPA}}{4.00} \times 95 \right) \% \left(\left(\frac{\text{College Level}}{4} \right) \times 5 \right) \right)$$

c. Formula III—utilized for applicants for the TOPS Teacher Award. For those applicants majoring in math or chemistry, an additional 10 points are added to the merit score determined by Formula I or II, resulting in an adjusted merit score.

d. Applicants' merit scores are ranked in descending order with the applicant with the highest merit score ranked first. The number of applicants selected for award is dependent upon the amount of award funds available.

Monetary Repayment—for purposes of the Rockefeller State Wildlife Scholarship and TOPS Teacher Award Programs, repaying the scholarship funding received, plus any interest accrued under the terms of the promissory note signed by the recipient, if the recipient fails to fulfill the terms of the program. See *Repayment*.

Overaward—for the purposes of LAC 28:IV, an over award occurs when a student received financial aid in excess of the cost of education as established in accordance with federal Title IV regulations or an award under state programs to which the student was not entitled.

Refund—a refund of school charges that the school makes to a student, usually after the student has withdrawn from school. The refund to the student is the difference between the amount the student paid toward school charges minus the amount the school keeps for the portion of the payment period that the student was enrolled.

Repayment—the amount of the cash disbursement that a student must pay back to the school if the student withdraws from the program. If the cash disbursement was greater than the student's living expenses (student's education costs above and beyond the amount of tuition and fees) up to the withdrawal date, the student must repay the excess amount. The actual amount of the refund/repayment is determined according to the school's policy in accordance with federal regulations. See *Monetary Repayment*.

Substantial Financial Need—for purposes of the SSIG program only, substantial financial need is the difference

between the student's cost of education and the sum of that student's expected family contribution (EFC) plus other student aid the student is due to receive. The difference thus computed must exceed \$199.

Undergraduate Student—a student who has not completed the requirements for a baccalaureate degree program and/or is not classified as a professional student for the purposes of receipt of federal student aid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:632 (April 1998).

Chapter 5. Application; Application Deadlines and Proof of Compliance

§501. Application

All new applicants for, and all continuing recipients of, Louisiana scholarship and grant programs must annually apply for state and federal aid by completing the Free Application for Federal Student Aid (FAFSA) or the renewal FAFSA, whichever is applicable to the individual student. The deadline for priority consideration for state aid is published in the FAFSA's instructions and may be revised annually by the LASFAC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998).

§503. Application Deadlines

A. Deadline for Priority Consideration

1. For priority consideration for the 1998-99 award year, applicants must submit the FAFSA to be received by the federal processor by June 1, 1998.

2. Priority consideration means that an applicant who submits a FAFSA by this date shall, under normal circumstances, receive notification of his eligibility for a noncompetitive award (TOPS Opportunity, Performance and Honors Awards) prior to enrolling in the fall term.

3. An applicant for a competitively awarded scholarship (TOPS Teacher Award and Rockefeller State Wildlife Scholarship) who submits a FAFSA by this date shall be considered for selection of award in the first round of applicants awarded.

4. For priority consideration for award years after 1998-99, applicants must submit the FAFSA to be postmarked by April 15, or to be received by the federal processor by May 1, preceding the award year.

B. Final Deadline. The final deadline to apply for state aid is March 1 of the award year, by which time the FAFSA must have been received by the federal processor. For example, for the 1998-99 award year, the final deadline date for receipt of the application by the federal processor is March 1, 1999.

C. If a prescribed deadline date falls on a weekend or holiday, it will automatically be extended to the next business day.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998).

§505. Proof of Compliance

As proof of compliance with the state's final deadline for submitting the FAFSA, LASFAC will accept the documentation listed in Paragraph 1 through 3. No other form of verification, including notarized or certified statements, will be accepted as proof of compliance with the deadline requirement.

1. A certificate of mailing, registered, certified, certified/return receipt requested, priority or overnight mail receipt from the United States Postal Service, or other authorized mail carriers such as United Parcel Service and Federal Express, which is dated prior to the state's final deadline.

2. The Electronic Student Aid Report (ESAR), produced by the federal processor, shows that the original application was received by the state's final deadline.

3. The federal processor provides verbal or written verification to LASFAC that the original application was received by the state's final deadline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998).

§507. Final Deadline for Submitting Documentation of Eligibility

A. LASFAC will continue to process eligibility for both new and renewal applicants during each award year until May 1 of the spring term of that award year.

B. Students not determined eligible by May 1 of the spring term of the award year are ineligible to receive program funding that award year.

C. All documentation and certifications necessary to establish student eligibility, including but not limited to high school and/or college transcripts and certifications, copies of Student Aid Reports, applicant confirmation forms, promissory notes and other documents which may be utilized in determining eligibility, must be received by LASFAC no later than May 1 of the award year. For example, to receive an award for the 1998-99 award year, LASFAC must have in its possession all documents relevant to establishing eligibility by May 1, 1999.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998).

Chapter 7. Tuition Opportunity Program for Students (TOPS) Opportunity; Performance and Honors Awards

§701. General Provisions

A. Legislative Authority. The TOPS Opportunity, Performance and Honors Awards were created by Act 1375 of the 1997 Regular Session of the Louisiana Legislature. This Act amended and reenacted R.S. 17:3026(J) and (K), 3042.36, Chapter 20-G of the Louisiana Revised Statutes of 1950, comprised of R.S. 17:3048.1 and 3048.2, and R.S. 47:1508(B)(18).

B. Description, History and Purpose. The Tuition Opportunity Program for Students (TOPS) is a comprehensive, merit-based student aid program consisting of a series of

components, with each component having its own eligibility criteria and titled award. The purpose of TOPS is to provide an incentive for Louisiana residents to academically prepare for and pursue postsecondary education in this state, resulting in an educated work force enabling Louisiana to prosper in the global market of the future. The major components of TOPS are the opportunity award, the performance award and the honors award.

C. The opportunity, performance and honors awards, which will be funded for the 1998-99 academic year, combine former programs (Louisiana Tuition Assistance Plan [TAP] and the Louisiana Honors Scholarship Program) with a new component, the honors award, to produce a comprehensive program of state scholarships.

D. The purposes of this program are to:

1. financially assist those students who are academically prepared to continue their education at a Louisiana postsecondary institution; and
2. encourage academic excellence; and
3. provide incentives for Louisiana high school graduates to pursue postsecondary education in this state.

E. Award Amounts. The specific award amounts for each component of TOPS are as follows.

1. The TOPS Opportunity Award provides undergraduate tuition for full-time attendance at Louisiana public two- and four-year colleges and universities and Louisiana Technical College.

2. The TOPS Performance Award provides a \$400 annual stipend, in addition to tuition.

3. The TOPS Honors Award provides an \$800 annual stipend, in addition to tuition.

4. Performance and Honors Award recipients attending Louisiana Technical College are restricted to the receipt of the amount of tuition charged by the institution and are not eligible for annual stipends.

5. Students attending a regionally accredited independent college or university which is a member of the Louisiana Association of Independent Colleges and Universities (LAICU) receive the average public tuition amount, as defined in §301 plus any applicable stipend.

6. Recipients of TOPS Awards who are also beneficiaries of Student Tuition Assistance and Revenue Trust (START) Saving Program accounts, may apply the START disbursements to pay tuition, and any remaining tuition due may be paid by the TOPS award. Any balance of the TOPS award which remains after payment of the institution's charges, shall be credited to the student's account and treated in accordance with institutional policies.

7. For the 1998-99 award year only, students funded under the Tuition Assistance Plan (TAP) or the Louisiana Honors Scholarship during the 1997-98 award year, who have maintained eligibility for the 1998-99 award year, shall receive awards under the TOPS Opportunity or Performance Awards, respectively. For 1997 high school graduates receiving a TAP or Louisiana Honors Scholarship award during the 1997-98 award year, who meet the criteria for establishing and maintaining eligibility for a TOPS Performance and/or Honors Award as specified in §§703-705, may at their option elect to be awarded under that program which provides the higher

monetary award. Students electing an award with a higher monetary value, will be required to meet continuation requirements for the higher award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:635 (April 1998).

§703. Establishing Eligibility

To establish eligibility for a TOPS Opportunity, Performance or Honors Award, the student applicant must meet all of the following criteria:

1. be a U.S. citizen or national or eligible noncitizen, and be registered with the Selective Service, if required; and
2. be a resident of Louisiana, as defined in Chapter 3 of LAC 28:IV; and

3. annually submit the completed Free Application for Federal Student Aid (FAFSA) or renewal FAFSA by the applicable state aid deadline defined in §503; and

4. initially apply and enroll in an eligible postsecondary institution within two years of the date of high school graduation and for Opportunity Awards only, enroll as a first-time freshman, as defined in Section §301 in an eligible postsecondary institution within two years of the date of high school graduation.

5. graduate from a BESE-approved, provisionally-approved, or probationally-approved public or nonpublic high school or eligible non-Louisiana high school as defined in §1701; or for Performance Awards only, be enrolled in a state-approved home study program; and

6. at the time of high school graduation, have successfully completed 16.5 units of high school course work constituting a core curriculum as defined in §301. Applicants for the TOPS Performance Award are not required to complete the core curriculum until the graduating class of 2001; and

7. at the time of high school graduation have taken the American College Test (ACT) and received composite test score results, or an equivalent concordant value on the Scholastic Aptitude Test (SAT), of at least:

- a. the state's reported prior year average, rounded, but never less than 19, for the Opportunity Award; or
- b. a 23 for the Performance Award; or
- c. a 27 for the Honors Award; and

8. have attained a cumulative high school grade point average, based on a 4.00 maximum scale for all courses reflected on the high school transcript of at least:

- a. a 2.50 for the Opportunity Award; or
- b. a 3.50 for either the Performance or Honors Awards; and

9. for the Performance Award only, be certified as graduating in the top 5 percent of the high school graduating class, as defined in Chapter 19 of LAC 28:IV or be enrolled in a state-approved home study program and score in the upper 5 percent in the state on the National Merit Examination; and

10. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and

11. not have a criminal conviction, except for misdemeanor traffic violations; and

12. agree that awards will be used exclusively for educational expenses; and

13. enroll as a full-time undergraduate student, as defined in §301, in a LASFAC approved eligible postsecondary institution, as defined in §1901; and

14. if academically eligible for more than one of the TOPS components, excluding the TOPS Teacher Award, be awarded under that component which requires the highest academic standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:636 (April 1998).

§705. Maintaining Eligibility

A. To continue receiving the TOPS Opportunity, Performance or Honors Awards, the recipient must meet all of the following criteria:

1. have received less than four years or eight semesters of TOPS Award funds; and

2. annually submit the Free Application for Federal Student Aid (FAFSA) or renewal FAFSA by the applicable state aid deadline defined in §501; and

3. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and

4. not have a criminal conviction, except for misdemeanor traffic violations; and

5. agree that awards will be used exclusively for educational expenses; and

6. continue to enroll as a full-time undergraduate student in an eligible postsecondary institution, as defined in §705.A.13, unless granted an exception for cause by LASFAC; and

7. earn at least 24 college credit hours during the fall and spring semesters or fall, winter and spring quarters, or complete an average of 30 clock hours per week, as evaluated at the conclusion of the spring term. Unless granted an exception for cause by LASFAC, failure to earn the required number of hours will result in permanent cancellation of the recipient's eligibility; and

8. not be placed on academic probation by the postsecondary institution attended; and

9. maintain, by the end of each academic year (the conclusion of the spring term), a cumulative college grade point average on a 4.00 maximum scale of at least:

a. a 2.10 after the completion of less than 48 credit hours, a 2.30 after the completion of 48 credit hours, and a 2.50 after the completion of 72 credit hours, for continuing receipt of an Opportunity Award; or

b. a 3.00 for continuing receipt of either a Performance or Honors Award.

B. Students failing to meet the requirements listed in §705.A.8 and 9.a and b may have their tuition awards reinstated upon the lifting of academic probation and/or attainment of the required grade point average, if the period of ineligibility did not persist for more than two years from

the date of loss of eligibility. Reinstated students are ineligible for receipt of annual stipends.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:637 (April 1998).

Chapter 9. TOPS Teacher Award

§901. General Provisions

A. Legislative Authority. The TOPS Teacher Award Program was created by Act 476, of the 1997 Regular Session of the Louisiana Legislature. This bill amended and reenacted R.S. 17:3042.1(A)(3) and (4), (B), (C), and (D) and 3042.2(A) and (B); reenacted R.S. 17:3042.1(A)(5) and (6) and 3042.8; and renamed Chapter 20-B of Title 17 of the Louisiana Revised Statutes of 1950.

B. Description, History and Purpose. The Tuition Opportunity Program for Students (TOPS) Teacher Award:

1. annually provides approximately 90 competitively awarded educational loans to residents of Louisiana who commit to teach at the elementary or secondary school level in Louisiana. When the recipient teaches at an approved school in Louisiana, the loans are forgiven in the ratio of one year of loan forgiveness for each year of teaching, or two years of loan forgiveness for each year of teaching in an elementary or secondary school which is located in an economically disadvantaged region of the state as determined by the Board of Elementary and Secondary Education (BESE);

2. was first funded for the 1997-98 award year;

3. was created to provide an incentive for Louisiana's best and brightest students to become tomorrow's classroom teachers and to provide an incentive that will attract highly qualified teachers in mathematics and chemistry at the elementary and secondary school levels.

C. Award Amounts

1. Loans are made in the amount of \$6,000 per award year for mathematics and chemistry majors.

2. Loans are made in the amount of \$4,000 per year for teacher education majors other than those listed in §901.C.1.

3. Recipient may receive a maximum of four years of funding.

4. Recipients receive one half of the annual award (\$3,000 or \$2,000, respectively) at the beginning of the fall and spring terms.

5. Recipients may, in conjunction with the Teachers Award, receive another TOPS Award.

6. Recipients may not receive aid which, together with the TOPS Teacher Award, would exceed the students' total cost of education as determined by the institution in accordance with regulations implementing federal Title IV student aid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:637 (April 1998).

§903. Establishing Eligibility

To establish eligibility the student applicant must meet all of the following criteria:

1. be a U.S. Citizen or National or eligible non-citizen, and be registered with the Selective Service, if required; and
2. be a resident of Louisiana, as defined in Chapter 3 of LAC 28:IV; and
3. annually submit the completed Free Application for Federal Student Aid (FAFSA) or Renewal FAFSA, whichever is applicable to the student, by the state aid deadline defined in §503; and
4. graduate from a Board of Elementary and Secondary Education (BESE)-approved, provisionally-approved, or probationally-approved public or nonpublic high school; and
5. at the time of high school graduation, have successfully completed 16.5 units of high school course work constituting a core curriculum as defined in Chapter 3 of LAC 28:IV; and
6. at the time of high school graduation, have attained a composite score on the American College Test (ACT) or the Scholastic Aptitude Test (SAT) which is, or is equivalent to, at least a 23 on the 1990 version of the ACT; and
7. graduate with a cumulative high school grade point average of at least a 3.25, calculated on a 4.00 scale, for all courses reflected on the high school transcript; and
8. if by the end of June in the year of application, the student will have completed 24 or more hours of graded college credit, have at least a 3.25 cumulative college grade point average on a 4.00 scale; and
9. complete and submit such documentary evidence as may be required by LASFAC by the deadline specified in §503; and
10. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and
11. not have a criminal conviction, except for misdemeanor traffic violations; and
12. agree that the award will be used exclusively for educational expenses; and
13. enroll during the fall term at an eligible college or university, as defined in §1901, as a full-time undergraduate student, as defined in §301, in a degree program or course of study leading to a degree in education or an alternative program leading to regular certification as a teacher at the elementary or secondary level in mathematics or chemistry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:637 (April 1998).

§905. Selection Criteria

Recipients are competitively selected for the award based upon the merit rank score assigned to each eligible applicant. The merit ranking formula is defined in §301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998).

§907. Maintaining Eligibility

To continue receiving the TOPS Teacher Award, recipients must meet all of the following criteria:

1. have received less than four years or eight semesters of TOPS Teacher Award funding; and
2. at the close of each academic year (ending with the spring semester or quarter), have earned at least 24 hours total credit during the fall, winter and spring terms; and
3. achieve a cumulative grade point average of at least a 3.00 calculated on a 4.00 scale at the end of each academic year; and
4. not be placed on academic probation as determined by the college or university attended; and
5. continue to enroll each subsequent semester or quarter as a full-time undergraduate student, unless granted an exception for cause, in a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level; or
6. enter a program approved by the State Board of Elementary and Secondary Education (BESE) which leads to a degree in education or to regular certification as a teacher as soon as sufficient credits have been earned to do so; and
7. annually apply for federal and state student aid by completing the FAFSA or Renewal FAFSA, whichever is applicable to the student, by the state deadline; and
8. have no criminal convictions, except for misdemeanor traffic violations; and
9. be in compliance with the terms of all other federal and state aid programs which the student may be receiving and which are administered by LASFAC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998).

§909. Completion of Promissory Note and Acceptance of Award

Prior to receiving an award, the recipient must agree to the terms and conditions contained in the TOPS Teacher Award Program Promissory Note by completing the form and returning it to LASFAC by the specified deadline. The promissory note obligates the recipient to teach one year for each year of funding received; or, if teaching in a school located in an *economically disadvantaged region* of the state, as defined by the State Board of Elementary and Secondary Education (BESE), teach one year for every two years of funding received, or repay the funds received, plus accrued interest and any collection costs incurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998).

§911. Discharge of Obligation

A. The loan obligation may be discharged by teaching fulfillment, monetary repayment or cancellation.

B.1. Teaching fulfillment is accomplished by:

- a. within two years of the date of certification as a teacher, perform service as a full-time classroom teacher in a Louisiana Board of Elementary and Secondary Education

(BESE)-approved, provisionally-approved, or probationally-approved elementary or secondary school;

b. each one-half year or more of full-time service as a teacher will fulfill an equivalent period of funding (one semester). However, if teaching in an elementary or secondary school which is located in an economically disadvantaged region of the state, as defined by BESE, one-half year of teaching will fulfill one year of funding.

2. The first semester of full-time teaching will be applied toward fulfillment of the earliest dated disbursement not previously paid under §911.C, the second semester the next earliest dated disbursement, and continuing until all disbursements have been fulfilled.

3. Teaching to fulfill requirements must be completed within six years of the date of certification as a teacher.

C. Monetary Repayment. Recipients who elect not to discharge the obligation by teaching fulfillment and who are not eligible for discharge by cancellation must repay the loan principal plus accrued interest and any collection costs incurred.

1. Interest will accrue on the outstanding principal at the rate of 8 percent per annum.

2. Interest on each disbursement will accrue from the date of disbursement until repaid, canceled or fulfilled. Accrued interest will be capitalized when the recipient enters repayment status.

3. Repayment Status. The recipient enters repayment status the first of the month following:

a. determination by LASFAC that the recipient cannot complete fulfillment by teaching within the required time period;

b. notification of LASFAC by the recipient that monetary repayment is desired;

c. six months after LASFAC determines that the recipient is no longer pursuing a degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary school level.

4. The annual repayment amount will be the greater of:

a. the amount necessary to repay the capitalized amount within 10 years; or

b. \$1,200 per year or the unpaid balance, whichever is less.

5. Recipients in repayment status may have their payments deferred in accordance with §2105.B, Deferral of Repayment Obligation.

6. During the period of time a recipient is in deferment status, a recipient is not required to make repayments and interest does not accrue.

7. The period of time for completion of repayment will be extended by a period of time equal to the length of time the recipient is in deferment status.

D. Cancellation. The obligation to repay any remaining unpaid balance of the TOPS Teacher Award shall be canceled in the event either of the following conditions occur:

1. upon submission to LASFAC of a sworn affidavit of a qualified physician that the recipient is precluded from gainful employment because of a complete and permanent medical disability or condition.

2. Upon submission to LASFAC of a death certificate,

or other evidence conclusive under State law, that the recipient is deceased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:638 (April 1998).

Chapter 11. Rockefeller State Wildlife Scholarship

§1101. General Provisions

A. Legislative Authority. The Louisiana State Wildlife Scholarship Program was created and amended by the following Acts of the Louisiana Legislature:

1. Act 807 of the 1980 Regular Legislative Session;
2. Act 849 of the 1987 Regular Legislative Session;
3. Act 707 of the 1989 Regular Legislative Session.

B. Description, History and Purpose

1. The Rockefeller State Wildlife Scholarship Program:
a. is funded with dedicated monies and offers competitively awarded scholarships valued at \$1,000 per academic year to both undergraduate and graduate students majoring in forestry, wildlife, or marine science as it pertains to wildlife;

b. was established in 1980.

2. In accepting the Rockefeller State Wildlife Scholarship, the student agrees to attain a degree in one of the required fields at a Louisiana public college or university offering such degrees. If the student fails to successfully complete an eligible course of study, as per the agreement made between LASFAC and the student, the funds must be repaid with interest.

C. Award Amounts

1. The annual award is \$1,000.

2. The cumulative maximum award is \$7,000 for up to five years of undergraduate and two years of graduate study.

3. Recipients receive \$500 each fall and spring term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:639 (April 1998).

§1103. Establishing Eligibility

To establish eligibility, the student applicant must meet all of the following criteria:

1. be a U.S. citizen or national or eligible noncitizen, and be registered with the Selective Service, if required; and

2. be a resident of Louisiana, as defined in Chapter 3 of LAC 28:IV; and

3. annually, submit the completed Free Application for Federal Student Aid (FAFSA) or the Renewal FAFSA, whichever is applicable to the student, by the state aid deadline defined in §503; and

4. complete and submit such documentary evidence as may be required by LASFAC; and

5. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and

6. not have a criminal conviction, except for misdemeanor traffic violations; and

7. agree that award proceeds will be used exclusively for educational expenses; and

8. be enrolled or accepted for enrollment as a full-time undergraduate or graduate student at a Louisiana public college or university majoring in forestry, wildlife or marine science, with the intent of obtaining a degree from a Louisiana public college or university offering a degree in one of the three specified fields; and

9. must have graduated from high school and, if at the time of application the student applicant has earned less than 24 hours of graded college credit since graduating from high school, have earned a minimum cumulative high school grade point average of at least 2.50 calculated on a 4.00 scale for all courses completed in grades nine through 12 and have taken the ACT or SAT and received test score results; or

10. if at the time of application, the student applicant has earned 24 or more hours of college credit, then the applicant must have at least a 2.50 cumulative college grade point average.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:639 (April 1998).

§1105. Selection Criteria

Recipients are competitively selected for an award based upon the merit rank score assigned to each eligible applicant. The merit ranking formula is defined in §301.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:640 (April 1998).

§1107. Maintaining Eligibility

To continue receiving the Rockefeller State Wildlife Scholarship, recipients must meet all of the following criteria:

1. have received less than seven academic years (five undergraduate and two graduate) of funding under the Rockefeller State Wildlife Scholarship Program; and

2. at the close of each academic year (ending with the spring semester or quarter), have earned at least 24 hours total credit during the fall, winter and spring terms at an institution defining 12 semester or eight quarter hours as the minimum for full-time undergraduate status or earn at least 18 hours total credit during the fall, winter and spring terms at an institution defining nine semester hours as the minimum for full-time graduate status; and

3. achieve a cumulative grade point average of at least 2.50 at the end of the first academic year and each academic year thereafter; and

4. continue to enroll each subsequent semester or quarter (excluding summer sessions and intersessions) at the same institution unless granted an exception for cause and/or approval for transfer of the award by LASFAC; and

5. continue to pursue a course of study leading to an undergraduate or graduate degree in wildlife, forestry or marine science.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:640 (April 1998).

§1109. Completion of Promissory Note and Acceptance of Award

Prior to receiving an award, the recipient must agree to the terms and conditions contained in the Rockefeller State Wildlife Scholarship Program Promissory Note (LASFAC-RS02), by completing the form and returning it to LASFAC by the specified deadline. The promissory note obligates the recipient to obtain a Wildlife, Forestry or Marine Science degree or repay the scholarship funds received, plus accrued interest and any collection costs incurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:640 (April 1998).

§1111. Discharge of Obligation

A. The loan obligation may be discharged by graduation in an eligible major, monetary repayment or cancellation.

B. Graduation Fulfillment. Fulfillment of undergraduate awards is accomplished by the recipient's attainment of a bachelor's degree; fulfillment of graduate awards is accomplished by attainment of a master's or doctorate degree, in wildlife, forestry or marine science.

C. Monetary Repayment. Recipients who do not discharge the obligation by graduation fulfillment and who are not eligible for discharge by cancellation must repay the loan principal, plus accrued interest and any collection costs incurred.

1. Interest accrues on the outstanding principal at the rate of 8 percent per annum.

2. Interest on each disbursement accrues from the date of disbursement until repaid, canceled or fulfilled. Accrued interest will be capitalized when the recipient enters repayment status.

3. Repayment Status. The recipient enters repayment status the first day of the month following:

a. notification of LASFAC by the recipient that monetary repayment is desired; or

b. six months after LASFAC determines that the recipient is no longer pursuing a degree program or course of study leading to a degree in wildlife, forestry or marine science.

4. The annual repayment amount will be the greater of:

a. the amount necessary to repay the capitalized amount within seven years; or

b. \$1,200 per year or the unpaid balance, whichever is less.

5. Recipients in repayment status may have their payments deferred in accordance with §2105.B, titled Deferment of Repayment Obligation.

a. During the period of time a recipient is in deferment status, the recipient is not required to make payments and interest does not accrue.

b. The period of time for completion of repayment will be extended by a period of time equal to the length of time the recipient is in deferment status.

D. Cancellation. The obligation to repay all or part of Rockefeller State Wildlife Scholarship Program funds shall be canceled in the event either of the following occur:

1. Upon submission to LASFAC of a sworn affidavit of a qualified physician that the recipient is precluded from completing the educational program and/or from gainful employment because of a complete and permanent medical disability or condition.

2. Upon submission to LASFAC of a death certificate, or other evidence conclusive under state law, that the recipient is deceased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:640 (April 1998).

Chapter 13. State Student Incentive Grant (SSIG)

§1301. General Provisions

A. Legislative Authority

1. Federal

- a. Title IV of the Higher Education Act of 1965;
- b. 34 CFR Part 692, as amended;
- c. Title IV of the Higher Education Amendments of 1992 (Public Law 102-325).

2. State

- a. R.S. 17:3032.5;
- b. Act 632 of the 1974 Regular Legislative Session;
- c. Act 228 of the 1977 Regular Legislative Session.

B. Description, History and Purpose. The Louisiana State Student Incentive Grant Program (SSIG), first funded in 1975, provides need-based grants to academically qualified students using federal and state funds. These grants are to be used for educational expenses including tuition and fees, books and supplies, and living expenses, such as room, board and transportation.

C. Louisiana administers a decentralized SSIG Program. Certain functions of the program are delegated to participating schools. Schools approved for participation in the Louisiana SSIG Program must have federal eligibility and must annually submit a state application and be approved for state participation. Funding available for a specific award year is allocated to eligible in-state postsecondary institutions, who select and certify recipients to LASFAC. LASFAC forwards award funding to the institutions for disbursement to the student or student's account.

D. Award Amounts. Individual grants range from an annual minimum of \$200 to a maximum of \$2,000; however, the actual amount of each student's award is determined by the financial aid office at the institution and is governed by the number of recipients selected and the amount of funds available. Awards are based upon a full academic year, excluding summer sessions and intersession, beginning with the fall term and concluding with the spring term.

E. Allocation of Funds. Annually, funds are allocated to postsecondary institutions based on school type, the school's prior year first-time, full-time enrollment and the amount of the prior year's allocation that was expended. Initial funds, for first-time recipients, are computed as a percentage of all participating institutions first-time, full-time enrollment as of October 10 of the prior fiscal year. Continuation funds for students who had previously received SSIG are computed as a percentage of the allocated funds used during the previous

year. The continuation formula applies 60 percent for four year schools and 40 percent for two year schools.

F. Reallocation of Funds. Uncommitted institutional allotted funds are reallocated if not committed by the deadline of November 1 for colleges and universities and January 1 for proprietary schools and campuses of Louisiana Technical College. The method of reallocation is dependent upon the amount of funds available for reallocation. If the reallocation amount is less than \$50,000, then only two and four year colleges and universities, which have fully committed their original allotment by the appropriate deadline, receive a reallocation. If \$50,000 or more is available for reallocation, it is reallocated to eligible schools of all types, which have fully committed their original allotment by the appropriate deadline.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:641 (April 1998).

§1303. Establishing Eligibility

SSIG applicants must meet all of the following criteria:

1. be a U.S. citizen or national or eligible noncitizen, and registered with the Selective Service, if required; and
2. be a resident of Louisiana, as defined in §301; and
3. annually, submit the completed Free Application for Federal Student Aid (FAFSA) or Renewal FAFSA, whichever is available to the applicant, by the state deadline defined in §503 and any deadline imposed by the institution attended; and
4. have a high school diploma with at least a 2.00 cumulative grade point average, or a minimum average score of 45 on the General Educational Development (GED) test, or an ACT composite score of at least 20, or a postsecondary grade point average of at least 2.00 from the most recent term; and
5. be selected and certified by the school for receipt of an SSIG award, contingent upon final approval by LASFAC; and
6. meet any additional selection criteria established by the individual institution participating in the SSIG Program; and
7. be certified as a full-time undergraduate student in an eligible program at an eligible postsecondary institution, as defined in §1901; and either:
 - a. be enrolled full time at the time of disbursement if disbursement occurs on or prior to the fourteenth class day (ninth class day for Louisiana Tech); or
 - b. be enrolled full time as of the fourteenth class day (ninth class day at Louisiana Tech) and is enrolled at least half-time at the time of disbursement if disbursement occurs after the fourteenth class day (ninth class day at Louisiana Tech); and
8. have substantial financial need, as defined in §301; and
9. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and
10. not have a criminal conviction, except for misdemeanor traffic violations; and

11. agree that the award proceeds will be used exclusively for educational expenses; and

12. not be in default of an educational loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:641 (April 1998).

§1305. Maintaining Eligibility

To continue receiving an SSIG Award, the recipient must meet all of the following criteria:

1. meet all of the initial eligibility criteria listed in §1303; and

2. maintain a cumulative postsecondary grade point average of at least 2.00 calculated on a 4.00 scale by the conclusion of the spring term.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:642 (April 1998).

Chapter 15. T.H. Harris Scholarship

§1501. General Provisions

A. Legislative Authority

1. R.S. 17:3036.1;
2. Act 24 of the 1938 Regular Legislative Session;
3. Act 199 of the 1940 Regular Legislative Session;
4. Act 19 of the 1942 Regular Legislative Session;
5. Act 499 of the 1948 Regular Legislative Session;
6. Act 83 of the 1977 Regular Legislative Session;
7. Act 710 of the 1985 Regular Legislative Session;
8. Act 663 of the 1990 Regular Legislative Session.

B. Description, History and Purpose. The T. H. Harris Scholarship Program was first funded with state general funds in 1942 for the purpose of granting scholarships to deserving youth enrolling at state-supported colleges or universities. A maximum cumulative award, assuming the recipient maintains eligibility, is \$2,000 for five years of study. Effective with award year 1996-97, applications are not being accepted and the program is being phased out. Students awarded during the 1995-96 award year, continue to receive an award, as long as funds are available and they maintain continuing academic eligibility.

C. Award Amounts. The annual award is \$400, with a cumulative maximum award of \$2,000 for five years. Recipients receive \$200 each fall and spring term, less a \$5 award fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:642 (April 1998).

§1503. Maintaining Eligibility

To continue to receive T. H. Harris Scholarship funds, recipients must meet all of the following criteria:

1. be in compliance with the terms of other federal and state aid programs which the applicant may be receiving and which are administered by LASFAC; and

2. agree that award proceeds will be used exclusively for educational expenses; and

3. continue to enroll as a full-time undergraduate student in a two- or four-year public college or university, unless granted an exception for cause by LASFAC; and

4. successfully complete the minimum number of hours required for a full-time student as defined in §301; and

5. achieve a cumulative grade point average of at least 3.00, on a 4.00 scale, at the conclusion of the spring term each academic year; and

6. have received less than 10 semesters of T.H. Harris funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:642 (April 1998).

Chapter 17. Responsibilities of High Schools, School Boards, Special School Governing Boards, the Louisiana Department of Education and LASFAC on Behalf of Eligible Non-Louisiana High Schools

§1701. High School Eligibility to Participate

Graduates of the following high schools are eligible to participate in LASFAC Scholarship and Grant programs.

1. Louisiana Public High Schools. Louisiana public high schools as listed in the *Louisiana School Directory* (Louisiana Department of Education Bulletin 1462).

2. Approved Nonpublic High Schools. Board of Elementary and Secondary Education (BESE) approved nonpublic high schools as listed in the *Louisiana School Directory* (Bulletin 1462), as an approved nonpublic school which meets the standards specified in *The Louisiana Handbook for School Administrators* (Bulletin 741). For the purposes of LAC 28:IV, approved nonpublic schools include private or diocesan high schools classified annually by the Department of Education as approved, provisionally-approved or probationally-approved.

3. Eligible Non-Louisiana High Schools. Eligible non-Louisiana high schools are defined as high schools which meet all of the following criteria:

- a. are in a state adjoining the state of Louisiana; and
- b. have provided LASFAC with acceptable evidence of an agreement dated prior to June 5, 1994, between a parish school system and the high school's local governing authority, which authorizes the attendance of students who are residents of Louisiana; and

c. have students who graduate during the academic year preceding the award year, who were residing in Louisiana and who are Louisiana domiciled and were funded through the Louisiana Minimum Foundation Program; and

d. have certified the academic performance of Louisiana graduates, in accordance with §1703.

4. Other Out-of-State High Schools. Graduates of other out-of-state high schools located in the United States are eligible to participate in the Rockefeller State Wildlife Scholarship and the State Student Incentive Grant Programs only.

5. General Education Diploma Recipients. Non-high school graduates earning a General Education Diploma (GED) in lieu of a high school diploma are eligible for participation in the State Student Incentive Grant Program only.

6. Home Study Program Students. Students enrolled in a state-approved home study program who score in the upper 5 percent in the state on the National Merit Examination and meet other requirements of the program are eligible for the TOPS Performance Award only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:642 (April 1998).

§1703. High School's Certification of Student Achievement

A. Certification Form and Data Elements

1. Responsibility for identification and certification of high school graduates who qualify for TOPS awards is as follows:

a. each city and parish school board for the high schools under their jurisdiction;

b. the principal or headmaster of each nonpublic high school approved by the State Board of Elementary and Secondary Education (BESE);

c. the principal or headmaster of eligible non-Louisiana high schools.

2. The Louisiana Department of Education shall report to LASFAC the names of students enrolled in a state-approved home study program who score in the upper 5 percent in the state on the National Merit Examination.

3. The certification form shall be completed, certified and returned to LASFAC annually.

4. The certification shall be returned to LASFAC by the deadline specified on the form.

5. The certification shall be on a form provided by LASFAC or in an electronic format pre-approved by LASFAC.

6. The certification form includes, but is not limited to, the following data elements:

a. student's name, address, phone number and social security number;

b. month and year of high school graduation;

c. final cumulative high school grade point average for all courses reflected on the transcript, converted to a maximum 4.00 scale, if applicable;

d. the number of core units earned and the number of core units unavailable to the student at the school attended;

e. the total number of graduates in the graduating class;

f. those students who graduated in the top 5 percent in accordance with §1703.C.2.a.i.

B. Certification of Cumulative High School Grade Point Average (HSGPA). High school officials are required to certify to LASFAC the final cumulative high school grade point average of each applicant and average shall be:

1. inclusive of the grades recorded for all courses on the applicant's official high school transcript;

2. each applicant's final cumulative high school grade point average must be reported on a maximum 4.00 scale.

a. The following grading conversion shall be used to report the applicant's cumulative high school grade point average:

i. letter grade A = 4 quality points;

ii. letter grade B = 3 quality points;

iii. letter grade C = 2 quality points;

iv. letter grade D = 1 quality point.

b. Schools which award more than 4 quality points for a course must convert the course grade to a maximum 4.00 scale using the formula described in the example that follows. [In this example, the school awards one extra quality point for an honors course.]

i. Example. An applicant earned a C in an Honors English IV course and received 3 out of the 5 possible quality points that could have been awarded for the course.

ii. In converting this course grade to a standard 4.00 maximum scale, the following formula must be used:

$$\frac{\text{Quality Points Awarded for the Course}}{\text{Maximum Points Possible for the Course}} \cdot \frac{X (\text{Converted Quality Points})}{4.00 (\text{Maximum Scale})}$$

$$\frac{3.00}{5.00} \cdot \frac{X}{4.00}$$

By cross multiplying,

$$5X = 12; X = 2.40$$

iii. In this example, the quality points for this Honors English IV course should be recorded as 2.40 when the school calculates and reports the student's cumulative high school grade point average.

C. Certifying Graduates for the TOPS Performance Award

1. Policies for Determining the Top 5 Percent of Each Graduating Class. City and parish school boards, nonpublic high schools, special school governing boards, and LASFAC on behalf of eligible non-Louisiana high schools, shall adopt, publish and forward to LASFAC criteria for ranking graduates and determining the top 5 percent of the graduating class for high schools under their jurisdiction. Such criteria shall:

a. consider only the academic grades for those courses recorded on the student's official high school transcript; and

b. define the academic courses which are to be considered in determining academic class ranking; and

c. define the procedure by which students who would otherwise have equal academic class ranking may be ranked (tie-breaker procedure). This may include an evaluation of students' academic grades on a set of predetermined core academic courses such as English, math and science or an evaluation of the level of difficulty of the courses taken by the students, such as honors courses and higher level math or science courses; and

d. be adopted by an affirmative act taken during a public meeting.

2. Formula for Determining the Number of Graduates in the Top 5 Percent

a. In computing the top 5 percent of each Louisiana high school's graduating class, apply the following formula to compute the maximum number of graduates who may rank in the top 5 percent for the purposes of the performance award:

i. the total number of students who are Louisiana residents receiving high school diplomas from the institution

during the academic year preceding the award year, multiplied by the figure 0.05, and, if not a whole number, rounded up to the next whole number. Foreign exchange students and other nonresidents shall not be counted as members of the graduating class for the purpose of this computation.

ii. Example. For a high school that awarded state high school diplomas to two summer graduates, seven midyear graduates and 79 spring graduates during the academic year, the following computation would apply.

$$(2\%7\%79) \cdot 88; (88 \times 0.05) \cdot 4.4;$$

4.4 rounds up to 5.0

iii. Accordingly, five students may be selected for the performance award at the high school depicted in the example.

b. In computing the top 5 percent of each eligible non-Louisiana high school's graduating class and calculating the number of Louisiana residents to be named as performance award recipients, apply the following formulas.

i. The total number of students, both Louisiana residents and non-Louisiana residents, receiving a high school diploma from the institution during the academic year preceding the award year, multiplied by the figure 0.05, and, if not a whole number, rounded up to the next whole number. Example:

$$\text{Total Graduates} \cdot 69; (69 \times 0.05) \cdot 3.45;$$

rounds up to 4.0

ii. The number of academic year graduates who are Louisiana residents funded through the Louisiana Minimum Foundation Program (MFP), multiplied by the figure 0.05, and, if not a whole number, rounded up to the next whole number. (Louisiana resident graduates not funded through MFP shall not be counted in this calculation). Example:

$$\text{MFP Graduates} \cdot 23; (23 \times 0.05) \cdot 1.15$$

rounds up to 2.0

iii. To be certified as a performance award recipient, the student must rank both in the top 5 percent of the non-Louisiana high school's total academic year graduating class, as well as in the top 5 percent of MFP-funded Louisiana residents in the graduating class.

iv. In the examples provided above, the maximum number of Louisiana residents to be certified for the performance award is two, and the minimum number is zero. If only one Louisiana resident ranked in the top 5 percent (4 of 69) of the total graduates, then only one student could be certified to the performance award. Conversely, if three Louisiana residents ranked in the top 5 percent (4 of 69), only the top two of these three could be certified.

3. Ensure that the approved selection criteria are publicly posted in each high school under the board or headmaster's jurisdiction and provide a copy of the criteria to LASFAC.

4. Ensure that amendments to the criteria, as approved by the board or headmaster, shall only be effective for the years following the year in which amended.

5. Certifying Students for the TOPS Performance Award. Of the students ranked in the top 5 percent of their graduating class in accordance with this §1703, only those meeting the following criteria may be listed on the certification form:

a. those students who have attained a final cumulative high school grade point average of at least a 3.50 on a 4.00 maximum scale; and

b. for graduates of the 2001 high school graduating class who have successfully completed the core curriculum as defined in Section §301.

D. Certification by Sworn Affidavit. The school board superintendent or nonpublic high school headmaster or principal shall certify by sworn affidavit that:

1. all data supplied on the certification form are true and reflect the official records of the school for the students listed; and

2. records pertaining to the listed students will be maintained and available upon request to LASFAC and the legislative auditor for a minimum of three years or until audited, whichever occurs first; and

3. the school board or school under the superintendent's or principal's jurisdiction will reimburse LASFAC for any awards disbursed to postsecondary institutions on behalf of students who were incorrectly certified.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:643 (April 1998).

§1705. Notification of Certified Students

A. High schools are required to present a certificate of achievement during the graduation ceremony or other school reception to students qualifying as recipients of TOPS Performance and Honors Awards.

B. High schools are required to invite members of the Louisiana Legislature representing the school's district to attend the ceremony or reception and make the presentation awarding the endorsed certificates of achievement.

C. If the certifying authority (school board, principal, headmaster or State Department of Education) elects to notify students of their certification, then the following disclaimer shall be included in any communication to the student:

"Although you have been certified as academically eligible for a Tuition Opportunity Program for Students (TOPS) Award, you must satisfy all of the following conditions to redeem a scholarship under this program:

1. You must be a Louisiana resident as defined by the Louisiana Student Financial Assistance Commission; and

2. You must be accepted for enrollment by an eligible Louisiana college or university or campus of Louisiana Technical College and be registered as a full-time undergraduate student; and

3. You must annually apply for federal student aid by the deadline required for consideration for state aid; and

4. You must have met all academic and nonacademic requirements and be officially notified of your award by the Louisiana Student Financial Assistance Commission (LASFAC)."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:644 (April 1998).

Chapter 19. Responsibilities of Postsecondary Institutions

§1901. Postsecondary Institution's Eligibility to Participate

A. Louisiana two- and four-year public colleges and universities are authorized to participate in the Tuition Opportunity Program for Students (TOPS), Rockefeller State Wildlife Scholarship, State Student Incentive Grant (SSIG) and the T.H. Harris Scholarship.

B. Regionally accredited private colleges and universities which are members of the Louisiana Association of Independent Colleges and Universities, Inc. (LAICU) are authorized to participate in TOPS and SSIG. As of November 1997, LAICU membership included Centenary College, Dillard University, Louisiana College, Loyola University, Our Lady of the Lake College of Nursing and Allied Health, Our Lady of Holy Cross College, Tulane University and Xavier University.

C. Campuses of Louisiana Technical College are authorized to participate in TOPS and SSIG.

D. Approved Louisiana proprietary and beauty schools are authorized to participate in SSIG only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:645 (April 1998).

§1903. Postsecondary Institution Responsibilities

A. Certification of Student Data. Upon request by LASFAC, and for the purpose of determining an applicant's eligibility for a program award, an institution will report the following student data:

1. admission and full-time undergraduate enrollment; and
2. eligibility for, or enrollment in, a course of study leading to initial teacher certification; and
3. enrollment in math or chemistry as a major while pursuing teacher certification; and
4. graduate or undergraduate enrollment in wildlife forestry or marine science; and
5. cumulative college grade point average; and
6. cumulative college credit hours earned;
7. academic year hours earned.

B. Program Billing. Each term, institutions shall bill LASFAC for students who are recipients of a TOPS Award and who have enrolled at the institution in accordance with the following terms and conditions:

1. institutions may bill only for students certified eligible by LASFAC; and
2. institutions will bill LASFAC based on their certification that the recipient of a TOPS Award is enrolled full time, as defined in §301, as of the fourteenth class day (ninth class day for Louisiana Tech, first class day for campuses of Louisiana Technical College, and for any qualifying summer sessions as of the last day to drop and receive a full refund for the full summer session). Institutions

shall not bill for students who are enrolled less than full time on the fourteenth class day (ninth class day for Louisiana Tech, first class day for campuses of Louisiana Technical College, and for any qualifying summer sessions as of the last day to drop and receive a full refund for the summer session), unless the student qualifies for payment for less than full-time enrollment as defined in §2103.B. Students failing to meet the full-time enrollment requirement are responsible for reimbursing the institution for any awards received. Refunds of awards to students who are not receiving federal Title IV aid, for less than full-time enrollment after the fourteenth class day, shall be returned to the state. Refunds to students who are receiving federal Title IV aid shall be refunded to the state in accordance with the institution's federal Title IV aid refund procedures; and

3. institutions will not bill LASFAC for any awardee who has elected to accept a full tuition waiver or award from another source which is specifically designated for tuition only; and

4. to prevent the student's total financial assistance from exceeding the institution's cost of education or some other limitation established by the institution which may be less than the cost of education, the institution may reduce the amount of the award to be paid by the TOPS Opportunity, Performance, Honors or Teacher Awards and subsequently billed to LASFAC; and

5. annually, two- and four-year institutions are required to provide LASFAC a current fee schedule, as defined in §301, for TOPS billing purposes. The schedule must include:

a. the total cost of tuition, which shall not include any fees charged by the institution that are in addition to the basic course enrollment charges, as defined in §301; and

b. an itemized description of the composition of the mandatory fees listed on the fee schedule must also be supplied;

6. campuses of Louisiana Technical College are exempt from furnishing a schedule of fees, but must bill LASFAC on the first class day of each quarter for three times the monthly amount established by the Board of Elementary and Secondary Education (BESE) for full-time attendance; and

7. certify that the institution will reimburse LASFAC for any award funds incorrectly disbursed to ineligible students; and

8. upon the school's certification that a recipient of a TOPS Award is enrolled full time, institutions may bill for and LASFAC will reimburse the institution for each such recipient as follows:

a. public two- and four-year colleges and universities may bill for an amount up to the maximum amount listed on the approved fee schedule at that institution;

b. Louisiana Technical College campuses may bill each quarter for three times the monthly amount established by the Board of Elementary and Secondary Education (BESE) for full-time attendance;

c. LAICU member colleges and universities may bill for an amount up to the average public tuition amount, as defined in §301;

d. for recipients of the performance and honors awards, institutions may bill LASFAC for the stipend that accompanies these awards, in the amounts of \$200 or \$400 per semester, respectively;

e. Louisiana Technical College campuses may not bill LASFAC for stipends.

C. Annual Application for Participation in, and Certification of Recipients of, the SSIG Program

1. Annually, LASFAC forwards SSIG institutional participation agreements to those schools participating in the program during the prior award year and, upon written requests received, to schools not participating in the SSIG Program during the prior award year. To be eligible for allotment of SSIG funds the institution must meet all of the following requirements:

a. complete and return the annual SSIG application by the specified deadline; and

b. certify that students and parents will not be charged a fee for the collection of information used to determine the student's eligibility for SSIG; and

c. certify that students listed on the recipient roster meet federal, state and institutional specific SSIG eligibility criteria; and

d. certify that if the institution's SSIG allotment is based in part on the financial need of independent students, as defined by the U.S. Department of Education, a reasonable portion of the institution's allotment is being made available to independent students; and

e. certify that each SSIG recipient's total package of aid does not exceed the student's financial need; and

f. certify that SSIG funds recovered from overawards, refunds, and/or repayments, as defined in §301, during the applicable award period shall be returned to LASFAC to be reissued to other qualified students. Funds recovered from overawards, refunds and/or repayments after the applicable award period shall be returned to LASFAC for return to the U.S. Department of Education and/or the state of Louisiana. The amount of overaward, refund and/or repayment shall be determined according to the school's policy established in accordance with federal regulations.

2. Annually, LASFAC provides eligible institutions an official allotment schedule, recipient roster and institution certification forms. Institutions are required to:

a. complete and return recipient rosters and institutional certification forms to ensure expenditure of allotted SSIG awards by the school specific deadlines of November 1 for public and LAICU member two- and four-year colleges and universities and January 1 for campuses of Louisiana Technical College and proprietary institutions; and

b. submit changes to the recipient roster by completing a replacement roster, provided by LASFAC; and

c. certify that if any SSIG funds are released in error to ineligible students, the institution will either recover the award amount from the students and refund to LASFAC or remit the refund due.

D. Disbursement of Funds. Upon receipt of award funds and prior to their disbursement to students, the institution will:

1. for TOPS Teacher Award recipients:

a. verify that the recipient is enrolled full time, in an approved degree program or course of study leading to a degree in education or alternative program leading to regular certification as a teacher at the elementary or secondary level; or

b. if designated as a math or chemistry major, verify enrollment in a course of study leading to certification as a math or chemistry teacher;

2. for Rockefeller State Wildlife Scholarship recipients verify undergraduate or graduate enrollment, whichever is applicable to the student, in

a. wildlife; or

b. forestry; or

c. marine science; or

d. other major specified by the Louisiana Department of Wildlife and Fisheries as meeting their criteria for receipt of scholarship funds;

3. release award funds by crediting the student's account within 14 days of the institution's receipt of funds or disbursing individual award checks to recipients as instructed by LASFAC. Individual award checks for the T.H. Harris Scholarship, Rockefeller State Wildlife Scholarship, TOPS Teacher Award and SSIG must be released to eligible recipients within 30 days of receipt by the school or be returned to LASFAC.

E. Reporting of Academic Data. At the conclusion of each academic year, the institution will complete and return to LASFAC, a College Academic Grade Report, including but not limited to the following data elements:

1. academic year hours earned; and

2. cumulative hours earned; and

3. cumulative grade point average;

4. academic standing and, if applicable, date of placement on academic probation; and

5. upon graduation, degree date and type and name of degree.

F. Records Retention. Records pertaining to the students listed on the billing certification form will be subject to audit as required by state statute. Such records will be maintained for a minimum of three years and be available upon request to LASFAC and the Louisiana legislative auditor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:645 (April 1998).

Chapter 21. Miscellaneous Provisions and Exceptions

§2101. Academic Suspension of Awards and Reinstatement

A. Students denied an award for their failure to maintain the required cumulative college grade point average and academic good standing may be reinstated upon attainment of the required cumulative grade point average and the lifting of academic probation provided that the period of ineligibility did not persist for more than two years from the date of loss of eligibility.

B. Students whose TOPS Performance and Honors Awards are reinstated are ineligible for annual stipends.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:646 (April 1998).

§2103. Exceptions to the Continuous Enrollment Requirement

A. Continuous Enrollment Requirement. To maintain eligibility, all scholarship programs require recipients to continue to enroll as full-time students, as defined in §301, each consecutive semester or quarter, excluding summer sessions and intersession, at two and four year colleges and universities. Recipients who cannot meet this requirement may be granted an exception for cause, as determined by LASFAC.

B. Less Than Full-Time Attendance. The LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards and the T.H. Harris Scholarship Program for less than full-time enrollment provided that the student meets all other eligibility criteria and at least one of the following:

1. requires less than full-time enrollment to complete the undergraduate degree; or
2. is enrolled in a degree program that defines *full time* as less than 12 hours per semester or eight hours per quarter; or
3. requires less than full-time enrollment to complete requirements for a specified course of study or clinical program.

C. Procedure for Requesting Exceptions to the Continuous Enrollment Requirement

1. Recipient must submit the exception request form, with documentary evidence, within the deadline specified.
2. If determined eligible for an exception, the recipient will be awarded if he or she enrolls in the first fall, winter or sprint term immediately following the exception ending date.
3. If determined ineligible for an exception, subsequent appeals are to be processed in accordance with LASFAC's appeal procedures as defined in §2109.

D. Qualifying Exceptions to the Continuous Enrollment Requirement

1. Parental Leave
 - a. Definition. The student/recipient must be pregnant or caring for a newborn or newly-adopted child.
 - b. Certification Requirements. A completed exception request form, certified by a written statement from a doctor of medicine who is legally authorized to practice or an authorized official of the adoption agency.
 - c. Acceptable Documentation. Includes dates of required leave of absence, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, the required treatment.
 - d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after the occurrence of the qualifying exception.
 - e. Maximum Length of Exception. Up to one academic year per child.
2. Rehabilitation Program
 - a. Definition. The student/recipient must be receiving

rehabilitation in a program administered by a licensed rehabilitation center under a written individualized plan with specific dates of beginning and ending services.

b. Certification Requirements. A completed exception request form, certified by a rehabilitation counselor and doctor of medicine.

c. Acceptable Documentation. Includes dates of the required leave of absence, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, the required treatment.

d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after occurrence of the qualifying exception.

e. Maximum Length of Exception. Up to two academic years per occurrence.

3. Temporary Disability

a. Definition. The student/recipient must be recovering from an accident, injury, illness or required surgery that did not previously exist when he or she originally applied for the applicable scholarship and grant program(s), or his or her preexisting condition has substantially deteriorated since the time of application, or the student/recipient's spouse, dependent, parent or guardian requires continuous care for similar conditions for at least 60 days due to an accident, illness, injury or required surgery.

b. Certification Requirements. Certified by a doctor of medicine who is legally authorized to practice and by a completed exception request form.

c. Acceptable Documentation. Includes dates of the required leave of absence, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, the required treatment.

d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after occurrence of the qualifying exception.

e. Maximum Length of Exception. Up to two academic years for recipient; up to a maximum of one academic year for care of a disabled dependent, spouse or parent.

4. Internship/Residency Program

a. Definition. The student/recipient must be enrolled in a required program that must be completed in order to begin professional practice or service; it must be a program where the student is working toward an appropriate scholarship and grant program degree.

b. Certification Requirements. Certified by a written statement from an internship or residency program official and a completed exception request form.

c. Acceptable Documentation. Includes dates of required leave of absence from the school's dean, academic counselor, or major professor stating that the residency/internship is a requirement toward fulfilling an appropriate scholarship and grant program degree, and that the student has been accepted into the residency/internship program, the semester(s) or number of days involved, the

length of the internship/residency period, the beginning and ending dates of the leave of absence.

d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days of notification of acceptance into the internship.

e. Maximum Length of Exception. Up to two academic years of required program or study.

5. Cooperative Work/Study Program

a. Definition. The student/recipient must be a registered student in the appropriate school offering the cooperative work/study program. Even though the school may have entrance requirements for the cooperative work/study programs, the student/recipient must continue to meet and maintain scholarship and grant program cumulative grade point average requirements.

b. Certification Requirements. Certified by a written statement from the college/school official including dates of enrollment and termination and a completed exception request form.

c. Acceptable Documentation. Includes dates of leave of absence from the school's dean, academic counselor, or major professor stating that the student is enrolled in an official cooperative work/study program sponsored by the university, the semester(s) or number of days involved, the beginning and ending dates of the cooperative work/study program.

d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days of acceptance into the cooperative work/study program.

e. Maximum Length of Exception. Up to one academic year or required program of study.

6. Religious Commitment

a. Definition. The student/recipient must be a member of a religious group that requires the student to perform certain activities or obligations which necessitate taking a leave of absence from school.

b. Certification Requirements. Certified by a written statement from the college official, a completed exception request form, and a statement from the religious group's governing official.

c. Acceptable Documentation. Includes dates of the required leave of absence from the religious group's governing official, a completed exception request form, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of the religious obligation.

d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after accepting or committing to the religious obligation.

e. Maximum Length of Exception. Up to two academic years.

7. Death of Immediate Family Member

a. Definition. The student cannot attend school for at least 30 days due to recovering from the death of a spouse, parent, guardian, dependent, sister or brother or grandparent.

b. Certification Requirements. A written statement

from the college official, a completed exception request form, and a copy of the death certificate or a doctor's or funeral director's verifying statement or a copy of the obituary published in the local newspaper.

c. Acceptable Documentation. Includes dates of leave of absence from the school's registrar, a doctor's statement if student/recipient care was needed, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved.

d. Filing Requirements. The student/recipient must file a completed exception request form with certification and documentation requirements within 60 days of the date of death.

e. Maximum Length of Exception. Up to one academic semester or two quarters per death.

8. Military Service, Peace Corps, National Service Corps, VISTA

a. Definition. The student/recipient is called on active duty status with the United States Armed Forces or is performing emergency state service with the National Guard or is serving in the Peace Corps, National Service Corps or VISTA.

b. Certification Requirements. Certified by a written statement from the commanding officer or regional supervisor or certified military orders and by a completed exception request form.

c. Acceptable Documentation. Includes dates of required leave of absence, the necessity of withdrawing, dropping hours, etc., the semester(s) or number of days involved, the length of duty (beginning and ending dates).

d. Filing Requirements. The student/recipient must file a completed exception request form, with the required certification and documentation, within 60 days after receipt of military orders or letter of appointment.

e. Maximum Length of Exception. Up to the length of the required service period.

9. Exceptional Circumstances

a. Definition. The student/recipient has exceptional circumstances, other than those listed in §2103.D.1-8, which are beyond his immediate control and which necessitates full or partial withdrawal from, or non-enrollment in, an eligible postsecondary institution.

b. Certification Requirement. Certified by a notarized statement and by a completed exception request form.

c. Acceptable Documentation. The notarized statement should include attachments of copies of all documents relevant to the exceptional circumstance.

d. Filing Requirement. The student/recipient must file a completed exception request form, with the required notarized statement and documentation, within 60 days after the occurrence of the exceptional circumstance.

e. Maximum Length of Exception. Up to one academic year.

E. Nonqualifying Exceptions. Nonqualifying Exceptions include, but are not limited to:

1. the student is unaware of the continuation renewal requirements for a program and fails to meet such requirements;

2. the student failed to timely submit an exception

request form for an exception to the continuous enrollment requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:647 (April 1998).

§2105. Repayment Obligation, Deferment and Cancellation

A. Monetary Repayment. Recipients of the Rockefeller State Wildlife Scholarship who do not meet their obligation to obtain a degree in wildlife, forestry or marine science and recipients of the TOPS Teacher Award who do not fulfill their obligation to teach the required number of years and who are not eligible for Discharge by Cancellation, must repay the loan principal plus accrued interest as delineated in §§1111 and 911, respectively.

B. Deferment of Repayment Obligation. Recipients of the Rockefeller State Wildlife Scholarship or TOPS Teacher Award who are in repayment status may have their payments deferred for the following reasons:

1. Parental Leave

a. Definition. The student/recipient must be pregnant or caring for a newborn or newly-adopted child.

b. Certification Requirements. Certification by a written statement from a doctor of medicine who is legally authorized to practice or an authorized official of the adoption agency.

c. Acceptable Documentation. Includes dates of required leave of absence, the number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, and the required treatment.

d. Filing Requirements. The recipient must request by letter, with the required certification and documentation, within 60 days after the occurrence of the qualifying event.

e. Maximum Length of Deferment. Up to one academic year.

2. Rehabilitation Program

a. Definition. The recipient must be receiving rehabilitation in a program administered by a licensed rehabilitation center under a written individualized plan with specific dates of beginning and ending services.

b. Certification Requirements. Certification by a rehabilitation counselor or doctor of medicine.

c. Acceptable Documentation. Includes dates of the required leave of absence, the semester(s) or number of days involved, the length of the recovery period, the beginning and ending dates of the doctor's care, the required treatment.

d. Filing Requirements. The recipient must file a written request, with the required certification and documentation, within 60 days after occurrence of the qualifying treatment.

e. Maximum Length of Deferment. Up to two academic years.

3. Temporary Disability of Recipient, Child, Parent, Spouse, or Guardian

a. Definition. Temporary total disability of recipient or recipient's dependent, parent, guardian or spouse of whom recipient is primary care-giver.

b. Certification Requirements. Certification by a qualified physician.

c. Acceptable Documentation. Includes dates of the required leave, the length of the recovery or disability period, the beginning and ending dates of the doctor's care, the required treatment.

d. Filing Requirements. The recipient must file a written request with the required certification and documentation no earlier than 30 days but within 60 days after the occurrence of disability.

e. Maximum Length of Deferment. A deferment under §2105.B.3 for Temporary Disability of the Maker shall not exceed 36 months. A deferment under §2105.B.3 for Temporary Disability of any other person shall not exceed 12 months.

4. Military Service, Peace Corps, National Service Corps, VISTA

a. Definition. The recipient is called on active duty status with the United States Armed Forces or is performing emergency state service with the National Guard or is serving in the Peace Corps, National Service Corps or VISTA.

b. Certification Requirements. Certified by a written statement from the commanding officer or regional supervisor or certified military orders.

c. Acceptable Documentation. Includes dates of required leave of absence, the semester(s) or number of days involved, the length of duty (beginning and ending dates).

d. Filing Requirements. The student/recipient must file a written request with the required certification and documentation, within 60 days after receipt of military orders or letter of appointment.

e. Maximum Length of Deferment. Up to the length of the required service period.

5. Recipient is engaging in a full-time course of study at an institution of higher education at the baccalaureate level or higher. A deferment under §2105.B.5 shall not exceed 36 months; or

6. Recipient is:

a. seeking and unable to find full-time employment for a single period not to exceed 12 months; or

b. seeking and unable to find full-time teaching employment at a qualifying Louisiana school for a period of time not to exceed 27 months; or

C. Cancellation of Repayment Obligation. Upon submission of applicable proof, loans may be canceled for the following reasons:

1. death of the recipient;

2. complete and permanent disability of the recipient which precludes the recipient from gainful employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998).

§2107. Funding and Fees

A. Limitation of Terms Funded

1. Routine funding for all Scholarship and Grant Programs is limited to the fall, winter and spring school terms.

2. Extensions will be granted for the TOPS Opportunity, Performance, and Honors Awards for an institution's educational programs that require recipients to attend summer sessions to complete the program's mandatory courses when such courses are not offered during regular terms.

B. Fees. The LASFAC may charge a variable fee not to exceed \$10 for each award check processed for recipients of the T.H. Harris Scholarship. This fee will be charged only if the Louisiana Legislature fails to appropriate sufficient state general funds for administration of this program. The LASFAC, at its discretion, may automatically deduct the fee from each T.H. Harris Scholarship award check.

C. Less than Full-Time Attendance. The LASFAC will authorize awards under the TOPS Opportunity, Performance, Honors and Teachers Awards and the T.H. Harris Scholarship Program for less than full-time enrollment provided that the student meets all other eligibility criteria and at least one of the following:

1. requires less than full-time enrollment to complete the undergraduate degree; or

2. is enrolled in a degree program that defines *full time* as less than 12 hours per semester or eight hours per quarter; or

3. requires less than full-time enrollment to complete requirements for a specified course of study or clinical program.

D. Insufficient Funds Appropriated

1. All State Scholarship and Grant Program Awards are contingent upon the annual appropriation of funds by the Louisiana Legislature.

2. In the event appropriated funds are insufficient to fully reimburse institutions for tuition awards and stipends for all students determined eligible for the TOPS Opportunity and Honors Awards for a given academic year, funding shall be allocated in the following priority:

a. the number of students to whom awards shall be made shall be reduced by the number necessary to remain within budgetary expenditure authority;

b. those students from families with the greatest ability to pay the student's tuition, as evidenced by the adjusted gross income reported by the family on the prior year's state and federal tax returns, shall be denied an award;

c. funding is provided first to those students determined to have the most need, as evidenced by their families' smaller adjusted gross income;

d. from among those students otherwise eligible who are denied an award, those students whose families have the least capacity to pay, as evidenced by their families' lower adjusted gross income, shall be the first to receive an award if monies become available.

E. Stop Payment of Uncleared Checks. The LASFAC may stop payment on checks which are issued as scholarship or grant awards but not negotiated by September 1 following the close of the academic year for which they were issued.

F. Transferability of Funds. A student receiving an award under the Tuition Opportunity Program for Students (TOPS), Rockefeller State Wildlife Scholarship and/or the T.H. Harris Scholarship may have his award transferred to another postsecondary institution which is authorized to participate in

these programs, as described in §1901. The student must meet all continuation requirements and submit a Scholarship and Grant Transfer Request Form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:649 (April 1998).

§2109. Appeal of Adverse Discretionary Decisions

A. Appeal of Adverse Discretionary Decisions Policy

1. The Louisiana Student Financial Assistance Commission (LASFAC or commission) has established a formal appeal process consistent with the Louisiana Administrative Procedure Act by which aggrieved parties may appeal an agency adverse discretionary decision. An agency adverse discretionary decision is a decision made by agency staff based on an interpretation of legislative or regulatory intent and which has an adverse impact on an applicant or participant in a program administered by the commission. An applicant or program participant who believes the agency has incorrectly interpreted legislative or regulatory intent in making a decision and, said decision having adversely affected the applicant or participant, may file an appeal.

2. The appeal process allows for an initial review or hearing to be held by a hearing officer or an appeal committee appointed by the commission, depending upon the level of review requested.

3. If after the decision of the appeal committee or hearing officer the appellant is not satisfied, then he will have the right to seek review of the decision by the full commission.

4. If the commission refuses to review the decision of the hearing officer or the appeal committee, then the aggrieved party has the right to seek a rehearing on the matter by the full commission.

5. If the application for a rehearing is denied, then the aggrieved party has the right to seek judicial review.

B. Appeal of Adverse Discretionary Decisions Procedure

1. Adverse discretionary decisions made by the Louisiana Office of Student Financial Assistance may be appealed to the Louisiana Student Financial Assistance Commission.

a. Petitions for appeal must be in writing and filed within 30 days of notice of the decision or, if no notice is given within 30 days from becoming aware of or the date the aggrieved party should have been aware of the adverse decision.

b. The appeal must be addressed to the Executive Director, Office of Student Financial Assistance and sent to Box 91202, Baton Rouge, LA 70821-9202, or hand delivered to the physical address of LASFAC in Baton Rouge.

c. Appeals may not be supplemented or amended after the lapse of 30 days. An appellant has the right to file a written appeal or have his appeal heard orally. Requests for an oral hearing must be made within the 30-day time period to file the appeal.

i. If no request for an oral hearing is made, then the appellant may submit documentation and/or written memorandum to support his appeal at least 15 days prior to the

review of the commission or the appeal committee appointed by the commission. Appellant will be notified at least 30 days prior to the date of the review by the commission or the appeal committee appointed by the commission. The commission or the appeal committee will review all the evidence submitted and render a decision.

ii. If the appellant requests an oral hearing, then appellant will be given at least 30 days prior notice of the hearing. The commission shall appoint a hearing officer to hear the appeal of the appellant. All hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

2. If after the review of the appeal committee or after a hearing held before the hearing officer a decision adverse to the appellant is made, then appellant may seek to have the decision reviewed by the full commission.

a. The application for review must be made within 15 days of appellant receiving notice of the decision. The appellant may submit exceptions, written arguments or briefs to support the application for review.

b. No oral hearing shall be held at this level of review. All action is stayed pending review by the full commission.

i. If the full commission denies the application for review, then the action becomes final as of the date of the denial for review.

ii. If the full commission denies the application for review then it shall set a hearing date to review the decision of the hearing officer.

3. The appellant may seek a rehearing of an adverse decision made by the full commission. The request for rehearing must conform to the provisions and time limits set by R.S. 49:959. An application for rehearing does not stay any action taken by the commission.

4. Oral Hearing. All hearings shall be held pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

a. On the day of the oral hearing appellant and appellee shall be prepared to start the hearing at the time specified in the notice of hearing.

b. The hearing may be continued for good cause provided a written request for extension is received at the commission at least seven days prior to the date of the hearing.

i. All parties will be notified of a rescheduling or postponement of the hearing.

ii. Failure to be present at the hearing and ready to proceed may result in an adverse decision against the nonappearing party.

iii. Strict rules of evidence will not apply in these hearings. The appellant shall have the following rights at the hearing:

(a). the right to present testimony, introduce evidence, and call witnesses on his behalf;

(b). the right to cross exam witnesses called by the agency;

(c). the right to subpoena witnesses;

(d). the right to take depositions;

(e). prior to the hearing, the right and the

opportunity to review agency records that are relevant to his appeal; and to make copies of those records at a cost of \$.20 per page;

(f). the right to be represented by counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3021-3036.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 24:650 (April 1998).

Jack L. Guinn
Executive Director

9804#022

RULE

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Chemical Accident Prevention
(LAC 33:III.5901)(AQ170*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division Regulations, LAC 33:III.5901 (AQ170*).

This rule is identical to federal law or regulation, 62 FR 45129-45132 (August 25, 1997) and 63 FR 639-645 (January 6, 1998), which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the rule. Therefore, the rule is promulgated in accordance with R.S. 49:953(F)(3) and (4). This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

The rule amends the Chemical Accident Prevention rule to include the recently adopted changes to the Environmental Protection Agency's Risk Management rule (40 CFR part 68). These changes finalize the "stay provisions" that were part of the rule and expired on December 22, 1997. These changes include deleting the category of Division 1.1 explosives (as listed by the federal Department of Transportation) from the list of regulated substances; exempting from threshold quantity determinations the regulated flammable substances in gasoline used as fuel and in naturally occurring hydrocarbon mixtures prior to entry into a natural gas processing plant or a petroleum refining process unit; clarifying the provision for threshold determination of flammable substances in a mixture; modifying to clarify the definition of stationary source to exempt transportation and storage incident to transportation; clarifying that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources; and clarifying that the chemical accident prevention provisions do not apply to sources located on the outer continental shelf. This rule is needed because without it facilities that were previously

exempt under provisions of the stay in 40 CFR part 68 are subject to LAC 33:III.Chapter 59. A technical amendment was made to the rule to include an amendment adopted by EPA on August 25, 1997, in 62 FR 45129-45132. This amendment modified the concentration for hydrochloric acid solutions from 30 percent to 37 percent.

The basis and rationale for this rule are to make the department's Chemical Accident Prevention rule consistent with the EPA Risk Management rule.

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Part III. Air

Chapter 59. Chemical Accident Prevention and Minimization of Consequences

Subchapter A. General Provisions

§5901. Incorporation by Reference of Federal Regulations

A. Except as provided in Subsection C of this Section, the department incorporates by reference 40 CFR Part 68 (July 1, 1997), and as amended in 62 FR 45129-45132 (August 25, 1997) and 63 FR 639-645 (January 6, 1998).

* * *

[See Prior Text in B-C.5]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054 and 30:2063.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:421 (April 1994), amended LR 22:1124 (November 1996), repromulgated LR 22:1212 (December 1996), amended LR 24:652 (April 1998).

Gus Von Bodungen
Assistant Secretary

9804#009

RULE

**Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division**

Open Burning (LAC 33:III.1109)(AQ166)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.1109 (AQ166).

Acts 276 and 1275 of the 1997 Regular Session of the Louisiana Legislature provide for local governments to enact ordinances to require, prohibit, or regulate the destruction, disposal, or burning of trash, leaves, limbs, and branches. The basis and rationale for this rule are to mirror requirements on open burning as provided for in Acts 276 and 1275 of the 1997 Regular Legislative Session.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

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ENVIRONMENTAL QUALITY

Part III. Air

Chapter 11. Control of Emissions of Smoke

§1109. Control of Air Pollution from Outdoor Burning

* * *

[See Prior Text in A]

B. Outdoor Burning Prohibited. No person shall cause or allow the outdoor burning of waste material or other combustible material on any property owned by him or under his control except as provided in Subsections C and D of this Section.

C. Statutory Exceptions. The following activities are not subject to the prohibition created in Subsection B of this Section:

1. the burning of leaves, grass, twigs, branches, and vines by a private property owner on his own property for noncommercial purposes in parishes with a population of 300,000 or less, provided the property owner attends the burning of yard waste at all times. This exception shall not apply in the parish of East Baton Rouge;

2. the burning of trees, brush, grass, or other vegetable matter in any parish having a population of 90,000 or less, provided the location of the burning is not within the territorial limits of a city or town or adjacent to a city or town in such proximity that the ambient air of the city or town will be affected by smoke from the burning;

3. the burning of trees, branches, limbs, or other wood as a bonfire that is specifically authorized by ordinance in the parishes of St. James, St. John the Baptist, or St. Charles;

4. the burning of agricultural by-products in the fields in connection with the planting, harvesting, or processing of agricultural products;

5. the controlled burning of cotton gin agricultural wastes in connection with cotton gin operations;

6. the controlled burning in connection with timber stand management; and

7. the controlled burning of pasture land or marshland in connection with trapping or livestock production.

D. Exceptions to Prohibition Against Outdoor Burning. Outdoor burning of waste material or other combustible material may be conducted in the situations enumerated below if no public nuisance is or will be created and if the burning is not prohibited by and is conducted in compliance with other applicable laws and with regulations and orders of governmental entities having jurisdiction, including air control regulations and orders. The authority to conduct outdoor burning under this regulation does not exempt or excuse the person responsible from the consequences of or the damages or injuries resulting from the burning:

1. outdoor burning in connection with the preparation of food;

2. campfires and fires used solely for recreational purposes or for ceremonial occasions;

3. outdoor burning in a rural park or rural recreation area of trees, brush, grass, and other vegetable matter for game management purposes in accordance with practices acceptable to Louisiana Parks and Recreation Commission and Louisiana Wildlife and Fisheries Commission;

4. small fires, by tradesmen and contractors, in such activities as street repair, installation or repair of sewer, water, electric, telephone mains, and services;

5. the operation of contrivances using open flames such as welding torches, blow torches, portable heaters, and other flame making devices;

6. outdoor burning, in other than rural park or rural recreation area, of trees, brush, grass, and other vegetable matter from such area in land clearing and right-of-way maintenance operations if the following conditions are met:

a. prevailing winds at the time of the burning must be away from any city or town, the ambient air of which may be affected by smoke from the burning;

b. the location of the burning must be at least 1,000 feet (305 meters) from any dwelling other than a dwelling or structure located on the property on which the burning is conducted;

c. care must be used to minimize the amount of dirt on the material being burned;

d. heavy oils, asphaltic materials, items containing natural or synthetic rubber, or any materials other than plant growth which produce unreasonable amounts of smoke may not be burned; nor may these substances be used to start a fire;

e. the burning may be conducted only between the hours of 8 a.m. and 5 p.m. Piles of combustible material should be of such size to allow complete reduction in this time interval; and

f. the burning must be controlled so that a traffic hazard as prohibited by Subsection E of this Section is not created;

7. fire purposely set as a part of an organized program of drills for the training of fire fighting personnel or for testing fire fighting materials or equipment if the following conditions are met:

a. the duration of the burning held to the minimum required for such purposes;

b. the burning is conducted only between the hours of 8 a.m. and 5 p.m.; and

c. the burning is controlled so that a traffic hazard as prohibited by Subsection E of this Section is not created;

8. outdoor burning of waste hydrocarbon products (from petroleum exploration, development or production operations, natural gas processing, such as, but not limited to, basic sediments, oil produced in testing an oil well, and paraffin) may be conducted at the site of origin when it is not practicable to transport the waste products for sale or reclamation, or to dispose of them lawfully in some other manner. In addition, hydrocarbons spilled or lost from pipeline breaks or other transport failure which cannot practicably be recovered or be disposed of lawfully in some other manner may be outdoor burned at the site where the spill occurred or at another appropriate place due to safety considerations. Except when the immediate or continuous burning of hydrocarbon spills is reasonably necessary to abate or eliminate an existing or imminent threat of injury to human life or significant damage to property, the outdoor burning shall be conducted under the following conditions:

a. the location of the burning must not be within or adjacent to a city or town or in such proximity thereto that the

ambient air of the city or town may be affected by smoke from the burning;

b. the burning is conducted only between the hours of 8 a.m. and 5 p.m.; and

c. the burning is controlled so that a traffic hazard as prohibited by Subsection E of this Section is not created; and

9. special situations approvable for exemption by the administrative authority prior to initiation of burning operation, as follows:

a. outdoor burning of explosives, pyrophoric, or any other materials where there is no practicable or safe method of disposal;

b. experimental burning for purposes of data gathering and research; and

c. nonrecurring unusual circumstances or any condition not covered above.

E. Traffic Hazards Prohibited. The emission of smoke, suspended particulate matter or uncombined water or any air contaminants or combinations thereof which passes onto or across a public road and creates a traffic hazard by impairment of visibility, as defined in LAC 33:III.111, or intensifies an existing traffic hazard condition is prohibited.

F. Exclusion from Application of this Section. Outdoor burning pursuant to and in compliance with the terms of a variance granted by the administrative authority is excluded from the application of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:1081 (October 1995), LR 24:652 (April 1998).

Gus Von Bodungen
Assistant Secretary

9804#065

RULE

Department of Environmental Quality Office of Air Quality and Radiation Protection Air Quality Division

Prevention of Significant Deterioration (PSD)
and Public Inspection (LAC 33:III.509)(AQ164)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division regulations, LAC 33:III.509 (AQ164).

The rule corrects language which mandates that the administrative authority make available preconstruction or modification information available at site-specific locations. Public participation is maintained through newspaper notification, the provision for citizens to request public hearings from the department secretary, and availability, upon request, to view these documents at the nearest departmental

RULE

**Department of Environmental Quality
Office of Waste Services**

RCRA Updates

(LAC 33:V.Chapters 1, 3, 5, 7, 9, 11, 13, 15, 22, 25, 31, 33, 38, 41, 43, and 49)(HW061*)

regional office. The Office of Air Quality and Radiation Protection receives approximately 10 to 15 permit applications and permit modifications annually. The requirement to provide copies at the same locations where the administrative authority made available original documents is redundant. The basis and rationale for this rule are to correct existing, redundant language that requires the administrative authority to provide copies at the same locations where original documents are made available.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

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Part III. Air

Chapter 5. Permit Procedures

§509. Prevention of Significant Deterioration

* * *

[See Prior Text in A-Q.6]

7. The administrative authority shall make all comments available for public inspection at the Headquarters of the Department of Environmental Quality, Office of Air Quality and Radiation Protection. In accordance with 40 CFR 51.166(g)(2)(ii-vii), the regional office having jurisdiction for the parish in which the permit modification is being sought will be the regional location of all materials. In addition, the administrative authority may elect to provide certain parts of permits or permit modifications at other locations in the region.

* * *

[See Prior Text in Q.8-8.a]

b. notify the applicant in writing of the final determination and make such notification available for public inspection at the Headquarters of the Department of Environmental Quality, Office of Air Quality and Radiation Protection. In accordance with 40 CFR 51.166(g)(2)(ii-vii), the regional office having jurisdiction for the parish in which the permit modification is being sought will be the regional location of all materials. In addition, the administrative authority may elect to provide certain parts of permits or permit modifications at other locations in the region.

* * *

[See Prior Text in R-S.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:348 (June 1988), LR 16:613 (July 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:478 (May 1991), LR 21:170 (February 1995), LR 22:339 (May 1996), LR 23:1677 (December 1997), LR 24:654 (April 1998).

Gus Von Bodungen
Assistant Secretary

9804#070

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Hazardous Waste Division regulations, LAC 33:V.Chapters 1, 3, 5, 7, 9, 11, 13, 15, 22, 25, 31, 33, 38, 41, 43, and 49 (HW061*).

This rule is identical to a federal law or regulation, 60 FR 35703-35706, 50426-50430, 55202-55206, 63417-63434; 61 FR 4903-4916, 13103-13106, 15566-15660, 15660-15668, 16290-16316, 19117, 33680-33690, 33691, 36419-36421, 43924-43931; 62 FR 7502-7600, which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the rule. Therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4). This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This rule includes the addition of tests to demonstrate that a sorbent is nonbiodegradable. It will improve the process for permitting facilities that store, treat, or dispose of hazardous waste by providing opportunities for public involvement earlier in the process and by expanding public access to information throughout the permitting process and the operational lives of facilities, requiring prospective applicants to hold an informal public meeting before submitting an application for a RCRA permit and to advertise this meeting in the newspaper, through broadcast media, and on a sign posted at or near the property. A permitting agency may mail a notice to interested persons when the facility submits its application and, as the agency deems necessary, may require a facility owner or operator to set up an information repository that will hold all information and documents the permitting agency has decided is necessary, and may require combustion facilities (i.e., incinerators and other facilities that burn hazardous wastes) to notify the public before they hold a trial burn. An error in the text pertaining to regulatory exclusion from the definition of solid waste for recovered oil that is inserted into the petroleum refining process is corrected. The rule adds procedural controls governing the export and import of wastes when shipped for recovery among Organization for Economic Cooperation and Development (OECD) countries. The basis and rationale for this rule are to make the state regulations equivalent with federal regulations.

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ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

* * *

[See Prior Text in A-D.44.f]

g. recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) at or before a point (other than direct insertion into a coker) where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous wastes listed in LAC 33:V.4901 (e.g., K048-K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in LAC 33:V.4001.

* * *

[See Prior Text in D.44-N.5]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid

and Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:655 (April 1998).

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise:

* * *

[See Prior Text]

Competent Authorities—the regulatory authorities of concerned countries having jurisdiction over transfrontier movements of wastes destined for recovery operations.

* * *

[See Prior Text]

Concerned Countries—the exporting and importing Organization for Economic Cooperation and Development (OECD) member countries and any OECD member countries of transit.

* * *

[See Prior Text]

Consignee—(as used in LAC 33:V.1127) the person to whom possession or other form of legal control of the waste is assigned at the time the waste is received in the importing country.

Consignee—(as used in LAC 33:V.Chapter 11, except §1127) the ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

* * *

[See Prior Text]

Country of Transit—any designated OECD country in LAC 33:V.1113.I.1.a and b other than the exporting or importing country across which a transfrontier movement of wastes is planned or takes place.

* * *

[See Prior Text]

Exporting Country—any designated OECD member country in LAC 33:V.1113.I.1.a from which a transfrontier movement of wastes is planned or has commenced.

* * *

[See Prior Text]

Importing Country—any designated OECD country in LAC 33:V.1113.I.1.a to which a transfrontier movement of wastes is planned or takes place for the purpose of submitting the wastes to recovery operations therein.

* * *

[See Prior Text]

Notifier—the person under the jurisdiction of the exporting country who has, or will have at the time the planned transfrontier movement commences, possession or other forms of legal control of the wastes and who proposes their transfrontier movement for the ultimate purpose of submitting them to recovery operations. When the United States is the exporting country, notifier is interpreted to mean a person domiciled in the United States.

* * *

[See Prior Text]

Organization for Economic Cooperation and Development (OECD) Area—all land or marine areas under the national jurisdiction of any designated OECD member country in

LAC 33:V.1113.I. When the regulations refer to shipments to or from an OECD country, this means OECD area.

* * *

[See Prior Text]

Recognized Trader—a person who, with appropriate authorization of concerned countries, acts in the role of principal to purchase and subsequently sell wastes; this person has legal control of such wastes from time of purchase to time of sale; such a person may act to arrange and facilitate transfrontier movements of wastes destined for recovery operations.

Recovery Facility—an entity which, under applicable domestic law, is operating or is authorized to operate in the importing country to receive wastes and to perform recovery operations on them.

Recovery Operations—activities leading to resource recovery, recycling, reclamation, direct reuse or alternative uses as listed in Table 2.B of the Annex of OECD Council Decision C(88)90(Final) of 27 May 1988, (available from the Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, First Floor, Arlington, VA 22203 (Docket Number F-94-IEHF-FFFFF) and the Organization for Economic Cooperation and Development, Environment Directorate, 2 rue Andre Pascal, 75775 Paris Cedex 16, France), which include the following operations:

Code	Recovery Operations
R1	Use as a fuel (other than in direct incineration) or other means to generate energy
R2	Solvent reclamation/regeneration
R3	Recycling/reclamation of organic substances that are not used as solvents
R4	Recycling/reclamation of metals and metal compounds
R5	Recycling/reclamation of other inorganic materials
R6	Regeneration of acids or bases
R7	Recovery of components used for pollution control
R8	Recovery of components from catalysts
R9	Used oil re-refining or other reuses of previously used oil
R10	Land treatment resulting in benefit to agriculture or ecological improvement
R11	Uses of residual materials obtained from any of the operations numbered R1-R10
R12	Exchange of wastes for submission to any of the operations numbered R1-R11
R13	Accumulation of material intended for any operation in Table 2.B of the Annex of OECD Council Decision

* * *

[See Prior Text]

Transfrontier Movement—any shipment of wastes destined for recovery operations from an area under the national jurisdiction of one OECD member country to an area under the national jurisdiction of another OECD member country.

* * *

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:655 (April 1998).

§110. References

* * *

[See Prior Text in A-A.15]

0010	Modified Method 5 Sampling Train
* * *	
[See Prior Text]	
9320	Radium-228

*When Method 9066 is used it must be preceded by the manual distillation specified in procedure 7.1 of Method 9065. Just prior to distillation in Method 9065, adjust the sulfuric acid-preserved sample to pH 4 with 1 + 9 NaOH. After the manual distillation is completed, the autoanalyzer manifold is simplified by connecting the re-sample line directly to the sampler.

16. The OECD Green List of Wastes (revised May 1994), the Amber List of Wastes and Red List of Wastes (both revised May 1993) as set forth in Appendix 3, Appendix 4, and Appendix 5, respectively, to the OECD Council Decision C(92)39/FINAL (Concerning the Control of Transfrontier Movements of Wastes Destined for Recovery Operations). These incorporations by reference were approved by the director of the *Federal Register* in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 on July 11, 1996. These materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the *Federal Register*. The materials are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC; the U.S. Environmental Protection Agency, RCRA Information Center (RIC), 1235 Jefferson-Davis Highway, First Floor, Arlington, VA 22203 (Docket Number F-94-IEHF-FFFFF); and may be obtained from the Organization for Economic Cooperation and Development, Environment Directorate, 2 Rue Andre Pascal, 75775 Paris Cedex 16, France.

* * *

[See Prior Text in B]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:814 (September 1996), amended

by the Office of Waste Services, Hazardous Waste Division, LR 24:656 (April 1998).

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§309. Conditions Applicable to All Permits

Each permit shall include permit conditions necessary to achieve compliance with the Act and these regulations, including each of the applicable requirements specified in LAC 33:V.Subpart 1. In satisfying this provision, the administrative authority may incorporate applicable requirements of LAC 33:V.Subpart 1 directly into the permit or establish other permit conditions that are based on LAC 33:V.Subpart 1. The following conditions apply to all hazardous waste permits. All conditions applicable to permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit.

* * *

[See Prior Text in A-L.12]

M. Information Repository. The administrative authority may require the permittee to establish and maintain an information repository at any time, based on the factors set forth in LAC 33:V.708.C.2. The information repository will be governed by the provisions in LAC 33:V.708.C.3-6.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998).

Chapter 5. Permit Application Contents

Subchapter D. Part II General Permit Information Requirements

§517. Part II Information Requirements (the Formal Permit Application)

The formal permit application information requirements presented in this Section reflect the standards promulgated in LAC 33:V.Subpart 1. These information requirements are necessary in order to determine compliance with all standards. Responses and exhibits shall be numbered sequentially according to the technical standards. The permit application must describe how the facility will comply with each of the sections of LAC 33:V.Chapters 15-37 and 41. Information required in the formal permit application shall be submitted to the administrative authority and signed in accordance with requirements in LAC 33:V.509. The description must include appropriate design information (calculations, drawings, specifications, data, etc.) and administrative details (plans, flow charts, decision trees, manpower projections, operating instructions, etc.) to permit the administrative authority to determine the adequacy of the hazardous waste permit application. Certain technical data, such as design drawings, specifications, and engineering studies, shall be certified by a registered professional engineer. If a section does not apply, the permit application must state it does not apply and why it does not apply. This information is to be submitted using the

same numbering system and in the same order used in these regulations:

* * *

[See Prior Text in A-U]

V. for land disposal facilities, if a case-by-case extension has been approved under LAC 33:V.2239 or a petition has been approved under LAC 33:V.2241 or 2242, a copy of the notice of approval for the extension or petition is required; and

W. a summary of the preapplication meeting, along with a list of attendees and their addresses, and copies of any written comments or materials submitted at the meeting, as required under LAC 33:V.708.A.3.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 13:433 (August 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998).

Subchapter F. Special Forms of Permits

§537. Permits for Boiler and Industrial Furnaces

Burning Hazardous Waste for Recycling Purposes Only (boilers and industrial furnaces burning hazardous waste for destruction are subject to permit requirements for incinerators)

* * *

[See Prior Text in A-B.2.f]

g. The administrative authority must send a notice to all persons on the facility mailing list, as set forth in LAC 33:V.717.A.5, and to the appropriate units of state and local government, as set forth in LAC 33:V.717.A.2, announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the administrative authority has issued such notice.

i. This notice must be mailed within a reasonable time period before the trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

ii. This notice must contain:

(a) the name and telephone number of the applicant's contact person;

(b) the name and telephone number of the permitting agency's contact office;

(c) the location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

(d) an expected time period for commencement and completion of the trial burn.

h. During each approved trial burn (or as soon after the burn as is practicable), the applicant must make the following determinations and analyses:

i. a quantitative analysis of antimony, arsenic,

barium, beryllium, cadmium, chromium, lead, mercury, thallium, silver, and chlorine/chloride in the feedstreams (hazardous waste, other fuels, and industrial furnace feedstocks) to the boiler or industrial furnace is required;

ii. a quantitative analysis of the stack gas for the concentration and mass emissions of the trial POHCs is required;

iii. if dioxin and furan testing is required under LAC 33:V.3009.E, a quantitative analysis of the stack gas for the concentration and mass emission rate of the 2,3,7,8-chlorinated tetra-octa congeners of chlorinated dibenzo-p-dioxins and furans, and a computation showing conformance with the emission standard are required;

iv. a quantitative analysis of the stack gas for the concentration and mass emission of particulate matter, metal(s) or hydrogen chloride (HCl) and chlorine gas (Cl₂) and a computation showing conformance with the metals or HCl emission performance standard in LAC 33:V.3011 and 3015 are required;

v. a quantitative analysis of the scrubber water (if any), ash residues, and other residues is required for the purpose of estimating the fate of the trial POHCs, the fate of any metal, and the fate of chlorine/chloride subject to emissions testing under LAC 33:V.537.B.2.g.iii.(b);

vi. destruction and removal efficiency (DRE) must be computed in accordance with the DRE formula specified in LAC 33:V.3009.A;

vii. sources of fugitive emissions and their means of control must be identified;

viii. carbon monoxide, total hydrocarbons, and oxygen in the stack gas must be continuously measured. The administrative authority may approve an alternative scheme for monitoring total hydrocarbons;

ix. a quantitative analysis of the exhaust gas for the concentration and mass emission of particulate matter, and a computation showing conformance with the particulate matter standard in LAC 33:V.3011 is required; and

x. any other information will be required that the administrative authority specifies as necessary to ensure that the trial burn will reveal whether the facility complies with the performance standards required by LAC 33:V.3009-3015.

i. The applicant must submit to the administrative authority a certification that the trial burn has been conducted in accordance with the approved trial burn plan and must submit the results of all the analyses and determinations required in Subsection B.2.h of this Section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the administrative authority.

j. All data collected during any trial burn must be submitted to the administrative authority after completion of the trial burn.

k. All submissions required by this Paragraph must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under LAC 33:V.507 and 509.

l. Based on the results of the trial burn, the administrative authority shall specify the operating requirements in the final permit according to LAC 33:V.3005.E. The permit modification shall proceed as

a minor modification according to LAC 33:V.323.

* * *

[See Prior Text in B.3-4]

C. Interim Status Boilers and Industrial Furnaces

1. For the purpose of determining feasibility of compliance with the performance standards of LAC 33:V.3009-3015 of this Chapter and of determining adequate operating conditions under LAC 33:V.3007, applicants owning or operating existing boilers or industrial furnaces operated under the interim status standards of LAC 33:V.3007 must either prepare and submit a trial burn plan and perform a trial burn in accordance with the requirements of this Section or submit other information as specified in LAC 33:V.535.A.6. The administrative authority must announce his or her intention to approve of the trial burn plan in accordance with the timing and distribution requirements of Subsection B.2.g of this Section. The contents of the notice must include:

a. the name and telephone number of a contact person at the facility;

b. the name and telephone number of a contact office at the permitting agency;

c. the location where the trial burn plan and any supporting documents can be reviewed and copied; and

d. a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time periods during which the trial burn would be conducted.

2. Applicants who submit a trial burn plan and receive approval before submission of part II of the permit application must complete the trial burn and submit the results specified in LAC 33:V.537.B.2.h with part II of the permit application. If completion of this process conflicts with the date set for submission of part II, the applicant must contact the administrative authority to establish a later date for submission of part II or the trial burn results. If the applicant submits a trial burn plan with part II of the permit application, the trial burn must be conducted and the results submitted within a time period prior to permit issuance to be specified by the administrative authority.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:737 (September 1989), amended LR 18:1375 (December 1992), LR 21:266 (March 1995), LR 22:818 (September 1996), LR 22:832 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:657 (April 1998).

Chapter 7. Administrative Procedures for Treatment, Storage, and Disposal Facility Permits

Subchapter A. Permits

§701. Emergency Permits

Notwithstanding any other provision, in the event the administrative authority finds an imminent and substantial endangerment to human health or the environment, he may issue a temporary emergency permit (1) to a nonpermitted facility to allow treatment, storage, or disposal of hazardous waste or (2) to a permitted facility to allow treatment, storage, or disposal of a hazardous waste not covered by an effective

permit. This emergency permit:

* * *

[See Prior Text in A-D]

E. shall be accompanied by a public notice published under LAC 33:V.715 including:

* * *

[See Prior Text in E.1-F]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:658 (April 1998).

Subchapter B. Hearings

§708. Preapplication Public Meeting and Notice, Public Notice Requirements at the Application Stage, and Information Repository

A. Preapplication Public Meeting and Notice

1. Applicability. The requirements of this Section shall apply to all RCRA part II applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority. The requirements of this Section shall also apply to RCRA part II applications seeking renewal of permits for such units where the renewal application is proposing a significant change in facility operations. For the purposes of this Section a "significant change" is any change that would qualify as a class 3 permit modification under LAC 33:V.321.C. The requirements of this Section do not apply to permit modifications under LAC 33:V.321.C or to applications that are submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

2. Prior to the submission of a part II RCRA permit application for a facility, the applicant must hold at least one meeting with the public in order to solicit questions from the community and inform the community of proposed hazardous waste management activities. The applicant shall post a sign-in sheet or otherwise provide a voluntary opportunity for attendees to provide their names and addresses.

3. The applicant shall submit a summary of the meeting, along with the list of attendees and their addresses developed under Subsection A.2 of this Section, and copies of any written comments or materials submitted at the meeting to the permitting agency as a part of the part II application, in accordance with LAC 33:V.517.

4. The applicant must provide public notice of the preapplication meeting at least 30 days prior to the meeting. The applicant must maintain, and provide to the permitting agency upon request, documentation of the notice.

a. The applicant shall provide public notice in all of the following forms:

i. a newspaper advertisement. The applicant shall publish a notice, fulfilling the requirements in Subsection A.4.b of this Section, in a newspaper of general circulation in the parish or equivalent jurisdiction that hosts the proposed location of the facility. In addition, the administrative authority shall instruct the applicant to publish the notice in newspapers of general circulation in adjacent parishes or equivalent

jurisdictions where the administrative authority determines that such publication is necessary to inform the affected public. The notice must be published as a display advertisement;

ii. a visible and accessible sign. The applicant shall post a notice on a clearly marked sign at or near the facility, fulfilling the requirements in Subsection A.4.b of this Section. If the applicant places the sign on the facility property, then the sign must be large enough to be readable from the nearest point where the public would pass by the site;

iii. a broadcast media announcement. The applicant shall broadcast a notice, fulfilling the requirements in Subsection A.4.b of this Section, at least once, on at least one local radio station or television station. The applicant may employ another medium with prior approval of the administrative authority;

iv. a notice to the department. The applicant shall send a copy of the newspaper notice to the department and to the appropriate units of state and local government, in accordance with LAC 33:V.717.A.2.

b. The notices required under Subsection A.4.a of this Section must include:

i. the date, time, and location of the meeting;

ii. a brief description of the purpose of the meeting;

iii. a brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location;

iv. a statement encouraging people to contact the facility at least 72 hours before the meeting if they need special access to participate in the meeting; and

v. the name, address, and telephone number of a contact person for the applicant.

B. Public Notice Requirements at the Application Stage

1. Applicability. The requirements of this Section shall apply to all RCRA part II applications seeking initial permits for hazardous waste management units over which the department has permit issuance authority. The requirements of this Section shall also apply to RCRA part II applications seeking renewal of permits for such units under LAC 33:V.315.A. The requirements of this Section do not apply to permit modifications under LAC 33:V.321.C or permit applications submitted for the sole purpose of conducting post-closure activities or post-closure activities and corrective action at a facility.

2. Notification at Application Submittal

a. The administrative authority shall provide public notice, as set forth in LAC 33:V.717.A.5, and notice to appropriate units of state and local government, as set forth in LAC 33:V.717.A.2, that a part II permit application has been submitted to the department and is available for review.

b. The notice shall be published within a reasonable period of time after the application is received by the administrative authority. The notice must include:

i. the name and telephone number of the applicant's contact person;

ii. the name and telephone number of the permitting agency's contact office and a mailing address to which information, opinions, and inquiries may be directed throughout the permit review process;

- iii. an address to which people can write in order to be put on the facility mailing list;
- iv. the location where copies of the permit application and any supporting documents can be viewed and copied;
- v. a brief description of the facility and proposed operations, including the address or a map (e.g., a sketched or copied street map) of the facility location on the front page of the notice; and
- vi. the date that the application was submitted.

3. Concurrent with the notice required under Subsection B.2 of this Section, the administrative authority must place the permit application and any supporting documents in a location accessible to the public in the vicinity of the facility or at the permitting agency's office.

C. Information Repository

1. **Applicability.** The requirements of this Section apply to all applications seeking RCRA permits for hazardous waste management units over which the department has permit issuance authority.

2. The administrative authority may assess the need, on a case-by-case basis, for an information repository. When assessing the need for an information repository, the administrative authority shall consider a variety of factors including the level of public interest, the type of facility, the presence of an existing repository, and the proximity to the nearest copy of the administrative record. If the administrative authority determines, at any time after submittal of a permit application, that there is a need for a repository, then the administrative authority shall notify the facility that it must establish and maintain an information repository. (See LAC 33:V.309.M for similar provisions relating to the information repository during the life of a permit.)

3. The information repository shall contain all documents, reports, data, and information deemed necessary by the administrative authority to fulfill the purposes for which the repository is established. The administrative authority shall have the discretion to limit the contents of the repository.

4. The information repository shall be located and maintained at a site chosen by the facility. If the administrative authority finds the site unsuitable for the purposes and persons for which it was established, due to problems with the location, hours of availability, access, or other relevant considerations, then the administrative authority shall specify a more appropriate site.

5. The administrative authority shall specify requirements for informing the public about the information repository. At a minimum, the administrative authority shall require the facility to provide a written notice about the information repository to all individuals on the facility mailing list.

6. The facility owner/operator shall be responsible for maintaining and updating the repository with appropriate information throughout a time period specified by the administrative authority. The administrative authority may close the repository at his or her discretion, based on the factors in Subsection C.2 of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:659 (April 1998).

Chapter 9. Manifest System for TSD Facilities
§905. Use of the Manifest System

* * *

[See Prior Text in A-C]

D. Within three working days of the receipt of a shipment subject to LAC 33:V.Chapter 11.Subchapter B, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to competent authorities of all other concerned countries. A copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 17:364 (April 1991), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:660 (April 1998).

Chapter 11. Generators
Subchapter A. General

§1101. Applicability

* * *

[See Prior Text in A]

B. Any person who exports or imports hazardous waste subject to the manifesting requirements of this Chapter, or subject to the universal waste management standards of LAC 33:V.Chapter 38, to or from the countries listed in LAC 33:V.1113.I.1.a for recovery must comply with Subchapter B of this Chapter.

C. Any person who imports hazardous waste from a foreign country into the state of Louisiana must comply with the standards applicable to generators established in this Chapter.

D. A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements of LAC 33:V.105.D.5 is not required to comply with other standards in this Chapter or LAC 33:V.Subpart 1 with respect to such pesticides.

E. A person who generates a hazardous waste as defined in LAC 33:V.109 and further specified in LAC 33:V.Chapter 49 is subject to the requirements of this Chapter and penalties prescribed in the Act for noncompliance.

F. An owner or operator who initiates a shipment of hazardous waste from a treatment, storage, or disposal facility must comply with the generator standards established in this Chapter. The provisions of LAC 33:V.1109.E are applicable to the on-site accumulation of hazardous waste by generators. Therefore, the provisions of LAC 33:V.1109.E only apply to owners or operators who are shipping hazardous waste which they generated at that facility. A generator who treats, stores,

or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in LAC 33:V.Subpart 1.

G. A person who generates a hazardous waste as defined in LAC 33:V.109 and further specified in LAC 33:V.Chapter 49 is subject to the requirements of these chapters and shall register with the department in accordance with the applicable provisions of LAC 33:V.303.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:660 (April 1998).

§1113. Exports of Hazardous Waste

* * *

[See Prior Text in A-H.2]

I. International Agreements

1. Any person who exports or imports hazardous waste subject to manifest requirements of this Chapter, or subject to the universal waste management standards of LAC 33:V.Chapter 38, to or from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in LAC 33:V.1113.I.1.a, for purposes of recovery is subject to Subchapter B of this Section. The requirements of this Section and LAC 33:V.1123 do not apply.

a. For the purposes of these regulations the designated OECD countries consist of Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and the United States.

b. For the purposes of these regulations, Canada and Mexico are considered OECD member countries only for the purpose of transit.

2. Any person who exports hazardous waste to or imports hazardous waste from a designated OECD member country for purposes other than recovery (e.g., incineration, disposal), Mexico (for any purpose), or Canada (for any purpose) remains subject to the requirements of this Section and LAC 33:V.1123.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998).

Subchapter B. Transfrontier Shipments of Hazardous Waste

§1127. Transfrontier Shipments of Hazardous Waste for Recovery Within the OECD

A. Applicability

1. The requirements of this Subchapter apply to imports

and exports of wastes that are considered hazardous under United States national procedures and are destined for recovery operations in the countries listed in LAC 33:V.1113.I.1.a. A waste is considered hazardous under United States national procedures if it meets the definition of hazardous waste in LAC 33:V.109 and is subject to either the manifesting requirements in LAC 33:V.1107 or to the universal waste management standards of LAC 33:V.Chapter 38.

2. Any person (notifier, consignee, or recovery facility operator) who mixes two or more wastes (including hazardous and nonhazardous wastes) or otherwise subjects two or more wastes (including hazardous and nonhazardous wastes) to physical or chemical transformation operations, and thereby creates a new hazardous waste, becomes a generator and assumes all subsequent generator duties under RCRA and any notifier duties, if applicable, under this Subchapter.

B. General Conditions

1. Scope. The level of control for exports and imports of waste is indicated by assignment of the waste to a green, amber, or red list and by United States national procedures as defined in Subsection A.1 of this Section. The green, amber, and red lists are incorporated by reference in LAC 33:V.110.A.16.

a. Wastes on the green list are subject to existing controls normally applied to commercial transactions, except as provided in the following:

i. green-list wastes that are considered hazardous under United States national procedures are subject to amber-list controls;

ii. green-list wastes that are sufficiently contaminated or mixed with amber-list wastes such that the waste or waste mixture is considered hazardous under United States national procedures are subject to amber-list controls;

iii. green-list wastes that are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under United States national procedures must be handled in accordance with the red-list controls.

b. Wastes on the amber list that are considered hazardous under United States national procedures as defined in Subsection A.1 of this Section are subject to the amber-list controls of this Subchapter.

i. If amber-list wastes are sufficiently contaminated or mixed with other wastes subject to red-list controls such that the waste or waste mixture is considered hazardous under United States national procedures, the wastes must be handled in accordance with the red-list controls.

ii. Reserved

c. Wastes on the red list that are considered hazardous under United States national procedures as defined in Subsection A.1 of this Section are subject to the red-list controls of this Subchapter.

Note: Some wastes on the amber or red lists are not listed or otherwise identified as hazardous under RCRA (e.g., polychlorinated biphenyls) and, therefore, are not subject to the amber-list or red-list controls of this Subchapter. Regardless of the status of the waste under RCRA, however, other federal environmental statutes (e.g., the Toxic Substances Control Act) may restrict certain waste imports or exports. Such restrictions continue to apply without regard to this Subchapter.

d. Wastes not yet assigned to a list are eligible for transfrontier movements, as follows:

i. if such wastes are considered hazardous under United States national procedures as defined in Subsection A.1 of this Section, these wastes are subject to the red-list controls; or

ii. if such wastes are not considered hazardous under United States national procedures as defined in Subsection A.1 of this Section, such wastes may move as though they appeared on the green list.

2. General Conditions Applicable to Transfrontier Movements of Hazardous Waste

a. The waste must be destined for recovery operations at a facility that, under applicable domestic law, is operating or is authorized to operate in the importing country.

b. The transfrontier movement must be in compliance with applicable international transport agreements.

Note: These international agreements include, but are not limited to, the Chicago Convention (1944), ADR (1957), ADN (1970), MARPOL Convention (1973/1978), SOLAS Convention (1974), IMDG Code (1985), COTIF (1985), and RID (1985).

c. Any transit of waste through a non-OECD member country must be conducted in compliance with all applicable international and national laws and regulations.

3. Provisions Relating to Re-export for Recovery to a Third Country

a. Re-export of wastes subject to the amber-list control system from the United States, as the importing country, to a third country listed in LAC 33:V.1113.I.1.a may occur only after a notifier in the United States provides notification to and obtains consent of the competent authorities in the third country, the original exporting country, and new transit countries. The notification must comply with the notice and consent procedures in Subsection C of this Section for all concerned countries, and the original exporting country. The competent authorities of the original exporting country as well as the competent authorities of all other concerned countries have 30 days to object to the proposed movement.

i. The 30-day period begins once the competent authorities of both the initial exporting country and new importing country issue Acknowledgements of Receipt of the notification.

ii. The transfrontier movement may commence if no objection has been lodged after the 30-day period has passed or immediately after written consent is received from all relevant OECD importing and transit countries.

b. Re-export of wastes subject to the red-list control system from the original importing country to a third country listed in LAC 33:V.1113.I.1.a may occur only following notification of the competent authorities of the third country, the original exporting country, and new transit countries by a notifier in the original importing country in accordance with Subsection C of this Section. The transfrontier movement may not proceed until receipt by the original importing country of written consent from the competent authorities of the third country, the original exporting country, and new transit countries.

c. In the case of re-export of amber-list or red-list wastes to a country other than those in LAC 33:V.1113.I.1.a,

notification to and consent of the competent authorities of the original OECD member country of export and any OECD member countries of transit is required as specified in Subsection B.3.a-b of this Section in addition to compliance with all international agreements and arrangements to which the first importing OECD member country is a party and all applicable regulatory requirements for exports from the first importing country.

C. Notification and Consent

1. Applicability. Consent must be obtained from the competent authorities of the relevant OECD importing and transit countries prior to exporting hazardous waste destined for recovery operations subject to this Subchapter. Hazardous wastes subject to amber-list controls are subject to the requirements of Subsection C.2 of this Section; hazardous wastes subject to red-list controls are subject to the requirements of Subsection C.3 of this Section; and wastes not identified on any list are subject to the requirements of Subsection C.4 of this Section.

2. Amber-List Wastes. The export from the United States of hazardous wastes as described in Subsection A.1 of this Section that appear on the amber list is prohibited unless the notification and consent requirements of this Subsection are met.

a. Transactions Requiring Specific Consent

i. Notification. At least 45 days prior to commencement of the transfrontier movement, the notifier must provide written notification in English of the proposed transfrontier movement to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, with the words "Attention: OECD Export Notification" prominently displayed on the envelope. This notification must include all of the information identified in Subsection C.5 of this Section. In cases where wastes having similar physical and chemical characteristics, the same United Nations classification, and the same RCRA waste codes are to be sent periodically to the same recovery facility by the same notifier, the notifier may submit one notification of intent to export these wastes in multiple shipments during a period of up to one year.

ii. Tacit Consent. If no objection has been lodged by any concerned country (i.e., exporting, importing, or transit countries) to a notification provided pursuant to Subsection C.2.a.i of this Section within 30 days after the date of issuance of the Acknowledgment of Receipt of notification by the competent authority of the importing country, the transfrontier movement may commence. Tacit consent expires one calendar year after the close of the 30-day period; renotification and renewal of all consents are required for exports after that date.

iii. Written Consent. If the competent authorities of all the relevant OECD importing and transit countries provide written consent in a period less than 30 days, the transfrontier movement may commence immediately after all necessary consents are received. Written consent expires for each relevant OECD importing and transit country one calendar year after the date of that country's consent unless otherwise

specified; renotification and renewal of each expired consent is required for exports after that date.

b. Shipments to Facilities Preapproved by the Competent Authorities of the Importing Countries to Accept Specific Wastes for Recovery

i. The notifier must provide EPA the information identified in Subsection C.5 of this Section, in English, at least 10 days in advance of commencing shipment to a preapproved facility. The notification should indicate that the recovery facility is preapproved and may apply to a single specific shipment or to multiple shipments as described in Subsection C.2.a.i of this Section. This information must be sent to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, with the words "OECD Export Notification-Preapproved Facility" prominently displayed on the envelope.

ii. Shipments may commence after the notification required in Subsection C.2.a.i of this Section has been received by the competent authorities of all concerned countries, unless the notifier has received information indicating that the competent authorities of one or more concerned countries objects to the shipment.

3. Red-List Wastes. The export from the United States of hazardous wastes as described in Subsection A.1 of this Section that appear on the red list is prohibited unless notice is given in accordance with Subsection C.2.a.i of this Section and the notifier receives written consent from the importing country and any transit countries prior to commencement of the transfrontier movement.

4. Unlisted Wastes. Wastes not assigned to the green, amber, or red list that are considered hazardous under United States national procedures as defined in Subsection A.1 of this Section are subject to the notification and consent requirements established for red-list wastes in accordance with Subsection C.3 of this Section. Unlisted wastes that are not considered hazardous under United States national procedures as defined in Subsection A.1 of this Section are not subject to amber or red controls when exported or imported.

5. Notification Information. Notifications submitted under this Section must include:

- a. serial number or other accepted identifier of the notification form;
- b. notifier name and EPA identification number (if applicable), address, and telephone and telefax numbers;
- c. importing recovery facility name, address, telephone and telefax numbers, and technologies employed;
- d. consignee name (if not the owner or operator of the recovery facility), address, and telephone and telefax numbers; whether the consignee will engage in waste exchange or storage prior to delivering the waste to the final recovery facility and identification of recovery operations to be employed at the final recovery facility;
- e. intended transporters and/or their agents;
- f. country of export and relevant competent authority and point of departure;

g. countries of transit and relevant competent authorities and points of entry and departure;

h. country of import and relevant competent authority and point of entry;

i. statement of whether the notification is a single notification or a general notification. If general, include the period of validity requested;

j. date foreseen for commencement of transfrontier movement;

k. designation of waste type(s) from the appropriate list (amber or red and waste list code), descriptions of each waste type, estimated total quantity of each, RCRA waste code, and United Nations number for each waste type; and

l. certification/declaration signed by the notifier that states:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into and that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement."

Name: _____

Signature: _____

Date: _____

Note: The United States does not currently require financial assurance; however, United States exporters may be asked by other governments to provide and certify to such assurance as a condition of obtaining consent to a proposed movement.

D. Tracking Document

1. All United States parties subject to the contract provisions of Subsection E of this Section must ensure that a tracking document meeting the conditions of Subsection D.2 of this Section accompanies each transfrontier shipment of wastes subject to amber-list or red-list controls from the initiation of the shipment until it reaches the final recovery facility, including cases in which the waste is stored and/or exchanged by the consignee prior to shipment to the final recovery facility, except as provided in Subsection D.1.a-b of this Section.

a. For shipments of hazardous waste within the United States solely by water (bulk shipments only) the generator must forward the tracking document with the manifest to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water (in accordance with the manifest routing procedures in LAC 33:V.1107.D.3).

b. For rail shipments of hazardous waste within the United States which originate at the site of generation, the generator must forward the tracking document with the manifest (in accordance with the routing procedures for the manifest in LAC 33:V.1107.D.4) to the next nonrail transporter, if any, or the last rail transporter to handle the waste in the United States if exported by rail.

2. The tracking document must include all information required under Subsection C of this Section for notification and the following:

- a. date shipment commenced;
- b. name (if not notifier), address, and telephone and telefax numbers of primary exporter;
- c. company name and EPA ID number of all transporters;

d. identification (license, registered name, or registration number) of means of transport, including types of packaging;

e. any special precautions to be taken by transporters;

f. certification/declaration signed by notifier that no objection to the shipment has been lodged as follows:

"I certify that the above information is complete and correct to the best of my knowledge. I also certify that legally enforceable written contractual obligations have been entered into, that any applicable insurance or other financial guarantees are or shall be in force covering the transfrontier movement, and that:

[List the following sentence that is applicable]

1. all necessary consents have been received; or

2. the shipment is directed at a recovery facility within the OECD area and no objection has been received from any of the concerned countries within the 30 day tacit consent period; or

3. the shipment is directed at a recovery facility preauthorized for that type of waste within the OECD area; such an authorization has not been revoked, and no objection has been received from any of the concerned countries."

Name: _____

Signature: _____

Date: _____

and

g. appropriate signatures for each custody transfer (e.g., transporter, consignee, and owner or operator of the recovery facility).

3. Notifiers also must comply with the special manifest requirements of LAC 33:V.1113.E.1, 2, 3, 5, and 9; and consignees must comply with the import requirements of LAC 33:V. 1123.

4. Each United States person that has physical custody of the waste from the time the movement commences until it arrives at the recovery facility must sign the tracking document (e.g., transporter, consignee, and owner or operator of the recovery facility).

5. Within three working days of the receipt of imports subject to this Subchapter, the owner or operator of the United States recovery facility must send signed copies of the tracking document to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to the competent authorities of the exporting and transit countries.

E. Contracts

1. Transfrontier movements of hazardous wastes subject to amber or red control procedures are prohibited unless they occur under the terms of a valid written contract, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Such contracts or equivalent arrangements must be executed by the notifier and the owner or operator of the recovery facility and must specify responsibilities for each. Contracts or equivalent arrangements are valid for the purposes of this Section only if persons assuming obligations under the contracts or equivalent arrangements have appropriate legal status to conduct the operations specified in the contract or equivalent arrangement.

2. Contracts or equivalent arrangements must specify the name and EPA ID number, where available, of:

a. the generator of each type of waste;

b. each person who will have physical custody of the wastes;

c. each person who will have legal control of the wastes; and

d. the recovery facility.

3. Contracts or equivalent arrangements must specify which party to the contract will assume responsibility for alternate management of the wastes if its disposition cannot be carried out as described in the notification of intent to export. In such cases, contracts must specify that:

a. the person having actual possession or physical control over the wastes will immediately inform the notifier and the competent authorities of the exporting and importing countries and, if the wastes are located in a country of transit, the competent authorities of that country; and

b. the person specified in the contract will assume responsibility for the adequate management of the wastes in compliance with applicable laws and regulations including, if necessary, arranging their return to the original country of export.

4. Contracts must specify that the consignee will provide the notification required in Subsection B.3 of this Section prior to re-export of controlled wastes to a third country.

5. Contracts or equivalent arrangements must include provisions for financial guarantees, if required by the competent authorities of any concerned country, in accordance with applicable national or international law requirements.

Note: Financial guarantees so required are intended to provide for alternate recycling, disposal, or other means of sound management of the wastes in cases where arrangements for the shipment and the recovery operations cannot be carried out as foreseen. The United States does not require such financial guarantees at this time; however, some OECD countries do. It is the responsibility of the notifier to ascertain and comply with such requirements; in some cases, transporters or consignees may refuse to enter into the necessary contracts absent specific references or certifications to financial guarantees.

6. Contracts or equivalent arrangements must contain provisions requiring each contracting party to comply with all applicable requirements of this Subchapter.

7. Upon request by EPA, United States notifiers, consignees, or recovery facilities must submit to EPA copies of contracts, chain of contracts, or equivalent arrangements (when the movement occurs between parties controlled by the same corporate or legal entity). Information contained in the contracts or equivalent arrangements for which a claim of confidentiality is asserted in accordance with 40 CFR 2.203(b) will be treated as confidential and will be disclosed by EPA only as provided in 40 CFR 260.2.

Note: Although the United States does not require routine submission of contracts at this time, OECD Council Decision C(92)39/FINAL allows members to impose such requirements. When other OECD countries require submission of partial or complete copies of the contract as a condition to granting consent to proposed movements, EPA will request the required information; absent submission of such information, some OECD countries may deny consent for the proposed movement.

F. Provisions Relating to Recognized Traders

1. A recognized trader who takes physical custody of a waste and conducts recovery operations (including storage prior to recovery) is acting as the owner or operator of a recovery facility and must be so authorized in accordance with all applicable federal laws.

2. A recognized trader acting as a notifier or consignee for transfrontier shipments of waste must comply with all the requirements of this Subchapter associated with being a notifier or consignee.

G. Reporting and Record Keeping

1. Annual Reports. For all waste movements subject to this Subchapter, persons (e.g., notifiers, recognized traders) who meet the definition of primary exporter in LAC 33:V.109 shall file an annual report with the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, no later than March 1 of each year summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year. (If the primary exporter is required to file an annual report for waste exports that are not covered under this Subchapter, he may include all export information in one report provided the information required by this Subsection on exports of waste destined for recovery within the designated OECD member countries is contained in a separate Section.) Such reports shall include the following:

a. the EPA identification number, name, and mailing and site address of the notifier filing the report;

b. the calendar year covered by the report;

c. the name and site address of each final recovery facility;

d. by final recovery facility, for each hazardous waste exported, a description of the hazardous waste, the EPA hazardous waste number (from LAC 33:V.Chapter 49), designation of waste type(s) from OECD waste lists and applicable waste code from the OECD lists, the DOT hazard class, the name and U.S. EPA identification number (where applicable) for each transporter used, the total amount of hazardous waste shipped pursuant to this Subchapter, and the number of shipments pursuant to each notification;

e. in even numbered years, for each hazardous waste exported, except for hazardous waste produced by exporters of greater than 100kg but less than 1,000 kg in a calendar month and except for hazardous waste for which information was already provided pursuant to LAC 33:V.1111.B:

i. a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

ii. a description of the changes in volume and toxicity of the waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

f. a certification signed by the person acting as primary exporter that states:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment."

2. Exception Reports. Any person who meets the definition of primary exporter in LAC 33:V.109 must file an exception report, in lieu of the requirements of LAC 33:V.1111.C, with the administrative authority if any of the following occurs:

a. he has not received a copy of the tracking documentation signed by the transporter stating point of departure of the waste from the United States within 45 days from the date it was accepted by the initial transporter;

b. within 90 days from the date the waste was accepted by the initial transporter, the notifier has not received written confirmation from the recovery facility that the hazardous waste was received; or

c. the waste is returned to the United States.

3. Recordkeeping

a. Persons who meet the definition of primary exporter in LAC 33:V.109 shall keep the following records:

i. a copy of each notification of intent to export and all written consents obtained from the competent authorities of concerned countries for a period of at least three years from the date the hazardous waste was accepted by the initial transporter;

ii. a copy of each annual report for a period of at least three years from the due date of the report; and

iii. a copy of any exception reports and a copy of each confirmation of delivery (i.e., tracking documentation) sent by the recovery facility to the notifier for at least three years from the date the hazardous waste was accepted by the initial transporter or received by the recovery facility, whichever is applicable.

b. The periods of retention referred to in this Section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrative authority.

H. Preapproval for United States Recovery Facilities—Reserved.

I. OECD Waste Lists

1. General. For the purposes of this Subchapter, a waste is considered hazardous under United States national procedures, and hence subject to this Subchapter, if the waste:

a. meets the definition of hazardous waste in LAC 33:V.109; and

b. is subject to either the manifesting requirements of this Chapter or to the universal waste management standards of LAC 33:V.Chapter 38.

2. If a waste is hazardous under Subsection I.1.a of this Section and it appears on the amber or red list, it is subject to amber-list or red-list requirements respectively.

3. If a waste is hazardous under Subsection I.1.a of this Section and it does not appear on either the amber or red list, it is subject to red-list requirements.

4. The appropriate control procedures for hazardous wastes and hazardous waste mixtures are addressed in Subsection B of this Section.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998).

Chapter 13. Transporters

§1301. Applicability

* * *

[See Prior Text in A-D.2]

E. A transporter of hazardous waste must also comply with LAC 33:V.Chapter 11 if he transports hazardous waste into Louisiana from abroad or mixes hazardous wastes of different United States Department of Transportation shipping descriptions by placing them into a single container.

F. A transporter of hazardous waste subject to the manifesting requirements of LAC 33:V.Chapter 11 or subject to the waste management standards of LAC 33:V.Chapter 38 that is being imported from or exported to any of the countries listed in LAC 33:V.1113.I.1.a for purposes of recovery is subject to this Chapter and to all other relevant requirements of LAC 33:V.Chapter 11.Subchapter B including, but not limited to, LAC 33:V.1127.D for tracking documents.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998).

§1307. The Manifest System

A. A transporter may not accept hazardous waste from a generator or another transporter unless it is accompanied by a manifest, signed by the generator in accordance with the provisions of LAC 33:V.1107. The transportation of any hazardous wastes without a manifest shall be deemed a violation of these regulations and the Act. In the case of exports other than those subject to LAC 33:V.Chapter 11.Subchapter B, a transporter may not accept such waste from a primary exporter or other person:

* * *

[See Prior Text in A.1]

2. unless, in addition to a manifest signed in accordance with LAC 33:V.1107, such waste is also accompanied by an EPA Acknowledgment of Consent which, except for shipment by rail, is attached to the manifest (or shipping paper for exports by water [bulk shipment]). For exports of hazardous waste subject to the requirements of LAC 33:V.Chapter 11.Subchapter B, a transporter may not accept hazardous waste without a tracking document that includes all information required by LAC 33:V.1127.D.

* * *

[See Prior Text in B-H]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1109 (October 1994), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998).

Chapter 15. Treatment, Storage, and Disposal Facilities

§1531. Required Notices

A. The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the administrative authority in writing at least four weeks in advance of the date the waste is expected to arrive at the facility. Notice of subsequent shipments of the same waste from the same foreign source is not required.

B. The owner or operator of a recovery facility that has arranged to receive hazardous waste subject to LAC 33:V.Chapter 11.Subchapter B must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, and to the competent authorities of all other concerned countries within three working days of receipt of the shipment. The original of the signed tracking document must be maintained at the facility for at least three years.

C. The owner or operator of a facility that receives hazardous waste from an off-site source (except where the owner or operator is also the generator) must inform the generator in writing that he has the appropriate permit(s) for, and will accept, the waste the generator is shipping. The owner or operator must keep a copy of this written notice as part of the operating record.

D. Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the post-closure care period, the owner or operator must notify the new owner or operator in writing of the requirements of LAC 33:V.Subpart 1.

E. An owner's or operator's failure to notify the new owner or operator of the requirements in no way relieves the new owner or operator of his obligation to comply with all applicable requirements.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:378 (May 1989), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998).

Chapter 22. Prohibitions on Land Disposal

Subchapter A. Land Disposal Restrictions

§2201. Purpose, Scope, and Applicability

* * *

[See Prior Text in A-G.3]

4. wastes that are hazardous only because they exhibit a hazardous characteristic, and which are otherwise prohibited under this Chapter, are not prohibited if the wastes:

a. are disposed into a nonhazardous or hazardous injection well as defined in LAC 43:XVII.203.C; and

b. do not exhibit any prohibited characteristic of hazardous waste identified in LAC 33:V.4903 at the point of injection at the well head.

5. wastes that are hazardous only because they exhibit a hazardous characteristic and which are otherwise prohibited under this Chapter are not prohibited if the wastes meet any of the following criteria, unless the wastes are subject to a specified method of treatment other than DEACT in Table 2 of this Chapter, or are D003 reactive cyanide:

a. the wastes are managed in a treatment system which subsequently discharges to waters of the United States pursuant to a permit issued under section 402 of the Clean Water Act; or

b. the wastes are treated for purposes of the pretreatment requirements of section 307 of the Clean Water Act; or

c. the wastes are managed in a zero discharge system engaged in Clean Water Act-equivalent treatment as defined in LAC 33:V.2221.D.1; and

d. the wastes no longer exhibit a prohibited characteristic at the point of land disposal (i.e., placement in a surface impoundment).

* * *

[See Prior Text in H-I.5.c]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:398 (May 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:666 (April 1998).

§2203. Definitions Applicable to this Chapter

* * *

[See Prior Text in A-A. Injection Zone]

Inorganic Metal-Bearing Waste—a waste for which the department has established treatment standards for metal hazardous constituents and which does not otherwise contain significant organic or cyanide content as described in LAC 33:V.2207.C.1, and is specifically listed in Table 12 of this Chapter.

* * *

[See Prior Text]

Underlying Hazardous Constituent—any constituent listed in LAC 33:V.Chapter 22.Table 7, Universal Treatment Standards, except fluoride, vanadium, and zinc, which can reasonably be expected to be present at the point of generation of the hazardous waste, at a concentration above the constituent-specific UTS treatment standard.

Wastewaters—wastes that contain less than 1 percent by weight total organic carbon (TOC) and less than 1 percent by weight total suspended solids (TSS).

* * *

[See Prior Text in B]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:221 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998).

§2207. Dilution Prohibited as a Substitute for Treatment

A. Except as provided in Subsection B of this Section, no generator, transporter, handler, or owner or operator of a treatment, storage, or disposal facility shall in any way dilute a prohibited waste or the residual from treatment of a prohibited waste as a substitute for adequate treatment to achieve compliance with this Chapter, to circumvent the effective date of or otherwise avoid a prohibition listed in Subchapter A of this Chapter, or to circumvent a land disposal prohibition imposed by RCRA section 3004.

B. Dilution of wastes that are hazardous only because they exhibit a characteristic in treatment systems that include land-based units which treat wastes subsequently discharged to a water of the United States pursuant to a permit issued under section 402 of the Clean Water Act (CWA) or which treat wastes in a CWA-equivalent treatment system or which treat wastes for purposes of pretreatment requirements under section 307 of the CWA is not impermissible dilution for purposes of this Section unless a method other than DEACT has been specified in LAC 33:V.2223 as the treatment standard, or unless the waste is a D003 reactive cyanide wastewater or nonwastewater.

C. Combustion of the hazardous waste codes listed in Table 12 of this Chapter is prohibited, unless the waste, at the point of generation, or after any bona fide treatment, such as cyanide destruction prior to combustion, can be demonstrated to comply with one or more of the following criteria (unless otherwise specifically prohibited from combustion):

1. the waste contains hazardous organic constituents or cyanide at levels exceeding the constituent-specific treatment standard found in Table 7 of this Chapter;

2. the waste consists of organic, debris-like materials (e.g., wood, paper, plastic, or cloth) contaminated with an inorganic metal-bearing hazardous waste;

3. the waste, at point of generation, has reasonable heating value, such as greater than or equal to 5,000 BTU per pound;

4. the waste is cogenerated with wastes for which combustion is a required method of treatment;

5. the waste is subject to federal and/or state requirements necessitating reduction of organics (including biological agents); or

6. the waste contains greater than 1 percent Total Organic Carbon (TOC).

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998).

§2221. Schedule of Wastes Identified or Listed After November 8, 1984

* * *

[See Prior Text in A-E.5]

F. Waste-Specific Prohibitions: Spent Aluminum Potliners and Reactive and Carbamate Wastes

1. Effective April 20, 1998, the wastes specified in LAC 33:V.4901.C as EPA Hazardous Waste Numbers K156-K159,

K161, and in LAC 33:V.4901.E as EPA Hazardous Waste Numbers P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

2. Effective April 20, 1998, the wastes identified in LAC 33:V.4903.D as D003 that are managed in systems other than those whose discharge is regulated under the Clean Water Act (CWA) or that inject in Class I deep wells regulated under the Safe Drinking Water Act (SDWA) or that are zero dischargers that engage in CWA-equivalent treatment before ultimate land disposal, are prohibited from land disposal. This prohibition does not apply to unexploded ordnance and other explosive devices, which have been the subject of an emergency response. Such D003 wastes are prohibited unless they meet the treatment standard of DEACT before land disposal (see LAC 33:V.2223).

3. Effective April 20, 1998, the wastes specified in LAC 33:V.4901.C as EPA Hazardous Waste Number K088 are prohibited from land disposal. In addition, soil and debris contaminated with these wastes are prohibited from land disposal.

4. On April 20, 1998, radioactive wastes mixed with K088, K156-K161, P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U277-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U400-U404, U407, and U409-U411 are also prohibited from land disposal. In addition, soil and debris contaminated with these radioactive mixed wastes are prohibited from land disposal.

5. Between July 8, 1996, and April 20, 1998, the wastes included in 40 CFR 268.39(a), (c), and (d) may be disposed in a landfill or surface impoundment, only if such unit is in compliance with the requirements specified in LAC 33:V.2239.I.2.

6. The requirements of Subsection F.1-4 of this Section do not apply if:

a. the wastes meet the applicable treatment standards specified in this Chapter;

b. persons have been granted an exemption from a prohibition pursuant to a petition under LAC 33:V.2241, with respect to those wastes and units covered by the petition;

c. the wastes meet the applicable alternate treatment standards established pursuant to a petition granted under LAC 33:V.2231; or

d. persons have been granted an extension to the effective date of a prohibition pursuant to LAC 33:V.2239, with respect to these wastes covered by the extension.

7. To determine whether a hazardous waste identified in this Section exceeds the applicable treatment standards specified in LAC 33:V.2223, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable treatment levels, the waste is prohibited from land disposal and all

requirements of this Chapter are applicable, except as otherwise specified.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:667 (April 1998).

§2223. Applicability of Treatment Standards

A. A prohibited waste identified in the LAC 33:V.Chapter 22.Table 2 may be land disposed only if it meets the requirements found in Table 2. For each waste, the table identifies one of the three types of treatment standard requirements:

* * *

[See Prior Text in A.1-B]

C. For characteristic wastes (D001-D003, and D012-D043) that are subject to treatment standards in LAC 33:V.Chapter 22.Table 2, "Treatment Standards for Hazardous Wastes," all underlying hazardous constituents (as defined in LAC 33:V.2203) must meet Universal Treatment Standards, found in LAC 33:V.Chapter 22.Table 7, prior to land disposal as defined in LAC 33:V.2203.

* * *

[See Prior Text in D]

E. Between August 26, 1996, and August 26, 1997, the treatment standards for the wastes specified in LAC 33:V.4901.C as EPA Hazardous Waste Numbers K156-K159, K161, and in LAC 33:V.4901.E-F as EPA Hazardous Waste Numbers P127, P128, P185, P188-P192, P194, P196-P199, P201-P205, U271, U278-U280, U364-U367, U372, U373, U375-U379, U381-U387, U389-U396, U404, and U409-U411 and soil contaminated with these wastes were satisfied by either meeting the constituent concentrations presented in LAC 33:V.Chapter 22.Table 2, or by treating the waste by the following technologies: combustion, as defined by the technology code CMBST at LAC 33:V.Chapter 22.Table 3, for nonwastewaters; and biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at LAC 33:V.Chapter 22.Table 3, for wastewaters.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:668 (April 1998).

§2235. Landfills and Surface Impoundments Disposal Restrictions

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR

16:1057 (December 1990), LR 17:658 (July 1991), LR 22:22 (January 1996), repealed by the Office of Waste Services, Hazardous Waste Division, LR 24:668 (April 1998).

§2245. Generators' Waste Analysis, Record keeping, and Notice Requirements

A. Except as specified in LAC 33:V.2213, if a generator's waste is listed in LAC 33:V.Chapter 49, the generator must test his or her waste or test an extract using Method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference at LAC 33:V.110, or use knowledge of the waste to determine if the waste is prohibited from land disposal under this Chapter. Except as specified in LAC 33:V.2213, if a generator's waste exhibits one or more of the characteristics set out at LAC 33:V.4903, the generator must test an extract using Method 1311, the Toxicity Characteristic Leaching Procedure, described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference at LAC 33:V.110, or use knowledge of the waste, to determine if the waste is prohibited from land disposal under this Chapter. If the generator determines that his waste exhibits the characteristic of ignitability (D001) (and is not in the High TOC Ignitable Liquids Subcategory or is not treated by CMBST or RORGS of Table 3 of this Chapter) and/or the characteristic of corrosivity (D002) and/or reactivity (D003) and/or the characteristic of organic toxicity (D012-D043), and the waste is prohibited under LAC 33:V.2221.D-F, the generator must determine the underlying hazardous constituents, as defined in LAC 33:V.2203, in the D001, D002, D003, or D012-D043 waste.

* * *

[See Prior Text in B-B.1]

2. the waste constituents that the person treating the waste will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, D003, and D012-D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

* * *

[See Prior Text in B.3-4]

5. for hazardous debris, the contaminants subject to treatment as provided by LAC 33:V.2230 and the following statement: "This hazardous debris is subject to the alternative treatment standards of LAC 33:V.2230."

C. If a generator determines that he or she is managing a waste prohibited under this Chapter and determines that the waste can be land disposed without further treatment, with each shipment of waste he or she must submit to the treatment, storage, or land disposal facility a notice and certification stating that the waste meets the applicable treatment standards set forth in LAC 33:V.Chapter 22.Subchapter A and the applicable prohibitions set forth in LAC 33:V.2213. Generators of hazardous debris that is excluded from the definition of hazardous waste under LAC 33:V.109 (i.e., debris that the administrative authority has determined does not contain hazardous waste), however,

are not subject to these notification and certification requirements.

* * *

[See Prior Text in C.1-1.a]

b. the waste constituents that the person treating the waste will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, D003, and D012-D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

* * *

[See Prior Text in C.1.c-D.1]

2. the waste constituents that the person treating the waste will monitor, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, D003, and D012-D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

* * *

[See Prior Text in D.3-K]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998).

§2246. Special Rules Regarding Wastes That Exhibit a Characteristic

A. The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under this Chapter. For purposes of this Chapter, the waste will carry the waste code for any applicable listing under LAC 33:V.4901. In addition, the waste will carry one or more of the waste codes under LAC 33:V.4903, where the waste exhibits a characteristic, except in the case when the treatment standard for the waste code listed in LAC 33:V.4901 operates in lieu of the standard for the waste code under LAC 33:V.4903, as specified in LAC 33:V.2246.B. If the generator determines that his waste displays a hazardous characteristic (and the waste is not a D004-D011 waste, a High TOC D001, or is not treated by CMBST, or RORGS of LAC 33:V.Chapter 22.Table 3), the generator must determine what underlying hazardous constituents (as defined in LAC 33:V.2203.A) are reasonably expected to be present above the universal treatment standards found in LAC 33:V.2233.

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[See Prior Text in B-E.3.c]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended

LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998).

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

* * *

[See Prior Text in A-B.1]

2. the waste constituents to be monitored, if monitoring will not include all regulated constituents, for wastes F001-F005, F039, D001, D002, D003, and D012-D043. Generators must also include whether the waste is a nonwastewater or wastewater (as defined in LAC 33:V.2203) and indicate the subcategory of the waste (such as "D003 reactive cyanide"), if applicable;

* * *

[See Prior Text in B.3-C.3]

4. For characteristic wastes D001, D002, D003, and D012-D043 that are subject to the treatment standards in LAC 33:V.2223 (other than those expressed as a required method of treatment), that are reasonably expected to contain underlying hazardous constituents as defined in LAC 33:V.2203, that are treated on-site to remove the hazardous characteristic and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of LAC 33:V.2223 to remove the

hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet universal treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

5. For characteristic wastes D001, D002, D003, and D012-D043 that contain underlying hazardous constituents, as defined in LAC 33:V.2203.A, and that are treated on-site to remove the hazardous characteristic and to treat underlying hazardous constituents to levels in LAC 33:V.2233.Universal Treatment Standards, the certification must state the following:

"I certify under penalty of law that the waste has been treated in accordance with the requirements of LAC 33:V.2223 to remove the hazardous characteristic and that underlying hazardous constituents, as defined in LAC 33:V.2203.A, have been treated on-site to meet the LAC 33:V.2233.Universal Treatment Standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

* * *

[See Prior Text in D-H]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 23:566 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:670 (April 1998).

Appendix

Table 2. Treatment Standards for Hazardous Wastes					
Waste Code	Waste Description and Treatment/Regulatory Subcategory ¹	Regulated Hazardous Constituent		Wastewaters	Nonwastewaters
		Common Name	CAS ² Number	Concentration mg/l ³ ; or Technology Code ⁴	Concentration in mg/kg ⁵ unless noted as "mg/l TCLP" or Technology Code ⁴
D001 ⁹	Ignitable Characteristic Wastes, except for the LAC 33:V.4903.B.1 High TOC Subcategory	NA	NA	DEACT and meet LAC 33:V.2233 standards ⁸ ; or RORGS; or CMBST	DEACT and meet LAC 33:V.2233 standards ⁸ ; or RORGS; or CMBST
	High TOC Ignitable Characteristic Liquids Subcategory based on LAC 33:V 4903.B.1. - Greater than or equal to 10 percent total organic carbon. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	RORGS; or CMBST
D002 ⁹	Corrosive Characteristic Wastes	NA	NA	DEACT and meet LAC 33:V.2233 standards ⁸	DEACT and meet LAC 33:V.2233 standards ⁸
* * *					
[See Prior Text in D002, D004-D011 Radioactive High Level Wastes]					

D003 ⁹	Reactive Sulfides Subcategory based on LAC 33:V.4903.D.5.	NA	NA	DEACT	DEACT
	Explosives Subcategory based on LAC 33:V.4903.D.6, 7, and 8.	NA	NA	DEACT and meet LAC 33:V.2233 standards ⁸	DEACT and meet LAC 33:V.2233 standards ⁸
	Unexploded ordnance and other explosive devices that have been the subject of emergency response.	NA	NA	DEACT	DEACT
	Other Reactives Subcategory based on LAC 33:V.4903.D.1.	NA	NA	DEACT and meet LAC 33:V.2233 standards ⁸	DEACT and meet LAC 33:V.2233 standards ⁸
	Water Reactive Subcategory based on LAC 33:V.4903.D.2, 3, and 4. (Note: This subcategory consists of nonwastewaters only.)	NA	NA	NA	DEACT and meet LAC 33:V.2233 standards ⁸
	Reactive Cyanides Subcategory based on LAC 33:V.4903.D.5.	Cyanides (Total) ⁷	57-12-5	Reserved	590
	Cyanides (Amenable) ⁷	57-12-5	0.86	30	
* * *					
[See Prior Text in D004 - D011]					
D012 ⁹	Wastes that are TC for Endrin based on the TCLP in SW846 Method 1311.	Endrin	72-20-8	BIODG; or CMBST	0.13 and meet LAC 33:V.2233 standards ⁸
		Endrin aldehyde	7421-93-4	BIODG; or CMBST	0.13 and meet LAC 33:V.2233 standards ⁸
D013 ⁹	Wastes that are TC for Lindane based on the TCLP in SW846 Method 1311.	alpha-BHC	319-84-6	CARBN; or CMBST	0.066 and meet LAC 33:V.2233 standards ⁸
		beta-BHC	319-85-7	CARBN; or CMBST	0.066 and meet LAC 33:V.2233 standards ⁸
		delta-BHC	319-86-8	CARBN; or CMBST	0.066 and meet LAC 33:V.2233 standards ⁸
		gamma-BHC (Lindane)	58-89-9	CARBN; or CMBST	0.066 and meet LAC 33:V.2233 standards ⁸
D014 ⁹	Wastes that are TC for Methoxychlor based on the TCLP in SW846 Method 1311.	Methoxychlor	72-43-5	WETOX or CMBST	0.18 and meet LAC 33:V.2233 standards ⁸
D015 ⁹	Wastes that are TC for Toxaphene based on the TCLP in SW846 Method 1311.	Toxaphene	8001-35-2	BIODG or CMBST	2.6 and meet LAC 33:V.2233 standards ⁸
D016 ⁹	Wastes that are TC for 2,4-D (2,4-Dichlorophenoxyacetic acid) based on the TCLP in SW846 Method 1311.	2,4-D (2,4-Dichlorophenoxyacetic acid)	94-75-7	CHOXD, BIODG, or CMBST	10 and meet LAC 33:V.2233 standards ⁸
D017 ⁹	Wastes that are TC for 2,4,5-TP (Silvex) based on the TCLP in SW846 Method 1311.	2,4,5-TP (Silvex)	93-72-1	CHOXD or CMBST	7.9 and meet LAC 33:V.2233 standards ⁸

D018 ⁹	Wastes that are TC for Benzene based on the TCLP in SW846 Method 1311 and that are managed in non-CWA/non-CWA equivalent/non-Class I SDWA systems only.	Benzene	71-43-2	0.14 and meet LAC 33:V.2233 standards ⁸	10 and meet LAC 33:V.2233 standards ⁸
D019 ⁹	Wastes that are TC for Carbon tetrachloride based on the TCLP in SW846 Method 1311.	Carbon tetrachloride	56-23-5	0.057 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
D020 ⁹	Wastes that are TC for Chlordane based on the TCLP in SW846 Method 1311.	Chlordane (alpha and gamma isomers)	57-74-9	0.0033 and meet LAC 33:V.2233 standards ⁸	0.26 and meet LAC 33:V.2233 standards ⁸
D021 ⁹	Wastes that are TC for Chlorobenzene based on the TCLP in SW846 Method 1311 .	Chlorobenzene	108-90-7	0.057 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
D022 ⁹	Wastes that are TC for Chloroform based on the TCLP in SW846 Method 1311.	Chloroform	67-66-3	0.046 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
D023 ⁹	Wastes that are TC for o-Cresol based on the TCLP in SW846 Method 1311.	o-Cresol	95-48-7	0.11 and meet LAC 33:V.2233 standards ⁸	5.6 and meet LAC 33:V.2233 standards ⁸
D024 ⁹	Wastes that are TC for m-Cresol based on the TCLP in SW846 Method 1311.	m-Cresol (difficult to distinguish from p-cresol)	108-39-4	0.77 and meet LAC 33:V.2233 standards ⁸	5.6 and meet LAC 33:V.2233 standards ⁸
D025 ⁹	Wastes that are TC for p-Cresol based on the TCLP in SW846 Method 1311.	p-Cresol (difficult to distinguish from m-cresol)	106-44-5	0.77 and meet LAC 33:V.2233 standards ⁸	5.6 and meet LAC 33:V.2233 standards ⁸
D026 ⁹	Wastes that are TC for Cresols (Total) based on the TCLP in SW846 Method 1311.	Cresol-mixed isomers (Cresylic acid) (sum of o-, m-, and p-cresol concentrations)	1319-77-3	0.88 and meet LAC 33:V.2233 standards ⁸	11.2 and meet LAC 33:V.2233 standards ⁸
D027 ⁹	Wastes that are TC for p-Dichlorobenzene based on the TCLP in SW846 Method 1311.	p-Dichlorobenzene (1,4-Dichlorobenzene)	106-46-7	0.090 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
D028 ⁹	Wastes that are TC for 1,2-Dichloroethane based on the TCLP in SW846 Method 1311.	1,2-Dichloroethane	107-06-2	0.21 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
D029 ⁹	Wastes that are TC for 1,1-Dichloroethylene based on the TCLP in SW846 Method 1311.	1,1-Dichloroethylene	75-35-4	0.025 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
D030 ⁹	Wastes that are TC for 2,4-Dinitrotoluene based on the TCLP in SW846 Method 1311.	2,4-Dinitrotoluene	121-14-2	0.32 and meet LAC 33:V.2233 standards ⁸	140 and meet LAC 33:V.2233 standards ⁸

D031 ⁹	Wastes that are TC for Heptachlor based on the TCLP in SW846 Method 1311.	Heptachlor	76-44-8	0.0012 and meet LAC 33:V.2233 standards ⁸	0.066 and meet LAC 33:V.2233 standards ⁸
		Heptachlor epoxide	1024-57-3	0.016 and meet LAC 33:V.2233 standards ⁸	0.066 and meet LAC 33:V.2233 standards ⁸
D032 ⁹	Wastes that are TC for Hexachlorobenzene based on the TCLP in SW846 Method 1311.	Hexachlorobenzene	118-74-1	0.055 and meet LAC 33:V.2233 standards ⁸	10 and meet LAC 33:V.2233 standards ⁸
D033 ⁹	Wastes that are TC for Hexachlorobutadiene based on the TCLP in SW846 Method 1311.	Hexachlorobutadiene	87-68-3	0.055 and meet LAC 33:V.2233 standards ⁸	5.6 and meet LAC 33:V.2233 standards ⁸
D034 ⁹	Wastes that are TC for Hexachloroethane based on the TCLP in SW846 Method 1311.	Hexachloroethane	67-72-1	0.055 and meet LAC 33:V.2233 standards ⁸	30 and meet LAC 33:V.2233 standards ⁸
D035 ⁹	Wastes that are TC for Methyl ethyl ketone based on the TCLP in SW846 Method 1311.	Methyl ethyl ketone	78-93-3	0.28 and meet LAC 33:V.2233 standards ⁸	36 and meet LAC 33:V.2233 standards ⁸
D036 ⁹	Wastes that are TC for Nitrobenzene based on the TCLP in SW846 Method 1311.	Nitrobenzene	98-95-3	0.068 and meet LAC 33:V.2233 standards ⁸	14 and meet LAC 33:V.2233 standards ⁸
D037 ⁹	Wastes that are TC for Pentachlorophenol based on the TCLP in SW846 Method 1311.	Pentachlorophenol	87-86-5	0.089 and meet LAC 33:V.2233 standards ⁸	7.4 and meet LAC 33:V.2233 standards ⁸
D038 ⁹	Wastes that are TC for Pyridine based on the TCLP in SW846 Method 1311.	Pyridine	110-86-1	0.014 and meet LAC 33:V.2233 standards ⁸	16 and meet LAC 33:V.2233 standards ⁸
D039 ⁹	Wastes that are TC for Tetrachloroethylene based on the TCLP in SW846 Method 1311.	Tetrachloroethylene	127-18-4	0.056 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
D040 ⁹	Wastes that are TC for Trichloroethylene based on the TCLP in SW846 Method 1311.	Trichloroethylene	79-01-6	0.054 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
D041 ⁹	Wastes that are TC for 2,4,5-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,5-Trichlorophenol	95-95-4	0.18 and meet LAC 33:V.2233 standards ⁸	7.4 and meet LAC 33:V.2233 standards ⁸
D042 ⁹	Wastes that are TC for 2,4,6-Trichlorophenol based on the TCLP in SW846 Method 1311.	2,4,6-Trichlorophenol	88-06-2	0.035 and meet LAC 33:V.2233 standards ⁸	7.4 and meet LAC 33:V.2233 standards ⁸
D043 ⁹	Wastes that are TC for Vinyl chloride based on the TCLP in SW846 Method 1311.	Vinyl chloride	75-01-4	0.27 and meet LAC 33:V.2233 standards ⁸	6.0 and meet LAC 33:V.2233 standards ⁸
*** [See Prior Text in F001 - K087]					

K088	Spent potliners from primary aluminum reduction.	Acenaphthene	83-32-9	0.059	3.4
		Anthracene	120-12-7	0.059	3.4
		Benz(a)anthracene	56-55-3	0.059	3.4
		Benzo(a)pyrene	50-32-8	0.061	3.4
		Benzo(b)fluoranthene	205-99-2	0.11	6.8
		Benzo(k)fluoranthene	207-08-9	0.11	6.8
		Benzo(g,h,i)perylene	191-24-2	0.0055	1.8
		Chrysene	218-01-9	0.059	3.4
		Dibenz(a,h)anthracene	53-70-3	0.055	8.2
		Fluoranthene	206-44-0	0.068	3.4
		Indeno (1,2,3-c,d)pyrene	193-39-5	0.0055	3.4
		Phenanthrene	85-01-8	0.059	5.6
		Pyrene	129-00-0	0.067	8.2
		Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.4	5.0 mg/l TCLP
		Barium	7440-39-3	1.2	7.6 mg/l TCLP
		Beryllium	7440-41-7	0.82	0.014 mg/l TCLP
		Cadmium	7440-43-9	0.69	0.19 mg/l TCLP
		Chromium (Total)	7440-47-3	2.77	0.86 mg/l TCLP
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Mercury	7439-97-6	0.15	0.025 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
		Silver	7440-22-4	0.43	0.30 mg/l TCLP
		Cyanide (Total) ⁷	57-12-5	1.2	590
		Cyanide (Amenable) ⁷	57-12-5	0.86	30
		Fluoride	16984-48-8	35	48 mg/l TCLP
* * *					
[See Prior Text in K093 -K151]					

K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. ¹⁰	Acetonitrile	75-05-8	5.6	38
		Acetophenone	96-86-2	0.010	9.7
		Aniline	62-53-3	0.81	14
		Benomyl	17804-35-2	0.056	1.4
		Benzene	71-43-2	0.14	10
		Carbaryl	63-25-2	0.006	0.14
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chlorobenzene	108-90-7	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		o-Dichlorobenzene	95-50-1	0.088	6.0
		Methomyl	16752-77	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		Naphthalene	91-20-3	0.059	5.6
		Phenol	108-95-2	0.039	6.2
		Pyridine	110-86-1	0.014	16
Toluene	108-88-3	0.080	10		
Triethylamine	121-44-8	0.081	1.5		
K157	Wastewaters (including scrubber waters, condenser waters, washwaters, and separation waters) from the production of carbamates and carbamoyl oximes. ¹⁰	Carbon tetrachloride	56-23-5	0.057	6.0
		Chloroform	67-66-3	0.046	6.0
		Chloromethane	74-87-3	0.19	30
		Methomyl	16752-77-5	0.028	0.14
		Methylene chloride	75-09-2	0.089	30
		Methyl ethyl ketone	78-93-3	0.28	36
		o-Phenylenediamine	95-54-5	0.056	5.6
		Pyridine	110-86-1	0.014	16
Triethylamine	121-44-8	0.081	1.5		

K158	Bag house dusts and filter/separation solids from the production of carbamates and carbamoyl oximes. ¹⁰	Benomyl	17804-35-2	0.056	14
		Benzene	71-43-2	0.14	10
		Carbenzadim	10605-21-7	0.056	1.4
		Carbofuran	1563-66-2	0.006	0.14
		Carbosulfan	55285-14-8	0.028	1.4
		Chloroform	67-66-3	0.046	6.0
		Methylene chloride	75-09-2	0.089	30
		Phenol	108-95-2	0.039	6.2
K159	Organics from the treatment of thiocarbamate wastes. ¹⁰	Benzene	71-43-2	0.14	10
		Butylate	2008-41-5	0.042	1.4
		EPTC (Eptam)	759-94-4	0.042	1.4
		Molinate	2212-67-1	0.042	1.4
		Pebulate	1114-71-2	0.042	1.4
		Vernolate	1929-77-7	0.042	1.4
K161	Purification solids (including filtration, evaporation, and centrifugation solids), baghouse dust, and floor sweepings from the production of dithiocarbamate acids and their salts. ¹⁰	Antimony	7440-36-0	1.9	2.1 mg/l TCLP
		Arsenic	7440-38-2	1.9	5.0 mg/l TCLP
		Carbon disulfide	75-15-0	3.8	4.8 mg/l TCLP
		Dithiocarbamates (total)	NA	0.028	28
		Lead	7439-92-1	0.69	0.37 mg/l TCLP
		Nickel	7440-02-0	3.98	5.0 mg/l TCLP
		Selenium	7782-49-2	0.82	0.16 mg/l TCLP
* * *					
[See Prior Text in P001 - P123]					
P127	Carbofuran ¹⁰	Carbofuran	1563-66-2	0.006	0.14
P128	Mexacarbate ¹⁰	Mexacarbate	315-18-4	0.056	1.4
P185	Tirpate ¹⁰	Tirpate	26419-73-8	0.056	0.28
P188	Physostigmine salicylate ¹⁰	Physostigmine salicylate	57-64-7	0.056	1.4
P189	Carbosulfan ¹⁰	Carbosulfan	55285-14-8	0.028	1.4
P190	Metolcarb ¹⁰	Metolcarb	1129-41-5	0.056	1.4
P191	Dimetilan ¹⁰	Dimetilan	644-64-4	0.056	1.4
P192	Isolan ¹⁰	Isolan	119-38-0	0.056	1.4
P194	Oxamyl ¹⁰	Oxamyl	23135-22-0	0.056	0.28
P196	Manganese dimethyldithiocarbamate ¹⁰	Dithiocarbamates (total)	NA	0.028	28

P197	Formparanate ¹⁰	Formparanate	17702-57-7	0.056	1.4
P198	Formetanate hydrochloride ¹⁰	Formetanate hydrochloride	23422-53-9	0.056	1.4
P199	Methiocarb ¹⁰	Methiocarb	2032-65-7	0.056	1.4
P201	Promecarb ¹⁰	Promecarb	2631-37-0	0.056	1.4
P202	m-Cumenyl methylcarbamate ¹⁰	m-Cumenyl methylcarbamate	64-00-6	0.056	1.4
P203	Aldicarb sulfone ¹⁰	Aldicarb sulfone	1646-88-4	0.056	0.28
P204	Physostigmine ¹⁰	Physostigmine	57-47-6	0.056	1.4
P205	Ziram ¹⁰	Dithiocarbamates (total)	NA	0.028	28
* * *					
[See Prior Text in U001 - U249]					
U271	Benomyl ¹⁰	Benomyl	17804-35-2	0.056	1.4
U278	Bendiocarb ¹⁰	Bendiocarb	22781-23-8	0.056	1.4
U279	Carbaryl ¹⁰	Carbaryl	63-25-2	0.006	0.14
U280	Barban ¹⁰	Barban	101-27-9	0.056	1.4
* * *					
[See Prior Text in U328 - U359]					
U364	Bendiocarb phenol ¹⁰	Bendiocarb phenol	22961-82-6	0.056	1.4
U367	Carbofuran phenol ¹⁰	Carbofuran phenol	1563-38-8	0.056	1.4
U372	Carbendazim ¹⁰	Carbendazim	10605- 21-7	0.056	1.4
U373	Propham ¹⁰	Propham	122-42-9	0.056	1.4
U387	Prosulfocarb ¹⁰	Prosulfocarb	52888-80-9	0.042	1.4
U389	Triallate ¹⁰	Triallate	2303-17-5	0.042	1.4
U394	A2213 ¹⁰	A2213	30558-43-1	0.042	1.4
U395	Diethylene glycol, dicarbamate ¹⁰	Diethylene glycol, dicarbamate	5952-26-1	0.056	1.4
U404	Triethylamine ¹⁰	Triethylamine	101-44-8	0.081	1.5
U409	Thiophanate-methyl ¹⁰	Thiophanate-methyl	23564-05-8	0.056	1.4
U410	Thiodicarb ¹⁰	Thiodicarb	59669-26-0	0.019	1.4
U411	Propoxur ¹⁰	Propoxur	114-26-1	0.056	1.4

* * *

[See Prior Text in Note 1 - Note 7]

⁸ These wastes, when rendered nonhazardous and then subsequently managed in CWA or CWA-equivalent systems, are not subject to treatment standards. (See LAC 33:V.2201.G.4 and G.5.)

⁹ These wastes, when rendered nonhazardous and then subsequently injected in a Class I SDWA well, are not subject to treatment standards. (See LAC 33:V.Chapter 22.Subchapter B.)

¹⁰ Between August 26, 1996, and August 26, 1997, the treatment standards for this waste were satisfied in 40 CFR 268.40(g) by either meeting the

constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at LAC 33:V.Chapter 22.Table 3, for nonwastewaters; and biodegradation, as defined by the technology code BIODG, carbon adsorption, as defined by the technology code CARBN, chemical oxidation, as defined by the technology code CHOXD, or combustion, as defined as technology code CMBST at LAC 33:V.Chapter 22, Table 3, for wastewaters. *Note:* NA means not applicable.

* * *

[See Prior Text in Table 3 - Table 6]

Table 7. Universal Treatment Standards			
Regulated Constituent-Common Name	CAS Number	Wastewater Standard Concentration in mg/l ²	Nonwastewater Standard Concentration in mg/kg ³ unless noted as "mg/l TCLP"
A2213 ⁶	30558-43-1	0.042	1.4
*** [See Prior Text in Acenaphthylene - Acrylonitrile]			
Aldicarb sulfone ⁶	1646-88-4	0.056	0.28
*** [See Prior Text in Aldrin - gamma - BHC]			
Barban ⁶	101-27-9	0.056	1.4
Bendiocarb ⁶	22781-23-3	0.056	1.4
Bendiocarb phenol ⁶	22961-82-6	0.056	1.4
Benomyl ⁶	17804-35-2	0.056	1.4
*** [See Prior Text in Benzene -n-Butyl alcohol]			
Butylate ⁶	2008-41-5	0.042	1.4
*** [See Prior Text in Butyl benzyl phthalate - 2-sec-Butyl-4,6-dinitrophenol/Dinoseb]			
Carbaryl ⁶	63-25-2	0.006	0.14
Carbenzadim ⁶	10605-21-7	0.056	1.4
Carbofuran ⁶	1563-66-2	0.006	0.14
Carbofuran phenol ⁶	1563-38-8	0.056	1.4
*** [See Prior Text in Carbon disulfide - Carbon tetrachloride]			
Carbosulfan ⁶	55285-14-8	0.028	1.4
*** [See Prior Text in Chlordane (alpha and gamma isomers) - p-Creosol]			
m-Cumenyl methylcarbamate ⁶	64-00-6	0.056	1.4
*** [See Prior Text in Cyclohexanone -Diethyl phthalate]			
Diethylene glycol, dicarbamate ⁶	5952-26-1	0.056	1.4
*** [See Prior Text in 2-4-Dimethyl phenol - Dimethyl phthalate]			
Dimetilan ⁶	644-64-4	0.056	1.4
*** [See Prior Text in Di-n-butyl phthalate - Disulfoton]			
Dithiocarbamates (total) ⁶	137-30-4	0.028	28
*** [See Prior Text in Endosulfan I - Flourene]			
Formetanate hydrochloride ⁶	23422-53-9	0.056	1.4
Formparanate ⁶	17702-57-7	0.056	1.4
*** [See Prior Text in Heptochlor - Isodrin]			
Isolan ⁶	119-38-0	0.056	1.4
*** [See Prior Text in Isosafrole - Methapyrilene]			
Methiocarb ⁶	2032-65-7	0.056	1.4

Methomyl ⁶	16752-77-5	0.028	0.14
*** [See Prior Text in Methoxychlor - Methyl parathion]			
Metolcarb ⁶	1129-41-5	0.056	1.4
Mexacarbate ⁶	315-18-4	0.056	1.4
Molinate ⁶	2212-67-1	0.042	1.4
*** [See Prior Text in Naphthalene - N-Nitrosopyrrolidine]			
Oxamyl ⁶	23135-22-0	0.056	0.28
*** [See Prior Text in Parathion - Total PCBs]			
Pebulate ⁶	1114-71-2	0.042	1.4
*** [See Prior Text in Pentachlorobenzene - Phenol]			
o-Phenylenediamine ⁶	95-54-5	0.056	5.6
*** [See Prior Text in Phorate - Phthalic anhydride]			
Physostigmine ⁶	57-47-6	0.056	1.4
Physostigmine salicylate ⁶	57-64-7	0.056	1.4
Promecarb ⁶	2631-37-0	0.056	1.4
*** [See Prior Text in Pronamide]			
Propham ⁶	112-42-9	0.056	1.4
Propoxur ⁶	114-26-1	0.056	1.4
Prosulfocarb ⁶	52888-80-9	0.042	1.4
*** [See Prior Text in Pyrene - 2,3,4,6-Tetrachlorophenol]			
Thiodicarb ⁶	59669-26-0	0.019	1.4
Thiophanate-methyl ⁶	23564-05-8	0.056	1.4
Tirpate ⁶	26419-73-8	0.056	0.28
*** [See Prior Text in Toluene - Toxaphene]			
Triallate ⁶	2303-17-5	0.042	1.4
*** [See Prior Text in Bromoform (Tribromomethane) - Cyanides (Amenable)]			
Fluoride ⁵	16964-48-8	35	NA
*** [See Prior Text in Lead - Thallium]			
Vanadium ⁵	7440-62-2	4.3	0.23 mg/l TCLP
*** [See Prior Text in Zinc]			

[See Prior Text Note 1 - Note 4]

⁵ These constituents are not "underlying hazardous constituents" in characteristic wastes, according to the definition at LAC 33:V.2203.A.

⁶ Between August 26, 1996 and August 26, 1997, these constituents were

not "underlying hazardous constituents" (under 40 CFR 268.2(i)) as defined in LAC 33:V.2203.A.

Note: NA means not applicable

[See Prior Text in Table 8 - Table 11.Certification Statements A-G]

Table 12. Metal-Bearing Wastes Prohibited From Dilution in a Combustion Unit According to LAC 33:V.2207.C ¹	
Waste code	Waste description
D004	Toxicity characteristic for arsenic.
D005	Toxicity characteristic for barium.
D006	Toxicity characteristic for cadmium.
D007	Toxicity characteristic for chromium.
D008	Toxicity characteristic for lead.
D009	Toxicity characteristic for mercury.
D010	Toxicity characteristic for selenium.
D011	Toxicity characteristic for silver.
F006	Wastewater treatment sludges from electroplating operations except from the following processes: (1) sulfuric acid anodizing of aluminum; (2) tin plating carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum.
F007	Spent cyanide plating bath solutions from electroplating operations.
F008	Plating bath residues from the bottom of plating baths from electroplating operations where cyanides are used in the process.
F009	Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
F010	Quenching bath residues from oil baths from metal treating operations where cyanides are used in the process.
F011	Spent cyanide solutions from salt bath pot cleaning from metal heat treating operations.
F012	Quenching waste water treatment sludges from metal heat treating operations where cyanides are used in the process.
F019	Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum car washing when such phosphating is an exclusive conversion coating process.
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.
K003	Wastewater treatment sludge from the production of molybdate orange pigments.
K004	Wastewater treatment sludge from the production of zinc yellow pigments.
K005	Wastewater treatment sludge from the production of chrome green pigments.
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated).
K007	Wastewater treatment sludge from the production of iron blue pigments.
K008	Oven residue from the production of chrome oxide green pigments.

K061	Emission control dust/sludge from the primary production of steel in electric furnaces.
K069	Emission control dust/sludge from secondary lead smelting.
K071	Brine purification muds from the mercury cell processes in chlorine production, where separately prepurified brine is not used.
K100	Waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting.
K106	Sludges from the mercury cell processes for making chlorine.
P010	Arsenic acid H ₃ AsO ₄ .
P011	Arsenic oxide As ₂ O ₅ .
P012	Arsenic trioxide.
P013	Barium cyanide.
P015	Beryllium.
P029	Copper cyanide Cu(CN).
P074	Nickel cyanide Ni(CN) ₂ .
P087	Osmium tetroxide.
P099	Potassium silver cyanide.
P104	Silver cyanide.
P113	Thallic oxide.
P114	Thallium (I) selenite.
P115	Thallium (I) sulfate.
P119	Ammonium vanadate.
P120	Vanadium oxide V ₂ O ₅ .
P121	Zinc cyanide.
U032	Calcium chromate.
U145	Lead phosphate.
U151	Mercury.
U204	Selenious acid.
U205	Selenium disulfide.
U216	Thallium (I) chloride.
U217	Thallium (I) nitrate.

¹ A combustion unit is defined as any thermal technology subject to LAC 33:V.Chapter 30, Chapter 31, and/or Chapter 43.Subchapter N.

Chapter 25. Landfills

§2515. Special Requirements for Bulk and Containerized Liquids

* * *

[See Prior Text in A-F.2]

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

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

Plastics to Bacteria.

c. The sorbent material is determined to be nonbiodegradable under OECD test 301B: [CO₂ Evolution (Modified Sturm Test)].

d. Effective April 20, 1998, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the administrative authority, or the administrative authority determines, that:

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

will not present a risk of contamination of any underground source of drinking water (as that term is defined in LAC 33:V.109.)

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

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

Chapter 31. Incinerators

§3105. Applicability

* * *

[See Prior Text in A-E]

Table 1. Hazardous Constituents			
Common Name	Chemical Abstracts Name	Chemical Abstracts Number	Hazardous Waste Number
* * * [See Prior Text in Acetonitrile - Beryllium compounds, N.O.S. ¹]			
Bis (pentamethylene)-thiuram tetrasulfide	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-	120-54-7	U400
* * * [See Prior Text in Bromoacetone - Butyl benzyl phthalate]			
Butylate	Carbamothioic acid, bis (2-methylpropyl)-, S-ethyl ester	2008-41-5	U392
* * * [See Prior Text in Cacodylic acid - Copper Cyanide]			
Copper dimethyl-dithiocarbamate	Copper, bis(dimethylcarbamodithioato-S,S')-,	137-29-1	U393
* * * [See Prior Text in Creosote - Cycasin]			
Cycloate	Carbamothioic acid, cyclohexylethyl-, S-ethyl ester	1134-23-2	U386
* * * [See Prior Text in 2-Cyclohexyl-4,6- dinitrophenol - Daunomycin]			
Dazomet	2H-1,3,5-thiadiazine-2-thione, tetrahydro-3,5-dimethyl	533-74-4	U366
* * * [See Prior Text in DDD - Di-n-propylnitrosamine]			
Disulfiram	Thioperoxydicarbonic diamide, tetraethyl	97-77-8	U403
* * * [See Prior Text in Disulfoton - Epinephrine]			
EPTC	Carbamothioic acid, dipropyl-, S-ethyl ester	759-94-4	U390
* * * [See Prior Text in Ethyl carbamate (urethane) - Ethyl methanesulfonate]			
Ethyl Ziram	Zinc, bis(diethylcarbamodithioato-S,S')-	14324-55-1	U407
* * * [See Prior Text in Famphur]			
Ferbam	Iron, tris(dimethylcarbamodithioato-S,S')-,	14484-64-1	U396

* * *			
[See Prior Text in Fluoranthene - Hydrogen sulfide]			
3-Iodo-2-propynyl n-butylcarbamate	Carbamic acid, butyl-, 3-iodo-2-propynyl ester	55406-53-6	U375
* * *			
[See Prior Text in Indeno[1,2,3-cd]pyrene - Mercury fulminate]			
Metam Sodium	Carbamodithioic acid, methyl-, monosodium salt	137-42-8	U384
* * *			
[See Prior Text in Methacrylonitrile - MNNG]			
Molinate	1H-Azepine-1-carbothioic acid, hexahydro-, S-ethyl ester	2212-67-1	U365
* * *			
[See Prior Text in Mustard gas - Parathion]			
Pebulate	Carbamothioic acid, butylethyl-, S-propyl ester	1114-71-2	U391
* * *			
[See Prior Text in Pentachlorobenzene - Potassium cyanide]			
Potassium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl, potassium salt	128-03-0	U383
Potassium hydroxymethyl-n-methyl- dithiocarbamate	Carbamodithioic acid, (hydroxymethyl)methyl-, monopotassium salt	51026-28-9	U378
Potassium n-methyldithiocarbamate	Carbamodithioic acid, methyl-monopotassium salt	137-41-7	U377
* * *			
[See Prior Text in Potassium pentachlorophenate - Selenium sulfide]			
Selenium, tetrakis (dimethyl-dithiocarbamate)	Carbamodithioic acid, dimethyl-, tetraanhydrosulfide with orthothioselenious acid	144-34-3	U376
* * *			
[See Prior Text in Selenourea - Sodium cyanide]			
Sodium dibutyldithiocarbamate	Carbamodithioic acid, dibutyl, sodium salt	136-30-1	U379
Sodium diethyldithiocarbamate	Carbamodithioic acid, diethyl-, sodium salt	148-18-5	U381
Sodium dimethyldithiocarbamate	Carbamodithioic acid, dimethyl-, sodium salt	128-04-1	U382
* * *			
[See Prior Text in Sodium pentachlorophenate - Strychnine salts]			
Sulfallate	Carbamodithioic acid, diethyl-, 2-chloro-2-propenyl ester	95-06-7	U277
* * *			
[See Prior Text in TCDD]			
Tetrabutylthiuram disulfide	Thioperoxydicarbonic diamide, tetrabutyl	1634-02-2	U402
Tetrabutylthiuram monosulfide	Bis (dimethylthiocarbamoyl) sulfide	97-74-5	U401
* * *			
[See Prior Text in 1,2,4,5-Tetrachlorobenzene - Vanadium pentoxide]			
Vernolate	Carbamothioic acid, dipropyl-, S-propyl ester	1929-77-7	U385
* * *			
[See Prior Text in Vinyl chloride - Zinc phosphide]			

Ziram	Zinc, bis(dimethylcarbomodithioato-S,S')-(T-4)-	137-30-4	P205
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¹The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this table.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:1139 (December 1985), LR 13:433 (August 1987), LR 14:424 (July 1988), LR 15:737 (September 1989), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:944 (September 1995), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:681 (April 1998).

§3115. Incinerator Permits for New or Modified Facilities

* * *

[See Prior Text in A-B.11.d]

12. The administrative authority must send a notice to all persons on the facility mailing list, as set forth in LAC 33:V.717.A.5, and to the appropriate units of state and local government, as set forth in LAC 33:V.717.A.2, announcing the scheduled commencement and completion dates for the trial burn. The applicant may not commence the trial burn until after the administrative authority has issued such notice.

a. This notice must be mailed within a reasonable time period before the scheduled trial burn. An additional notice is not required if the trial burn is delayed due to circumstances beyond the control of the facility or the permitting agency.

b. This notice must contain:

i. the name and telephone number of the applicant's contact person;

ii. the name and telephone number of the permitting agency's contact office;

iii. the location where the approved trial burn plan and any supporting documents can be reviewed and copied; and

iv. an expected time period for commencement and completion of the trial burn.

13. during, or immediately after, each approved trial burn the applicant must make the following determinations when a DRE trial burn is required under LAC 33:V.3009.A:

a. a quantitative analysis of the trial POHCs in the waste feed;

b. a quantitative analysis of the exhaust gas for the concentration and mass emissions of the trial POHCs, oxygen (O₂) and hydrogen chloride (HCl);

c. a quantitative analysis of the scrubber water (if any), ash residues, and other residues, for the purpose of estimating the fate of the trial POHCs;

d. a computation of destruction and removal efficiency (DRE), in accordance with the DRE formula specified in LAC 33:V.3111;

e. if the HCl emission rate exceeds 1.8 kilograms of HCl per hour (four pounds per hour), a computation of HCl removal efficiency in accordance with LAC 33:V.3111;

f. a computation of particulate emissions, in accordance with LAC 33:V.3111;

g. an identification of sources of fugitive emissions and their means of control;

h. a measurement of average, maximum, and minimum temperatures and combustion gas velocity;

i. a continuous measurement of carbon monoxide (CO) in the exhaust gas; and

j. such other information as the administrative authority may specify as necessary to ensure that the trial burn will determine compliance with the performance standards in LAC 33:V.3111 and to establish the operating conditions required by LAC 33:V.3117 as necessary to meet that performance standard.

14. the applicant must submit to the administrative authority a certification that the trial burn has been carried out in accordance with the approved trial burn plan, and must submit the results of all the determinations required in Subsection B.13 of this Section. This submission shall be made within 90 days of completion of the trial burn, or later if approved by the administrative authority.

15. all data collected during any trial burn must be submitted to the administrative authority following the completion of the trial burn.

16. all submissions required by this Subsection must be certified on behalf of the applicant by the signature of a person authorized to sign a permit application or a report under LAC 33:V.507 and 509.

17. based on the results of the trial burn, the administrative authority shall set the operating requirements in the final permit according to LAC 33:V.3117. The permit modification shall proceed according to LAC 33:V.321.C.

* * *

[See Prior Text in C-C.2]

D. For the purposes of determining feasibility of compliance with the performance standards of LAC 33:V.3111 and of determining adequate operating conditions under LAC 33:V.3117, the applicant for a permit for an existing hazardous waste incinerator must prepare and submit a trial burn plan and perform a trial burn in accordance with LAC 33:V.529.B and Subsection B, B.1-11, and 13-16 or, instead, submit other information as specified in LAC 33:V.529.C. The administrative authority must announce his or her intention to approve the trial burn plan in accordance with the timing and distribution requirements of Subsection B.12 of this Section. The contents of the notice must include: the name and telephone number of a contact person at the facility; the name and telephone number of a contact office at the permitting agency; the location where the trial burn plan and any supporting documents can be reviewed and copied; and a schedule of the activities that are required prior to permit issuance, including the anticipated time schedule for agency approval of the plan and the time period during which the trial burn would be conducted. Applicants submitting information under LAC 33:V.529.A are exempt from compliance with LAC 33:V.3111 and 3117 and, therefore, are exempt from the

requirements to conduct a trial burn. Applicants who submit trial burn plans and receive approval before submission of a permit application must complete the trial burn and submit the results, specified in Subsection B.13 of this Section, with Part II of the permit application. If completion of this process conflicts with the date set for submission of the Part II application, the applicant must contact the administrative authority to establish a later date for submission of the Part II application or the trial burn results. Trial burn results must be submitted prior to issuance of a permit. When the applicant submits a trial burn plan with Part II of the permit application, the administrative authority will specify a time period prior to permit issuance in which the trial burn must be conducted and the results submitted.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 22:828 (September 1996), LR 22:835 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:683 (April 1998).

Chapter 33. Groundwater Protection

§3309. Concentration Limits

A. The administrative authority will specify in the facility permit concentration limits in the groundwater for hazardous constituents established under LAC 33:V.3307. The concentration of a hazardous constituent:

1. must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the permit; or
2. for any of the constituents listed in Table 1 of this Section, must not exceed the respective value given in that table if the background level of the constituent is below the value given; or
3. must not exceed an alternative limit established by the administrative authority under Subsection B of this Section.

* * *

[See Prior Text in Table 1-Note 1]

B. The administrative authority may establish an alternate concentration limit for a hazardous constituent if he finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the administrative authority will consider the following factors:

1. potential adverse effects on groundwater quality, considering:
 - a. the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;
 - b. the hydro geological characteristics of the facility and surrounding land;
 - c. the quantity of groundwater and the direction of groundwater flow;
 - d. the proximity and withdrawal rates of groundwater users;

- e. the current and future uses of groundwater in the area;
 - f. the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
 - g. the potential for health risks caused by human exposure to waste constituents;
 - h. the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 - i. the persistence and permanence of the potential adverse effects; and
2. potential adverse effects on hydraulically-connected surface water quality, considering:
 - a. the volume and physical and chemical characteristics of the waste in the regulated unit;
 - b. the hydrogeological characteristics of the facility and surrounding land;
 - c. the quantity and quality of groundwater and the direction of groundwater flow;
 - d. the patterns of rainfall in the region;
 - e. the proximity of the regulated unit to surface waters;
 - f. the current and future uses of surface waters in the area and any water quality standards established for those surface waters;
 - g. the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
 - h. the potential for health risks caused by human exposure to waste constituents;
 - i. the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
 - j. the persistence and permanence of the potential adverse effects.

C. In making any determination under Subsection B of this Section about the use of groundwater in the area around the facility, the administrative authority will consider any identification of underground sources of drinking water and exempted aquifers identified in the permit application under LAC 33:V.Chapter 3.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 10:496 (July 1984), LR 16:614 (July 1990), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:684 (April 1998).

Chapter 38. Universal Wastes

Subchapter B. Standards for Small Quantity Handlers of Universal Waste

§3835. Exports

A small quantity handler of universal waste who sends universal waste to a foreign destination, other than to those OECD countries specified in LAC 33:V.1113.I.1.a (in which case the handler is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B), must:

* * *

[See Prior Text in A.1-3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:573 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:684 (April 1998).

Subchapter C. Standards for Large Quantity Handlers of Universal Waste

§3857. Exports

A large quantity handler of universal waste who sends universal waste to a foreign destination other than to those OECD countries specified in LAC 33:V.1113.I.1.a (in which case the handler is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B) must:

* * *

[See Prior Text in A.1-3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:577 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998).

Subchapter D. Standards for Universal Waste Transporters

§3871. Exports

A universal waste transporter transporting a shipment of universal waste to a foreign destination other than to those OECD countries specified in LAC 33:V.1113.I.1.a (in which case the transporter is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B) may not accept a shipment if the transporter knows the shipment does not conform to the EPA Acknowledgment of Consent. In addition the transporter must ensure that:

* * *

[See Prior Text in A.1-2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:578 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998).

Subchapter F. Import Requirements

§3879. Imports

Persons managing universal waste that is imported from a foreign country into the United States are subject to the applicable requirements of this Chapter, immediately after the waste enters the United States, as indicated in Subsections A-C of this Section.

* * *

[See Prior Text in A-C]

D. Persons managing universal waste that is imported from an OECD country as specified in LAC 33:V.1113.I.1.a are subject to Subsections A-C of this Section, in addition to the requirements of LAC 33:V.Chapter 11.Subchapter B.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 23:578 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998).

Chapter 41. Recyclable Materials

§4105. Requirements for Recyclable Material

Recyclable materials are subject to additional regulations as follows:

* * *

[See Prior Text in A-E]

F. Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in LAC 33:V.1113.I.1.a) for the purpose of recovery is subject to the requirements of LAC 33:V.Chapter 11.Subchapter B, if it is subject to either the manifesting requirements of LAC 33:V.Chapter 11 or to the universal waste management standards of LAC 33:V.Chapter 38.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998).

§4143. Recyclable Materials Utilized for Precious Metal Recovery

* * *

[See Prior Text in A-B.4]

5. generators are subject to the requirements of Subchapter B of this Chapter; and

6. precious metals exported to or imported from designated OECD member countries for recovery are subject to the requirements of LAC 33:V.Chapter 11.Subchapter B and LAC 33:V.4311. Precious metals exported to or imported from non-OECD countries for recovery are subject to the requirements of LAC 33:V.1113 and 1123.

* * *

[See Prior Text in C-D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998).

Chapter 43. Interim Status

Subchapter A. General Facility Standards

§4311. Required Notices

Interim status facilities must comply with LAC 33:V.1531.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998).

Subchapter M. Landfills

§4507. Special Requirements for Bulk and Containerized Liquids

[See Prior Text in A-F.2.a]

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

c. The sorbent material is determined to be nonbiodegradable under OECD test 301B: [CO₂ Evolution (Modified Sturm Test)].

[See Prior Text in G-G.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), LR 21:266 (March 1995), LR 22:829 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:686 (April 1998).

Chapter 49. Lists of Hazardous Wastes

§4901. Category I Hazardous Wastes

[See Prior Text in A-Table 3]

F. Commercial chemical products or manufacturing chemical intermediates or off-specification commercial chemical products referred to in LAC 33:V.4901.D.1-4 are identified as toxic wastes (T) unless otherwise designated and are subject to the small quantity generator exclusion defined in LAC 33:V.3903, 3913, and 3915.A and C. These wastes and their corresponding EPA Hazardous Waste Numbers are listed in Table 4. [Comment: For the convenience of the regulated community, the primary hazardous properties of these materials have been indicated by the letters T (Toxicity), R (Reactivity), I (Ignitability), and C (Corrosivity). Absence of a letter indicates that the compound is listed only for toxicity.]

Table 4. Toxic Wastes		
EPA Hazardous Waste Number	Chemical Abstract Number	Hazardous Waste
*** [See Prior Text]		
U119	62-50-0	Ethyl methanesulfonate
U396	14484-64-1	Ferbam
U120	206-44-0	Fluoranthene
*** [See Prior Text]		
U182	123-63-7	Paraldehyde
U391	1114-71-2	Pebulate
U183	608-93-5	Pentachlorobenzene
*** [See Prior Text]		

U179	100-75-4	Piperidine, 1-nitroso-
U400	120-54-7	Piperidine, 1,1'-(tetrathiodicarbonothioyl)-bis-
U383	128-03-0	Potassium dimethyldithiocarbamate
U378	51026-28-9	Potassium n-hydroxymethyl-n-methyl-di-thiocarbamate
U377	137-41-7	Potassium n-methyldithiocarbamate
U192	23950-58-5	Pronamide
*** [See Prior Text]		
U205	7488-56-4	Selenium sulfide SeS ₂ (R,T)
U376	144-34-3	Selenium, tetrakis(dimethyldithiocarbamate)
U015	115-02-6	L-Serine, diazoacetate (ester)
See F027	93-72-1	Silvex(2,4,5-TP)
U379	136-30-1	Sodium dibutyldithiocarbamate
U381	148-18-5	Sodium diethyldithiocarbamate
U382	128-04-1	Sodium dimethyldithiocarbamate
U206	18883-66-4	Streptozotocin
U277	95-06-7	Sulfallate
U103	77-78-1	Sulfuric acid, dimethyl ester
*** [See Prior Text]		
See F027	93-76-5	2,4,5-T
U402	1634-02-2	Tetrabutylthiuram disulfide
U207	95-94-3	1,2,4,5-Tetrachlorobenzene
*** [See Prior Text]		
U213	109-99-9	Tetrahydrofuran (I)
U401	97-74-5	Tetramethylthiuram monosulfide
U214	563-68-8	Thallium(I) acetate
*** [See Prior Text]		
U217	10102-45-1	Thallium(I) nitrate
U366	533-74-4	2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-
U218	62-55-5	Thioacetamide
*** [See Prior Text]		

U244	137-26-8	Thioperoxydicarbonic diamide [(H ₂ N)C(S)] ₂ S ₂ , tetramethyl-
U402	1634-02-2	Thioperoxydicarbonic diamide, tetrabutyl
U403	97-77-8	Thioperoxydicarbonic diamide, tetraethyl
U409	23564-05-8	Thiophanate-methyl
U219	62-56-6	Thiourea
* * *		
[See Prior Text]		
U177	684-93-5	Urea, N-methyl-N-nitroso-
U385	1929-77-7	Vernolate
U043	75-01-4	Vinyl chloride
* * *		
[See Prior Text]		
U200	50-55-5	Yohimban-16-carboxylic acid,11,17-dimethoxy-18-[(3,4,5-trimethoxybenzoyl)oxy]-, methyl ester,(3beta,16beta,17alpha,18beta,20alpha)-
U407	14324-55-1	Zinc, bis(diethylcarbamodithioato-S,S')-
U249	1314-84-7	Zinc phosphide Zn ₃ P ₂ , when present at concentrations of 10 percent or less

¹ CAS Number given for parent compound only.

* * *

[See Prior Text in G]

Table 6 lists constituents that serve as a basis for listing hazardous waste.

Table 6. Table of Constituents that Serve as a Basis for Listing Hazardous Waste

* * *

[See Prior Text in F001-K151]

EPA Hazardous Waste Number K156 benomyl carbaryl carbendazim carbofuran carbosulfan formaldehyde methylene chloride triethylamine
EPA Hazardous Waste Number K157 Carbon tetrachloride formaldehyde methyl chloride methylene chloride pyridine triethylamine

EPA Hazardous Waste Number K158 benomyl carbendazim carbofuran carbosulfan chloroform methylene chloride
EPA Hazardous Waste Number K159 benzene butylate EPTC molinate pebulate vernolate
EPA Hazardous Waste Number K161 antimony arsenic metam-sodium ziram

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:320 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 14:426 (July 1988), LR 14:790 (November 1988), LR 15:182 (March 1989), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 16:1057 (December 1990), LR 17:369 (April 1991), LR 17:478 (May 1991), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:829 (September 1996), LR 22:840 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1522 (November 1997), LR 24:686 (April 1998).

H.M. Strong
Assistant Secretary

9804#008

RULE

**Department of Environmental Quality
Office of Water Resources
Water Quality Management Division**

Bacteria Criteria (LAC 33:IX.1113)(WP028)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Water Quality regulations, LAC 33:IX.1113.C.5 (WP028).

The bacteria standards are revised by stating that the primary contact recreation criteria shall be applied during the months in which primary contact recreation such as swimming, tubing, or water skiing activities in the state are likely to occur. Secondary contact recreation criteria would apply to the nonrecreational period to be protective of any

incidental contact. Drinking water supply and oyster propagation water uses will continue to require year-long application of the most stringent criteria applicable to those uses. The previous bacteria criteria language in the Louisiana Surface Water Quality Standards established numerical criteria for four designated water uses: primary contact recreation, secondary contact recreation, drinking water supply, and oyster propagation. The language previously required application of the criteria all year long for each use. It is recognized that the water uses of drinking water supply and oyster propagation require year-long application. However, primary contact recreation such as swimming, water skiing, and tubing is entirely seasonal and is not occurring for many months during the year. Therefore, it is appropriate to establish a representative seasonal recreational period for application of the very stringent criteria for primary contact recreation. This approach will ensure that primary contact recreation criteria are most effectively applied to protect the swimming use when it is occurring and not applied when the use is not occurring.

The basis and rationale for this rule are to amend the Louisiana Surface Water Quality Standards to allow for seasonal application of the very stringent bacteria criteria for primary contact recreation. The establishment of a recreational period was developed by assessing a review of the typical beginning and ending of swimming activities in popular state water bodies. Water temperature data by month from representative water bodies were also assessed.

This rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part IX. Water Quality

Chapter 11. Surface Water Quality Standards

§1113. Criteria

* * *

(See Prior Text in A.-C.5.b)

i. Primary Contact Recreation. Based on a minimum of not less than five samples taken over not more than a 30-day period, the fecal coliform content shall not exceed a log mean of 200/100 mL, nor shall more than 10 percent of the total samples during any 30-day period or 25 percent of the total samples collected annually exceed 400/100 mL. These primary contact recreation criteria shall apply only during the defined recreational period of May 1 through October 31. During the nonrecreational period of November 1 through April 30, the criteria for secondary contact recreation shall apply.

* * *

(See Prior Text in C.5.b.ii-Table 1.Footnote 10)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2074(B)(1).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 10:745 (October 1984), amended LR 15:738 (September 1989), LR 17:264 (March 1991), LR 17:967 (October 1991), repromulgated LR

17:1083 (November 1991), amended LR 20:883 (August 1994), LR 24:688 (April 1998).

Linda Korn Levy
Assistant Secretary

9804#064

RULE

Department of Health and Hospitals Board of Pharmacy

Pharmacy Records—Transfer of Prescription Information (LAC 46:LIII.2929)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Pharmacy Law, R.S. 37:1178, the Board of Pharmacy amends LAC 46:LIII.2929.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LIII. Pharmacists

Chapter 29. Pharmacy Records

§2929. Transfer of Prescription Information

A.1. - 2. ...

a. Pharmacies electronically accessing the same prescription drug records may transfer up to the maximum refills permitted by law and the prescriber's authorization.

3. - 4. ...

B. Manual Filing System. If a pharmacy maintains prescription information in a manual system, the transfers are subject to the following requirements.

1. - 2.b.ii. ...

iii. number of valid refills remaining, the date of last refill and, if a controlled substance, date(s), and location(s) of previous refill(s).

iv. - v. ...

C. Computerized Filing System. If a pharmacy maintains prescription information in a data processing system, the transfers are subject to the following requirements:

1. - 2. ...

3. The data processing system shall have a mechanism to prohibit the transfer of controlled substance prescriptions which have previously been transferred, unless the pharmacy can electronically access the prescription drug records at the pharmacy from which a transfer is requested.

4. The original prescription, in a data processing system, which has been transferred must be invalidated in the data processing for purposes of refilling unless other pharmacies may electronically access the prescription drug records for purposes of transfer. All required information must be maintained for at least five years.

5. ...

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 15:967 (November 1989), amended LR 24:688 (April 1998).

Fred H. Mills, Jr.
Executive Director

9804#015

RULE

**Department of Health and Hospitals
Board of Pharmacy**

Provisional Community Pharmacy
(LAC 46:LIII.Chapter 14)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and the Pharmacy Law, R.S. 37:1178, the Board of Pharmacy adopts LAC 46:LIII.Chapter 14 (Provisional Community Pharmacy).

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 14. Provisional Community Pharmacy

§1401. Provisional Community Pharmacy

Provisional Community Pharmacy—the practice of pharmacy at a site where prescriptions are dispensed free of charge to appropriately screened and qualified indigent patients.

Qualified Patients—those patients not served by Medicaid/Medicare, uninsured, and with insufficient funds, as determined by strict screening guidelines, to obtain needed medications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 24:689 (April 1998).

§1403. Provisional Community Pharmacy Permit

A. A provisional community pharmacy permit shall be required to operate a pharmacy in the state to transact business by dispensing free prescription drugs to patients in Louisiana. This permit shall only be granted to an organization qualified as a charitable organization in the *Internal Revenue Code* under §501(c)(3).

B. Permit Fee. The provisional community pharmacy permit fee shall be determined by the legislature and/or the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 24:689 (April 1998).

§1405. Compliance

The provisional community pharmacy must be in compliance with applicable federal and state laws and/or regulations pertaining to the practice of pharmacy, except as exempted in §1407.C. All screening guidelines and revisions shall be submitted to the board upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 24:689 (April 1998).

§1407. Additional Requirements

A. Parenteral/Enteral dispensing. A provisional community pharmacy engaging in the dispensing of parenteral/enteral preparations as defined in §2101, shall obtain a parenteral/enteral permit and comply with all requirements in LAC 46:LIII.Chapter 21.

B. Accessibility. A provisional community pharmacy shall be directly accessible to the general public.

C. Pharmacy Operations. A provisional community pharmacy shall comply with the provisions of LAC 46:LIII.Chapter 11, with the exception of §§1103 and 1127.8.b.i and ii, with written board approval, in order to provide free medications to qualified indigent patients.

D. Prescription Legend Drug Samples. A provisional community pharmacy may not sell, purchase, trade, or possess prescription legend drug samples, unless the following conditions are satisfied:

1. The prescription legend drug samples are dispensed at no charge to the qualified indigent patient of the provisional community pharmacy.

2. The prescription legend drug samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 24:689 (April 1998).

Fred H. Mills, Jr.
Executive Director

9804#016

RULE

**Department of Health and Hospitals
Board of Pharmacy**

Schedule Drug Prescriptions (LAC 46:LIII.3531)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law, R.S. 37:1178, the Board of Pharmacy hereby amends LAC 46:LIII.3531.

(Editor's Note: Section 3531 is being published in full to reflect new codification, with the agency being charged for the amended portion only; therefore the agency's fiscal impact [printing, etc.] remains the same.

The revisions to §3531 refine accessibility of controlled substances in: emergency situations; for hospice patients; and for patients in long term care facilities. Revision of §3531 reflects advances in communications technology via facsimile. The revision also eliminates the duplication of paperwork.)

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 35. Pharmacy Prescription Drugs

§3531. Schedule Drug Prescription Requirements

A. A schedule drug prescription or order must be issued for a legitimate medical purpose by a licensed medical

practitioner in the usual course of professional practice and dispensed by a licensed pharmacist.

B. Schedule Drug Prescription Form. Schedule drug prescriptions/orders shall be written or reduced to writing with ink, indelible pencil, or typewritten in compliance with the following form:

1. patient's:
 - a. full name; and
 - b. address;
2. schedule drug:
 - a. name;
 - b. strength;
 - c. quantity;
 - d. instructions; and
 - e. dosage form;
3. authorized prescriber's:
 - a. full name;
 - b. address;
 - c. signature for Schedule II drugs; and
 - d. DEA registration number.

C. Schedule II Drug Prescriptions or Orders. Schedule II prescriptions must be issued and signed by an authorized practitioner.

1. Schedule II Drug Oral Prescriptions/Orders. A pharmacist may dispense an oral Schedule II controlled substance prescription authorized by a medical practitioner, in the case of a bona fide emergency situation, upon a prescribing practitioner's verbal authorization.

2. Emergency. A bona fide emergency situation exists when:

- a. need—schedule drug administration is necessary for immediate treatment;
- b. availability—non-available appropriate alternate treatment;
- c. reasonable—the prescribing practitioner cannot reasonably provide a written prescription.

3. Adequate Regime. Dispense a limited amount of schedule drugs to treat the patient during the emergency period.

4. Reduced to Writing. An oral prescription/order shall be immediately reduced to writing, in proper form, by the dispensing pharmacist with his signature.

5. Verification. A pharmacist shall verify the authenticity of a verbal Schedule II prescription/order.

6. Schedule Prescription Retrieval. A signed written Schedule II prescription/order, in proper form, shall be received from the practitioner within seven days.

7. Schedule II Prescriptions/Orders. Schedule II prescriptions are non-refillable.

8. Schedule II Drug Via Facsimile. A prescription written for a Schedule II controlled substance may be transmitted by the practitioner or the practitioner's agent to a pharmacy via facsimile equipment, provided that the original signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in §3531.C.8.a and b.

a. A prescription written for a Schedule II narcotic substance to be compounded for direct administration to a patient by parenteral, intravenous, intramuscular,

subcutaneous, or intraspinal infusion may be transmitted by the practitioner or his agent to the pharmacy by facsimile. The facsimile serves as the original written prescription.

b. A prescription written for a Schedule II narcotic substance for a hospice or terminally ill patient may be transmitted by the practitioner or his agent to the dispensing pharmacy by facsimile. The practitioner or his agent will note on the prescription that the patient is a hospice or terminally ill patient. The facsimile serves as the original written prescription.

9. Schedule II Drug/Partial Filling. A prescription written for a Schedule II controlled substance for a patient in a Long Term Care Facility (LTCF) or for a patient with a terminal illness may be filled in partial quantities. The pharmacist must record on the prescription whether the patient is terminally ill or an LTCF patient. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of schedule II controlled substance dispensed in all partial fillings must not exceed the total quantity prescribed and must be executed within 60 days from the date of issue.

D. Schedule III/IV Prescriptions/Orders. Schedule III and IV prescriptions may be issued upon oral or written orders of an authorized practitioner.

1. Schedule III/IV Oral Prescriptions/Orders. Oral prescriptions/orders shall be promptly reduced to writing.

2. Refillable Schedule III/IV Prescriptions/Orders. Schedule III and IV prescriptions are refillable, with appropriate authorization.

3. Schedule III/IV Prescription Order Form. Schedule III and IV prescriptions shall conform to the following.

a. Authorized Practitioners Instructions—Refillable Authority. An authorized practitioner must orally approve or inscribe refillable instructions on the face of the prescription or order. In the absence of specific refill instructions, the prescription is non-refillable.

b. Refillable Prescription Period. Schedule III, IV, and V prescriptions shall not be refilled more than five times within six months of the date of issue. Schedules III, IV, and V prescriptions shall become null and void after six months or after five authorized refills, whichever comes first.

c. Schedule III/IV/V Prescription Refill Records. The pharmacist dispensing Schedule III, IV, and V prescriptions shall note on the reverse side of the original prescription refill information such as date, with quantity or variation of quantity dispensed, and pharmacist's name or initials or the same notations shall be made into a computer system.

E. Schedule Prescription Drug Labeling. A schedule prescription label shall be affixed to a suitable container and exhibit the following information:

1. pharmacy name;
2. pharmacy address;
3. date filled or refilled;
4. serial number;
5. patient's name;

6. authorized prescriber's name;
7. drug name and strength;
8. direction;
9. pharmacist's last name and initial; and
10. federal transfer caution label.

F. Schedule V Drugs. Schedule V dispensing requires a prescription except for the following:

1. Schedule V Exempt Narcotics. Exempt narcotics are preparations dispensed without a prescription containing limited quantities of certain narcotic drugs dispensed by a licensed pharmacist, generally for antidiarrheal purposes, to a person of majority with suitable identification and the transaction properly recorded in a bound Schedule V Exempt Narcotic Book containing the name and address of purchaser, and name and quantity of exempt narcotic dispensed, with the date of sale and the dispensing pharmacist's name or initials.

2. Schedule V Exempt Preparation. An exempt narcotic transaction shall not exceed 240 cc/ml. (8 fluid ounces), or not more than 48 solid dosage units, which may be dispensed to the same person in any given 48-hour period, containing limited narcotic quantities with non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

3. Exempt Narcotic Record. A bound Exempt Narcotic Book shall be maintained in the pharmacy for exempt Schedule V drugs sold, with purchaser's name and address, date of sale, name and quantity of exempt narcotic dispensed and the pharmacist's initials. The exempt narcotic book shall be maintained for a period of five years from the date of the last entered transaction, and shall be made available for board inspection.

4. Identification. The pharmacist must ascertain suitable identification of buyer and proof of age, when appropriate.

5. Authorized Dispensing. Schedule V exempt narcotic preparations must be dispensed by a pharmacist.

G. Schedule Prescription Files. Schedule prescription files must be maintained on premises.

1. Schedule II Prescription Files. Schedule II prescriptions shall be maintained separately from other prescription records and contain the name or initials of the pharmacist that dispensed the prescription.

2. Schedule III, IV, and V Prescription Files. Schedule III, IV, and V dispensed prescriptions may be filed separately, or, in the alternative, they may be filed in numerical sequence with either Schedule II prescriptions or with noncontrolled prescriptions. When filed with other prescriptions, Schedule III, IV and V prescriptions must be stamped with a red-inked "C" at least one inch high in the lower right-hand corner of the prescriptions. However, if a pharmacy maintains computerized dispensing records, then the requirement to mark the hard copy prescription with a red "C" is waived. Dispensing pharmacists' name or initials and dispensing date shall be placed on the prescription.

3. Schedule III, IV, and V Prescription Files Maintenance. Schedule III, IV, and V prescription files must

be maintained in a readily available and retrievable manner.

H. Record Keeping

1. Registrant must maintain readily retrievable, complete and accurate transaction records, as follows:

- a. DEA order forms;
- b. Schedule II receiving invoices shall be maintained separately. Schedule III, IV, and V receiving invoices may be maintained with general records and shall be readily retrievable;
- c. schedule drug prescription files;
- d. schedule drug inventories—initial, annual, and current.

2. Schedule Drugs Inventory Records. Schedule drug inventories must be complete and reflect an accurate accounting of schedule drug transactions.

a. Inventory Content. The inventory record shall reflect the following:

- i. an accurate schedule drug inventory shall comprise the drug name, strength, and correct accounting supported with invoices, prescriptions/orders, and/or transfers;
- ii. registrant's name;
- iii. registrant's DEA number;
- iv. inventory date;
- v. inventory period;
- vi. available prior inventory;
- vii. preparer's signature;
- viii. inventory records shall be maintained for five years.

b. Initial Inventory Record. An initial schedule drug physical inventory shall be conducted when the registrant commences to dispense schedule prescriptions.

c. Annual Inventory Records. A complete and accurate Schedule II drug physical inventory shall be conducted annually following the anniversary date of the initial inventory.

d. Biennial Inventory Record. An estimated Schedule III, IV, and V drug physical inventory shall be conducted biennially following the anniversary date of the initial inventory, unless the container holds more than 1,000 tablets or capsules in which case an exact inventory shall be made.

e. Schedule Drug Theft Inventory. A schedule drug inventory shall be conducted when there is a loss or theft of schedule drugs and reported to the Regional DEA office on DEA Form 106, and a copy sent to the board.

f. Business Termination Inventory. A schedule CDS inventory must be taken when a registrant's pharmacy is sold, exchanged, assigned, closed, or transferred, with a copy mailed to the board and the DEA.

g. Pharmacist-in-Charge Termination Inventory. A schedule drug inventory must be conducted by the outgoing pharmacist-in-charge and verified by the incoming pharmacist-in-charge.

h. Schedule Drugs Central Records. Schedule Drug Central Records repository shall be permitted upon board and DEA approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 14:708 (October 1988), amended LR 24:689 (April 1998).

Fred H. Mills, Jr.
Executive Director

9804#004

RULE

**Department of Health and Hospitals
Board of Pharmacy**

**Transmission of Prescriptions
(LAC 46:LIII.1111)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and Pharmacy Law, R.S. 37:1178, the Board of Pharmacy amends LAC 46:LIII.1111.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LIII. Pharmacists

Chapter 11. Pharmacies

§1111. Transmission of Prescriptions

A. ...

1. - 2. ...

3. **Electronic Transmission.** A pharmacist may receive and dispense a bona fide prescription communicated from a practitioner, via facsimile or other means, and then reduce to hard copy if necessary. When receiving a prescription transmitted in this manner, the pharmacist must indicate on the hard copy the mode of transmission as well as the phone number of the practitioner making the transmission.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1178.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Pharmacy, LR 23:1311 (October 1997), amended LR 24:692 (April 1998).

Fred H. Mills, Jr.
Executive Director

9804#014

RULE

**Department of Health and Hospitals
Office of Public Health**

Drinking Water Revolving Fund (LAC 48:V.7801-7811)

Under the authority of the Drinking Water Revolving Loan Fund Act, R.S. 40:2821 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Health and Hospitals, Office of Public Health has adopted the Drinking Water Revolving Loan Fund regulations, LAC 48:V.Chapter 78.

This rule establishes requirements for participation in the Drinking Water Revolving Loan Fund program as authorized

under the Safe Drinking Water Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature, R.S. 40:2821 et seq. The Drinking Water Revolving Loan Fund will provide financial assistance to qualified borrowers for the construction of eligible drinking water facilities.

The rule provides information relating to eligibility of projects, application requirements, project priority ratings, engineering and environmental reviews, loan conditions, and construction inspections. The basis and rationale for this rule are to implement the Drinking Water Loan Fund program as authorized by the Safe Drinking Water Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature, R.S. 40:2821 et seq., and to provide the mechanism for the state to qualify for federal funds that will provide financial assistance to water systems for the construction of eligible drinking water facilities.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Health Services

Subpart 25. Drinking Water

Chapter 78. Drinking Water Revolving Loan Fund

§7801. Introduction

A. The Department of Health and Hospitals, Office of Public Health (OPH) is the state agency within Louisiana granted primary enforcement responsibility from the United States Environmental Protection Agency (EPA) to ensure that Public Water Systems (PWSs) within the state are in compliance with state drinking water regulations which equal or exceed federal drinking water regulations adopted in accordance with the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f et seq.). The SDWA Amendments of 1996 authorized a state revolving loan fund program to assist water systems in financing the costs of infrastructure improvements to facilitate compliance with and further the health protection objectives of the SDWA.

B. In accordance with the Louisiana Constitution and authorizing legislation, the Department of Environmental Quality (DEQ) is assisting OPH in the financial administration of the Drinking Water Revolving Loan Fund (the fund). Regulations governing the revolving loan fund program are promulgated by both OPH and DEQ.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:692 (April 1998).

§7803. Authority

Act 480 of the 1997 Regular Session of the Louisiana Legislature amended and reenacted R.S. 30:2011(A)(3) and (D)(23), 2073(8), 2074(A)(4), 2078(A), and (B)(1), the introductory paragraph of (B)(2), (B)(2)(a) and (I), (B)(3), and (C), 2079(A), 2080, 2081, 2083, 2087 and 2088, and enacted R.S. 30:2074(B)(8) and Chapter 32 of Title 40 of the Louisiana Revised Statutes of 1950, comprising R.S. 40:2821-2826, relative to state funds; creates the fund; provides for administration of the fund program by OPH, including the authority to establish assistance priorities and perform oversight and other related activities; authorizes the secretary of DEQ to administer the financial and environmental review aspects of the fund; requires that certain monies

received be deposited into the fund; authorizes imposition of administrative fees; provides for rulemaking authority; provides for an exemption to certain public bond trust restrictions; and provides for related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:692 (April 1998).

§7805. Definitions

The following terms used in these regulations shall have the following meanings:

Applicant—any person who submits an application for financial assistance in accordance with LAC 48:V.Chapter 78.

Community Water System—a public water system that serves year-round residents within a residential setting.

Construction—preliminary planning, engineering, architectural, legal, fiscal, and economic investigations and/or studies, surveys, designs, plans, working drawings, specifications, erection, building, acquisition, alteration, remodeling, improvement, or extension of the project.

Department—the Office of Public Health (OPH) of the Louisiana Department of Health and Hospitals (DHH).

Disadvantaged Community—a community:

- a. whose application for a construction loan is primarily to resolve a health and compliance problem;
- b. that will serve a population of less than 3,300 on a retail connection basis; and
- c. where the median household income is 65 percent or more below the state average. Larger communities may receive this designation if taking over another public water system which would be determined to be disadvantaged under these criteria or by providing drinking water service to existing unserved areas with health problems.

Drinking Water Facilities—facilities which are for the purpose of protecting, producing, collecting, transporting, and treating source water, and for storing, distributing, or holding drinking water.

Environmental Review—an assessment by the DEQ of the environmental impact of a proposed project and assurances that the project will comply with all environmental laws and executive orders applicable to the project area.

Financial Assistance—loans, credit enhancement devices, guarantees, pledges, interest rate swap agreements, linked deposit agreements, and other financial subsidies authorized by law.

Fund—the Drinking Water Revolving Loan Fund established by the department in accordance with the Safe Drinking Water Act (SDWA) Amendments of 1996 and Act 480 of the 1997 Regular Session of the Louisiana Legislature.

Governmental Agency—the state, its political subdivisions, or any agency thereof, Indian tribes, and combinations of governmental entities, which have authority to own, construct, or operate a public water system and other related activities.

Letter of Intent—a written notification of the intent of the applicant to participate in the fund program. The notification must include a request for financial assistance, the estimated

amount of financial assistance, an estimated construction schedule; and must document the authority of the applicant to make the request.

Loan or Loans—a disbursement of money from the fund made by the department to a person in accordance with a loan and pledge agreement.

Loan and Pledge Agreement—a contractual arrangement by and between a person and the state acting by and through DEQ, providing for a loan or loans to such person for the purpose of paying the eligible cost of a project or projects.

Noncommunity Water System—a public water system that serves persons in a nonresidential setting.

Nonprofit Noncommunity Water System—a noncommunity water system that is owned by an entity organized under Louisiana law which qualifies as a tax exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

Person—any individual, partnership, firm, corporation, company, cooperative, association, society, trust, or any other business unit or entity, including the state, its political subdivisions, or any agency thereof, Indian tribes, and combinations of governmental entities.

Privately Owned System—a public water system that is not owned by a governmental agency.

Project—improvements or activities that are to be undertaken by a public water system which:

- a. are of a type that will facilitate compliance with state drinking water regulations which are no less stringent than any federal drinking water regulations adopted pursuant to the SDWA; or
- b. further the health protection objectives of the SDWA.

Public Water System—a system intended to provide potable water to the public, which system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year. The term includes:

- a. any collection, treatment, storage, and distribution facilities under the control of the operator of the system and used primarily in connection with the system; and
- b. any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

Publicly Owned System—a public water system that is owned by a governmental agency.

Secretary—the secretary of the Department of Health and Hospitals.

State—the State of Louisiana or any agency or instrumentality thereof.

System Improvement Plan—the document containing the necessary plans, specifications, and studies relating to the construction of a complete project of drinking water facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:693 (April 1998).

§7807. Pre-Application and Eligibility for Participation

A. Pre-Application. To be considered for financial assistance, a completed pre-application must be submitted to

the department by the applicant, using the form(s) provided by the department.

B. Letter of Intent. An applicant shall include a letter of intent to the department as part of the pre-application package.

C. Eligible Projects. Financial assistance may be provided only for the construction of drinking water facilities as described in a system improvement plan approved by the department. The department may consider only applications for projects by community water systems, both publicly and privately owned, and nonprofit noncommunity water systems.

D. Project Priority Rating. All eligible projects for which a pre-application is submitted will be assigned a priority rating annually by the department based upon the priority criteria described in the Intended Use Plan submitted to the EPA each year as part of the federal capitalization grant application.

E. Allowable/Eligible Costs

1. Allowable cost determinations, based on applicable federal law and guidance, will be made by the department on a project-by-project basis.

2. Pre-Application Conference. Applicants whose pre-application project falls in the fundable portion of the annual priority list, and who have demonstrated a commitment to proceed with the application process, shall be invited to an application conference with the department and the DEQ in order to insure the applicant is acquainted with program requirements and to assist the applicant in preparing an application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:693 (April 1998).

§7809. Application Requirements and Loan Conditions

A. Limitation on Applications. An application shall only be funded after authorization from both the department and the DEQ. Completed application packages shall be provided to both the department and the DEQ simultaneously.

B. Application Package. The contents of the application package must contain all applicable information required by the department including, but not limited to, the following:

1. System Improvement Plan. The applicant will submit a System Improvement Plan (SIP) consisting of those necessary plans, specifications and studies that directly relate to construction of drinking water facilities. The SIP must contain enough information to allow the department to perform an engineering review of the proposed project to determine compliance with the *State Sanitary Code*, and to allow for the appropriate environmental review as required by the DEQ.

2. Financial Information. The applicant is required to submit sufficient information to demonstrate its legal, institutional, managerial, and financial capability to ensure the construction, operation, and maintenance of the drinking water facilities and repayment of the loan, interest, and administrative fees.

3. Site Certificate. The applicant must submit a certificate executed by an attorney certifying that the applicant

has acquired all property sites, easements, rights-of-way, or specific use permits necessary for construction, operation, and maintenance of the project described in the approved SIP.

4. Engineering Review. The department will perform a technical review of the SIP to insure that the proposed improvements are necessary and eligible for program funding, and that the completed project will result in compliance with the SDWA and any applicable state drinking water regulations. This review shall include the review of bidding documents to verify that the proposed contractor has complied with all applicable federal cross-cutting authorities and has or will have all required bonds and insurance certificates.

C. Loan Conditions. Loans for projects will be made only to eligible applicants who comply with the conditions and requirements established by the DEQ.

D. Loan Period. Standard loans shall be made by the DEQ for a period of time not to exceed 20 years from the completion date of the project. Loans to disadvantaged communities may be extended to a period of 30 years. Interim construction financing shall not exceed two years without written approval from the department and from DEQ.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:694 (April 1998).

§7811. Miscellaneous

A. Coordination. Coordination of project review and approval for funding shall be conducted in accord with the Memorandum of Understanding (MOU) to be executed by the department and the DEQ.

B. Inspection During Construction. By making application for financial assistance to the department, applicants consent and agree to allow the department and/or the DEQ the right of reasonable access and opportunity for inspection as follows.

1. From the time a completed application for financial assistance is received by the department, throughout all stages of construction, and at any other time while financial assistance from the department to the applicant is outstanding, the department shall have the right to inspect any and all projects, and any and all incidental works, areas, facilities and premises otherwise pertaining to the project for which application is made.

2. The department and the DEQ shall further have the same right of inspection to examine any and all books, accounts, records, contracts, or other instruments, documents, or information in the possession of the applicant or its contractors, agents, employees, or representatives which relate in any respect to the receipt, deposit, or expenditure of project-related financial assistance funds.

C. Project Changes/Modifications

1. The applicant shall receive approval from the department and the DEQ prior to effecting any changes which:

a. alter the project performance standards;

b. alter the type or degree of water treatment provided by the project;

c. substantially delay or accelerate the project schedule;

d. substantially alter the design plans and/or specifications; or the location, size, or capacity; or quality of any major part of the project.

2. Minor changes in the project which are consistent with the scope and objectives of the project and the requested financial assistance do not require the approval of the department prior to implementation of the change. However, the amount of the financial assistance may be increased only by means of a formal amendment to the assistance agreement which must first be approved by both the department and the DEQ.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2821 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, Division of Environmental Health Services, LR 24:694 (April 1998).

Bobby P. Jindal
Secretary

9804#071

RULE

Department of Public Safety and Corrections Gaming Control Board

Appeals; Petition for Declaratory
Orders and Rulings, Statutes and Rules
(LAC 42:III.115 and 116)

The Gaming Control Board hereby adopts LAC 42:III.115 and 116 in accordance with R.S. 27:1 et seq., and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part III. Gaming Control Board

Chapter 1. General Provisions and Scope

§115. Appeals to the Board

Appeals to the board from a decision of a hearing officer shall be decided by the board. The appeal shall be decided on the record by a majority of a quorum of the board or a majority of a panel of three members of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 24:695 (April 1998).

§116. Petition for Declaratory Orders and Rulings, Statutes and Rules

A. Any interested person may file a petition for a declaratory order or ruling as to the applicability of any statutory provision or as to the applicability or validity of any rule or order of the board.

B. Petitions referred to in §116.A shall be in writing and filed with the board at its office in Baton Rouge.

C. Petitions filed with the board in accordance with §116 shall be disposed of promptly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 24:695 (April 1998).

Hillary J. Crain
Chairman

9804#021

RULE

Department of Public Safety and Corrections Office of the State Fire Marshal

Manufactured Housing (Installation)
(LAC 55:V.521-553)

In accordance with the provisions of R.S. 49:950 et seq., and R.S. 51:911.32.A(2), relative to the authority of the Office of the State Fire Marshal to promulgate and enforce rules and regulations, the Office of the State Fire Marshal hereby adopts the following rules.

Title 55

PUBLIC SAFETY

Part V. Fire Protection

Chapter 5. Manufactured Housing (Installation)

§521. Definitions

When used in these regulations, these terms shall have the following meanings:

Dealer—any person engaged in the sale, leasing, or distribution of mobile homes or manufactured housing primarily to a person who, in good faith, purchases or leases a mobile home or manufactured housing for purposes other than resale.

Fire Marshal—the assistant secretary of the Office of the State Fire Marshal of the State of Louisiana.

Installation—the construction of a foundation system and the placement or erection of a manufactured home or a mobile home on the foundation system. *Installation* includes, without limitation, supporting, blocking, leveling, securing, or anchoring such home and connecting multiple or expandable sections of such home together and to the foundation.

Installer—a person responsible for the installation of a manufactured home or mobile home and who is required to obtain a license pursuant to the provisions of R.S. 51:912.

Manufactured Home—a new or used structure transportable in one or more sections, which is 8 body feet or more in width or 40 body feet or more in length or, when erected on site, is 320 or more square feet and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating and air conditioning, and electrical systems contained therein. For purposes of LAC 55:V.Chapter 5, the terms *mobile home*, *manufactured home*, and *manufactured housing* may be used interchangeably and apply only to structures bearing the permanently affixed seal of the U.S. Department of Housing and Urban Development.

Manufacturer—any person who constructs or assembles manufactured housing.

Person—a natural person, association, or group of natural persons, partnership, company, corporation, institution, or legal entity.

Salesman—any person employed by a dealer for purposes of selling manufactured housing to the public.

Transporter—an individual who transports the manufactured home or mobile home to the site of installation but does not perform the blocking and anchoring of the home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:695 (April 1998).

§523. General

A. Any person who engages in the business of installing manufactured homes, who directs, supervises, or controls installations or performs repairs to an existing installation shall have an appropriate, valid Louisiana manufactured housing installer's license issued by the Office of the State Fire Marshal.

B. Persons who have had a license issued by this office revoked may not apply for approval as an installer within one year of the date of revocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998).

§525. License Exceptions

Notwithstanding the provisions of LAC 55:V.523, the following individuals are not required to have a license as provided therein:

1. when the individual installing the manufactured home is the owner thereof, or the manufactured home is owned by a member of the individual's immediate family, and the manufactured home is not intended for sale, exchange, lease, or rent;

2. an individual installing additional blocking for support;

3. an individual installing a manufactured home when the manufactured home is installed on a dealer's, distributor's, or manufacturer's sales or storage lot or at a show and is not occupied or intended to be occupied. This exemption does not include those manufactured homes installed in manufactured homes parks or manufactured homes subdivisions;

4. an individual performing plumbing or electrical work when the individual doing the work is a licensed plumber or electrician;

5. an individual performing maintenance, repairs, or corrections to an installation for the purpose of customer service on behalf of manufacturers or dealers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998).

§527. Manufactured Housing Installer's License

Effective May 1, 1998, a manufactured home may not be installed without a licensed manufactured housing installer

supervising installation work being performed. The licensed manufactured housing installer is responsible for the reading, understanding, and following of the manufacturers installation instructions and performance of nonlicensed workers engaged in the installation of the home.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998).

§529. Requirements for Installer's License

A. To be licensed as a manufactured housing installer, an applicant shall have at least one year's experience installing manufactured homes.

B. Verification of experience shall be submitted in the form of sworn statements signed by the applicant before a notary public.

C. In addition to the completed application form and application fee, an applicant shall provide the following:

1. personal identification;
2. proof of workers' compensation insurance;
3. proof of vehicle liability as required by law.

D. After January 1, 1999, in addition to the requirement of §529.A, B, and C, the application must include a certificate of completion as evidence of having attended and received a passing grade in a fire marshal-approved manufactured housing installation education program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998).

§531. Installer's Responsibilities and Limits

A. Work covered by an installer's license shall be limited to:

1. installing manufactured homes in accordance with applicable statutes, administrative rules and regulations, adopted codes, and standards;

2. installing the support, tie down and the structural connections for manufactured housing in accordance with applicable statutes, rules and regulations, adopted codes, and standards;

3. providing plumbing, electrical, and mechanical connections of and to the manufactured home in accordance with applicable statutes, rules and regulations, adopted codes, and standards;

4. performing plumbing, mechanical, and electrical tests in accordance with applicable statutes, rules and regulations, adopted codes, and standards, as required for installation;

5. supervising individuals installing manufactured homes.

B. An installer shall:

1. assure the manufactured home is in compliance with the *Louisiana Uniform Standard Code for Manufactured Housing and Mobile Homes*;

2. perform electrical and plumbing tests if the plumbing and electrical connections were made by the installer;

3. close and secure all access panels and covers on or under the manufactured home;

4. assure the manufactured home installation is in compliance with the applicable statutes, rules and regulations,

adopted codes, and standards;

5. assure that all doors and windows are adjusted, secured in place, and operational;

6. assure that all "ship loose" flue vents and chimneys are installed, secured in place, and capped according to their listing;

7. complete all reporting and application forms required by these rules;

8. leave the manufacturer's installation instructions at the installation site to be available at the time of the inspection if used for any part of the installation and thereafter left with the owner thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:696 (April 1998).

§533. Installer's Responsibilities to the Consumer

An installer shall:

1. ensure all phases of the installation work performed by the installer are complete and in compliance with the applicable statutes, rules and regulations, adopted codes, and standards;

2. notify the Office of the State Fire Marshal of the installation work performed by the installer;

3. correct all applicable nonconformances within 30 days of receipt of a correction notice from the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998).

§535. Monthly Report

A. An installer shall submit a monthly installation report to the Office of the State Fire Marshal by the twentieth day of the following month.

B. A report need not be filed for those months in which no installations were made.

C. Reports shall be submitted on forms provided by the Office of the State Fire Marshal and provide all information requested thereon.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998).

§537. Issuance and Possession of License

A. A manufactured home installer license shall be issued to the person named on the application and shall be nontransferable.

B. The licensee shall publicly display said license at licensee's principal place of business and physically possess a copy of the license when at the job site.

C. The licensee shall provide satisfactory evidence of being licensed when requested to by the Office of the State Fire Marshal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998).

§539. License Renewal

A. Licenses issued under LAC 55:V.Chapter 5 shall expire on January 1 of the year following issuance.

B. An application for renewal of a current license shall include:

1. the required fees as set forth in R.S. 51:912.27.A;

2. all information requested on the form by the Office of the State Fire Marshal.

C. Forty-five days prior to license expiration, the fire marshal shall mail each licensee a license renewal application.

D. A license renewal application must be submitted to the fire marshal prior to the expiration date of the license. Persons wishing to apply for a license after their license has expired must reapply for a new license and meet all requirements of a new applicant.

E. A person not meeting the continuing educational requirement prior to December 31 of each year, shall apply for a temporary installer's license that will be effective for six months or until said installer completes his continuing education requirement, whichever occurs first.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998).

§541. Issuance of the Temporary Installer's License

A. In order to be issued a temporary installer's license, the applicant must qualify as provided by LAC 55:V:539.E, or meets all of the conditions of LAC 55:V:537 except for the educational requirements. The purpose of the temporary license is to allow such individuals to complete the educational requirements. Such requirements must be completed at the earliest available time after issuance of the temporary license. The temporary installer's license is not renewable.

B. A temporary installer's license allows persons to perform all of the work performed by an installer. The license shall be valid for six months from the date of issue.

C. The fee for the temporary license is the same as the installer's license as provided in R.S. 51:912.27.A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998).

§543. License Suspension or Revocation; Imposition of Civil Penalties

A. The fire marshal may, after notice and hearing as required by R.S. 49:950 et seq., suspend or revoke an installer's license issued by this office, or impose a civil penalty as provided for by R.S. 40:1563.4, for violations of applicable statutes, rules, regulations, adopted codes, or standards or lawful orders issued by the fire marshal.

B. The schedule of fines shall be as follows:

1. First offense of the following violations:

- | | |
|---|-------|
| a. Failure to timely renew license | \$100 |
| b. Failure to timely file required report | \$100 |

c. Failure to properly supervise unlicensed employees	\$100
d. Failure to install "ship loose" flue vents and chimneys	\$100
e. Failure to timely correct nonconformances	\$100
2. Second offenses of the foregoing violations	\$250
3. Third offenses of the foregoing violations	\$500
4. First offense of the following violations:	
a. Failure to properly set up and install the manufactured home	\$250
b. Failure to properly tie down the manufactured home	\$250
c. Failure to properly plumb and/or electrically connect the manufactured home	\$250
d. Failure to properly tag and seal multi-sectional manufactured home	\$250
e. Bringing the manufactured home out of compliance with federal standards by altering it or installing improper equipment	\$250
f. Second offenses of the foregoing violations	\$500
g. Third offenses of the foregoing violations	\$750

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:697 (April 1998).

§545. Education: Requirements, Installer's License

A. Beginning January 1, 1999, all licensed installers shall attend at least one fire marshal-approved installation class per calendar year.

B. Classes shall only be provided by the fire marshal or a fire marshal-approved provider and shall include instruction as to statutes, codes, rules, and regulations or standards and/or changes thereof and proper installation procedures.

C. Prior to the end of the license period, licensees will be notified by the fire marshal of class requirements and class availability for the next license period.

D. The fire marshal shall not renew licenses of licensees who did not attend required classes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998).

§547. Course Curriculum Requirements for Education Provider Training

A. The course curriculum shall be submitted to the fire marshal for approval and shall include a detailed description of course content and materials.

B. The course curriculum for manufactured housing installers should, at a minimum, include the following areas of training:

1. definitions, as provided in the "Louisiana Minimum Standards for Installation of Manufactured Homes and Mobile Home" law;
2. license and registration requirements;
3. permits and penalties;
4. installer qualification;
5. location of manufactured homes;
6. foundation systems;
7. structural connections;
8. anchoring systems;
9. electrical connections;
10. plumbing connections;
11. mechanical connections;
12. fuel gas piping connections;
13. fire protection and separation;
14. underfloor enclosures, access, and ventilation;
15. alternate manufactured housing uses;
16. accessory buildings and structures;
17. alterations, repairs, and additions.

C. Within 30 days of notification of any change in course curriculum requirements adopted by the fire marshal, the provider shall submit a revised curriculum to the fire marshal for approval.

D. The provider shall notify the fire marshal, in writing, seven days prior to each class, indicating the time, date, and location of the class. The fire marshal's representative shall be permitted to audit any class, without fee or cost for entry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998).

§549. Requirements for Education Provider Instructors

A. Instructors must provide to the fire marshal for approval, documentation of qualifications to teach installation classes.

B. Documentation must include:

1. formal schooling;
2. specified training in the manufactured housing industry;
3. history of instructional ability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998).

§551. Inspections by the Office of the State Fire Marshal

A. Upon request for inspection by a Louisiana-licensed dealer, manufacturer, installer, or the homeowner, the Office of the State Fire Marshal will cause an inspection to be performed by one of the employees of this office to determine compliance with the applicable sections of R.S. 51:912.21 through R.S. 912.28 regarding installation.

B. Upon completion of the requested inspection the Office of the State Fire Marshal will present to the requesting party and the homeowner an inspection report indicating the findings of said inspection.

C. The requesting party will reimburse the Office of the State Fire Marshal for the inspection in accordance with the provisions of R.S. 51:911.32(3).

D. The fee shall be \$40.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:698 (April 1998).

§553. Pier Spacing and Construction

In accordance with R.S. 51:912.23(1)(a) the following table and figures shall be utilized for installation of piers:

TABLE A

PIER SPACING TABLE

Soil Class	1,000 PSF		1,500 PSF		2,000 PSF		2,500 PSF		3,000 PSF	
Footer Size	4'x16'x16'	6'x20'x20'	4'x16'x16'	6'x20'x20'	4'x16'x16'	6'x20'x20'	4'x16'x16'	6'x20'x20'	4'x16'x16'	6'x20'x20'
Max. Pier Space	3'	4'6"	4'	6'6"	6'	9'	8'	11'	9'	11'

(Note: Pier Measurements are from Center to Center)

FIGURE A

BLOCKING (Single Tiered)

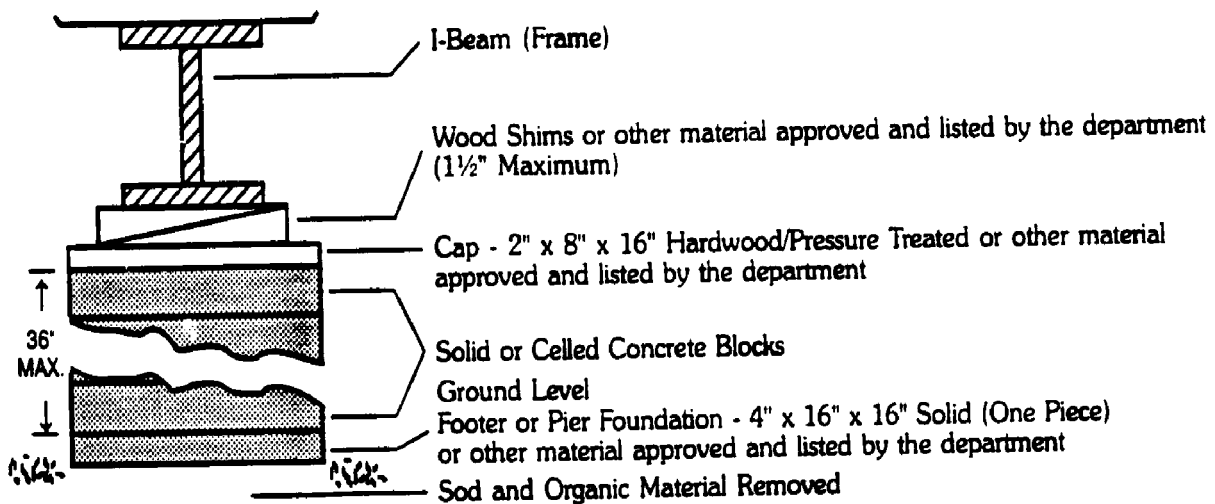


FIGURE B

BLOCKING (Double Tiered and Block Interlocked)

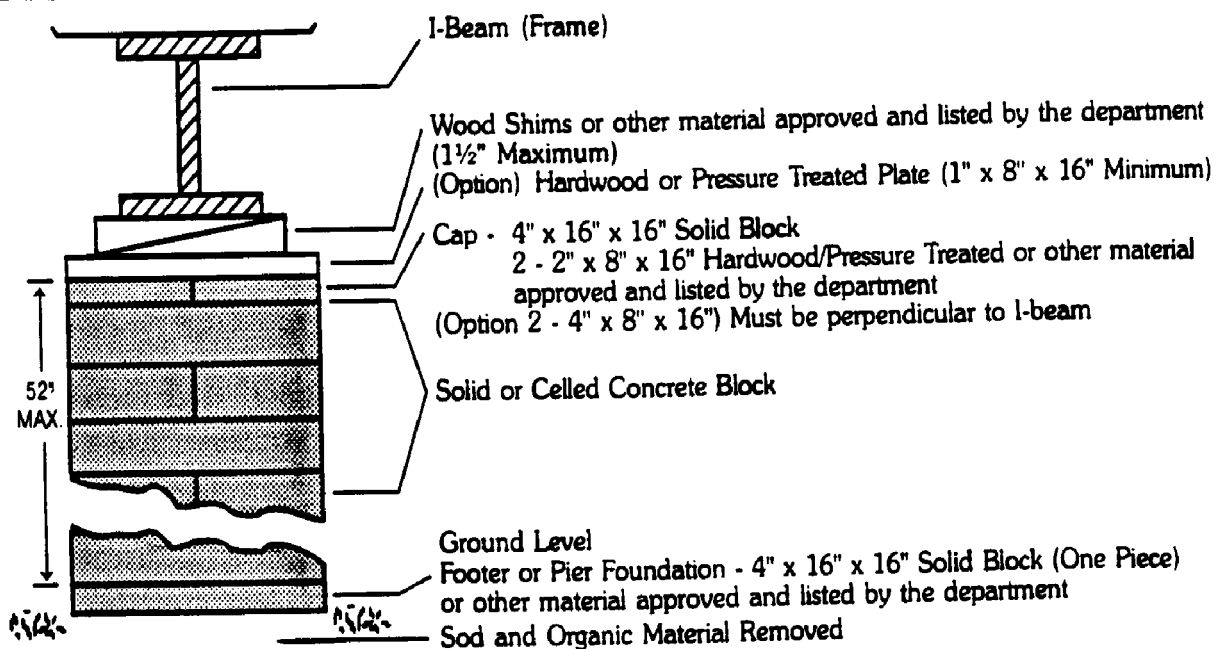


FIGURE C

I-BEAM FRAME ATTACHMENT

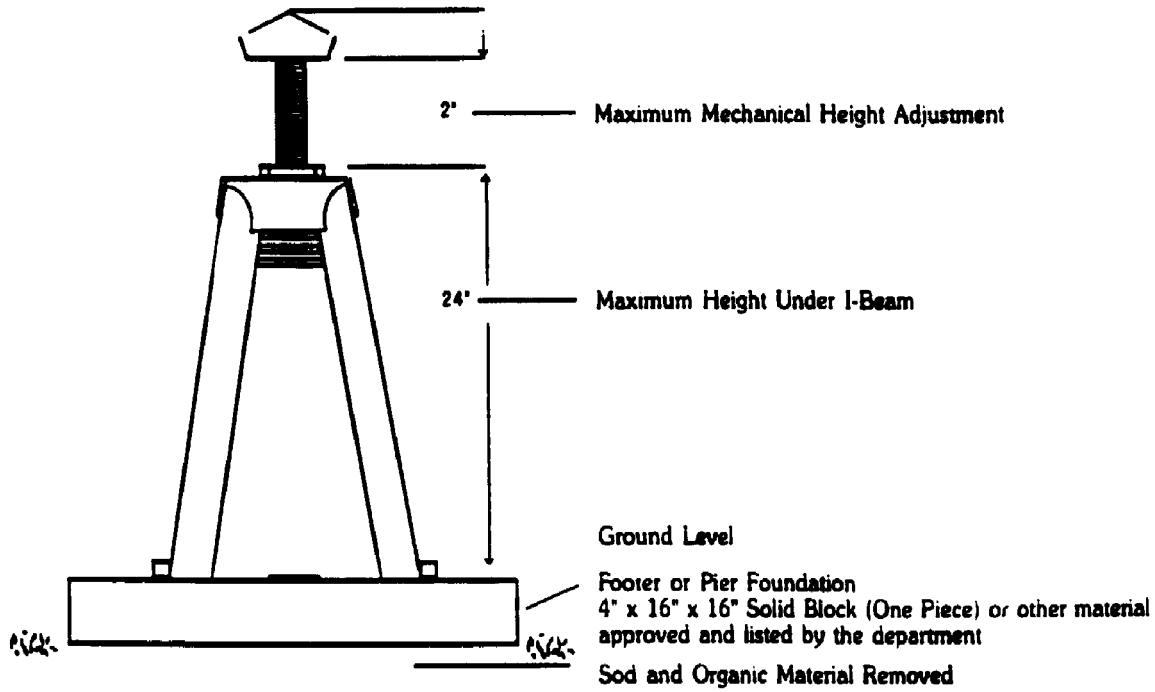
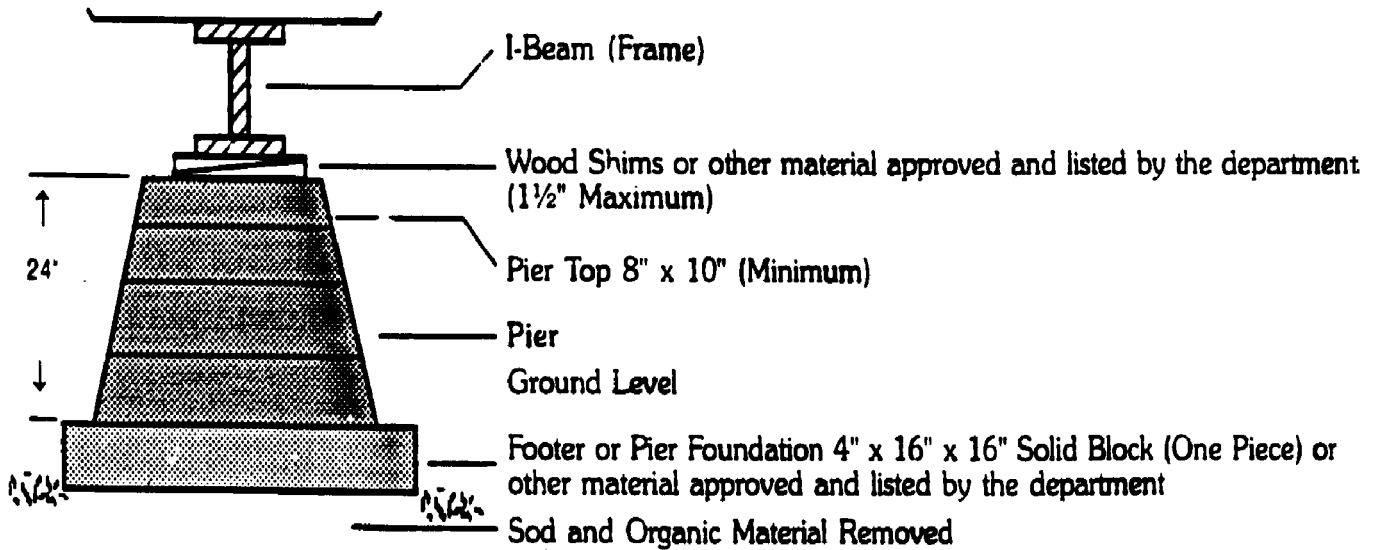


FIGURE D

BLOCKING (Solid Pier)



AUTHORITY NOTE: Promulgated in accordance with R.S. 51:911.32.A(2).

HISTORICAL NOTE: Promulgated by Department of Public Safety and Corrections, Office of the State Fire Marshal, LR 24:699 (April 1998).

Thomas H. Normile
Undersecretary

9804#041

RULE

Department of Revenue Office of Alcohol and Tobacco Control

Responsible Vendor Program Fees (LAC 55:VII.501)

Under the authority of R.S. 26:906 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control has adopted LAC 55:VII.501 to establish an annual \$35 fee for each licensed establishment holding a Class "A" General, Class "A" Restaurant, or a Class "B" Retail Alcoholic Beverage Control Permit issued under R.S. 26:71 or R.S. 26:271.

Act 1054 of the 1997 Regular Session of the Louisiana Legislature enacted Chapter 7 of Title 26 of the Revised Statutes, comprised of §§901 through 909, to establish the Responsible Vendor Program. According to the Act's provisions, the program, which educates vendors, their employees, and customers about selling, serving, and consuming alcoholic beverages in a responsible manner, must be approved by January 1, 1998. Section 906 provides for a fee, not exceed \$50 per licensed establishment, to fund the costs of developing and administering the program.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Chapter 5. Responsible Vendor Program

§501. Fees

The Office of Alcohol and Tobacco Control hereby establishes an annual fee of \$35 per licensed establishment holding a Class "A" General, Class "A" Restaurant, or a Class "B" Retail Alcoholic Beverage Control Permit issued under R.S. 26:71 or R.S. 26:271 for the purpose of funding development and administration of the Louisiana Responsible Vendor Program.

1. The fee shall be assessed on all new and renewal applications for retail permits to engage in the business of dealing in alcoholic beverages.

2. The fee shall not be assessed to those parties seeking a Special Event Permit under the provisions of R.S. 26:793(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:906.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:702 (April 1998).

Murphy J. Painter
Commissioner

9804#042

RULE

Department of Social Services Office of Community Services

Interethnic Adoption (LAC 67:V.401)

The Department of Social Services, Office of Community Services has adopted the following rule in the Adoption and Foster Care Program. This rule, §401, Interethnic Adoption Provisions, replaced the previous §401, Multi-ethnic Placement.

This rule is mandated by The Small Job Protection Act of 1996 (Public Law 104-188), Section 1808 "Removal of Barriers to Interethnic Adoption," which was signed by President Clinton on August 20, 1996. It became effective January 1, 1997. This rule further affirms and strengthens the 1994 Multi-ethnic Placement Act prohibition against discrimination in adoption and foster care placements.

Title 67

SOCIAL SERVICES

Part V. Community Services

Subpart 1. General Administration

Chapter 4. Placements

§401. Interethnic Adoption Provisions

A. The Office of Community Services and its subrecipients involved in adoption or foster care placements may not:

1. deny to any person the opportunity to become an adoptive or a foster parent on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved; or

2. delay or deny the placement of a child for adoption or into foster care on the basis of the race, color, or national origin of the adoptive or foster parent, or the child involved.

B. The term *placement decision* means the decision to place, or to delay or deny the placement of, a child in a foster care or an adoptive home, and includes the decision of OCS and its subrecipients to seek the termination of birth parents' rights or otherwise make a child legally available for adoptive placement.

C. Any individual who is aggrieved by an action in violation of §401.A taken by OCS or its subrecipients shall have the right to bring an action seeking relief in a United States district court of appropriate jurisdiction.

D. Nothing in §401 shall be construed to affect the

application of the Indian Child Welfare Act of 1978, 25 U.S.C. 1901 et seq.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-188, Section 1808.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Community Services, LR 20:898 (August 1994), amended LR 21:1353 (December 1995), LR 24:702 (April 1998).

Madlyn B. Bagneris
Secretary

9804#072

RULE

Department of Social Services Office of Family Support

Support Enforcement—Child Support Distribution (LAC 67:III.2514)

The Department of Social Services, Office of Family Support has amended the *Louisiana Administrative Code*, Title 67, Part III, Subpart 4, Support Enforcement Services (SES), the child support enforcement program. An emergency rule was signed by the secretary on December 3, 1997.

Public Law 105-33, the Balanced Budget Act of 1997, signed into law on August 5, 1997, amended §457 of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which governs the distribution of support collected under Title IV-D of the Social Security Act. The Department of Health and Human Services, Administration for Children and Families issued Action Transmittal OCSE-AT-97-17 on October 21, 1997, directing states to take immediate action. Under the existing rule, funds collected in excess of a Family Independence Temporary Assistance Program (FITAP) grant amount, up to the amount of the court-ordered monthly support, are required to be disbursed to the applicant/recipient. Under P.L. 104-193 this distribution is no longer required, and the full amount collected must be used to determine the federal share. The state will retain the state share to reimburse the current and prior assistance amounts.

Additionally, Public Law 104-193, as clarified by the Action Transmittal, mandated that state tax intercepts be distributed as all other collections, so the words "and/or state tax" are being deleted from LAC 67:III.2514.B.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 4. Support Enforcement Services

Chapter 25. Support Enforcement

Subchapter D. Collection and Distribution of Support Payments

§2514. Distribution of Child Support Collections

A. Effective December 3, 1997, the agency will distribute child support collections in the following manner:

1. In cases in which the applicant/recipient (AR) currently receives Family Independence Temporary Assistance Program (FITAP) benefits, collections received in a month will

be retained by the state to reimburse previous and current assistance amounts. If the collection amount exceeds the amount of unreimbursed grant, the excess will be refunded to the AR up to the current arrearage amount.

2. - 4. ...

B. There are general exceptions to distribution. Any collections received through intercept programs or income assignments are subject to refund to the noncustodial parent based on federal and state laws and regulations. Effective December 3, 1997, amounts collected through IRS intercepts will be applied to arrears in this order:

1. - 2. ...

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and P.L. 105-33.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:304 (March 1997), amended LR 24:703 (April 1998).

Madlyn B. Bagneris
Secretary

9804#075

RULE

Department of Transportation and Development Office of Weights and Measures

Minimum Standards for Reflectivity of Work-Site Materials (LAC 73:III.Chapter 3)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of Act 1303 of the 1997 Regular Session of the Louisiana Legislature, the Department of Transportation and Development adopts the following rule setting forth minimum standards for reflective materials.

Title 73

WEIGHTS, MEASURES AND STANDARDS

Part III. Weights and Measures

(Editor's Note: Text in existing §301, promulgated in LR 21:706 (July 1995), has been moved to Chapter 5, Materials and Testing, §501, Manuals.)

Chapter 3. Minimum Standards for Reflectivity of Work-Site Materials

§301. Minimum Standards for Reflective Sign Sheeting

A. Reflective sheeting shall be one of the following types as specified on the plans and conforming to ASTM D 4956 except as modified herein. The sheeting shall be an approved product listed in QPL 13.

1. Type I. A medium-intensity retro reflective sheeting referred to as "engineering grade" and typically enclosed lens glass-bead sheeting.

2. Type II. A medium-high-intensity retro reflective sheeting sometimes referred to as "super engineering grade" and typically enclosed lens glass-bead sheeting.

3. Type III. A high-intensity retro reflective sheeting, that is typically encapsulated glass-bead retro reflective material.

4. Type IV. A high-intensity retro reflective sheeting. This sheeting is typically an unmetallized microprismatic retro

reflective element material.

5. Type V. A super-high-intensity retro reflective sheeting. This sheeting is typically a metallized microprismatic retro reflective element material.

6. Type VI. An elastomeric-high-intensity retro reflective sheeting without adhesive. This sheeting is typically a vinyl microprismatic retro reflective material.

7. Type VII. A super-intensity retro reflective sheeting having high retro reflectivity values at wide entrance angles of +45° and +60°. This sheeting is typically an unmetallized microprismatic retro reflective element material.

8. Type VIII. A super-intensity retro reflective sheeting having optimized performance over a broad range of observation angles. This sheeting is typically an unmetallized microprismatic retro reflective element material.

B. Adhesive Classes. The adhesive required for retro

reflective sheeting shall be Class 1 (pressure sensitive) or Class 2 (heat activated) as specified in ASTM D 4956.

C. Identification Marks. Type II sheeting shall be distinguished by integral identification marks that cannot be removed or affected by physical or chemical methods without causing damage to the sheeting. The markings shall be inconspicuously placed on 12-inch centers and shall be visible from a distance of not more than 3 feet.

D. Alternate Sheeting Types

1. DOTD Type VII. Minimum coefficient of retro reflection shall be as specified in Table 1015-1. Reflectance or daytime luminance shall be as specified in Table 1015-2. Artificially weathered panels exposed for 2,200 hours and evaluated in accordance with Section 7.4 and 8.6 of ASTM D 4956 shall conform to 50 percent of minimum values specified in Table 1015-1.

Table 1015-1 Type VII Sheeting ^A								
Observation Angle	Entrance Angle	White	Yellow	Red	Blue	Green	Orange	Flour. Orange
0.2°	-4°	800	660	215	43	80	300	200
0.2°	+30°	400	340	100	20	35	150	120
0.2°	+45°	145	85	25	7.6	12	50	50
0.2°	+60°	35	23	6.6	1.0	2.0	10	10
0.5°	-4°	200	160	45	9.8	20	100	80
0.5°	+30°	100	85	26	5.0	10	50	50
0.5°	+45°	75	60	18	2.8	6.0	20	20
0.5°	+60°	30	20	6.4	2.0	2.0	10	6.0

^AMinimum Coefficient of Retro Reflection (R_λ) cd/ft²/ft² (cd lx⁻¹m²)

Table 1015-2 Luminance Factor (Y%) (Daytime Luminance)		
Color	Minimum	Maximum
White	40	--
Yellow	24	45
Red	3.0	15
Blue	1.0	10
Green	3.0	9.0
Orange	12	30
Florescent Orange	30	--

2. DOTD Type VIII. Minimum coefficient of retro reflection shall be as specified in Table 1015-3. Reflectance or daytime luminance shall be as specified in Table 1015-2. Artificially weathered panels exposed for 2,200 hours and evaluated in accordance with Section 7.4 and 8.6 of ASTM D 4956 shall conform to 50 percent of minimum values specified in Table 1015-3.

Table 1015-3 Type VIII Sheeting _A							
Observation Angle	Entrance Angle	Rotation Angle	White	Yellow	Red	Blue	Green
0.20°	-4°	0°	430	350	70	20	45
0.33°	-4°	0°	300	250	53	15	33
0.50°	-4°	0°	250	200	46	10	25
1.00°	-4°	0°	80	65	14	4.0	10
0.20°	30°	0°	235	190	39	11	24
0.33°	30°	0°	150	130	25	7.0	18
0.50°	30°	0°	170	140	25	7.0	19
1.00°	30°	0°	50	40	11	2.5	5.0
0.20°	40°	90°	150	125	25	6.0	15
0.33°	40°	90°	85	75	14	4.0	8.0
0.50°	40°	90°	35	30	4.0	1.5	3.5
1.00°	40°	90°	20	13	5.0	0.7	2.0
_A Minimum Coefficient of Retro Reflection (R _A) cd/ft ² (cd lx ⁻¹ m ⁻²)							

E. Durability. Type VII and VIII sheeting shall perform satisfactorily for at least seven years (three years for orange) and retain 50 percent of the minimum coefficient of retro reflection in Table 1015-1 and Table 1015-3, respectively.

F. Sheeting Guaranty. The contractor shall supply the department with a guaranty from the sheeting manufacturer stating that if the retro reflective sheeting fails to conform to the performance and durability requirements of §301.F, the sheeting manufacturer shall do the following:

1. If the failure occurs within the first five years (seven years for Type III) from the date of sign fabrication (three years for Type II, Type III and Type VII orange sheeting), the sheeting manufacturer shall restore the sign face, in its field location, to its original effectiveness at no cost to the department for materials, labor, and equipment.

2. If the failure occurs from five to seven years from the date of sign fabrication for Types I, VII and VIII sheeting (except for orange), or from five to 10 years from the date of sign fabrication for Type II and seven to 10 years for Type III sheeting (except for orange), the sheeting manufacturer shall replace the sheeting required to restore the sign face to its original effectiveness at no cost to the department.

3. Replacement sheeting for sign faces, materials, and labor shall carry the unexpired guaranty of the sheeting for which it replaces.

4. The sign fabricator shall be responsible for dating all signs with the month and year of fabrication at the time of sign fabrication. This date shall constitute the start of the guaranty obligation period.

G. Reflective sheeting for temporary signs, barricades and channelizing devices, except drums and cones, shall meet the requirements of ASTM D 4956, Type II or Type III.

H. Reflective sheeting for drums shall be a minimum of 6 inches wide and shall meet the requirements of ASTM D 4956, Type III, and the Supplementary Requirement S2 for reboundable sheeting with the following modifications pertaining to artificial weathering. The reboundable reflective sheeting shall be tested for weather resistance by a 45E southern outdoor exposure for six months as opposed to the accelerated weathering specified in Subsections 8.6 and S2.2.4 of ASTM D 4956.

I. Reflective sheeting for cones shall conform to ASTM D 4956, Type VI.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:703 (April 1998).

§303. Minimum Standards for Striping

A. Temporary Pavement Markings

1. Temporary Tape. Temporary tape shall conform to ASTM D 4592, Type I (removable) or Type II (nonremovable) and shall be an approved product listed in QPL-60.

2. Painted Stripe. Paint shall be an approved traffic paint conforming to Subsection 1015.12. of *Louisiana Specifications for Roads and Bridges*. Glass beads for drop-on applications shall conform to Subsection 1015.13 of *Louisiana Specifications for Roads and Bridges*.

3. Temporary Raised Pavement Markings for Microsurfacing

a. Material Requirements. The temporary raised markers shall be flexible reflective tabs. The markers shall be yellow with amber reflective area on both sides. The body of the marker shall consist of a base and vertical wall made of polyurethane or other approved material and shall be capable of maintaining a reasonable vertical position after installation. The initial minimum coefficient of luminous intensity at an entrance angle of -4E and an observation angle of 0.2E shall be 2.5.

b. The markers shall be of standard size and quality and amenities as manufactured by:

- i. Davidson Plastic Company;
- ii. Renco, Inc.;
- iii. Valterra Products, Inc.; or
- iv. an approved equal for traffic marking materials (microsurfacing raised markers).

c. The reflective material shall be protected with an easily removable cover of heat resistant material capable of withstanding and protecting the reflective material from the application of asphalt at temperatures exceeding 325°F.

d. Certificates of Compliance. The contractor shall furnish three copies of certifications from the manufacturer stating that the materials meet the requirements of these specifications.

2. Temporary Raised Pavement Markers

a. Temporary raised pavement markers shall be installed as per manufacturer's recommendation or as directed by the engineer.

b. The temporary raised markers shall be flexible reflective tabs placed at 40-foot intervals on the centerline of the roadway.

c. The markers shall be installed in a manner so that the reflective faces of the markers are perpendicular to a line parallel to the roadway centerline.

d. If, in the opinion of the engineer, the temporary raised markers require removal after permanent striping has been accomplished, they shall be removed in such a manner as the pavement surface will not be unnecessarily damaged.

B. Traffic Paint. The contractor shall have the option of furnishing either alkyd traffic paint or water-borne traffic paint; however, the same type paint shall be used throughout the project. Each paint container shall bear a label with the name and address of manufacturer, trade name or trade mark, type of paint, number of gallons, batch number and date of manufacture. Paints shall be approved products listed in QPL-36; shall show no excessive settling, caking or increase in viscosity during six months of storage; and shall be readily stirred to a suitable consistency for standard spray gun application. An infrared curve shall be generated in accordance with DOTD TR 610 and compared with the standard curve made during the initial qualification process.

1. Alkyd Traffic Paint. This material shall be rapid-setting compound suitable for use with hot application equipment. The material shall meet the following requirements:

Property	Test Method	Requirements	
		Min	Max
Weight, lb/gal	ASTM D 1475	12.0	
Viscosity @ 25°C, Krebs Units	ASTM D 562	85	115
Dry to No Pick Up	ASTM D 711		180
Directional Reflectance, % White Yellow	ASTM E 97	80 50	
Bleeding	Fed. Spec. TT-P-115	Pass	
Total Solids, % by weight	ASTM D 1644, Method A	70	
Film Shrinkage	(a)	Pass	
Hiding Power	(b)	Pass	
Pigment, %	ASTM D 2371	50	55
Nonvolatiles in Vehicle, % by weight	ASTM D 215	35	
Flexibility	Fed. Spec. TT-P-1952	Pass	
Pigment Composition	(c)	Pass	

a. Film Shrinkage. With a film applicator, cast a wet film with a thickness of 30 mils over a smooth glass plate. Allow sample to cure at room condition for four to five hours. Using a micrometer, measure the plate thickness before the film is cast using five measurements to obtain an average. The cured film shall have a minimum thickness of 12 mils.

b. Hiding Power. The paint shall have a wet hiding power of at least 350 square feet per gallon. The compound shall have sufficient hiding power to cover any pavement when applied at a wet film thickness of 15 mils.

c. Pigment Composition. White paint shall contain at least 1.5 pounds of titanium dioxide pigment per gallon as determined using DOTD TR 523 with at least 92 percent TiO₂ content. The TiO₂ shall conform to ASTM D 476. Yellow paint shall contain at least 1.3 pounds of medium chrome yellow pigment per gallon as determined using DOTD TR 523. Medium chrome yellow pigment shall conform to ASTM D 211, Type III.

2. Water Borne Traffic Paint. This material shall be a rapid setting waterborne compound suitable for use with hot application equipment. The material shall meet the following requirements:

Property	Test Method	Requirements	
		Min	Max
Weight, lb/gal	ASTM D 1475	12.0	
Viscosity @ 25°C, Krebs Units	ASTM D 562	75	90
Drying to No Pickup, min.	ASTM D 711		10
Dry through, min.	ASTM D 1640		20

Volume Solids	---	58	
Total Solids, % by weight	ASTM D 2369	70	
Pigment, % by weight	ASTM D 3723	45	55
Nonvolatiles in Vehicle % by weight	Fed. Test 141B	40	
Bleed Ratio	Fed. Spec. TT-P-1952	0.96	
Daylight Reflectance, % White Yellow	Fed. Test 141B	85 54	
Hiding Power (Contract Ratio at 10 mils)	Fed. Test 141B	0.96	
Flexibility	Fed. Spec. TT-P-1952	Pass	
Drying Time, min.	(a)		3
Fineness of Grind	ASTM D 1210	3	
Freeze-Thaw	ASTM D 2243	Pass	

Heat Stability	Fed. Spec. TT-P-1952	Pass	
Shelf Life, months	(b)	12	
Color	(c)	Pass	
Volatile Organic Compounds (g/L)			250
Pigment Composition	(d)	Pass	

a. Drying Time to No Track. Paint applied at 15 mils wet on the road surface with paint heated to 120-150EF shall not show tracking when a standard size automobile crosses in a passing maneuver at three minutes.

b. The paint shall show no excessive setting, caking or increase in viscosity during 12-month storage and shall be readily stirred to a consistency for use in the striping equipment.

c. Color. Yellow paint shall conform to the requirements of the following table when tested in accordance with ASTM E 1349. White shall be a clean, bright, untinted binder.

Color Specification Limits (Daytime)								
Color	1		2		3		4	
	X	Y	X	Y	X	Y	X	Y
YELLOW	0.476	0.452	0.498	0.478	0.522	0.454	0.492	0.435

(The four pairs of chromaticity coordinates determine the acceptable color in terms of the CIE 1931 Standard Colorimetric system measured with Standard Illuminant C.)

d. The white paint shall contain a minimum of 1.0 pound per gallon of titanium dioxide as determined using DOTD TR 523. The titanium dioxide shall conform to ASTM D 476.

C. Glass Beads for Drop-On Application. Glass beads shall conform to AASHTO Designation: M 247, Type I, with the following modifications.

Gradation of Glass Beads	
Sieve Designation Alternative No.	Mass Percent Passing
20	80 - 100
30	65 - 85
40	--
50	15 - 35
80	--
100	0 - 5

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:705 (April 1998).

§305. Minimum Standard for Thermoplastic Pavement Markings

A. Description. This specification covers hot-sprayed or hot-extruded reflective thermoplastic compound for pavement markings on asphaltic or portland cement concrete pavement. Thermoplastic marking material applied to asphaltic surfaces shall consist of an alkyd-based formulation. Thermoplastic marking material applied to portland cement concrete surfaces shall consist of either an alkyd-based or hydrocarbon-based formulation. Material shall be so manufactured as to be applied by spray or extrusion to pavement in molten form, with internal and surface application of glass spheres, and upon cooling to normal pavement temperature, shall produce an adherent, reflectorized pavement marking of specified thickness and width, capable of resisting deformation.

1. Materials shall be approved products listed in QPL 63 and shall conform to AASHTO M 249. Material shall not scorch, break down, or deteriorate when held at the plastic temperature specified in Subsection 732(03)(d)(1) for four hours or when reheated four times to the plastic temperature.

Temperature-vs-viscosity characteristics of plastic material shall remain constant when reheated four times, and shall be the same from batch to batch. There shall be no obvious change in color of material as the result of reheating four times, or from batch to batch.

2. Suitability for Application. Thermoplastic material shall be a product especially compounded for pavement markings. Markings shall maintain their original dimension and placement and shall not smear or spread under normal traffic at temperatures of below 140EF. Markings shall have a uniform cross section. Pigment shall be evenly dispersed throughout its thickness. The exposed surface shall be free from tack and shall not be slippery when wet. Material shall not lift from pavement in freezing weather. Cold ductility of material shall be such as to permit normal movement with the pavement surfaced without chipping or cracking.

B. Inverted Profile Thermoplastic Pavement Markings. Materials shall conform to AASHTO M 249 and the specifications as stated herein with the following modifications:

1. Bead Content

U.S. Standard Sieve Size (Microns)	Class A - 10% min. (by wt.) of Thermoplastic Compound, Percent Retained	Class B - 25% min. (by wt.) of Thermoplastic Compound
14 (1400)	0 - 1	Beads shall meet gradation requirement of AASHTO M 247, Type I
16 (1190)	0 - 20	
18 (1000)	0 - 45	
20 (840)	30 - 80	
30 (595)	20 - 50	
Pan	0 - 10	

2. Bead Quality. The glass beads shall be coated with A-116 Silane or other adhesion promoting coating. The glass beads shall have a maximum of 3 percent irregular particles and a maximum of 5 percent are inclusions. The percentage of true sphere shall be 90 percent minimum for Class A beads and 80 percent minimum for Class B beads.

3. Binder Content. The binder content of the thermoplastic material shall be 19 percent minimum.

4. Titanium Dioxide. The titanium dioxide shall meet ASTM D476, Type II, Rutile grade—93 percent minimum titanium content.

5. Yellow Pigment. The yellow pigment for the yellow thermoplastic material shall be 4 percent minimum.

6. Specific Gravity. The specific gravity of the thermoplastic pavement marking material shall not exceed 2.35.

7. Flowability. After heating the thermoplastic material for 4 hours ±5 minutes at 425° ± 3°F (218° ± 2°C) and testing flowability, the white thermoplastic shall have a maximum percent residue of 22 percent and the yellow thermoplastic shall have a maximum residue of 24 percent.

8. Reflectivity. The initial reflectance for the in-place marking shall have the minimum reflectance value of 450 mcd/lux/m² for white and 350 mcd/lux/m² for yellow when measured with a geometry of 1.5° observation angle and 86.5° entrance angle.

9. Wet Reflectivity. The minimum in-place marking when wet shall have the minimum reflectance value of 200 mcd/lux/m² for white and 175 mcd/lux/m² for yellow when measured with a geometry of 1.5° observation angle and 86.5° entrance angle. The stripe shall be wet utilizing a pump-type garden sprayer for 30 seconds. After five seconds, place the reflectometer on the stripe and measure the retro reflectance.

10. Retained Reflectivity. The thermoplastic pavement marking material shall retain the minimum reflectance value of 130 mcd/lux/m² for at least four years after placement. Failure to meet this requirement shall require the contractor to replace the portion of the material shown to be below these minimums. The contractor shall supply a written warranty indicating the terms of this requirement.

11. Inverted Profile. The thermoplastic pavement marking material shall be applied to have individual profiles having a minimum height of 0.140 inches with the recessed inverted profiles having a thickness of 0.025 to 0.050 inches. The profiles shall be well defined and not excessively run back together.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measure, LR 24:707 (April 1998).

§307. Minimum Standards for Preformed Plastic Pavement Marking

A. Preformed plastic pavement marking tape shall be approved products listed in QPL 64 and shall conform to ASTM D 4505 Type I, Type I—High Performance (as specified below) or Type V, except as modified herein. The marking tape shall be Grade A, B, C, D, or E. The type and color shall be in accordance with the plans and the *Manual on Uniform Traffic Control Devices*.

B. Thickness. All preformed plastic pavement marking tape shall have a minimum overall thickness of 60 mils when tested without the adhesive.

C. Friction Resistance. The surface of the Type I preformed plastic pavement marking tape shall provide a minimum frictional resistance value of 35 British Polish Number (BPN) when tested according to ASTM E 303. The surface of the Type I—High Performance and Type V preformed plastic pavement marking tape shall provide a minimum frictional resistance value of 45 British Polish Number (BPN) when tested according to ASTM E 303, except values for the Type V are calculated by averaging values taken at downweb and a 45° angle from downweb.

D. Retro Reflective Requirements. The performed plastic pavement marking tape shall have the following minimum specific luminance values when measured in accordance with ASTM D 4061.

Type	Observation Angle	Entrance Angle	Specific Luminance mcd/ft ² /fc	
			White	Yellow
I	0.2°	86°	500	400
	1.0°	86.5°	300	175
I-High Performance	0.2°	86°	700	560
	1.0°	85.5°	400	225
V	0.2°	86°	1100	800
	1.0°	86.5°	700	500

E. Durability Requirements. The Type V preformed plastic pavement marking tape shall show no appreciable fading, lifting or shrinkage for at least four years after placement for longitudinal lines and at least two years after placement for symbols and legends.

F. The Type V preformed plastic pavement marking tape shall retain the following reflectance values for at least four years after placement for longitudinal lines and at least two years after placement for symbols and legends.

Observation Angle	Entrance Angle	Specific Luminance mcd/ft ² /fc	
		White	Yellow
1.0°	86.5°	100	100

G. Plastic Pavement Marking Tape Guaranty (Type V). The contractor shall provide the department with a guaranty from the manufacturer stating that if the plastic pavement marking tape fails to conform to the performance and durability requirements of §307.G within four years, the manufacturer will restore the plastic pavement marking tape to its original effectiveness at no cost to the department for materials, labor, and equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Measures, LR 24:708 (April 1998).

§309. Minimum Standards for Raised Pavement Markers

A. Markers shall conform to ASTM D4280, and be either nonreflectorized or reflectorized, as specified. Markers shall be approved products listed in QPL9. Infrared curves of materials used in markers shall match approved curves on file at the department's Materials and Testing Section.

B. Temporary Raised Pavement Markers for Asphaltic Surface Treatment

1. Material Requirements. The temporary raised markers shall be flexible reflective tabs. The markers shall be yellow with amber reflective area on both sides. The body of the marker shall consist of a base and vertical wall made of polyurethane or other approved material and shall be capable of maintaining a reasonable vertical position after installation. The initial minimum reflectivity at an entrance angle of 4° and an observation angle of 0.2° shall be 2.5.

2. The markers shall be of standard size and quality with amenities as manufactured by:

- a. Davidson Plastics Company;
- b. Renco, Inc.;
- c. Valterra Products, Inc.; or
- d. an approval equal for traffic marking materials (asphaltic surface treatment raised markers).

3. The reflective material shall be protected with an easily removable cover of heat resistant material capable of withstanding and protecting the reflective material from the application of asphalt at temperatures exceeding 325°F.

4. Certificates of Compliance. The contractor shall furnish three copies of certifications from the manufacturer stating that the materials meet the requirements of these specifications.

C. Temporary Raised Pavement Markers for Microsurfacing

1. Material Requirements. The temporary raised markers shall be flexible reflective tabs. The markers shall be yellow with amber reflective area on both sides. The body of the marker shall consist of a base and vertical wall made of polyurethane or other approved material and shall be capable of maintaining a reasonable vertical position after installation. The initial minimum reflectivity at an angle of incidence of 4° and an observation angle of 0.2° shall be 2.5.

2. The markers shall be of standard size and quality with amenities as manufactured by:

- a. Davidson Plastics Company;
- b. Renco, Inc.;
- c. Valterra Products, Inc.; or
- d. an approval equal for traffic marking (microsurfacing raised markers).

3. The reflective material shall be protected with an easily removable cover of heat resistant material capable of withstanding and protecting the reflective material from the application of asphalt at a temperature of 325°F.

4. Certificates of Compliance. The contractor shall furnish three copies of certificates from the manufacturer stating that the materials meet the requirements of these specifications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:35.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Weights and Standards, LR 24:709 (April 1998).

Frank M. Denton
Secretary

9804#052

RULE

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

Three-Day Basic and Saltwater Nonresident Recreational Fishing License Fees (LAC 76:VII.407)

The Wildlife and Fisheries Commission hereby adopts a rule relative to fees for three-day basic and saltwater nonresident recreational fishing licenses.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 4. License and License Fees

§407. Three-Day Basic and Saltwater Nonresident

Recreational Fishing License Fees

A. In lieu of the basic recreational fishing license, nonresidents may purchase a three-day basic recreational fishing license for a fee of \$10. This three-day license shall be valid for three consecutive days, including the day of issue.

B. In lieu of the saltwater recreational fishing license, a nonresident may purchase a three-day saltwater recreational fishing license at a fee of \$15. This three-day license shall be valid for three consecutive days, including the day of issue.

C. The fees in §407 hereby supersede those fees established for the licenses in this Section at R.S. 56:302.1(B)(1) and (2)(a).

D. The effective date of the fees in §407 shall be July 1, 1998.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:6(28).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:710 (April 1998).

Thomas M. Gattle, Jr.
Chairman

9804#035

Notices of Intent

NOTICE OF INTENT

**Department of Agriculture and Forestry
Office of Agro-Consumer Services
Weights and Measures Commission**

**Commercial Weighing and Measuring Devices
(LAC 7:XXXV.101 and 129)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Weights and Measures Commission proposes to substitute the National Institute of Standards for National Bureau of Standards in LAC 7:XXXV.101 and 129 to reflect the new name of that federal agency. These rules comply with and are enabled by R.S. 3:4606 and R.S. 3:4608.

No preamble concerning the proposed rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§101. Specifications, Tolerances and Regulation for Commercial Weighing and Measuring Devices

The commissioner of Agriculture and Forestry, under authority conferred by the Louisiana Revised Statutes of 1950, Title 3, Section 4608, and for the enforcement of requirements applicable to the equipment therein referred to, hereby adopts by reference all rules, regulations, standards, specifications and tolerances as contained in the National Institute of Standards and Technology Handbook H-44, and amendments thereto, entitled *Specifications, Tolerances, and Regulations for Commercial Weighing and Measuring Devices*, and as contained in the National Conference on Weights and Measures Publication 19 entitled *Examination Procedure for Price Verification*, but only insofar as the Louisiana Revised Statutes of 1950, as amended, may provide.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4606 and R.S. 3:4608 (formerly R.S. 55:4 and R.S. 55:6).

HISTORICAL NOTE: Adopted by the Department of Agriculture, Commission of Weights and Measures, April 1953, amended and promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Division of Weights and Measures, LR 19:1530 (December 1993), amended LR 23:857 (July 1997), amended by the Weights and Measures Commission, LR 24:

§129. Standards

A. - B.1. ...

2. has been tested by the National Institute of Standards and shown to comply with Handbook 44 criteria by the issuance of a Report of Test (Prior to 1985) or a Certificate of Conformance (1985, Forward); or

3. ...

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4603 (formerly R.S. 55:3).

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agro-Consumer Services, Commission of Weights and Measures, LR 13:158 (March 1987), amended by the Division of Weights and Measures, LR 19:1535 (December 1993), amended by the Weights and Measures Commission, LR 24:

All interested persons may submit written comments on the proposed amendments through May 26, 1998, to Ronnie Harrell, Department of Agriculture and Forestry, 5825 Florida Boulevard, Baton Rouge, LA 70806. All interested persons will be afforded an opportunity to submit data, views or arguments in writing at the address above.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Commercial Weighing and Measuring Devices

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs or savings to state or local governmental units. The proposed rule is merely changing the name of the federal agency.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is estimated to 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)
It is estimated that there will be no costs or economic benefits.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There will be no effect on competition and employment.

Skip Rhorer
Assistant Commissioner
9804#005

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Economic Development Racing Commission

Pari-Mutuel Tickets (LAC 35:XV.12341)

The Racing Commission hereby gives notice that it intends to amend LAC 35:XV:12341, "Pari-Mutuel Tickets," to provide for conditions of honoring pari-mutuel tickets for payouts.

Title 35
HORSE RACING
Part XV. Off-Track Wagering

Chapter 123. General Rules

§12341. Pari-Mutuel Tickets

A. - B. ...

C. When wagers are accepted by a host track, guest track or off-track wagering facility and a pari-mutuel ticket is issued therefor, such wagers are to be considered enforceable contracts, evidenced by possession of winning tickets, and such tickets shall be honored by all cashiers of the host track and the off-track wagering facility where such wagers are placed. Refunds of wagers shall be made only:

1. on a horse that is scratched; or
2. if a race is declared off; or
3. if a manual merge is rendered impossible because of

an act or event beyond the control of a host track and/or the host track's off-track wagering facility including, but not limited to, a catastrophe or acts of God. However, if a licensee, while participating in a common pooled wagering network with one or more other tracks, experiences transmission failure or other malfunctions with either the guest or host totalizator system which prevents the merger or required wagering data, then in such event the licensee shall honor the pari-mutuel ticket.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:141, R.S. 4:176 and R.S. 4:211-227.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Racing Commission, LR 14:290 (May 1988), amended by the Department of Economic Development, Racing Commission, LR 17:261 (March 1991), LR 24:

The domicile office of the Racing Commission is open from 8 a.m. to 4 p.m., and interested parties may contact Paul D. Burgess, executive director; C. A. Rieger, assistant director; or Tom Trenchard, administrative manager, at (504) 483-4000 (FAX 483-4898), holidays and weekends excluded, for more information. All interested persons may submit written comments relative to this proposed rule through April 10, 1998, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Paul D. Burgess
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Pari-Mutuel Tickets

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs to implement this action.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This action is not anticipated to affect revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This action benefits patrons, but not measurably.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action has no effect on competition nor employment.

Paul D. Burgess
Executive Director
9804#061

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Economic Development
Racing Commission

Racing A Horse Under
Investigation (LAC 35:I.1733)

The Racing Commission hereby gives notice that it intends to amend LAC 35:I.1733, "Racing a Horse under Investigation," which clarifies when a horse is ineligible to race while under an investigation for a positive test result.

Title 35
HORSE RACING

Part I. General Provisions

Chapter 17. Corrupt and Prohibited Practices

§1733. Racing a Horse Under Investigation

A. When a report as described in §1729 is received from the state chemist, the state steward shall immediately advise the trainer of his rights to have the "split" portion of the sample tested at his expense. The stable shall remain in good standing pending a ruling by the stewards, which shall not be made until the split portion of the original sample is confirmed positive by a laboratory chosen by the trainer from a list of referee laboratories. The horsemen's bookkeeper shall not release any affected purse monies until the results of the split portion of the sample are received by the commission. The horse allegedly to have been administered any such drug or substance shall not be allowed to enter in a race during the investigation, and until the completion of the stewards' hearing.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:142 and R.S. 4:148.

HISTORICAL NOTE: Adopted by the Racing Commission in 1971, promulgated by the Department of Commerce, Racing Commission, LR 2:449 (December 1976), amended LR 3:45 (January 1977), repromulgated LR 4:287 (August 1978), amended LR 7:262 (May 1981), LR 9:755 (November 1983), amended by the Department of Economic Development, Racing Commission, LR 18:367 (April 1992), LR 23:951 (August 1997), LR 24:

The domicile office of the Racing Commission is open from 8 a.m. to 4 p.m. and interested parties may contact Paul D. Burgess, executive director; C. A. Rieger, assistant director; or Tom Trenchard, administrative manager, at (504) 483-4000 (FAX 483-4898), holidays and weekends excluded, for more information. All interested persons may submit written comments relative to this proposed rule through April 10, 1998, to 320 North Carrollton Avenue, Suite 2-B, New Orleans, LA 70119-5100.

Paul D. Burgess
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Racing a Horse under Investigation

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no costs to implement this action.
- I. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This action is not anticipated to affect revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This action benefits horsemen but only by clarifying the intent of the rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This action has no effect on competition or employment.

Paul D. Burgess
Executive Director
9804#062

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741—GED Requirements

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, an amendment to Bulletin 741, Standard 1.124.02. Bulletin 741 is referenced in LAC 28:I.901.A. The amendment allows local superintendents to issue age waivers for 16 year olds to take the GED in certain instances without approval from BESE and provides due process for adults to appeal to BESE if their request for a waiver is denied at the local level.

1.124.02 A student shall be 17 years of age or older in order to be authorized to be administered the General Educational Development (GED) test. A married or emancipated individual may be permitted to take the GED test at 16 years of age and above. A student who has attained the age of 16 and qualified to take the GED test may request an age waiver from the local school superintendent if one or more of the following hardships exist and appropriate documentation is on file at the local school board office:

- pregnant or actively parenting;
- incarcerated;
- institutionalized or living in a residential facility;
- chronic physical or mental illness.

The local school superintendent or his/her designee may approve the request without requesting action from the Board of Elementary and Secondary Education (BESE). Such local action must occur prior to a qualified 16 year old student

taking the GED test. If the request for an age waiver is denied at the local level, a student may request the waiver from the Department of Education for approval by BESE with documentation of reason for denial at the local level. All other requests for age waivers due to hardships not listed above, must be approved by BESE prior to taking the GED test. Individuals 15 years of age and below shall not be permitted to take the GED test under any circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:7.

HISTORICAL NOTE: Amended by the Board of Elementary and Secondary Education, LR 24:

Interested persons may submit comments until 4:30 p.m., June 10, 1998 to Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Bulletin 741—GED Requirements

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no estimated increase in cost for this policy revision. This change allows local parish superintendents the flexibility to issue age waivers for 16 year olds to take the GED in certain instances without approval from BESE and provides for due process for those adult education students who have attained the age of 16 and qualified to take the General Educational Development test to appeal to BESE if their request for a waiver is denied at the local level. It is estimated that at least one page of Bulletin 741 will need to be reprinted and disseminated. This estimated cost is \$100.
BESE estimated cost for printing this policy change and first page of fiscal and economic impact statement in the *Louisiana Register* is approximately \$60. Funds are available.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collection with the adoption of this bulletin.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This rule change may increase the number of students who receive waivers, since the local education agency will have more flexibility in granting age waivers to 16 year olds who wish to take the GED. Those persons affected who pass the test could be eligible for the job market sooner.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There may be a small number of 16 year old students who are granted age waivers and are allowed to take the GED test and pass who enter the job market sooner than they normally would.

Marlyn Langley
Deputy Superintendent
Management and Finance
9804#067

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Board of Elementary and Secondary Education

Restructure of Board Committees (LAC 28:I.103)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement, the following revision to the structure of the standing committees of the board. The amendment reduces the standing committees from 14 to 10.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 1. Organization

§103. Board Committees

A. As a means of assisting the board in the exercise of its powers and responsibilities as defined in the Constitution and by law, standing and special committees are created.

B. Standing committees composed of not less than three members of the board and appointed by the president are:

1. Board Relations/Strategic Planning/Administration Committee;
2. 8(g) Committee;
3. Finance/Audit Review Committee;
4. Legal/Due Process Committee;
5. Legislative/Policy Oversight Committee;
6. School and Community Support Committee;
7. School Standards/Accountability Committee;
8. Student Standards/Assessment Committee;
9. Quality Educators Committee;
10. Vocational-Technical Committee;
11. - 14. ...

B. Becomes Subsection C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3(D) and R.S. 17:6(A)(10).

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 16:297 (April 1990), amended LR 24:

Interested persons may submit comments until 4:30 p.m., June 10, 1998, to Jeannie Stokes, Board of Elementary and Secondary Education, Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Restructure of Board Committees

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This action will have no fiscal effect other than \$80 for advertising in the *Louisiana Register*.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This action 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)

This action will have no effect on cost and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This action will have no effect on competition and employment.

Weegie Peabody
Executive Director
9804#066

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Student Financial Assistance Commission Office of Student Financial Assistance

Commission Bylaws (LAC 28:V.Chapter 1)

The Louisiana Student Financial Assistance Commission (LASFAC), the statutory body created by R.S. 17:3021 et seq., in compliance with §952 of the Administrative Procedure Act, advertises its intention to revise its governing bylaws (originally promulgated in the September 1996 *Louisiana Register*, pages 809-813), as follows:

(Editor's Note: The full text of these bylaws is being repromulgated in order to place the text in LAC codified format. The agency is proposing amendments in §§101, 105, and 113. Other sections are not being amended.)

Title 28

EDUCATION

Part V. Student Financial Assistance—Higher Education Loan Program

Chapter 1. Student Financial Assistance Commission Bylaws

§101. Definitions and Authority

Assistant Executive Director (as used in these bylaws)—that person appointed in the unclassified service as the principal assistant to the executive director, who shall, as delegated by the executive director, assume the duties of the executive director during his/her absences.

Chairman of the Commission (as used in these bylaws)—the executive secretary to the governor or his/her designee, who shall serve as ex officio chairman of the commission.

Director (as used in these bylaws)—that person appointed in the classified service as the administrative head of a division of the Office of Student Financial Assistance.

Divisions (as used in these bylaws)—a subordinate organizational element of the Office of Student Financial Assistance which has been approved by the commission.

Executive Director (as used in these bylaws)—that person duly appointed by the commission pursuant to R.S. 17:3022(B) to serve in the unclassified service as executive director of the Office of Student Financial Assistance, who shall be its chief executive officer and the appointing authority for all classified employees of the office.

Fiscal Officer (as used in these bylaws)—that employee of the office assigned responsibility for preparation and monitoring the approved budget of the commission, who may jointly serve as a director.

Louisiana Student Financial Assistance Commission (as used in these bylaws)—the statutory body created by R.S. 17:3021, et seq., which shall be composed of the members who are duly appointed and qualified as provided by law. The commission shall be the governing body of the Office of Student Financial Assistance and shall establish procedures for the selection and appointment of the unclassified employees of that office, in conformance with applicable laws.

Office of Student Financial Assistance (as used in these bylaws)—the organization created by R.S. 36:650 to perform the functions of the state relating to the programs of financial assistance and the certain scholarship programs for higher education in accordance with the directives of the commission and applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), amended LR 24:

§103. Meetings

A. Regular Meetings. The commission shall hold regular meetings which are limited in number to 12 per year. All regular meetings shall be held at meeting places designated by the commission. Proxy voting shall be allowed at all meetings for the chairman of: State Board of Elementary and Secondary Education; Board of Supervisors, Louisiana State University; Board of Supervisors, Southern University; Board of Regents; Board of Trustees and Louisiana Association of Independent Colleges and Universities, or each of their designees; however, any proxy holder must also be a member of that respective board. The superintendent of education may vote by proxy through a member of his/her executive staff. No other members shall have the right of proxy voting.

B. Special Meetings. Special meetings of the commission may be called by the chairman at any time, or by the secretary upon written request therefor signed by a majority of the members and specifying the purposes of the desired meeting. Written notification shall be sent to each member at least three calendar days before the time of the meeting.

C. Compensation.

1. Members of the commission shall receive compensation for their service at the rate authorized by statute or as authorized by executive order, and shall be reimbursed for their necessary travel expenses actually incurred in the conduct of the business of the commission.

2. The commission is limited to 12 meetings per year for which per diem may be drawn by commission members. D .

Quorum. A simple majority of the commissioners shall constitute a quorum for the transaction of any business, and a simple majority of the quorum present at any meeting voting in favor or against a particular item shall be the act of the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

§105. Officers of the Commission and Executive Staff

A. Chairman and Vice Chairman.

1. The executive secretary to the governor or his/her designee shall serve as ex officio chairman of the commission. The commission shall select a vice chairman annually. Should a vacancy occur in the vice chairmanship, the commission shall elect a successor from its membership. The commission may elect such other officers as it deems necessary.

2. The chairman of the commission shall preside over all meetings of the commission, serve as ex officio member of all committees, name the appointive members of all standing and special committees of the commission, and fill all vacancies in the membership of such committees, in accordance with the provisions of these bylaws.

3. The vice chairman of the commission shall perform the duties of the chairman in the absence of the chairman of the commission.

4. In the event both the chairman and the vice chairman are absent from a commission meeting, the commission shall elect a temporary chairman from those present.

B. Secretary. The commission shall elect a secretary annually, who may certify the minutes, papers and documents of the commission or of its committees to be true and correct copies.

C. Executive Staff. The executive staff of the commission shall include the incumbent of those positions within the Office of Student Financial Assistance so designated by the executive director and will normally be composed of the executive director, the assistant executive director, the general counsel, the fiscal officer and the directors of the divisions of the office, and such other personnel as may be required for the efficient performance of the functions of the commission. The executive staff shall be tasked, directed and supervised by the executive director.

D. Authentication. Copies of all minutes, papers and documents of the commission, or its committees, may be certified to be true and correct copies by either the chairman, secretary or executive director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), amended LR 24:

§107. Order of Business

A. Rules of Order. When not in conflict with any of the provisions of this article, *Robert's Rules of Order* (latest revision) shall constitute the rules of parliamentary procedure applicable to all meetings of the commission or its committees.

B. Order of Business. The order of business of regular meetings of the commission shall be as follows:

1. roll call;

2. corrections and approval of minutes of preceding regular meetings and of all special meetings held subsequent thereto;

3. reports and recommendations of standing and special committees;

4. unfinished business;
5. divisional updates;
6. new business;
7. next meeting.

C. Reference to Committees. In cases where feasible and desirable before taking action, the commission should refer any subject or measure to the standing or special committee in whose purview the matter falls. The committee to which the matter is referred should submit to the commission its recommendations in writing, together with any resolutions necessary to facilitate such recommendations.

D. Meetings.

1. Meetings shall be conducted in accordance with state law governing public bodies. It shall be the policy of the commission that all meetings be open to all who wish to attend. The commission shall enter into a closed or executive session by two-thirds majority vote of the quorum present. Prior to each regular meeting of the commission, the executive director, with approval of the chairman, shall prepare and forward to each member of the commission a tentative agenda for the meeting at least five working days prior to such regular meeting. Upon request of three members of the commission made prior to the fifth day before the next commission meeting that a particular item be included, the chairman shall place the subject or subjects upon the agenda. All matters requiring commission action, however, may be acted on even though not carried on the agenda.

2. Each resolution shall be reduced to writing and presented to the commission before it is acted upon. All official actions of the commission shall require a simple majority vote of the quorum present at the meeting.

E. Minutes. The minutes of the commission shall record official action taken upon motions or resolutions which are voted upon by the commission and may contain a summary of reports and pertinent discussion. The foregoing provisions relative to contents of the minutes shall, in general, also apply to minutes of committees of the commission. The minutes of meetings of the commission become official only when completed and approved by the commission.

F. Meeting Attendance. Commission members are required to attend all commission meetings. Failure to attend three meetings annually will result in a notice being sent from the commission to the absent member stating that failure to attend one more meeting will result in a request being made to the appointing authority that the absent member be replaced. In the event a fourth meeting is missed, said request shall be sent to the appointing authority. Also, the absent member shall be relieved of duties on any committee to which he/she has been appointed to serve. This section is not applicable to meetings that are missed with just cause, as determined by the chairman.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

§109. Committees

A. Standing Committees. Unless and until otherwise decided by the vote of a simple majority of the membership of

the commission, the standing committees of the commission shall consist of the following:

1. Executive Committee;
2. Budget and Finance Committee;
3. Personnel and Policy Committee.

B. Appointment and Terms.

1. Members of all standing committees, one of whom shall be designated as chairman and one of whom shall be designated as vice chairman, shall be appointed by the chairman of the commission, ordinarily soon after the chairman assumes office. The term of committee appointments shall be one year.

2. Vacancies occurring among the appointive members of any committees, however arising, shall be filled by the chairman of the commission for the remainder of the unexpired term.

C. Officers of Standing Committees.

1. The chairman and the vice chairman of the commission shall be chairman and vice chairman, respectively, of the executive committee. In the absence of the chairman, the vice chairman shall preside. In the event both the chairman and vice chairman are absent from a meeting, the committee shall elect a temporary chairman from those present.

2. It shall be the duty of the chairman of each committee to call and to preside over the necessary meetings. The minutes of the meeting of the committee, showing its actions and recommendations, shall be deemed in compliance with the provisions of §107.C, hereof, concerning the written recommendations of the committee.

D. Quorum of Committee Meetings. A simple majority of the membership present at a meeting of a committee of the commission shall constitute a quorum for the transaction of business. When a quorum is not present, the chairman of the committee, or vice chairman in the chairman's absence, may designate a member of the commission to serve as a substitute member of the committee concerned.

E. Authority of Committees. The authority of committees of the commission shall be subject to these bylaws and to the policies and direction of the commission.

F. Executive Committee.

1. The executive committee shall consist of five members. The chairman and vice chairman of the commission shall serve in those capacities on the executive committee. The chairman of each of the other standing committees or the chair's designee from his respective committee shall be a member of the executive committee. The remaining person, for a total of five members, shall be appointed by the chairman of the commission from the other members of the commission.

2. The executive committee shall consider such matters as shall be referred to it by the commission and shall execute such orders and resolutions as shall be assigned to it at any meeting of the commission. All official actions of the executive committee shall require a majority vote of the quorum present at the meeting. The executive committee shall also approve all budget adjustments prior to submission to the appropriate authority. In the event that an emergency requiring immediate commission action shall arise between commission meetings,

it shall be the duty of the executive committee to meet in emergency session to take such action as may be necessary and appropriate. The executive committee shall report the actions it takes in emergency session to the commission for ratification at the commission's next meeting.

G. Budget and Finance Committee. The Budget and Finance Committee shall consist of not less than six members of the commission. Normally, to this committee shall be referred all matters related to budget and to policies concerning the financial management of the commission and the office.

H. Personnel and Policy Committee. The Personnel and Policy Committee shall consist of not less than six members of the commission. Normally, to this committee shall be referred matters concerning reorganization of the office. This committee shall hear appeals pursuant to the office's grievance procedure.

I. Special Committees. As the necessity therefor arises, the chairman may, with the concurrence of the commission, create special committees with such functions, powers and authority as may be delegated. The chairman may appoint ad hoc committees for special assignments for limited periods of existence not to exceed the completion of the assigned task.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

§111. Communications to the Commission

All communications to the commission, or to any committee thereof, from persons having official relations with the commission shall be filed in writing with the executive director and duly transmitted by him to the commission. The executive director shall have the authority to read and comment upon all communications from employees of the office but shall not delay or withhold such communications, except as hereinafter provided. Such communications shall be filed with the executive director at least five days before the meeting of the commission or committee and with the chairman at least three days before such meeting. Otherwise, the executive director may either submit such communication at that time or withhold such communication until the next meeting. In the event the executive director elects to withhold any such communication until the next meeting, such communication shall be promptly forwarded to the chairman with the notation of the executive director concerning such withholding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

§113. Rights Duties and Responsibilities of the Executive Staff of the Commission

A. Executive Staff of the Commission.

1. The executive staff of the commission staff shall include the incumbent of those positions within the Office of Student Financial Assistance so designated by the executive director and will normally be composed of the executive

director, the assistant executive director, the general counsel, the fiscal officer, and the directors of the divisions of the office, and such other personnel as may be required for the efficient performance of the functions of the commission. The executive staff shall be tasked, directed and supervised by the executive director.

2. Unless otherwise directed by the executive director, the executive staff shall attend the meetings of the commission and its various committees.

B. Executive Director

1. The executive director shall be the executive head and chief administrative officer of the Office of Student Financial Assistance. The executive director will be responsible to the commission for the conduct of the Office of Student Financial Assistance in all affairs and shall execute and enforce all of the decisions, orders, rules and regulations of the commission with respect to the conduct of the Office of Student Financial Assistance. The executive director shall be appointed by and shall hold office at the pleasure of the commission. The executive director's discretionary authority shall be broad enough to enable him/her to meet his/her responsibilities, in the day-to-day operations of the Office of Student Financial Assistance.

2. The executive director shall be the "appointing authority" for the purposes defined by state civil service law, rules and regulations and shall exercise the authority granted to an "appointing authority" thereunder.

3. The executive director shall have the authority to suspend or dismiss unclassified employees.

4. Subject to these bylaws and the regulations and directions of the commission, the executive director shall:

a. establish administrative policies and procedures for the operation of the Office of Student Financial Assistance;

b. plan, organize, supervise, direct, administer, and execute the functions and activities of the Office of Student Financial Assistance;

c. prepare and present a business plan and consolidated budget for the Office of Student Financial Assistance and the commission;

d. serve as governmental liaison and spokesperson for the commission;

e. promote the development of the commission's programs.

5. The executive director shall task, direct, and supervise the executive staff.

6. The executive director shall be responsible for ensuring compliance with the legislatively enacted budgets as approved by the commission.

7. Annually, on or before July 1st, an evaluation of the executive director's job performance and compensation shall be conducted by the commission. These evaluations shall be conducted using a format adopted by the commission for these purposes. Changes to the compensation structure adopted by the commission shall be effective on July 1st of the year in which the evaluation is performed.

C. Assistant Executive Director. The assistant executive director shall be nominated by the executive director and confirmed by the commission. The assistant executive director shall serve as the principal assistant to the executive director

and, as delegated by the executive director, assume the duties of the executive director during his/her absences. He/She shall be responsible to the executive director for the effective performance of all duties assigned by the executive director, in accordance with the policies, rules, regulations, directives and memoranda issued by the executive director and the commission.

D. Directors of Divisions

1. There shall be a director for each division of the Office of Student Financial Assistance, appointed by the executive director in accordance with state civil service laws, rules and regulations. Under the direction and authority of the executive director and the rules of the commission, each director shall administer the division for which he/she is appointed.

2. As the administrative head of a division, the director shall be responsible to the executive director for planning, supervising, directing, administering and executing the functions and programs assigned to the division in accordance with all applicable laws, rules, regulations, policies, directives, and budgets.

3. The directors may invite members of his/her administrative staff to aid him in his/her presentations to the commission.

E. Delegation of Authority. In the absence of the executive director, the assistant executive director, as delegated by the executive director, will assume the duties of the executive director during his/her absences. In the event both the executive director and the assistant executive director are absent, the executive director will appoint the most senior division director to assume the duties of the executive director.

F. Agency Fiscal Officer (Manager). The fiscal officer is responsible for assisting the directors in developing annual operating budgets based upon the commission's approved business plan. This shall include the functions of review and recommendations concerning the budget of each division and the preparation of a consolidated budget, as well as monitoring and reporting the budget as approved by the commission and enacted by the state legislature.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), amended LR 24:

§115. Responsibilities of Commission Members

Commission members are charged with the responsibility of ensuring that the functions and duties of the Office of Student Financial Assistance are performed effectively in fulfilling the purposes of R.S. 17:3021 et seq. Prior to assuming the responsibilities to which appointed and to avoid any potential conflict of interest, a commissioner shall, to the best of his or her knowledge, disclose to the State Board of Ethics any pre-existing relationship between the commission and the commissioner or any member of the commissioner's immediate family or any entity in which the commissioner has a substantial economic interest. This obligation to disclose is a continuing obligation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

§117. Amendment or Repeal of Bylaws

New bylaws may be adopted, and bylaws may be amended or repealed, at any meeting of the commission, but no such action shall be taken unless notice of such proposed adoption, amendment, or repeal shall have been given at a previous meeting or notice in writing of the proposed change shall have been served upon each member of the commission at least 30 days in advance of the final vote upon such change, provided, however, when deemed necessary, that by a simple majority of the entire membership of the commission, the requirements for such notice may be waived at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

§119. Rules and Regulations of Louisiana Student Financial Assistance Commission

A. Any action by the commission establishing policy or methods of procedure, administrative, business, or otherwise shall be known as "Rules and Regulations of the Louisiana Student Financial Assistance Commission."

B. "Rules and Regulations of the Louisiana Student Financial Assistance Commission" may be adopted by the commission, or may be amended or repealed, in whole or in part, at any meeting of the commission by a vote of simple majority.

C. All policies and procedures of the commission falling within the definition of rules and regulations, as herein defined, and in existence upon the date of the adoption of these bylaws, shall be a part of the "Rules and Regulations of the Louisiana Student Financial Assistance Commission."

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

§121. Effective Date

These bylaws shall be adopted and shall become effective on the date they are published as final rule in the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

§123. Repealing Clause

All rules, orders, regulations, and resolutions heretofore enacted or adopted by this commission, which are in conflict with these bylaws, are hereby repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:321.

HISTORICAL NOTE: Promulgated by the Student Financial Assistance Commission, Office of Student Financial Assistance, LR 22:810 (September 1996), repromulgated LR 24:

Interested persons may submit written comments on the Bylaws until 4:30 p.m., May 20, 1998, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: LASFAC Bylaws Revision**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The implementation cost associated with publishing the bylaws in the *Louisiana Register* is approximately \$320. If funding is allocated, the projected cost of employing as Assistant Executive Director is \$80,900 in FY 1998-99 and \$78,576 in FY 1999-2000.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections is anticipated to result from this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No impact on nongovernmental groups is anticipated to result from this action.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated to result from this rule.

Jack L. Guinn
Executive Director
9804#043

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Tuition Trust Authority
Office of Student Financial Assistance**

Student Tuition and Revenue Trust (START Saving)
Program (LAC 28:VI.Chapters 1 and 3)

The Tuition Trust Authority advertises its intention to amend rules governing the Student Tuition Assistance and Revenue Trust (START Saving) Program.

The Student Tuition Assistance and Revenue Trust (START Saving) Program was created by R.S. 17:3091 et seq. The *Internal Revenue Code* (IRC) §529 provides tax incentives for those state tuition savings and prepayment programs meeting the definition of a qualified state tuition program. The rules are being revised to reflect changes in the IRC §529 and editorial changes.

**Title 28
EDUCATION**

**Part VI. Student Financial Assistance—Higher
Education Savings**

Chapter 1. General Provisions

Subchapter A. Student Tuition Trust Authority

§101. Program Description and Purpose

A. The Louisiana Student Tuition Assistance and Revenue Trust (START Saving) Program was enacted in 1995 to provide a program of savings for future college costs to:

1. help make education affordable and accessible to all citizens of Louisiana;
2. assist in the maintenance of state institutions of postsecondary education by helping to provide a more stable financial base to these institutions;
3. provide the citizens of Louisiana with financing assistance for education and protection against rising tuition costs, to encourage savings to enhance the ability of citizens to obtain access to institutions of postsecondary education;
4. encourage academic excellence, to promote a well-educated and financially secure population to the ultimate benefit of all citizens of the state; and
5. encourage recognition that financing an education is an investment in the future.

B. The START Saving Program establishes education savings accounts by individuals, groups, or organizations with provisions for routine deposits of funds to cover the future educational costs of a designated beneficiary or a group of beneficiaries.

1. In addition to earning regular interest at competitive rates, certain accounts are also eligible for tuition assistance grants provided by the state to help offset the beneficiary's cost of postsecondary tuition.

2. The grant amount is determined by the account owner's federal annual income and total annual deposits of principal.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997), repromulgated LR 24:

§103. Legislative Authority

Act Number 547 of the 1995 Regular Legislative Session, effective June 18, 1995, enacted the Louisiana Student Tuition Assistance and Revenue Trust (START) Saving Program as Chapter 22-A, Title 17 of the Louisiana Revised Statutes (R.S. 17:3091-3099.2).

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997), repromulgated LR 24:

§105. Program Administration

A. The Louisiana Tuition Trust Authority (LATTA) is a statutory authority whose membership consists of the Louisiana Student Financial Assistance Commission (LASFAC), plus one member from the Louisiana Bankers

Association, the state treasurer, and one member each from the house of representatives and state senate.

B. The LATTA administers the START Saving Program through the Louisiana Office of Student Financial Assistance (LOSFA).

C. LOSFA is the organization created to perform the functions of the state relating to programs of financial assistance and certain scholarship programs for higher education in accordance with directives of its governing bodies and applicable law, and as such is responsible for administering the START Saving Program under the direction of the LATTA.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:711 (June 1997), repromulgated LR 24:

§107. Applicable Definitions

Account Owner—the person(s), independent student, organization or group that completes a depositor's agreement on behalf of a beneficiary or beneficiaries and is the account owner of record of all funds credited to the account.

Beneficiary—the person named in the education savings account depositor's agreement as the individual entitled to apply the account balance, or portions thereof, toward payment of their postsecondary qualified higher education expenses.

Depositor's Agreement—the agreement for program participation executed by the account owner which incorporates, by reference, R.S. Chapter 22-A, Title 17, and the rules promulgated by the LATTA to implement this statute and any other state or federal law applicable to the agreement.

Education Assistance Account (EAA)—an account which is eligible for tuition assistance grants and is established on behalf of a designated beneficiary by a parent, grandparent, legal guardian, or person claiming the beneficiary as a dependent on their federal income tax or by an independent undergraduate on his own behalf.

Education Savings Account—a comprehensive term which refers to the two types of accounts that may be established under the program: an *Education Assistance Account* and an *Education Scholarship Account*.

Education Scholarship Account (ESA)—an account which is not eligible for tuition assistance grants and is established on behalf of a beneficiary or beneficiaries by a person or organization other than a parent, grandparent, legal guardian, independent student or person claiming the beneficiary or beneficiaries as dependent(s) on that person's or organization's federal income tax return.

Eligible Educational Institution—either a state college, university, or technical college or institute or an independent college or university located in this state that is accredited by the regional accrediting association, or its successor, approved by the U.S. secretary of education or a public or independent college or university located outside this state that is accredited by one of the regional accrediting associations, or its successor, approved by the U.S. secretary of education or a state licensed proprietary school licensed pursuant to R.S. Chapter 24-A of Title 17, and any subsequent amendments thereto.

Emergency Refund—a refund of the redemption value of an account due to an unforeseen event which has adversely impacted the account owner, such as termination of employment, death, or permanent disability and resulted in a severe reduction in income or extraordinary expenses.

Enrollment Period—that period designated by the LATTA during which applications for enrollment in the START program will be accepted by the LATTA.

False or Misleading Information—a statement or response made by a person which is knowingly false or misleading and made for the purpose of establishing a program account and/or receiving benefits to which the person would not otherwise be entitled.

Family Member—in reference to the account beneficiary:

1. an ancestor of such individual;
2. the spouse of such individual;
3. step-sibling(s) and their spouse;
4. a lineal descendant of such individual, of such individual's spouse or parent of such individual or the spouse of any lineal descendant described herein. A legally adopted child of an individual shall be treated as a lineal descendant of such individual.

Fully Funded Account—an account having a redemption value equal to or greater than five times the annual tuition at the highest cost Louisiana public college or university projected to the scheduled date of the beneficiary's first enrollment in an eligible educational institution. An account which is "fully funded" is no longer eligible for accrual of tuition assistance grants. However, if subsequent cost projections result in the fully funded amount being more than the account balance, then tuition assistance grants may resume until the level of the most recent fully funded account projection has been met.

Independent Student—a person who is defined as an independent student by the Higher Education Act of 1965, as amended, and if required, files an individual federal income tax return in his/her name and designates him/herself as the beneficiary of an education assistance account.

Louisiana Education Tuition and Savings Fund (the Fund)—a special permanent fund maintained by the Louisiana State Treasurer for the purpose of the START Saving Program, consisting of deposits made by account owners pursuant to the START Saving Application and Depositor's Agreement, interest earned on said deposits as a result of investment by the Louisiana State Treasurer, accumulated penalties and forfeitures, and the Tuition Assistance Fund, which is a special sub-account designated to receive tuition assistance grants appropriated by the State, and interest earned thereon.

Louisiana Office of Student Financial Assistance (LOSFA)—the organization responsible for administering the START Saving Program under the direction of the Louisiana Tuition Trust Authority.

Louisiana Resident—

1. any person who resided in the state of Louisiana continuously during the 12 months immediately prior to the date of application and who has manifested intent to remain in the state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

1. any person who resided in the state of Louisiana continuously during the 12 months immediately prior to the date of application and who has manifested intent to remain in the state by establishing Louisiana as legal domicile, as demonstrated by compliance with all of the following:

- a. if registered to vote, is registered to vote in Louisiana;
- b. if licensed to drive a motor vehicle, is in possession of a Louisiana driver's license;
- c. if owning a motor vehicle located within Louisiana, is in possession of a Louisiana registration for that vehicle;
- d. if earning an income, has complied with state income tax laws and regulations.

2. a member of the Armed Forces stationed outside of Louisiana, but who claims Louisiana as his "home of record" and is in compliance with Paragraph 1.d above, is exempt from the requirement of continuous residence in the state during the 12 months preceding the date of completion of the depositor's agreement;

3. a member of the Armed Forces stationed in Louisiana under permanent change of station orders shall be considered eligible for program participation;

4. persons less than 21 years of age are considered Louisiana residents if they reside with and are dependent upon one or more persons who meet the above requirements.

Louisiana Tuition Trust Authority (LATTA)—the statutory body responsible for the administration of the START Saving Program.

Maximum Allowable Account Balance—the amount projected to equal five times the annual qualified higher education expenses, including tuition at the eligible educational institution selected projected to the scheduled date of the beneficiary's first enrollment in that institution, and qualified room and board costs. In the event no specific eligible educational institution is named by the account owner, the maximum allowable account balance amount is projected to equal five times the annual qualified higher education expenses, including tuition, at the highest cost public institution in the state, projected to the scheduled date of the beneficiary's first enrollment. Once the redemption value of an education assistance account equals or exceeds the maximum allowable account balance, principal deposits will no longer be accepted for the account. However, if subsequent projections increase the maximum allowable account balance, principal deposits may resume until the most recent maximum allowable account balance has been attained.

Qualified Higher Education Expenses—tuition, fees, books, supplies, equipment, and room and board required for the enrollment or attendance of a designated beneficiary at an eligible institution of postsecondary education

Rate of Expenditure—the rate [see §309. C] per academic year, at which tuition assistance grants may be disbursed from an education assistance account to pay the beneficiary's cost of tuition, or portion thereof, at an eligible educational institution.

Redemption Value—the cash value of an education savings account attributable to the sum of the principal invested, the interest earned on principal and authorized to be credited to the account by the LATTA, any tuition assistance grants appropriated by the legislature and authorized by the LATTA to be allocated to the account and the interest earned on tuition assistance grants, less any tuition assistance grants or interest thereon restricted from expenditure and less any penalties

required by *Internal Revenue Code*, §529(b)(3). If the account has a redemption value after the beneficiary has completed his educational program, this excess value shall be treated as a refund.

Refund Recipient—the person authorized by the depositor's agreement, or by operation of law, to receive refunds from the account.

Room and Board—qualified room and board costs include the reasonable cost for the academic period incurred by the designated beneficiary for room and board while attending an eligible educational institution on at least a half time basis, not to exceed the minimum amount included for room and board for such period in the cost of attendance (as currently defined in §472 of the Higher Education Act of 1965, 20 U.S.C. 1087II) for the eligible educational institution for such period. Room and board are only qualified higher education expenses for students who are enrolled at least half time.

Scheduled Date of First-Enrollment—for a dependent beneficiary, is the month and year in which the beneficiary turns 18 years of age. For an independent student, the scheduled date of first-enrollment is the expected date of enrollment reported by the independent student beneficiary. This date is used to determine eligibility for tuition assistance grants. See the term "*Fully Funded Account*."

Tuition—the mandatory educational charges required as a condition of enrollment and limited to undergraduate enrollment. It does not include nonresidence fees, laboratory fees, room and board nor other similar fees and charges.

Tuition Assistance Grant—a payment allocated to an education assistance account, on behalf of the beneficiary of the account, by the state. The grant amount is calculated based upon the account owner's annual federal adjusted gross income and total annual deposits of principal. The grant and interest earned may only be used to pay the beneficiary's tuition, or portion thereof, at an eligible in-state institution.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:712 (June 1997), amended LR 24:

Chapter 3. Education Savings Account

Note: Except where otherwise provided, all terms, conditions, and limitations in this Chapter shall apply to both education assistance accounts and education scholarship accounts.

§301. Education Assistance Accounts (EAA)

A. An Education Assistance Account is an Education Savings Account eligible for tuition assistance grants, which is established on behalf of a designated beneficiary by a parent, grandparent, legal guardian or the person claiming the designated beneficiary of the account as a dependent on their federal income tax return, or by an independent student on his own behalf to acquire an undergraduate certificate, associate degree, or undergraduate degree.

B. Program Enrollment Period

1. All eligible beneficiaries during 1997 may be enrolled between July 1 and December 1, 1997. Thereafter, all eligible beneficiaries may be enrolled between July 1 and November 1 of each year.

2. In addition to the July 1 through November 1 enrollment period, the enrollment period for newborn infants

is open from the date of birth until the named beneficiary's first birthday.

C. Completing the Depositor's Agreement

1. This agreement must be completed, in full, by the account owner.

2. The account owner shall designate a beneficiary.

3. The account owner may designate a limited power of attorney to another person who would be authorized to act on the account owner's behalf, in the event the account owner became incapacitated.

4. Transfer of account ownership is not permitted, except in the case of the death of an account owner.

5. Only the account owner or the beneficiary may be designated to receive refunds from the account.

D. Agreement to Terms. Upon executing a depositor's agreement, the account owner certifies that he understands and agrees to the following statements:

1. Admission to a Postsecondary Educational Institution—that participation in the START Program does not guarantee that a beneficiary will be admitted to any institution of postsecondary education;

2. Payment of Full Tuition—that participation in the START Program does not guarantee that the full cost of the beneficiary's tuition will be paid at an institution of postsecondary education nor does it guarantee enrollment as a resident student;

3. Maintenance of Continuous Enrollment—that once admitted to an institution of postsecondary education, participation in the START Program does not guarantee that the beneficiary will be permitted to continuously enroll or receive a degree, diploma, or any other affirmation of program completion;

4. Guarantee of Redemption Value—that the LATTA guarantees payment of the redemption value of any Education Savings Account, subject to the limitations imposed by R.S. 17:3098;

5. Conditions for Payment of Education Expenses—that payments for qualified higher education expenses under the START Saving Program are conditional upon the beneficiary's acceptance and enrollment at an eligible educational institution;

6. Fees—that except for penalties which may be imposed on refunds, the LATTA shall not charge fees for the opening or the maintenance of an account; financial institutions may be authorized by the LATTA to offer assistance in establishing a START Program account.

E. Acceptance of the Depositor's Agreement

1. A properly completed and submitted depositor's agreement will be accepted upon receipt.

2. Upon acceptance of the depositor's agreement, the LATTA will establish the account of the named beneficiary.

F. Citizenship Requirements. Both the account owner and beneficiary must meet the following citizenship requirements:

1. be a United States citizen; or

2. be a permanent resident of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and provide copies of INS documentation with the submission of the depositor's agreement.

G. Residency Requirements

1. On the date an account is opened, either the account owner or his designated beneficiary must be a Louisiana resident, as defined in §107 of these rules.

2. The LATTA may request documentation to clarify circumstances and formulate a decision that considers all facts relevant to residency.

H. Providing Personal Information

1. The account owner is required to disclose personal information in the depositor's agreement, including:

a. his Social Security number;

b. the designated beneficiary's Social Security number;

c. the beneficiary's date of birth;

d. the familial relationship between the account owner and the designated beneficiary;

e. the account owner's prior year's federal adjusted gross income amount as reported to the Internal Revenue Service.

2. By signing the depositor's agreement, the account owner provides written authorization for the LATTA to access his annual tax records through the Louisiana Department of Revenue, for the purposes of verifying federal adjusted gross income.

3. By signing the depositor's agreement, the account owner certifies that both account owner and beneficiary are United States Citizens or permanent residents of the United States as defined by the U.S. Immigration and Naturalization Service (INS) and, if permanent residents have provided copies of INS documentation with the submission of the Application and Depositor's Agreement, and that either account owner or beneficiary is and has been a Louisiana resident for 12 consecutive months.

4. Social Security numbers will be used for purposes of federal income tax reporting and to access individual account information for administrative purposes [see §315].

I. First Disbursement Restriction. A minimum of one year must lapse between the date the account owner makes the first deposit opening an account and the first disbursement from the account to pay a beneficiary's qualified higher education expenses, which will normally be the beneficiary's projected scheduled date of first-enrollment in an eligible educational institution.

J. Number of Accounts for a Beneficiary. There is no limit on the number of education savings accounts that may be opened for one beneficiary by different account owners; however, the sum total of funds in all accounts for the same beneficiary may not exceed the maximum allowable account balance for that beneficiary and the sum of all education assistance accounts will be used to determine when these accounts are fully funded for the purpose of earning tuition assistance grants.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:713 (June 1997), amended LR 24:

§303. Education Scholarship Accounts (ESA)

Reserved

§305. Deposits to Education Savings Accounts

A. Application Fee and Initial Deposit Amount

1. No application fee will be charged to participants applying for a START Program account directly to the LATTA.

2. Financial institutions may be authorized by the LATTA to offer assistance in establishing a START Program account.

3. An initial deposit is not required to open an education savings account; however, a deposit of at least \$10 in whole dollar amounts must be made within 60 days from the date on the letter of notification of approval of the account.

4. A lump sum deposit may not exceed the maximum allowable account balance [see §107].

B. Deposit Options

1. The account owner shall select one of the following deposit options during the completion of the depositor's agreement; however, the account owner may change the monthly deposit amount at any time and the payment method by notifying the LATTA:

a. occasional lump sum payment(s);

b. monthly payments made directly to the LATTA or to a LATTA-approved financial institution;

c. automatic account debit, direct monthly transfer from the account owner's checking or savings account to the LATTA;

d. payroll deduction, if available through the account owner's employer.

2. Account owners are encouraged to maintain a schedule of regular monthly deposits.

3. After acceptance of the depositor's agreement and annually thereafter, the LATTA will project the amount of the monthly deposit that will assure the account owner of sufficient savings to meet the qualified higher education expenses of the beneficiary at the scheduled date of enrollment at the selected institution, or the highest cost public institution if one was not preselected.

C. Limitations on Deposits

1. All deposits must be rendered in whole dollar amounts of at least \$10 and must be made in cash (check, money order, credit or debit card), defined as any of the deposit options listed in §305.B.1.

2. A minimum of \$100 must be deposited annually for the account to be considered for award of state tuition assistance grants.

3. Once the account becomes fully funded [see §107], it will no longer be considered for tuition assistance grants, regardless of the total amount of annual deposits made to the account.

4. Once the redemption value has reached or exceeded the maximum allowable account balance [see §107], principal deposits will no longer be accepted to the account.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:

§307. Allocation of Tuition Assistance Grants

A. Tuition assistance grants are state-appropriated funds allocated to an education assistance account, on behalf of the beneficiary named in the account.

1. The grants are calculated based upon the account owner's annual federal adjusted gross income and total annual deposits of principal.

2. Although allocated to individual accounts, tuition assistance grants are state funds and shall be held in an escrow account maintained by the state treasurer until disbursed to pay tuition costs at an eligible institution as set forth in §307.G.

B. Providing Proof of Annual Federal Adjusted Gross Income

1. The account owner's annual federal adjusted gross income is used in computing the annual tuition assistance grant allocation.

2. To be eligible in any given year for a tuition assistance grant, the account owner of an education assistance account must:

a. authorize the LATTA to access the account owner's state tax return filed with the Louisiana Department of Revenue; or

b. provide the LATTA a copy of his federal income tax return filed for that year.

3. In completing the depositor's agreement, the account owner of an education assistance account authorizes the LATTA to access his records with the Louisiana Department of Revenue, for the purposes of verifying the account owner's federal adjusted gross income. In the event the account owner will not file his tax information with the Louisiana Department of Revenue by their May 15 deadline, he must provide the LATTA with:

a. a copy of the form filed with the Internal Revenue Service (Form 1040, 1040A, 1040EZ, or 1040TEL); or

b. a notarized statement as to why no income tax filing was required of the account owner.

4. To ensure timely allocation of tuition assistance grants to the account, the account owner should provide these documents prior to July 1 following the applicable tax year. Tuition assistance grants will not be allocated to an education assistance account until the LATTA has received verification of an account owner's federal adjusted gross income and interest on tuition assistance grants will not accrue to the benefit of an education assistance account until the LATTA has authorized the tuition assistance grant allocation to the account.

5. If the account owner fails to provide the required tax documents by December 31 of the year following the taxable year, the account shall not be allocated a tuition assistance grant for the year being considered.

C. Availability of Tuition Assistance Grants

1. The availability of tuition assistance grants to be allocated to education assistance accounts is subject to an appropriation by the Louisiana Legislature.

2. In the event that sufficient grants are not appropriated during any given year, the LATTA shall reduce tuition

assistance grant rates, pro rata, as required to limit grants to the amount appropriated.

D. Tuition Assistance Grant Rates. The tuition assistance grant rates applicable to an education assistance account are determined by the federal adjusted gross income of the account owner, according to the following schedule:

Reported Federal Adjusted Gross Income	Tuition Assistance Grant Rate*
0 to \$14,999	14 percent
\$15,000 to \$29,999	12 percent
\$30,000 to \$44,999	10 percent
\$45,000 to \$59,999	8 percent
\$60,000 to \$74,999	6 percent
\$75,000 to \$99,999	4 percent
\$100,000 and above	0 percent

*Rates may be reduced pro rata, to limit grants to amounts appropriated by the Legislature.

E. Restrictions on Allocation of Tuition Assistance Grants to Education Assistance Accounts. The allocation of tuition assistance grants is limited to education assistance accounts which:

1. have principal deposits totaling at least \$100 annually;
2. have an account owner's reported federal adjusted gross income of less than \$100,000;
3. have a redemption value that is less than that of a fully funded account [see §107].

F. Frequency of Allocation of Tuition Assistance Grants to Education Assistance Accounts. Tuition assistance grants will be allocated annually and reported on the July 1 quarterly statement, or no later than the second statement following the account owner's required disclosure of his or her prior year's federal adjusted gross income.

G. Rate of Interest Earned on Tuition Assistance Grants. The rate of interest earned on tuition assistance grants shall be the rate of return earned on the Tuition Assistance Fund as reported by the state treasurer.

H. Restriction on Use of Tuition Assistance Grants

1. Tuition assistance grants, and any interest which may accrue thereon, may only be expended in payment of the beneficiary's tuition, or a portion thereof, at an eligible educational institution located in the state of Louisiana.
2. Tuition assistance grants may not be used at an out-of-state eligible educational institution, nor may they be used to pay for any qualified higher education expenses other than tuition.
3. Tuition assistance grants, although allocated to a beneficiary's account and reported on the account owner's quarterly statements, are assets of the state of Louisiana until expended to pay a beneficiary's tuition at an eligible Louisiana institution.
4. Tuition assistance grants are not the property of the account owner or beneficiary.
5. The amount of tuition assistance grants which may be expended during a given term is determined by the length of

the program in which the beneficiary actually enrolls [see §309].

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:715 (June 1997), amended LR 24:

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

A. Enrollment Notification

1. The designated beneficiary of an education assistance account must notify the LATTA of the name and address of the institution at which he has enrolled using the Notice of Enrollment form.

2. The Notice of Enrollment form should be completed and returned as soon as the beneficiary has determined which institution he will attend and must be returned at least 60 days prior to the beginning of the term for which benefits are to be utilized to ensure timely notification of available benefits to the beneficiary and the educational institution.

B. Statement of Available Funds. Upon receipt of the Notice of Enrollment, the LATTA will forward to both the beneficiary and the institution:

1. a statement specifying the amount of tuition assistance grants which may be expended from the account for the specified academic term; and
2. the balance of the account which may be expended for any remaining qualified higher education expenses that may be billed by the institution.

C. Disbursement of Account Funds. Disbursements will be made first from Tuition Assistance Grant funds and second from principal deposits and earnings as set forth herein.

D. Rate of Expenditure of Tuition Assistance Grants

1. To determine the beneficiary's allowable rate of expenditure of tuition assistance grants from an education assistance account, the total of tuition assistance grants and interest earned thereon which has been allocated to the account is divided by the number of years, or the number of remaining years, in the program in which the beneficiary enrolled or is attending, meaning the number of years to complete an undergraduate certificate, associate degree, or bachelor's degree program as defined by the institution, not to exceed four years.

2. The amount so calculated or the actual tuition, whichever is less, is the amount of tuition assistance grants which may be expended for the academic year.

a. If the student is attending a semester institution, the amount shall be divided by two to determine the amount allowable each semester;

b. If attending a quarter institution the amount shall be divided by three to determine the amount allowable each quarter.

E. Expenditure of Principal and Earnings

1. The balance of principal and earned interest in an education savings account may be expended as authorized by the beneficiary to pay his qualified higher education expenses billed by the institution.

2. Distributions will be made from principal and earnings by applying the ratio that the aggregate amount of contributions to the account for the beneficiary bears to the total balance of the account. If the qualified higher education expenses of the beneficiary for the year are at least equal to the total balance of the account principal and interest, then the earnings in their entirety will be expended. If the qualified higher education expenses of the beneficiary are less than the total amount of the distribution, the qualified higher education expenses will be deemed to be paid from a pro rata share of both the principal and earning components of the account.

F. Payments to Eligible Educational Institutions

1. After the final date for adding or dropping courses without penalty, the institution may bill the START program for the qualified higher education expenses of the beneficiary, up to the amounts specified in the Statement of Available Funds.

2. Upon reconciliation of institutional billing statements, the LATTA will disburse funds from the appropriate accounts, consolidate and forward payment directly to the institution.

3. The LATTA will make all payments for qualified higher education expenses directly to the eligible educational institution.

4. No payments for qualified higher education expenses shall be disbursed directly to the beneficiary.

G. Withdrawal During the Academic Term

1. If the designated beneficiary of an education savings account withdraws from the institution prior to the end of the academic term and withdrawals from the education savings account have been used to pay all or part of his qualified higher education expenses for that term, an institutional refund to the education savings account may be required.

2. If any refund is due the beneficiary from the institution, a pro rata share of any refund of qualified higher education expenses, including tuition, equal to that portion of the qualified higher education expenses paid by disbursements from the education savings account, shall be made by the institution to the LATTA.

3. The LATTA will credit any refunded amount to the appropriate education savings account.

H. Receipt of Scholarships

1. If the designated beneficiary of an education savings account is the recipient of a scholarship, waiver of tuition, or similar subvention which cannot be converted into money by the beneficiary, the account owner or beneficiary may request a refund from the education savings account in the amount equal to the value of the scholarship, waiver or similar subvention up to the balance of principal and interest in the account.

2. Upon the institution's verification that the beneficiary received a scholarship, waiver or similar subvention, the LATTA will refund, without penalty, the amount to the account owner or the beneficiary, as designated in the depositor's agreement.

I. Advanced Enrollment. A beneficiary may enroll in an eligible educational institution prior to his scheduled date of first-enrollment [see §107] and utilize education savings account funds; however, a beneficiary may not utilize funds

from an education savings account prior to one year from the date the account owner made the first deposit opening the account.

J. Part-Time Attendance and Nonconsecutive Enrollment. A beneficiary may utilize funds in an education savings account for enrollments which are nonconsecutive and for part-time attendance at an eligible educational institution. Room and board is only a qualified higher education expense for students who are enrolled at least half time.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:716 (June 1997), amended LR 24:

§311. Termination and Refund of an Education Savings Account

A. Account Contributions. Contributions to an education savings account are voluntary.

B. Account Terminations

1. The account owner may terminate an account at any time.

2. The LATTA may terminate an account in accordance with §311.E.

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

C. Refunds

1. A partial refund of an account may only be made as described in §311.F.3.

2. All other requests for refund will result in the refund of the redemption value and termination of the account.

D. Designation of a Refund Recipient

1. In the depositor's agreement, the account owner may designate the beneficiary to receive refunds from the account; however, the beneficiary, if so designated, must be enrolled in an eligible educational institution to be eligible for receipt of any such refund, otherwise the refund will be made directly to the account owner or his estate.

2. Refunds of interest earnings will be reported as income to the individual receiving the refund for both federal and state tax purposes.

3. In the event the beneficiary receives any refund of principal from the account, the tax consequence must be determined by the recipient.

E. Involuntary Termination of an Account with Penalty

1. The LATTA may terminate a depositor's agreement if it finds that the account owner or beneficiary provided false or misleading information [see §107].

2. All interest earnings on principal deposits may be withheld and forfeited, with only principal being refunded.

3. An individual who obtains program benefits by providing false or misleading information will be prosecuted to the full extent of the law.

F. Voluntary Termination of an Account without Penalty. No penalty will be assessed for accounts which are terminated and fully refunded or partially refunded due to the following reasons:

1. the death of the beneficiary; the refund shall be equal to the redemption value of the account, less unexpended tuition

assistance grants and interest thereon, and shall be made to the account owner;

2. the disability of the beneficiary; the refund shall be equal to the redemption value of the account, less unexpended tuition assistance grants and interest thereon, and shall be made to the account owner or the beneficiary, as designated in the depositor's agreement;

3. the beneficiary receives a scholarship, waiver of tuition, or similar subvention that the LATTA determines cannot be converted into money by the beneficiary, to the extent the amount of the refund does not exceed the amount of the scholarship, waiver of tuition, or similar subvention awarded to the beneficiary.

G. Voluntary Termination of an Account with Penalty

1. Refunds for any reason other than those specified in §311.E and F will be assessed a penalty of 10 percent of interest earned on principal deposits accumulated in said account at the time of termination which has not been expended for qualified higher education expenses.

2. Reasons for voluntary account termination with penalty include, but are not limited to the following:

a. request by an account owner, an account owner's estate or legal successor, for reasons other than those specified in §311.E and F.

b. decision not to attend; upon notification in writing that the beneficiary has reached 18 years of age and has stated he does not intend to attend an institution of higher education;

c. upon notification in writing that the beneficiary has completed his educational program and does not plan to pursue further education.

3. Refunds made under the provisions of §311.G shall be equal to the redemption value of the education savings account at the time of the refund minus 10 percent of accumulated interest earned on principal deposits which has not been expended for qualified higher education expenses, and shall be made to the person designated in the depositor's agreement.

H. Effective Date of Account Termination. Account termination shall be effective at midnight on the last day of the calendar quarter in which the request for account termination is received. Accounts will be credited with interest earned on principal deposits through the effective date of the closure of the account.

I. Frequency of Refund Payments. Payment of refunds shall be made on or about the forty-fifth day of the calendar quarter following the quarter in which the account was terminated. Upon receipt of a request for an emergency refund [See § 107], the LATTA will verify the emergency and notify the account owner in writing that a refund of all principal deposited in an education savings account will be made within 10 days of the close of the calendar quarter in which the request for refund was received. The refund of all interest earned on the principal, accrued through the end of the calendar quarter, will be refunded as soon as possible thereafter.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:717 (June 1997), amended LR 24:

§313. Substitution, Assignment, and Transfer

A. Substitute Beneficiary. The beneficiary of an education assistance account may be changed to a substitute beneficiary provided the account owner completes a Beneficiary Substitution form and the following requirements are met:

1. the substitute beneficiary is a family member as defined under §107.

2. the substitute beneficiary meets the citizen/resident alien requirements of §301.F, and if the account owner is a nonresident of the state of Louisiana, the substitute beneficiary meets the applicable residency requirements [see §301.G];

3. if the original beneficiary is an independent student [see §107], meaning he is also the account owner of the account, the substitute beneficiary must be the spouse or child of the account owner.

B. Assignment or Transfer of Account Ownership. The ownership of an education savings account, and all interest, rights and benefits associated with such, are nontransferable.

C. Changes to the Depositor's Agreement

1. The account owner may request changes to the depositor's agreement.

2. Changes must be requested in writing and be signed by the account owner.

3. Changes which are accepted will take effect as of the date the notice is received by the LATTA.

4. The LATTA shall not be liable for acting upon inaccurate or invalid data which was submitted by the account owner.

5. The account owner will be notified by the LATTA in writing of any changes affecting the depositor's agreement which result from changes in applicable federal and state statutes and rules.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:

§315. Miscellaneous Provisions

A. Account Statements and Reports

1. The LATTA will forward to each account owner a quarterly statement of account which itemizes the:

a. date and amount of deposits and interest earned during the prior quarter;

b. total principal and interest accrued to the statement date; and

c. total tuition assistance grants and interest allocated to the account as of the statement date.

2. Tuition assistance grants shall be allocated annually and reported on the July 1 quarterly statement or no later than the second statement following the account owner's required disclosure of his or her prior year's federal adjusted gross income.

3. The account owner must report errors on the quarterly statement of account to the LATTA within 60 days from the date on the account statement or the statement will be deemed correct.

B. Tuition Assistance Grants. Tuition assistance grants will be allocated annually and reported on the July 1 statement, or no later than the second statement following the account

owner's required disclosure of annual federal adjusted gross income to the LATTA.

C. Earned Interest

1. Interest earned on principal deposits during a calendar quarter will be credited to accounts and reported to account owners on or about the forty-fifth day of the calendar quarter following the quarter in which the interest was earned, beginning with the first full calendar quarter following the date of the first deposit.

2. The rate of interest earned shall be the rate of return earned on the fund as reported by the state treasurer and approved by the LATTA.

D. Refunded Amounts

1. Interest earned on an education savings account which is refunded to the account owner or beneficiary will be taxable for state and federal income tax purposes.

2. No later than January 31 of the year following the year of the refund, the LATTA will furnish the State Department of Revenue, the Internal Revenue Service and the recipient of the refund an Internal Revenue Service Form 1099, or whatever form is appropriate according to applicable tax codes.

E. Maximum Allowable Account Balance Report

1. The account owner of an education savings account will be notified, in writing, of the maximum allowable account balance.

2. The maximum allowable account balance is based on the cost of qualified higher education expenses for the eligible educational institution designated on the depositor's agreement, projected to the date of the beneficiary's scheduled date of first enrollment.

3. If no eligible educational institution was designated on the depositor's agreement, the maximum allowable account balance will be projected based upon the highest cost in-state eligible public educational institution.

4. If the account owner changes the institution designated on the depositor's agreement, a revised maximum allowable account balance will be calculated and the account owner will be notified of any change.

5. The maximum allowable account balance is revised and reported to account owners annually, and is based upon changes in the cost projections for qualified higher education expenses.

F. Rule Changes. The LATTA reserves the right to amend the rules regulating the START Program's policies and procedures; however, any amendments to rules affecting participants will be published in accordance with the Administrative Procedure Act and distributed to account owners for public comment prior to the adoption of final rules.

G. Determination of Facts. The LATTA shall have sole discretion in making a determination of fact regarding the application of these rules.

H. Individual Accounts. The LATTA will maintain an individual account for each beneficiary, showing the redemption value of the account.

I. Confidentiality of Records. All records of the LATTA identifying account owners and designated beneficiaries of

education savings accounts, amounts deposited, expended or refunded, are confidential and are not public records.

J. No Investment Direction. No account owner or beneficiary of an education savings account may direct the investment of funds credited to an account.

K. No Pledging of Interest as Security. No interest in an education savings account may be pledged as security for a loan.

L. Excess Funds

1. Principal deposits to an education savings account are no longer accepted once the account total reaches the maximum allowable account balance [see §305.C]; however, the principal and interest earned thereon may continue to earn interest and any tuition assistance grants allocated to the account may continue to accrue interest.

2. Funds in excess of the maximum allowable account balance may remain in the account and continue to accrue interest and may be expended to an eligible educational institution in accordance with §309, or upon termination of the account, will be refunded in accordance with §311.

M. Withdrawal of Funds. Funds may not be withdrawn from an education savings account except as set forth in §309 and §311.

N. NSF Procedure

1. A check received for deposit to an education savings account which is returned due to insufficient funds in the depositor's account on which the check is drawn, will be redeposited and processed a second time by the START Program's financial institution.

2. If the check is returned due to insufficient funds a second time, the check will be returned to the depositor.

O. Effect of a Change in Residency

1. On the date an account is opened, either the account owner or beneficiary must be a resident of the state of Louisiana [see §301.G]; however, if the account owner or beneficiary, or both, temporarily or permanently move to another state after the account is opened, they may continue participation in the program in accordance with the terms of the depositor's agreement.

2. The account owner may elect to terminate the account or request a "rollover" of account funds to a qualified state tuition program in the new state of residence. Only the principal deposited, and interest earned thereon, may be "rolled over."

3. Tuition assistance grants allocated to an education assistance account are not transferrable nor refundable.

P. Effect on Other Financial Aid. Participation in the START Program does not disqualify a student from participating in other federal, state or private student financial aid programs; however, depending upon the regulations which govern these other programs at the time of enrollment, the beneficiary may experience reduced eligibility for aid from these programs.

Q. Change in Projected School of Enrollment

1. The account owner may redesignate the beneficiary's projected school of enrollment, but not more than once annually.

2. If the change in school results in a change in the account's fully funded or maximum allowable account balance,

the account owner will be notified.

R. Abandoned Accounts. Abandoned accounts will be defined and treated in accordance with R.S. 9:151 et seq., as amended, the Louisiana Uniform Unclaimed Property Act.

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

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:718 (June 1997), amended LR 24:

Interested persons may submit written comments on the statement until 4:30 p.m., May 20, 1998, to Jack L. Guinn, Executive Director, Office of Student Financial Assistance, Box 91202, Baton Rouge, LA 70821-9202.

Jack L. Guinn
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Student Tuition Assistance and Revenue
Trust (START Saving) Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The implementation cost associated with publishing revisions to the START Program rules is approximately \$1,440. These program revisions are not expected to impact program costs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No impact on revenue collections is anticipated to result from this rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
These changes will make the START saving program more attractive to its participants and assist in reaching the participation goals projected for the program.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No impact on competition and employment is anticipated to result from this rule.

Jack L. Guinn
Executive Director
9804#044

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of the Secretary**

Risk Evaluation/Corrective Action Program
(LAC 33:I.Chapter 13; LAC 33:V.322, 1803, 1915, 2315, 2809, 2911, 3207, 3309, 3322, 3507, 3515, 3521, 4373, 4379, 4385, 4389, 4457, 4475, and 4705; LAC 33:VII.709-725, and 909; LAC 33:XI.715)(OS021)

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 13; the Hazardous Waste regulations, LAC 33:V.322, 1803, 1915, 2315, 2809, 2911, 3207, 3309, 3322, 3507, 3515, 3521, 4373, 4379, 4385, 4389, 4457, 4475, 4705; the Solid Waste regulations, LAC 33:VII.709, 711, 713, 715, 717, 721, 723, 725, 909; and the Underground Storage Tanks regulations, LAC 33:XI.715 (Log Number OS021).

The Risk Evaluation/Corrective Action Program (RECAP) proposed rule provides the mechanism for addressing sites with releases of hazardous substances and wastes by means of implementing a risk evaluation/corrective action program. Risk evaluation/corrective action uses risk assessment to determine if remediation is necessary for the protection of human health and the environment and to identify constituent of concern (COC) levels in impacted media that do not pose unacceptable risks to human health and the environment. These constituents will be listed in a table in the document and will be known as RECAP Standards (RSs). RECAP consists of a tiered framework comprised of three management options. The tiered options allow site assessment and corrective action measures to be tailored to site conditions and risks. As the management option level increases, the approach becomes more site-specific, and hence, the level of effort required to meet the objectives of the option increases. All management options achieve the same goal: protection of human health and the environment. The proposed rule is designed to establish a consistent method based on sound scientific principles to be used by all affected persons in defining the level of cleanup necessary at an impacted site and will serve as a standard tool to assess impacts to soil, ground water, surface water, and air.

The basis and rationale for this proposed rule are to implement Act 1092 (R.S. 30:2272.1 and 2285) of the 1995 Regular Session, known as the Voluntary Investigation and Remedial Action (VIRA) Act. This act requires the department to promulgate minimum remediation standards to serve as the basis of approving voluntary remedial action plans. As this state statute indicates, voluntary remedial action plans cannot be approved by the department until minimum remediation standards for the protection of public health and safety are adopted by the department. Currently the department receives risk analyses (risk assessments) that vary tremendously in scope and degree of completeness and correctness. This proposed rule will serve to establish uniformity for submitters in the program to minimize the time and money necessary to identify corrective action levels for constituents of concern at a contaminated site. This should encourage voluntary and expeditious remediation. This proposed rule will ensure that consistent procedures established by promulgation are used throughout the department for the assessment, remediation, and/or closure of applicable sites in Louisiana.

This proposed rule meets the exceptions listed in R.S. 30:2019 (D) (3) and R.S.49:953 (G) (3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures

Chapter 13. Risk Evaluation/Corrective Action Program

§1301. Scope

A. This Chapter constitutes the minimum technical requirements to evaluate and/or remediate sites that have been affected by constituents of concern, except as otherwise specifically provided by statute, rule, or permit.

B. Any remediation performed in accordance with this Chapter shall not relieve any person from:

1. complying with more stringent federal, state, or local requirements; or
2. obtaining any and all permits required by law, except as expressly provided herein.

C. No provision of this Chapter shall be construed to limit the department's authority to require additional remediation based upon site-specific conditions in order to protect human health and the environment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

§1303. Liberal Construction

These rules, being necessary to promote the public health and welfare, shall be liberally construed in order to permit the department to effectuate the provisions of the Environmental Quality Act including, but not limited to, R.S. 30:2272.1, 2077, 2195.2(A), 2195.10, 2203(A), 2204(A)(2) and (3), and 2205(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

§1305. Applicability

A. Except as is otherwise specifically provided by statute, rule, or permit, this Chapter establishes the minimum technical requirements to evaluate and/or remediate sites that have been affected by constituents of concern including, without limitation, those sites and activities subject to:

1. the Louisiana Environmental Quality Act, R.S. 30:2001 et seq.;
2. the federal Resource Conservation and Recovery Act (RCRA), as amended by Hazardous and Solid Waste Amendments (HSWA), 42 U.S.C. 3251 et seq.; and
3. the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. 9601 et seq.

B. This Chapter shall not apply to activities conducted in accordance with corrective action plans that were approved by the department prior to the effective date of this rule, except when modification of such a plan is deemed by the department to be necessary to protect human health or the environment or when modification of such a plan is otherwise allowed or required by the department in accordance with law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

§1307. Adoption by Reference

The document entitled, *Louisiana Department of Environmental Quality Risk Evaluation/Corrective Action Program (RECAP)*, dated April 20, 1998 is hereby adopted and incorporated herein in its entirety. The RECAP document is available for purchase or inspection from 8 a.m. until 4:30 p.m., Monday through Friday from the Louisiana Department of Environmental Quality, Office of Legal Affairs and Enforcement, Investigations and Regulation Development Division, Box 82282 (7290 Bluebonnet Boulevard, Fourth Floor), Baton Rouge, LA 70884-2282. For RECAP document availability at other locations, contact the department's Regulation Development Section at (504) 765-0399. The RECAP document may also be reviewed on the Internet at <http://www.deq.state.la.us>.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

§1309. Severability

If any provision of these regulations or the application thereof to any person, situation, or circumstance is for any reason adjudged invalid, the adjudication does not affect any other provision or application that can be given effect without the invalid provision or application; to this end, the provisions of these regulations are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2272.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 24:

Part V. Hazardous Waste and Hazardous Materials
Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§322. Classification of Permit Modifications

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

Modifications	Class
* * *	
[See Prior Text in A - D.1.f]	
g. Changes in the approved closure plan allowing alternate risk assessment base closure protective of human health and the environment in accordance with LAC 33:I.Chapter 13.	3
* * *	
[See Prior Text in D.2 - N.2]	

¹Class 1 modifications requiring prior administrative authority approval.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:815 (September 1996), amended by the Office of the Secretary, LR 24:

Chapter 18. Containment Buildings
§1803. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection A of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (LAC 33:V.2521). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in LAC 33:V.Chapters 35 and 37; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:

Chapter 19. Tanks
§1915. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in Subsection A of this Section, then the owner or operator must either:

1. close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills, LAC 33:V.2521. In addition, for the purposes of closure, post-closure, and financial responsibility, such a tank system is then considered to be a landfill, and the owner or operator must meet all the requirements for landfills specified in LAC 33:V.Chapters 35 and 37; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

* * *

[See Prior Text in C - D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 13:651 (November 1987), amended LR 16:614 (July 1990), LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:1511 (November 1997), amended by the Office of the Secretary, LR 24:

Chapter 23. Waste Piles
§2315. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection A of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure care requirements that apply to landfills as specified in LAC 33:V.2521; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

* * *

[See Prior Text in C - D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), amended by the Office of the Secretary, LR 24:

Chapter 28. Drip Pads
§2809. Closure

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection A of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with closure and post-closure care requirements that apply to landfills (LAC 33:V.2521). For permitted units, the requirement to have a permit continues throughout the post-closure period. In addition, for the purpose of closure, post-closure, and financial responsibility, such a drip pad is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in LAC 33:V.Chapters 35 and 37; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to

approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

* * *

[See Prior Text in C - D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:944 (September 1995), amended by the Office of the Secretary, LR 24:

Chapter 29. Surface Impoundments

§2911. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If some waste residues or contaminated materials are left in place at final closure, the owner or operator must either:

1. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment; or

2. comply with all post-closure requirements contained in LAC 33:V.3519 and 3527, including maintenance and monitoring throughout the post-closure care period (specified in the permit under LAC 33:V.3521). The owner or operator must:

a. maintain the integrity and effectiveness of the final cover including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

b. maintain and monitor the leak detection system in accordance with LAC 33:V.2903 and 2907.E and comply with all other applicable leak detection system requirements of this Chapter;

c. maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of LAC 33:V.Chapter 33; and

d. prevent run-on and run-off from eroding or otherwise damaging the final cover.

* * *

[See Prior Text in C - E]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of the Secretary, LR 24:

Chapter 32. Miscellaneous Units

§3207. Closure and Post-Closure Care

A. A miscellaneous unit that is a disposal unit must be maintained in a manner that complies with LAC 33:V.3203 during the post-closure care period. In addition, if a treatment or storage unit has contaminated soils or groundwater that cannot be completely removed or decontaminated during closure, then that unit must also meet the requirements of LAC

33:V.3203 during post-closure care. The post-closure plan under LAC 33:V.3523 must specify the procedures that will be used to satisfy this requirement.

B. For a miscellaneous unit that is not a disposal unit, at closure the owner or operator must remove or decontaminate all waste residues, contaminated system components (liners, etc.), contaminated subsoils, structures, and equipment contaminated with waste and leachate and manage them as hazardous waste unless LAC 33:V.109.Hazardous Waste.6 applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for miscellaneous units must meet all of the requirements specified in LAC 33:V.Chapters 35 and 37.

C. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection B of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (LAC 33:V.2521); in addition, for the purposes of closure, post-closure, and financial responsibility, such a miscellaneous unit is then considered to be a landfill and the owner or operator must meet all of the requirements for landfills specified in LAC 33:V.Chapters 35 and 37; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:399 (May 1990), amended LR 18:1256 (November 1992), amended by the Office of the Secretary, LR 24:

Chapter 33. Groundwater Protection

§3309. Concentration Limits

* * *

[See Prior Text in A - Table 1, Note 1]

B. The administrative authority may establish an alternate concentration limit for a hazardous constituent if he finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. The establishment of such alternative concentration limits shall be in accordance with LAC 33:I.Chapter 13.

C. In making any determination under Subsection B of this Section about the use of groundwater in the area around the facility, the administrative authority will consider any identification of underground sources of drinking water and exempted aquifers identified in the permit application under LAC 33:V.Chapter 3. Any identification of underground sources of drinking water shall be in accordance with LAC 33:I.Chapter 13.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 10:496 (July 1984), LR 16:614 (July 1990), amended by the Office of the Secretary, LR 24:

§3322. Corrective Action

* * *

[See Prior Text in A - C]

D. Any risk-assessment-based corrective action must be protective of human health and the environment in accordance with LAC 33:I.Chapter 13.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:614 (July 1990), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:

Chapter 35. Closure and Post-Closure

§3507. Closure Performance Standards

A. In accordance with LAC 33:V.3509, the owner or operator must close his facility in a manner that:

1. minimizes the need for further maintenance; and
2. controls, minimizes, or eliminates, to the extent necessary to prevent threats to human health and the environment, post-closure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the groundwater, surface waters, or to the atmosphere; and

3. complies with closure requirements of this Chapter including, but not limited to, the requirements of LAC 33:V.1803, 1911, 1915, 2117, 2315, 2521, 2719, 2911, 3121, and 3203—3207.

B. As a means of satisfying the closure requirements of Subsection A.2 of this Section, the owner or operator may demonstrate an alternative risk-assessment-based closure in accordance with LAC 33:I.Chapter 13.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:

§3515. Disposal or Decontamination of Equipment, Structures, and Soils

During the partial and final closure periods, all contaminated equipment, structures, and soils must be properly disposed of or decontaminated, unless otherwise specified in LAC 33:V.1803, 1915, 2315, 2521, 2719, 2809, and 2911, or under the authority of LAC 33:V.3203 and 3207. By removing any hazardous waste or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that waste in accordance with all applicable requirements of LAC 33:V.Chapter 11.

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

HISTORICAL NOTE: Promulgated by the Department of

Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), LR 16:614 (July 1990), amended by the Office of the Secretary, LR 24:

§3521. Post-Closure Care and Use of Property

* * *

[See Prior Text in A - A.2.b]

3. The owner or operator may elect to demonstrate a shortened post-closure care period meets the requirements of Subsection A.2.a of this Section by using risk assessment methodology. The risk assessment must demonstrate that the shortened post-closure care period is protective of human health and the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in B - D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:399 (May 1990), amended by the Office of the Secretary, LR 24:

Chapter 43. Interim Status

Subchapter E. Groundwater Monitoring

§4373. Preparation, Evaluation, and Response

* * *

[See Prior Text in A - K]

1. a list of hazardous constituents, concentration limits, the compliance points, and the compliance period. The administrative authority may establish alternative risk-assessment-based concentration limits. Any alternative risk-assessment-based concentration limit must be protective of human health and the environment, as demonstrated in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in K.2 - M]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 14:791 (November 1988), LR 18:723 (July 1992), amended by the Office of the Secretary, LR 24:

Subchapter F. Closure and Post-Closure

§4379. Closure Performance Standard

A. The owner or operator must close his facility in a manner that:

1. minimizes the need for further maintenance;
2. controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of hazardous waste, hazardous constituents, leachate, contaminated rainfall, or hazardous waste decomposition products to the ground or surface waters or to the atmosphere; and

3. complies with the closure requirements of these regulations including, but not limited to, LAC 33:V.1915, 4457, 4475, 4489, 4501, 4521, 4543, and 4705.

B. As a means of satisfying the closure requirements of Subsection A.2 of this Section, the owner or operator may demonstrate an alternative risk-assessment-based closure in accordance with LAC 33:I.Chapter 13.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 15:181 (March 1989), LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:

§4385. Disposal or Decontamination of Equipment, Structures, and Soils

During the partial and final closure periods, all contaminated equipment, structures, and soil must be properly disposed of or decontaminated, unless specified otherwise in LAC 33:V.4442, 4457, 4475, 4489, 4501, 4601, or 4705. By removing all hazardous wastes or hazardous constituents during partial and final closure, the owner or operator may become a generator of hazardous waste and must handle that hazardous waste in accordance with all applicable requirements of LAC 33:V.Chapter 11.

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

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

§4389. Post-Closure Care and Use of Property

* * *

[See Prior Text in A - B.2]

C. The owner or operator may elect to demonstrate a shortened post-closure care period meets the requirements of Subsection B.1 of this Section by using risk assessment methodology. The risk assessment must demonstrate that the shortened post-closure care period is protective of human health and the environment in accordance with LAC 33:I.Chapter 13.

D. The administrative authority may require, at partial and final closure, continuation of any of the security requirements of LAC 33:V.4315 during part or all of the post-closure period when:

1. hazardous wastes may remain exposed after completion of partial or final closure; or
2. access by the public or domestic livestock may pose a hazard to human health.

E. Post-closure use of property on or in which hazardous wastes remain after partial or final closure must never be allowed to disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the facility's monitoring systems, unless the administrative authority finds that the disturbance:

1. is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or
2. is necessary to reduce a threat to human health or the environment.

F. All post-closure care activities must be in accordance with the provisions of the approved post-closure plan as specified in LAC 33:V.4391.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 18:723 (July 1992), amended by the Office of the Secretary, LR 24:

Subchapter J. Surface Impoundments
§4457. Closure and Post-Closure

A. At closure, the owner or operator must:

1. remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless LAC 33:V.4905.A.4 applies; or

2. if some waste residues or contaminated materials are left in place at final closure, the owner or operator must either:

- a. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment; or

- b. close the impoundment and provide post-closure care in accordance with Subsection B of this Section.

B. If the owner or operator elects to comply with Subsection A.2.b of this Section, he must close the impoundment and provide post-closure care for a landfill under LAC 33:V.4501, including the following:

1. eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues;

2. stabilize remaining wastes to a bearing capacity sufficient to support the final cover; and

3. cover the surface impoundment with a final cover designed and constructed to:

- a. provide long-term minimization of the migration of liquids through the closed impoundment;

- b. function with minimum maintenance;

- c. promote drainage and minimize erosion or abrasion of the cover;

- d. accommodate settling and subsidence so that the cover's integrity is maintained; and

- e. have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

C. In addition to the requirements of LAC 33:V.4501, during the post-closure care period, the owner or operator of a surface impoundment in which wastes, waste residues, or contaminated materials remain after closure in accordance with the provisions of Subsection A.2.b of this Section must:

1. maintain the integrity and effectiveness of the final cover, including making repairs to the cover as necessary to correct the effects of settling, subsidence, erosion, or other events;

2. maintain and monitor the leak detection system in accordance with LAC 33:V.4455.B and comply with all other applicable leak detection system requirements of LAC 33:V.Chapter 43.

3. maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of LAC 33:V.4367; and

4. prevent run-on and runoff from eroding or otherwise damaging the final cover.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 15:470 (June 1989), LR 18:723 (July 1992), LR 21:266 (March 1995); amended by the Office of the Secretary, LR 24:

Subchapter K. Waste Piles

§4475. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in Subsection A of this Section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (LAC 33:V.Chapter 43, Subchapter M); or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:723 (July 1992), amended by the Office of the Secretary, LR 24:

Subchapter T. Containment Buildings

§4705. Closure and Post-Closure Care

* * *

[See Prior Text in A]

B. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in LAC 33:V.4705.A, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must either:

1. close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (LAC 33:V.4501). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill and the owner or operator must meet all of the requirements for landfills specified in LAC 33:V.Chapter 43.Subchapters F and G; or

2. perform a risk assessment to demonstrate that closure with the remaining contaminant levels is protective of human

health and the environment in accordance with LAC 33:I.Chapter 13. Any such risk assessment is subject to approval by the administrative authority and must demonstrate that post-closure care is not necessary to adequately protect human health and the environment.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended by the Office of the Secretary, LR 24:

Part VII. Solid Waste

Chapter 7. Solid Waste Standards

Subchapter B. Landfills, Surface Impoundments, Land Farms

§709. Standards Governing All Solid Waste Disposal Facilities (Type I and II)

* * *

[See Prior Text in A - E.4.f.ii]

iii. upon consultation with and approval of the administrative authority, implement any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be in accordance with LAC 33:I.Chapter 13 and be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Subsection E.6 of this Section. The following factors must be considered by a permit holder in determining whether interim measures are necessary:

* * *

[See Prior Text in E.4.f.iii.(a) - v]

g. The permit holder must establish a groundwater protection standard for each Appendix C, Table 2 parameter or constituent detected in the groundwater. The groundwater protection standard shall be in accordance with LAC 33:I.Chapter 13 and shall be:

* * *

[See Prior Text in E.4.g.i - ii]

iii. for parameters or constituents for which MCLs have not been promulgated, the background concentration for the parameter or constituent established from wells in accordance with Subsection E.4 of this Section, or the administrative authority may allow the standard to be set in accordance with LAC 33:I.Chapter 13 on a case-by-case basis;

iv. for Type I facilities, the administrative authority may allow the standard for all parameters or constituents to be set in accordance with LAC 33:I.Chapter 13 on a case-by-case basis;

v. for parameters or constituents for which the background level is higher than the MCL identified under Subsection E.4.g.i or ii of this Section, the background concentration for the parameter or constituent established from wells in accordance with Subsection E.4 of this Section; or

vi. the administrative authority may establish a more stringent groundwater protection standard if necessary to protect human health or the environment.

* * *

[See Prior Text in E.5 - 6]

a. Based on the results of the corrective measures

assessment conducted under Subsection E.5 of this Section, the permit holder must select a remedy that, at a minimum, meets the standards of Subsection E.6.b of this Section. Within 180 days after initiation of the corrective measures assessment required in Subsection E.5 of this Section, the permit holder must submit four bound copies (8 ½ by 11 inches) of a corrective-action plan, describing the selected remedy, which will meet the requirements of Subsection E.6.b-d of this Section and be in accordance with LAC 33:I.Chapter 13. The corrective-action plan must also provide for a corrective-action groundwater monitoring program as described in Subsection E.7.a.i of this Section.

* * *

[See Prior Text in E.6.b - 7.d]

e. If the administrative authority approves, in writing, the demonstration submitted pursuant to Subsection E.7.d of this Section, the permit holder must, within 30 days of the approval, submit a plan to the Solid Waste Division (which includes an implementation schedule) to implement alternate measures in accordance with LAC 33:I.Chapter 13:

* * *

[See Prior Text in E.7.e.i - 8.c.ii]

iii. upon consultation with and approval of the administrative authority, must implement any interim measures necessary to ensure the protection of human health and the environment. Interim measures should be in accordance with LAC 33:I.Chapter 13 and, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to Subsection E.6 of this Section. The following factors must be considered by a permit holder in determining whether interim measures are necessary:

* * *

[See Prior Text in E.8.c.iii.(a) - 9]

a. Corrective action at solid waste disposal facilities other than Type II landfills and associated Type II surface impoundments must be performed in accordance with Subsection E.9 of this Section and LAC 33:I.Chapter 13.

* * *

[See Prior Text in E.9.b. - 10]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1315 (October 1993), amended by the Office of the Secretary, LR 24:

§711. Standards Governing Landfills (Type I and II)

* * *

[See Prior Text in A - F.1]

a. decreased by the administrative authority if the permit holder demonstrates that the reduced period is sufficient to protect human health and the environment in accordance with LAC 33:I.Chapter 13, and this demonstration is approved by the administrative authority (Any demonstration must provide supporting data, including adequate groundwater monitoring data.); or

b. increased by the administrative authority if the administrative authority determines that the lengthened period is necessary to protect human health and the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in F.2 - 3.a]

b. maintaining and operating the leachate collection and removal system, until leachate is no longer generated or until the permit holder can demonstrate that the leachate no longer poses a threat to human health or the environment in accordance with LAC 33:I.Chapter 13;

* * *

[See Prior Text in F.3.c - d]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 19:1143 (September 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:

§713. Standards Governing Surface Impoundments (Type I and II)

* * *

[See Prior Text in A - E.3.c]

4. If the permit holder demonstrates that removal of most of the solid waste to achieve an alternate level of contaminants based on indicator parameters in the contaminated soil will be adequately protective of human health and the environment (including groundwater) in accordance with LAC 33:I.Chapter 13, the administrative authority may decrease or eliminate the post-closure period.

a. If levels of contamination at the time of closure meet residential standards as specified in LAC 33:I.Chapter 13 and approval of the administrative authority is granted, the requirements of Subsection E.4.b of this Section shall not apply. The requirements of Subsection F of this Section, "Facility Post-closure Requirements," shall apply.

b. Excepting those sites closed in accordance with Subsection E.4.a of this Section, within 90 days after a closure is completed, the permit holder must have entered in the mortgage and conveyance records of the parish for the property, a notation stating that solid waste remains at the site and providing the indicator levels obtained during closure.

* * *

[See Prior Text in E.5 - F.1]

a. decreased by the administrative authority if the permit holder demonstrates that the reduced period is sufficient to protect human health and the environment in accordance with LAC 33:I.Chapter 13 and this demonstration is approved by the administrative authority (Any demonstration must provide supporting data, including adequate groundwater monitoring data.); or

b. increased by the administrative authority if the administrative authority determines that the lengthened period is necessary to protect human health and the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in F.2 - 2.b.iv]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:

§715. Standards Governing Land Farms (Type I and II)

* * *

[See Prior Text in A - F.1]

a. decreased by the administrative authority if the permit holder demonstrates that the reduced period is sufficient to protect human health and the environment in accordance with LAC 33:I.Chapter 13 and this demonstration is approved by the administrative authority (Any demonstration must provide supporting data, including adequate groundwater monitoring data.); or

b. increased by the administrative authority if the administrative authority determines that the lengthened period is necessary to protect human health and the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in F.2 - 3.b]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), repromulgated LR 19:1316 (October 1993), amended by the Office of the Secretary, LR 24:

Subchapter C. Solid Waste Processors

§717. Standards Governing All Solid Waste Processors (Type I-A and II-A)

* * *

[See Prior Text in A - I.2.b]

c. The permit holder shall verify that the underlying soils have not been contaminated due to the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.3, 4, and 5 must be provided to the administrative authority.

* * *

[See Prior Text in I.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:

Subchapter D. Minor Processing and Disposal Facilities

§721. Construction and Demolition Debris and Woodwaste Landfills and Processing Facilities (Type III)

* * *

[See Prior Text in A - E]

1. The time-frame of post-closure care may be lengthened, if necessary, to protect human health or the environment in accordance with LAC 33:I.Chapter 13.

* * *

[See Prior Text in E.2 - 3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:

§723. Composting Facilities (Type III)

* * *

[See Prior Text in A - D.2.b]

c. The permit holder shall verify that the underlying soils have not been contaminated in the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.3, 4, and 5 must be provided to the administrative authority.

* * *

[See Prior Text in D.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), amended by the Office of the Secretary, LR 24:

§725. Separation and Woodwaste Processing Facilities (Type III)

* * *

[See Prior Text in A - D.2.b]

c. The permit holder shall verify that the underlying soils have not been contaminated from the operation of the facility. If contamination exists, a remediation/removal program developed to meet the standards of LAC 33:VII.713.E.3, 4, and 5 must be provided to the administrative authority.

* * *

[See Prior Text in A - D.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended LR 20:1001 (September 1994), LR 22:280 (April 1996), amended by the Office of the Secretary, LR 24:

Chapter 9. Enforcement

§909. Closing Unauthorized and Promiscuous Dumps

Unauthorized and promiscuous dumps shall be closed through the following procedure.

* * *

[See Prior Text in A - B]

C. Requirements for on-site closure are as follows:

1. if required, or authorized and approved, by the administrative authority, closure shall be conducted in accordance with LAC 33:I.Chapter 13. However, the requirements of Subsection C.2.g of this Section will apply. If closure in accordance with LAC 33:I.Chapter 13 results in constituent-of-concern levels remaining above those allowed for residential scenarios, the requirements of Subsection C.2.f of this Section will also apply; and

2. if closure will not be conducted in accordance with Subsection C.1 of this Section, then approval or authorization may be granted by the administrative authority for the following alternative closure requirements:

a. extinguish all fires;

b. dewater and either solidify waste for return to the landfill or discharge it as governed by a NPDES permit, if applicable;

- c. implement a rodent-extermination program, if applicable, to prevent migration of rats;
- d. compact the waste with suitable equipment;
- e. provide a final cover consisting of a minimum of 24 inches of silty clays and 6 inches of topsoil cover for supporting vegetative growth and revegetate the area to control erosion if necessary;
- f. record in the parish mortgage and conveyance records a document describing the specific location of the facility and specifying that the property was used for the disposal of solid waste. The document shall identify the name of the person with knowledge of the contents of the facility, as well as providing the chemical levels remaining, if present. A true copy of the document, filed and certified by the parish clerk of court, shall be sent to the Solid Waste Division; and
- g. conduct long-term monitoring in accordance with Subsection E of this Section, if deemed necessary by the administrative authority.

* * *

[See Prior Text in D - E.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Solid Waste Division, LR 19:187 (February 1993), amended by the Office of the Secretary, LR 24:

Part XI. Underground Storage Tanks

Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

§715. Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

A. Applicability. Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this Section except for USTs excluded under LAC 33:XL101.B and UST systems subject to the department's Hazardous Waste Regulations. Investigations and corrective actions required by this Section must comply with LAC 33:I.Chapter 13, Risk Evaluation/Corrective Action Program.

* * *

[See Prior Text in B - H.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of the Secretary, LR 24:

A public hearing will be held on May 26, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by OS021. Such comments

must be received no later than June 20, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486. Copies of this proposed regulation and the RECAP document can be purchased at the above referenced address. Contact the Investigations and Regulation Development Division at (504) 765-0399 for pricing information. Check or money order is required in advance for each copy of OS021 and the RECAP document.

This proposed regulation and the RECAP document are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm> on the Internet.

Herman Robinson
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Risk Evaluation/Corrective Action Program

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Existing staff and facilities will be used in the implementation of the Risk Evaluation/Corrective Action Program (RECAP) rule. FY 98-99 additional department costs are estimated to be \$145,000; FY 99-00 additional costs are estimated to be \$85,000. These costs are for software development (one-time cost) and one additional contracted toxicologist/risk assessor.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No significant increase or decrease in revenues is expected with the promulgation of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Implementation of the proposed Risk Evaluation/Corrective Action Program (RECAP) rule will result in an overall reduction in the costs of remediating contaminated sites to a protective level when compared to existing regulatory approaches. Soil re-use will result in reduced landfill disposal costs and the need for purchasing fill from an off-site location. More achievable cleanup levels for industrial/commercial land use will result in cost savings, but still be protective of public health and the environment. Positive economic benefit will be realized by the environmental service providers because a higher volume of remedial activities is anticipated as a result of the new rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
It is expected that an increase in needed environmental services will correspond with the expected increase in the number of remedial actions addressed under this rule. Established standards for determining the level of cleanup at a site will increase competition in the environmental service

sectors because all parties will be pursuing remedial actions under the same set of standards.

J. Dale Givens
Secretary
9804#055

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Environmental Quality Office of Waste Services Hazardous Waste Division

Recodification (LAC 33:V.Subpart 1)(HW063*)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division Regulations, LAC 33:V.Chapters 1, 3, 5, 11, 15, 19, 21, 22, 23, 25, 27, 29, 30, 35, 38, 39, 40, 41, 43, and 49 (HW063*).

This proposed rule is identical to a federal regulation found in 40 CFR parts 260, 261, 262, 264, 265, 266, 268, 270, and 273, which is applicable in Louisiana. For more information regarding the federal requirement, contact the Investigations and Regulation Development Division at the address or phone number given below. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

Although LAC 33:V.Subpart 1 is currently equivalent to the federal regulations, this proposed rule will update the affected sections to reflect the same order in language as the federal regulations. The basis and rationale for the proposed rule are to make it easier for the regulated community to compare the state and federal regulations.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental

Quality—Hazardous Waste

Chapter 1. General Provisions and Definitions

§105. Program Scope

These rules and regulations apply to owners and operators of all facilities that generate, transport, treat, store, or dispose of hazardous waste, except as specifically provided otherwise herein. The procedures of these regulations also apply to denial of a permit for the active life of a hazardous waste management facility or TSD unit under LAC 33:V.706. Definitions appropriate to these rules and regulations, including *solid waste* and *hazardous waste*, appear in LAC 33:V.109. Those wastes which are excluded from regulation are found in this Section.

* * *

[See Prior Text in A - C.6]

D. Exclusions

1. Materials That Are Not Solid Wastes. The following materials are not solid wastes for the purpose of this Section:

a.i. domestic sewage; and

ii. any mixture of domestic sewage and other wastes that pass through a sewer system to a Publicly Owned Treatment Works (POTW) for treatment. *Domestic sewage* means untreated sanitary wastes that pass through a sewer system;

b. industrial wastewater discharges that are point source discharges subject to regulation under section 402 of the Clean Water Act, as amended;

[Comment: This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.]

c. irrigation return flows;

d. source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.;

e. material subjected to in-situ mining techniques that are not removed from the ground as part of the extraction process;

f. pulping liquors (i.e., black liquor) that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless they are accumulated speculatively as defined in LAC 33:V.109.Solid Waste;

g. spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in LAC 33:V.109.Solid Waste;

h. secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

i. only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

ii. reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

iii. the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

iv. the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal;

i.i. spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

ii. wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood;

j. EPA Hazardous Waste Numbers. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in LAC 33:V.4903.E when, subsequent to generation, these materials are recycled to coke ovens, or to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This

exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens, tar recovery, or refining processes, or mixed with coal tar;

k. nonwastewater splash condenser dross residue from the treatment of K061 in high-temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery; and

l. recovered oil from petroleum refining, exploration and production, and from transportation incident thereto, which is to be inserted into the petroleum refining process (SIC Code 2911) at or before a point (other than direct insertion into a coker) where contaminants are removed. This exclusion applies to recovered oil stored or transported prior to insertion, except that the oil must not be stored in a manner involving placement on the land, and must not be accumulated speculatively, before being so recycled. Recovered oil is oil that has been reclaimed from secondary materials (such as wastewater) generated from normal petroleum refining, exploration and production, and transportation practices. Recovered oil includes oil that is recovered from refinery wastewater collection and treatment systems, oil recovered from oil and gas drilling operations, and oil recovered from wastes removed from crude oil storage tanks. Recovered oil does not include (among other things) oil-bearing hazardous wastes listed in LAC 33:V.4901 (e.g., K048-K052, F037, F038). However, oil recovered from such wastes may be considered recovered oil. Recovered oil also does not include used oil as defined in LAC 33:V.4001.

2. Solid Wastes That Are Not Hazardous Wastes. The following solid wastes are not hazardous wastes:

a. household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse-derived fuel), or reused. "Household waste" means any material (including garbage, trash, and sanitary wastes in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas). A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this Subpart if such facility:

i. receives and burns only:

(a). household waste (from single and multiple dwellings, hotels, motels, and other residential sources); and

(b). solid waste from commercial or industrial sources that does not contain hazardous waste; and

ii. such facility does not accept hazardous wastes and the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility;

b. solid wastes generated by any of the following and which are returned to the soils as fertilizers:

i. the growing and harvesting of agricultural crops; and

ii. the raising of animals, including animal manures;

c. mining overburden returned to the mine site;

d. fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste, generated primarily from the combustion of coal or other fossil fuels, except as provided in LAC 33:V.3025 for facilities that burn or process hazardous waste;

e. drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy;

f. wastes that fail the test for the toxicity characteristic because chromium is present or are listed in LAC 33:V.Chapter 49, due to the presence of chromium, which do not fail the test for the toxicity characteristic for any other constituent, or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or waste generators that:

i. the chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

ii. the waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

iii. the waste is typically and frequently managed in nonoxidizing environments;

g. specific wastes which meet the standard in Subsection D.1.f.i, ii and iii (so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic) are:

i. chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling;

ii. chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling;

iii. buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue;

iv. sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling;

v. wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling;

vi. wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue;

vii. waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries; and

viii. wastewater treatment sludges from the production of TiO₂ pigment using chromium-bearing ores by the chloride process;

h. solid waste from the extraction, beneficiation, and processing of ores and minerals (including coal, phosphate rock, and overburden from the mining of uranium ore), except as provided in LAC 33:V.3025 for facilities that burn or process hazardous waste. For purposes of this Paragraph, beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting and/or autoclaving and/or chlorination/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching. For the purpose of this Paragraph, solid waste from the processing of ores and minerals will include only the following wastes:

- i. slag from primary copper processing;
- ii. slag from primary lead processing;
- iii. red and brown muds from bauxite refining;
- iv. phosphogypsum from phosphoric acid production;
- v. slag from elemental phosphorus production;
- vi. gasifier ash from coal gasification;
- vii. process wastewater from coal gasification;
- viii. calcium sulfate wastewater treatment plant sludge from primary copper processing;
- ix. slag tailings from primary copper processing;
- x. fluorogypsum from hydrofluoric acid production;
- xi. process wastewater from hydrofluoric acid production;
- xii. air pollution control dust/sludge from iron blast furnaces;
- xiii. iron blast furnace slag;
- xiv. treated residue from roasting/leaching of chrome ore;
- xv. process wastewater from primary magnesium processing by the anhydrous process;
- xvi. process wastewater from phosphoric acid production;
- xvii. basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;
- xviii. basic oxygen furnace and open hearth furnace slag from carbon steel production;
- xix. chloride process waste solids from titanium tetrachloride production; and
- xx. slag from primary zinc processing;

i. cement kiln dust waste, except as provided in LAC 33:V.3025 for facilities that burn or process hazardous waste;

j. solid waste that consists of discarded arsenical-treated wood or wood products which fails the test for the toxicity characteristic for Hazardous Waste Codes D004)D017 and which is not a hazardous waste for any other reason, if the waste is generated by persons who utilize the arsenical-treated wood and wood product for these materials' intended end use;

k. petroleum-contaminated media and debris that fail the test for the toxicity characteristic (Hazardous Waste Numbers D018-D043 only) and are subject to the corrective action regulations under underground storage tanks rules and regulations (LAC 33:XI);

l. injected groundwater that is hazardous only because it exhibits the toxicity characteristic (Hazardous Waste Codes D018-D043 only) in LAC 33:V.4903 and that is re-injected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until January 1, 1993. New operations involving injection wells (beginning after March 25, 1991) will qualify for this compliance date extension (until January 25, 1993) only if:

i. operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

ii. a copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460;

m. used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use;

n. non-terneplated used oil filters that are not mixed with wastes listed in LAC 33:V.4901 if these oil filters have been gravity hot-drained using one of the following methods:

i. puncturing the filter anti-drain back valve or the filter dome end and hot-draining;

ii. hot-draining and crushing;

iii. dismantling and hot-draining; or

iv. any other equivalent hot-draining method that will remove used oil; and

o. used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

3. Hazardous Wastes That Are Exempted from Certain Regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit, is not subject to regulation under LAC 33:V.Subpart 1 or to the notification requirements of Subsection A of this Section, until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of product or raw materials.

4. Samples

a. Except as provided in Subsection D.4.b of this Section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or composition, is not subject to any requirements of LAC 33:V.Subpart 1 or to the notification requirements of Subsection A of this Section, when:

- i. the sample is being transported to a laboratory for the purpose of testing; or
- ii. the sample is being transported back to the sample collector after testing; or
- iii. the sample is being stored by the sample collector before transport to a laboratory for testing; or
- iv. the sample is being stored in a laboratory before testing; or
- v. the sample is being stored in a laboratory after testing but before it is returned to the sample collector; or
- vi. the sample is being stored temporarily in the laboratory after testing for a specific purpose (e.g., until conclusion of a court case or enforcement action where further testing of the sample may be necessary).

b. In order to qualify for the exemption in Subsection D.4.a.i-ii of this Section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector must:

i. comply with Louisiana Department of Public Safety (LDPS), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

ii. comply with the following requirements if the sample collector determines that LDPS, USPS, or other shipping requirements do not apply to the shipment of the sample:

(a). assure that the following information accompanies the sample:

- (i). the sample collector's name, mailing address, and telephone number;
- (ii). the laboratory's name, mailing address, and telephone number;
- (iii). the quantity of the sample;
- (iv). the date of shipment; and
- (v). a description of the sample; and

(b). package the sample so that it does not leak, spill, or vaporize from its packaging.

c. This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no

longer meeting any of the conditions stated in Subsection D.4.a of this Section.

5. Treatability Study Samples

a. Except as provided in Subsection D.5.b of this Section, persons who generate or collect samples for the purpose of conducting treatability studies as defined in LAC 33:V.109 are not subject to any requirement of LAC 33:V.Chapters 9, 11, 13, or 49, or to the notification requirements of Subsection A of this Section, nor are such samples included in the quantity determinations of LAC 33:V.3903-3915 and LAC 33:V.1109.E.7 when:

- i. the sample is being collected and prepared for transportation by the generator or sample collector; or
- ii. the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or
- iii. the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

b. The exemption in Subsection D.5.a of this Section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies, provided that:

i. the generator or sample collector uses (in "treatability studies") no more than 10,000 kg of media contaminated with nonacute hazardous waste, 1,000 kg of nonacute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, or 2,500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream; and

ii. the mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with nonacute hazardous waste, or may include 2,500 kg of media contaminated with acute hazardous waste, 1,000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

iii. the sample is packaged so that it will not leak, spill, or vaporize from its packaging during shipment, and the requirements of Subsection 105.D.5.b.iii.(a) or (b) of this Section are met:

(a). the transportation of each sample shipment complies with the shipping requirements of the LDPS and USPS, or any other applicable shipping requirements; or

(b). if the LDPS, the USPS, or other shipping requirements do not apply to the shipment of the sample, the following information must accompany the sample:

- (i). the name, mailing address, and telephone number of the originator of the sample;
- (ii). the name, address, and telephone number of the facility that will perform the treatability study;
- (iii). the quantity of the sample;
- (iv). the date of shipment; and
- (v). a description of the sample, including its EPA Hazardous Waste Number;

iv. the sample is shipped to a laboratory or testing facility that is exempt under Subsection D.6 of this Section or has an appropriate LAC 33:V.Subpart 1 permit or interim status;

v. the generator or sample collector maintains the following records for a period ending three years after completion of the treatability study:

- (a). copies of the shipping documents;
- (b). a copy of the contract with the facility conducting the treatability study; and
- (c). documentation showing:
 - (i). the amount of waste shipped under this exemption;
 - (ii). the name, address, and EPA identification number of the laboratory or testing facility that received the waste;
 - (iii). the date the shipment was made; and
 - (iv). whether or not unused samples and residues were returned to the generator; and

vi. the generator reports the information required under Subsection D.5.b.v.(c) of this Section in its biennial report.

c. The administrative authority may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The administrative authority may grant requests on a case-by-case basis for quantity limits in excess of those specified in Subsection D.5.b.i and ii and 6.d of this Section for up to an additional 5,000 kg of media contaminated with nonacute hazardous waste, 500 kg of nonacute hazardous waste, 2,500 kg of media contaminated with acute hazardous waste, and 1 kg of acute hazardous waste:

i. in response to requests for authorization to ship, store, and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process (e.g., batch versus continuous), the size of the unit undergoing testing (particularly in relation to scale-up considerations), the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations;

ii. in response to requests for authorization to ship, store, and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies when: there has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment; and

iii. the additional quantities and time frames allowed in Subsection D.5.c.i and ii of this Section are subject to all the provisions in Subsection D.5.a and b.iii-vi of this Section. The generator or sample collector must apply to the administrative authority and provide in writing the following information:

(a). the reason why the generator or sample collector requires additional time or quantity of sample for the treatability study evaluation and the additional time or quantity needed;

(b). documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(c). a description of the technical modifications or change in specifications that will be evaluated and the expected results;

(d). if such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(e). such other information that the administrative authority considers necessary.

6. Samples Undergoing Treatability Studies at Laboratories and Testing Facilities. Samples undergoing treatability studies and the laboratory or testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to LAC 33:V.Subpart 1 requirements) are not subject to any requirement of LAC 33:V.Chapters 3, 5, 9, 11, 13, 15, 22, 41, and 43 or to the notification requirements of Subsection A of this Section, provided that the following conditions are met. A mobile treatment unit may qualify as a testing facility subject to Subsection D.6.a-k of this Section. Where a group of mobile treatment units is located at the same site, the limitations specified in Subsection D.6.a-k of this Section apply to the entire group of mobile treatment units collectively as if the group were one mobile treatment unit:

a. no less than 45 days before conducting treatability studies, the facility notifies the administrative authority in writing that it intends to conduct treatability studies under this Subsection;

b. the laboratory or testing facility conducting the treatability study has an EPA identification number;

c. no more than a total of 10,000 kg of "as received" media contaminated with nonacute hazardous waste, 2,500 kg of media contaminated with acute hazardous waste, or 250 kg of other "as received" hazardous waste is subjected to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector;

d. the quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with nonacute hazardous waste, 2,500 kg of media contaminated with acute hazardous waste, 1,000 kg of nonacute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials (including nonhazardous solid waste) added to "as received" hazardous waste;

e. no more than 90 days have elapsed since the treatability study for the sample was completed, or no more

than one year (two years for treatability studies involving bioremediation) has elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility;

f. the treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste;

g. the facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information must be included for each treatability study conducted:

i. the name, address, and EPA identification number of the generator or sample collector of each waste sample;

ii. the date shipment was received;

iii. the quantity of waste accepted;

iv. the quantity of "as received" waste in storage each day;

v. the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

vi. the date the treatability study was concluded; and

vii. the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number;

h. the facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study;

i. the facility prepares and submits a report to the administrative authority by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

i. the name, address, and EPA identification number of the facility conducting the treatability studies;

ii. the types (by process) of treatability studies conducted;

iii. the names and addresses of persons for whom studies have been conducted (including their EPA identification numbers);

iv. the total quantity of waste in storage each day;

v. the quantity and types of waste subjected to treatability studies;

vi. when each treatability study was conducted; and

vii. the final disposition of residues and unused sample from each treatability study;

j. the facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under LAC 33:V.109.Hazardous Waste and, if so, are

subject to LAC 33:V.Chapters 3, 5, 9, 11, 13, 15, 22, 41, 43, and 49, unless the residue and unused samples are returned to the sample originator under the Subsection D.5 of this Section exemption; and

k. the facility notifies the administrative authority by letter when the facility is no longer planning to conduct any treatability studies at the site.

7. The following wastes are exempt from regulation under this Subpart, except as specified in LAC 33:V.Chapter 38, and therefore, are not fully regulated as hazardous waste. The wastes listed in this Section are subject to regulation under LAC 33:V.Chapter 38:

a. batteries as described in LAC 33:V.3803;

b. pesticides as described in LAC 33:V.3805; and

c. thermostats as described in LAC 33:V.3807.

8. PCB Wastes Regulated Under Toxic Substance Control Act. PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated by the United States Environmental Protection Agency under 40 CFR 761, and that are hazardous only because they fail the test for the toxicity characteristic (Hazardous Waste Numbers D018—D043 only) are exempt from regulation under LAC 33:V.Subpart 1.

* * *

[See Prior Text in E - J.2]

K. Variance to be Classified as a Boiler

1. Variance to be Classified as a Boiler. In accordance with the standards and criteria in LAC 33:V.109.Boiler and the procedures in Subsection K.2 of this Section, the administrative authority may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in LAC 33:V.109 after considering the following criteria:

a. the extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases; and

b. the extent to which the combustion chamber and energy recovery are of integral design; and

c. the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

d. the extent to which exported energy is utilized; and

e. the extent to which the device is in common and customary use as a "boiler" functioning primarily to produce steam, heated fluids, or heated gases; and

f. other factors, as appropriate.

2. Procedures for Variances From Classification as a Solid Waste or to be Classified as a Boiler. The administrative authority will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed controlled flame combustion devices as boilers as provided in this Subsection:

a. the applicant must apply to the administrative authority. The application must address the relevant criteria contained in this Subsection; and

b. the administrative authority will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision

will be provided by newspaper advertisement and/or radio broadcast in the locality where the recycler is located. The administrative authority will accept comment on the tentative decision for 30 days and may also hold a public hearing upon request or at his discretion. The administrative authority will issue a final decision after receipt of comments and after a hearing (if any).

L. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis

1. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis. The administrative authority may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in LAC 33:V.4105.C.4 should be regulated under Subchapter A of LAC 33:V.Chapter 41. The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. In making this decision, the administrative authority will consider the following factors:

- a. the types of materials accumulated or stored and the amounts accumulated or stored;
- b. the method of accumulation or storage;
- c. the length of time the materials have been accumulated or stored before being reclaimed;
- d. whether any contaminants are being released into the environment, or are likely to be so released; and
- e. other relevant factors.

2. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities. The administrative authority will use the following procedures when determining whether to regulate hazardous waste recycling activities described in LAC 33:V.4105.C.3 under the provisions of Subchapter A of LAC 33:V.Chapter 41, rather than under the provisions of Subchapter C of LAC 33:V.Chapter 41 of these regulations:

- a. if a generator is accumulating the waste, the administrative authority will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of LAC 33:V.1101, 1109.A, 1111.A, and 1113.A. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the administrative authority will hold a public hearing. The administrative authority will provide notice of the hearing to the public and allow public participation at the hearing. The administrative authority will issue a final order after the hearing stating whether or not compliance with LAC 33:V.Chapter 11 is required. The order becomes effective 30 days after service of the decision unless the administrative authority specifies a later date or unless review by the administrative authority is requested. The order may be appealed to the administrative authority by any person who participated in the public hearing. The administrative authority may choose to grant or to deny the appeal. Final department action occurs when a final order is issued and department review procedures are exhausted; and

- b. if the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of these regulations. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than 180 days of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the administrative authority's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the department's determination. The question of whether the administrative authority's decision was proper will remain open for consideration during the public comment period discussed under LAC 33:V.707 and in any subsequent hearing.

* * *

[See Prior Text in M - N.5]

O. Variances from Classification as a Solid Waste

1. Variances from Classification as a Solid Waste. In accordance with the standards and criteria below, the administrative authority may determine on a case-by-case basis that the following recycled materials are not solid waste:

- a. materials that are accumulated speculatively without sufficient amounts being recycled, as defined in LAC 33:V.109;
- b. materials that are reclaimed and then reused within the original production process in which they were generated; and
- c. materials that have been reclaimed, but must be reclaimed further before the materials are completely recovered.

2. Standards and Criteria for Variances from Classification as a Solid Waste

- a. The administrative authority may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The administrative authority's decision will be based on the following criteria:

- i. the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (e.g., because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);
- ii. the reason that the applicant has accumulated the material for one or more years without recycling 75 percent of the volume accumulated at the beginning of the year;
- iii. the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;
- iv. the extent to which the material is handled to minimize loss; and
- v. other related factors.

- b. The administrative authority may grant requests for

a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

- i. how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;
- ii. the prevalence of the practice on an industry-wide basis;
- iii. the extent to which the material is handled before reclamation to minimize loss;
- iv. the time periods between generating the material and its reclamation and between reclamation and return to the original primary production process;
- v. the location of the reclamation operation in relation to the production process;
- vi. whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;
- vii. whether the person who generates the material also reclaims it; and
- viii. other relevant factors.

c. The administrative authority may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

- i. the degree of processing the material has undergone and the degree of further processing that is required;
- ii. the value of the material after it has been reclaimed;
- iii. the degree to which the reclaimed material is like an analogous raw material;
- iv. the extent to which an end market for the reclaimed material is guaranteed;
- v. the extent to which the reclaimed material is handled to minimize loss; and
- vi. other relevant factors.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:181 (March 1989), LR 16:47 (January 1990), LR 16:217 (March 1990), LR 16:220 (March 1990), LR 16:398 (May 1990), LR 16:614 (July 1990), LR 17:362 (April 1991), LR 17:368 (April 1991), LR 17:478 (May 1991), LR 17:883 (September 1991), LR 18:723 (July 1992), LR 18:1256 (November 1992), LR 18:1375 (December 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 20:1000 (September 1994), LR 21:266 (March

1995), LR 21:944 (September 1995), LR 22:813 (September 1996), LR 22:831 (September 1996), amended by the Office of the Secretary, LR 23:298 (March 1997), amended by the Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:564 (May 1997), LR 23:567 (May 1997), LR 23:721 (June 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 23:952 (August 1997), LR 23:1511 (November 1997), LR 24:298 (February 1998), LR 24:

§109. Definitions

For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise:

* * *

[See Prior Text]

Accumulated Speculatively—a material is *accumulated speculatively* if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that—during the calendar year (commencing on January 1)—the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75 percent requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under LAC 33:V.105.D are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

* * *

[See Prior Text]

Boiler—an enclosed device using controlled flame combustion and having the following characteristics:

* * *

[See Prior Text in 1 - 1.c]

2. the unit is one which the administrative authority has determined, on a case-by-case basis, to be a boiler, after considering the standards in LAC 33:V.105.K.

* * *

[See Prior Text]

Hazardous Waste—a solid waste, as defined in this Section, is a hazardous waste if:

1. it is not excluded from regulation as a hazardous waste under LAC 33:V.105.D; and

2. it meets any of the following criteria:

a. it exhibits any of the characteristics of hazardous waste identified in LAC 33:V.4903, except that any mixture of a waste from the extraction, beneficiation, or processing of ores and minerals excluded under LAC 33:V.105.D.2.h and any other solid waste exhibiting a characteristic of hazardous waste under LAC 33:V.4903 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred; or if it continues to exhibit any of the characteristics exhibited by the nonexcluded wastes prior to mixture. Further, for the purposes of applying the toxicity characteristic to such

mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in LAC 33:V.4903.E. Table 5 that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture;

b. it is listed in LAC 33:V.4901 and has not been excluded from the lists in LAC 33:V.4901 by the Environmental Protection Agency or the administrative authority;

c. it is a mixture of a solid waste and a hazardous waste that is listed in LAC 33:V.4901 solely because it exhibits one or more of the characteristics of hazardous waste identified in LAC 33:V.4903 unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in LAC 33:V.4903; or unless the solid waste is excluded from regulation under LAC 33:V.105.D.2.h and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in LAC 33:V.4903 for which the hazardous waste listed in LAC 33:V.4901 was listed. (However, nonwastewater mixtures are still subject to the requirements of LAC 33:V. Chapter 22, even if they no longer exhibit a characteristic at the point of land disposal.);

d. it is a mixture of solid waste and one or more hazardous wastes listed in LAC 33:V.4901 and has not been excluded from Paragraph 2 of this definition under LAC 33:V.105.D and M; however, the following mixtures of solid wastes and hazardous wastes listed in LAC 33:V.4901 are not hazardous wastes (except by application of Paragraph 2.a or b of this definition) if the generator can demonstrate that the mixture consists of wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act (including wastewater at facilities which have eliminated the discharge of wastewater) and:

i. one or more of the following solvents listed in LAC 33:V.4901.B—carbon tetrachloride, tetrachloroethylene, trichloro-ethylene—provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed one part per million; or

ii. one or more of the following spent solvents listed in LAC 33:V.4901.B—methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents—provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 25 parts per million; or

iii. one of the following wastes listed in LAC 33:V.4901.C—heat exchanger bundle cleaning sludge from the petroleum refining industry (EPA Hazardous Waste Number K050); or

iv. a discarded commercial chemical product or chemical intermediate listed in LAC 33:V.4901.D and E arising from de minimis losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this Clause, "de minimis" losses include those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves, or other devices used to transfer materials); minor leaks of process equipment, storage tanks, or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers rendered empty by that rinsing; or

v. wastewater resulting from laboratory operations containing toxic (T) wastes listed in LAC 33:V.4901, provided that the annualized average flow of laboratory wastewater does not exceed 1 percent of total wastewater flow into the headworks of the facility's wastewater treatment or pretreatment system, or provided the wastes' combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pretreatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

vi. one or more of the following wastes listed in LAC 33:V.4901.C—wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste Number K157)—provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or are recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of five parts per million by weight; or

vii. wastewaters derived from the treatment of one or more of the following wastes listed in LAC 33:V.4901.C—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste Number K156)—provided that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of five milligrams per liter; and

e. Rebuttable Presumption for Used Oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in LAC 33:V.4901. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste (e.g., by using an analytical method from LAC 33:V. Chapter 49. Appendix A to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in LAC 33:V.3105. Table 1).

i. The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner or disposed.

ii. The rebuttable presumption does not apply to used oils contaminated with Chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

3. A solid waste which is not excluded from regulation under LAC 33:V.105.D becomes a hazardous waste when any of the following events occur:

a. in the case of a waste listed in LAC 33:V.4901, when the waste first meets the listing description set forth in LAC 33:V.4901;

b. in the case of a mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in LAC 33:V.4901 is first added to the solid waste; and

c. in the case of any other waste (including a waste mixture), when the waste exhibits any of the characteristics identified in LAC 33:V.4903.

4. Unless and until a hazardous waste meets the criteria of Paragraph 5 of this definition:

a. a hazardous waste will remain a hazardous waste;

b.i. Except as otherwise provided in Paragraph 4.b.ii of this definition, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate (but not including precipitation runoff) is a hazardous waste. (However, materials that are reclaimed from solid waste and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.)

ii. The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of hazardous waste, unless they exhibit one or more of the characteristics of hazardous wastes:

(a). waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry (SIC Codes 331 and 332);

(b). waste from burning any of the materials exempted from regulation by LAC 33:V.4105.B.1 - 12;

(c).i. nonwastewater residues, such as slag, resulting from High-Temperature Metals Recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations, or industrial furnaces (as defined in Industrial Furnace, Paragraphs 6, 7 and 13, in this Section), that are disposed of in subtitle D units, provided that these residues meet the generic exclusion levels identified in Tables A and B of this definition for all constituents and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a

minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving, by clear and convincing evidence, that the material meets all of the exclusion requirements.

Table A

Generic Exclusion Levels for K061 and K062 Nonwastewater HTMR Residues	
Constituent	Maximum for any Single Composite Sample-TCLP (mg/l)
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Table B

Generic Exclusion Levels for F006 Nonwastewater HTMR Residues	
Constituent	Maximum for any Single Composite Sample-TCLP (mg/l)
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(ii). A one-time notification and certification must be placed in the facility's files and sent to the administrative authority for K061, K062, or F006 HTMR residues that meet

the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generators' or treaters' files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater needs only to notify the administrative authority on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. The notification must include the following information:

- [a]. the name and address of the subtitle D unit receiving the waste shipments;
- [b]. the EPA hazardous waste number(s) and treatability group(s) at the initial point of generation; and
- [c]. the treatment standards applicable to the waste at the initial point of generation; and
- [d]. the certification must be signed by an authorized representative and must state as follows:

"I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

d. Biological treatment sludge from the treatment of one of the following wastes listed in LAC 33:V.4901.C—organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste Number K156), and wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste Number K157).

5. Any solid waste described in Paragraph 4 of this definition is not a hazardous waste if it meets the following criteria:

a. in the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in LAC 33:V.4903. (However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of LAC 33:V.Chapter 22, even if they no longer exhibit a characteristic at the point of land disposal);

b. in the case of a waste which is a listed waste under LAC 33:V.4901, contains a waste listed under LAC 33:V.4901 or is derived from a waste listed in LAC 33:V.4901, and it also has been excluded from Paragraph 4 of this definition under LAC 33:V.105.H and M.

6. Notwithstanding Paragraphs 1-4 of this definition and provided the debris as defined in LAC 33:V.2203 does not exhibit a characteristic identified at LAC 33:V.4903.B-E, the following materials are not subject to regulation under LAC 33:V.Subpart 1:

a. hazardous debris as defined in LAC 33:V.2203 that has been treated using one of the required extraction or destruction technologies specified in LAC 33:V.Chapter 22.Appendix.Table 8. Persons claiming this exclusion in an enforcement action will have the burden of proving, by clear and convincing evidence, that the material meets all of the exclusion requirements; or

b. debris as defined in LAC 33:V.2203 that the

administrative authority, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

* * *

[See Prior Text]

Solid Waste—

1.a. any discarded material that is not excluded by LAC 33:V.105.D or that is not excluded by a variance granted under LAC 33:V.105.O.

b. a discarded material is any material which is:
i. abandoned as explained in Paragraph 2 of this definition;
ii. recycled as explained in Paragraph 3 of this definition; or
iii. considered inherently waste-like, as explained in Paragraph 4 of this definition.

2. Materials are solid waste if they are abandoned by being:

- a. disposed of; or
- b. burned or incinerated; or
- c. accumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

3. Materials are solid wastes if they are recycled—or accumulated, stored, or treated before recycling—as specified in Paragraph 3.a-d of this definition:

a. used in a manner constituting disposal:
i. materials noted with an "*" in column 1 of Table 1 in this Chapter are solid wastes when they are:
(a). applied to or placed on the land in a manner that constitutes disposal; or

(b). used to produce products that are applied to or placed on the land (in which cases the product itself remains a solid waste);

ii. however, commercial chemical products listed in LAC 33:V.4901.D and E are not solid wastes if they are applied to the land and that is their ordinary manner of use;

b. burning for energy recovery:
i. materials noted with an "*" in column 2 of Table 1 in this Chapter are solid wastes when they are burned to recover energy, used to produce a fuel, or otherwise contained in fuels (in which case the fuel itself remains a solid waste);

ii. however, commercial chemical products listed in LAC 33:V.4901.D and E are not solid wastes if they are themselves fuels;

c. reclaimed—materials noted with an "*" in column 3 of Table 1 in this Chapter are solid wastes when reclaimed;

d. accumulated speculatively—materials noted with an "*" in column 4 of Table 1 in this Chapter are solid wastes when accumulated speculatively.

4. Inherently Waste-Like Materials. The following materials are solid wastes when they are recycled in any manner:

a. Hazardous Waste Numbers F020, F021 (unless used as an ingredient to make a product at the site of generation), F022, F023, F026, and F028;

b. secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in LAC 33:V.4901 or 4903,

except for brominated material that meets the following criteria:

- i. the material must contain a bromine concentration of at least 45 percent;
 - ii. the material must contain less than a total of 1 percent of toxic organic compounds listed in LAC 33:V.3105.Table 1; and
 - iii. the material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping); and
- c. the administrative authority will use the following criteria to add wastes to that list:
- i. the materials are ordinarily disposed of, burned, or incinerated; or
 - ii. the materials contain toxic constituents listed in Table 1 of LAC 33:V.Chapter 31 and these constituents are not ordinarily found in raw materials or products for which the materials substitute (or are found in raw materials or products in smaller concentrations) and are not used or reused during the recycling process; and
 - iii. the material may pose a substantial hazard to human health and the environment when recycled.
5. Materials that are not Solid Waste when Recycled
- a. Materials are not solid wastes when they can be shown to be recycled by being:
 - i. used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or
 - ii. used or reused as effective substitutes for commercial products; or

- iii. returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on land.

- b. The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process (described in preceding paragraphs of this definition):
 - i. materials used in a manner constituting disposal, or used to produce products that are applied to the land; or
 - ii. materials burned for energy recovery, used to produce a fuel, or otherwise contained in fuels; or
 - c. Materials accumulated speculatively; or
 - d. Inherently waste-like materials listed in Paragraph 4 of this definition.

6. Respondents in actions to enforce regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

Table 1				
	Use Constituting Disposal (1)	Energy Recovery/Fuel (2)	Reclamation (3)	Speculative Accumulation (4)
Spent Materials	*	*	*	*
Sludges (listed in LAC 33:V.4901)	*	*	*	*
Sludges exhibiting a characteristic of hazardous waste	*	*	*
By-products (listed in LAC 33:V.4901)	*	*	*	*
By-products exhibiting a characteristic of hazardous waste	*	*	*
Commercial chemical products listed in LAC 33:V.4901.E and F	*	*	
Scrap Metal	*	*	*	*

* * *

[See Prior Text]

Treatability Study—a study in which a hazardous waste is subjected to a treatment process to determine:

- 1.a. whether the waste is amenable to the treatment process;
- b. what pretreatment (if any) is required;
- c. the optimal process conditions needed to achieve the desired treatment;
- d. the efficiency of a treatment process for a specific

waste or wastes; or

- e. the characteristics and volumes of residuals from a particular treatment process.

2. Also included in this definition for the purpose of the LAC 33:V.105.D.5 and 6 exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A "treatability study" is not a means of commercially treating or disposing of hazardous waste.

* * *

[See Prior Text]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 14:790 (November 1988), LR 15:378 (May 1989), LR 15:737 (September 1989), LR 16:47 (January 1990), LR 16:218 (March 1990), LR 16:220 (March 1990), LR 16:399 (May 1990), LR 16:614 (July 1990), LR 16:683 (August 1990), LR 17:362 (April 1991), LR 17:478 (May 1991), LR 18:723 (July 1992), LR 18:1375 (December 1992), repromulgated LR 19:626 (May 1993), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 22:814 (September 1996), LR 23:564 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 3. General Conditions for Treatment, Storage, and Disposal Facility Permits

§305. Scope of the Permit

* * *

[See Prior Text in A -C.2]

3. farmers who dispose of hazardous waste pesticides from their own use as provided in LAC 33:V.1101.D;

* * *

[See Prior Text in C.4 -G.3]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:220 (March 1990), LR 16:614 (July 1990), LR 17:658 (July 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 23:567 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 5. Permit Application Contents

Subchapter E. Specific Information Requirements

§525. Specific Part II Information Requirements for Surface Impoundments

Except as otherwise provided in LAC 33:V.1501, owners and operators of facilities that treat, store, or dispose of hazardous waste in surface impoundments must provide the following additional information:

* * *

[See Prior Text in A - J.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 16:220 (March 1990), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

§527. Specific Part II Information Requirements for Waste Piles

Except as otherwise provided in LAC 33:V.1501, owners and operators of facilities that treat or store hazardous waste in waste piles must provide the following additional information:

* * *

[See Prior Text in A - J.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 16:220 (March 1990), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

§531. Specific Part II Information Requirements for Land Treatment Facilities

Except as otherwise provided in LAC 33:V.1501, owners and operators of facilities that use land treatment to dispose of hazardous waste must provide the following additional information:

* * *

[See Prior Text in A - H.4]

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

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

§533. Specific Part II Information Requirements for Landfills

Except as otherwise provided in LAC 33:V.1501, owners and operators of facilities that dispose of hazardous waste in landfills must provide the following additional information:

* * *

[See Prior Text in A - J.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:280 (April 1984), LR 16:220 (March 1990), LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 11. Generators

§1101. Applicability

* * *

[See Prior Text in A - C]

D. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this Chapter or other standards in the LAC 33:V.Chapters 3, 5, 7, 9, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43 for those wastes, provided he triple rinses each emptied pesticide container in accordance with the provisions of LAC 33:V.109.Empty Container.3 and disposes of the pesticide residues in a manner consistent with the disposal instructions on the pesticide label.

* * *

[See Prior Text in E - G]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 15. Treatment, Storage, and Disposal Facilities

§1501. Applicability

* * *

[See Prior Text in A - C.2]

3. Reserved;
4. a farmer disposing of waste pesticides from his own use as provided in LAC 33:V.1101.D;

* * *

[See Prior Text in C.5 - 11.c]

D. The requirements of this Chapter apply to owners or operators of all facilities which treat, store, or dispose of hazardous wastes referred to in LAC 33:V.Chapter 22.

E. The requirements of this Chapter apply to a person disposing of hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act only to the extent they are included in a RCRA permit by rule granted to such a person under LAC 33:V.305.D.

F. The requirements of this Chapter apply to a person disposing of hazardous waste by means of underground injection subject to a permit issued under an Underground Injection Control (UIC) program approved or promulgated under the Safe Drinking Water Act only to the extent they are required by 40 CFR 144.14.

G. The requirements of this Chapter apply to the owner or operator of a POTW which treats, stores, or disposes of hazardous waste only to the extent they are included in a RCRA permit by rule granted to such a person under LAC 33:V.305.D.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), LR 21:266 (March 1995), LR 21:944 (September 1995), LR 23:565 (May 1997), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 19. Tanks

§1901. Applicability

The requirements of this Chapter apply to owners and operators of facilities that use tank systems for storing or treating hazardous waste except as otherwise provided in Subsections A and B of this Section or LAC 33:V.1501.

* * *

[See Prior Text in A - D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 21. Containers

§2101. Applicability

The regulations in this Chapter apply to owners and operators of all hazardous waste facilities that store containers of hazardous waste, except as specified in LAC 33:V.1501, or if the container is empty (see LAC 33:V.109).

* * *

[See Prior Text in A - D]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:1256 (November 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 22. Prohibitions on Land Disposal Subchapter A. Land Disposal Restrictions

§2201. Purpose, Scope, and Applicability

* * *

[See Prior Text in A - I]

1. waste pesticides that a farmer disposes of in accordance with LAC 33:V.1101.D;

* * *

[See Prior Text in I.2 - 5.c]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:398 (May 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:723 (July 1992), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 23. Waste Piles

§2301. Applicability

- A. The regulations in this Subpart apply to owners and operators of facilities that store or treat hazardous waste in piles, except as specified in LAC 33:V.1501.

* * *

[See Prior Text in B - C.5]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 25. Landfills

§2501. Applicability

The regulations in this Chapter apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as specified in LAC 33:V.1501.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 27. Land Treatment

§2701. Applicability

The regulations in this Chapter apply to owners and operators of facilities that treat or dispose of hazardous waste in land treatment units, except as LAC 33:V.1501 provides otherwise.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 29. Surface Impoundments

§2901. Applicability

The regulations in this Subpart apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste except as LAC 33:V.1501 provides otherwise.

[Comment: All surface impoundments used to store hazardous waste, including short-term storage (90 days or less), must have a TSD permit.]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3025. Regulation of Residues

A residue derived from the burning or processing of hazardous waste in a boiler or industrial furnace is not excluded from the definition of a hazardous waste under LAC 33:V.105.D.2.d, h, and i unless the device and the owner or operator meet the following requirements:

* * *

[See Prior Text in A - A.1]

2. Ore or Mineral Furnaces. Industrial furnaces subject to LAC 33:V.105.D.2.h must process at least 50 percent by weight normal, nonhazardous raw materials;

* * *

[See Prior Text in A.3 - C.2.b]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 22:826 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 35. Closure and Post-Closure

§3501. Applicability

* * *

[See Prior Text in A]

B. Except as LAC 33:V.1501 provides otherwise, LAC 33:V.3503—3517 (which concern closure) apply to all hazardous waste facilities in operation or under construction as of the effective date of LAC 33:V.Subpart 1 and to all hazardous waste facilities permitted under LAC 33:V.Subpart 1, as applicable.

* * *

[See Prior Text in C - C.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1256 (November 1992), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 38. Universal Wastes

Subchapter A. General

§3801. Scope and Applicability

* * *

[See Prior Text in A]

B. Persons managing household wastes that are exempt under LAC 33:V.105.D.2.a and are also of the same type as the universal wastes as defined in this Chapter may, at their option, manage these wastes under the requirements of this Chapter.

* * *

[See Prior Text in C]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

§3805. Applicability—Pesticides

* * *

[See Prior Text in A - B]

1. recalled pesticides described in Subsection A.1 of this Section, and unused pesticide products described in Subsection A.2 of this Section, that are managed by farmers in compliance with LAC 33:V.1101.D (LAC 33:V.1101.D addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with the definition of *empty container* under LAC 33:V.109);

* * *

[See Prior Text in B.2 - D.2]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:569 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 40. Used Oil

Subchapter A. Materials Regulated as Used Oil

§4003. Applicability

This Section identifies those materials which are subject to regulation as used oil under this Chapter. This Section also identifies some materials that are not subject to regulation as used oil under this Chapter and indicates whether these materials may be subject to regulation as hazardous waste under this Subpart.

* * *

[See Prior Text in A - E.1.a]

b. not solid wastes and, thus, are not subject to the hazardous waste regulations of LAC 33:V.Subpart 1 as provided in LAC 33:V.109.Hazardous Waste.4.b.i.

* * *

[See Prior Text in E.2 - I]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 21:266 (March 1995), amended LR 22:836 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 41. Recyclable Materials

§4105. Requirements for Recyclable Material

Recyclable materials are subject to additional regulations as follows:

* * *

[See Prior Text in A - B.4]

- 5. Reserved
- 6. Reserved

* * *

[See Prior Text in B.7]

8. fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under LAC 33:V.105.D.1.1);

* * *

[See Prior Text in B.9 - F]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 43. Interim Status

Subchapter A. General Facility Standards

§4307. Applicability

The regulations of LAC 33:V.Chapter 43 apply to owners and operators of all hazardous waste facilities except as LAC 33:V.1501 provides otherwise.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 21:944 (September 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter C. Contingency Plan and Emergency Procedures

§4337. Applicability

The regulations of this Subchapter apply to owners and operators of all hazardous waste facilities except as provided in LAC 33:V.1501.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter D. Manifest System, Recordkeeping, and Reporting

§4351. Applicability

The regulations in this Subchapter apply to owners and operators of both on-site and off-site facilities, except as LAC 33:V.1501 provides otherwise. LAC 33:V.4353, 4355, and 4363 do not apply to owners and operators of on-site facilities that do not receive any hazardous waste from off-site sources.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste,

Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter F. Closure and Post-Closure

§4377. Applicability

Except as LAC 33:V.1501 provides otherwise:

* * *

[See Prior Text in A - B.4]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 16:219 (March 1990), LR 16:614 (July 1990), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter G. Financial Requirements

§4397. Applicability

A. The requirements of LAC 33:V.3719, 4401, 4403, 4411, and 4413 apply to owners and operators of all hazardous waste facilities, except as provided otherwise in this Section or in LAC 33:V.1501.

* * *

[See Prior Text in B - C]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:433 (August 1987), LR 13:651 (November 1987), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter J. Surface Impoundments

§4447. Applicability

The regulations in this Subchapter apply to owners and operators of facilities that use surface impoundments to treat, store, or dispose of hazardous waste, except as LAC 33:V.1501 provides otherwise.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter K. Waste Piles

§4463. Applicability

The regulations in this Subchapter apply to owners and operators of facilities that treat or store hazardous waste in piles, except as LAC 33:V.1501 provides otherwise. Alternatively, a pile of hazardous waste may be managed as a landfill under LAC 33:V.Chapter 43, Subchapter M.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter L. Land Treatment

§4477. Applicability

The regulations in this Subchapter apply to owners and operators of hazardous waste land treatment facilities with interim status, except as LAC 33:V.1501 provides otherwise.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter M. Landfills

§4495. Applicability

The regulations in this Subchapter apply to owners and operators of facilities that dispose of hazardous waste in landfills, except as LAC 33:V.1501 provides otherwise. A waste pile used as a disposal facility is a landfill and is governed by this Subchapter.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter O. Thermal Treatment

§4523. Applicability

The regulations in this Subpart apply to owners or operators of facilities that thermally treat hazardous waste in devices other than enclosed devices using controlled flame combustion, except as LAC 33:V.1501 provides otherwise. Thermal treatment in enclosed devices using controlled flame combustion is subject to the requirements of LAC 33:V.Chapter 31 and Subchapter N of LAC 33:V.Chapter 43 if the unit is an incinerator, and LAC 33:V.Chapter 30, if the unit is a boiler or an industrial furnace as defined in LAC 33:V.109.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 11:1139 (December 1985), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Subchapter P. Chemical, Physical, and Biological Treatment

§4535. Applicability

The regulations in this Subchapter apply to owners and operators of facilities which treat hazardous wastes by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities, except as LAC 33:V.1501 provides otherwise. Chemical, physical, and biological treatment of hazardous waste in tanks, surface impoundments, and land treatment facilities must comply with the requirements of LAC 33:V.Chapter 43, Subchapters I, J, and L, respectively.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 18:723 (July 1992), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 49. Lists of Hazardous Wastes

Editor's Note: The text in §4905 has been moved to LAC 33:V.109.Hazardous Waste.2.d.

§4905. Exclusions for Wastewaters

Repealed.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 14:791 (November 1988), LR 15:182 (March 1989), LR 18:723 (July 1992), repealed by the Office of Waste Services, Hazardous Waste Division, LR 24:

A public hearing will be held on May 26, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by HW063*. Such comments must be received no later than May 26, 1998, at 4:30 p.m., and should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486. The comment period for this rule ends on the same date as the public hearing.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.:

7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olaie/irdd/olaeregs.htm>.

H.M. Strong
Assistant Secretary

9804#053

NOTICE OF INTENT

Department of Environmental Quality Office of Waste Services Hazardous Waste Division

Small Quantity Generator Emissions
(LAC 33:V.3801 and 3915)(HW065)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste Division regulations, LAC 33:V.3801 and 3915 (HW065).

This proposed rule seeks to make Louisiana's Hazardous Waste regulations on universal wastes, small quantity generators, equivalent to federal regulations for Conditionally Exempt Small Quantity Generators. A review of state regulations concerning universal wastes, small quantity generators, added for the RCRA V authorization package

showed an inconsistency with the equivalent federal regulations for universal wastes (Conditionally Exempt Small Quantity Generators). The basis and rationale for this proposed rule are to mirror the federal regulations despite the fact that we have only two categories of hazardous waste generators.

This proposed rule meets the exceptions listed in R.S. 30:2019(D)(3) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 38. Universal Wastes

Subchapter A. General

§3801. Scope and Applicability

* * *

[See Prior Text in A - C]

D. Small quantity generator wastes that are regulated under LAC 33:V.Chapter 39 and are also of the same type as the universal wastes defined in LAC 33:V.3813 may, at their option, manage these wastes under the requirements of this Chapter.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 23:568 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

Chapter 39. Small Quantity Generators

§3915. Requirements

The small quantity generator must:

* * *

[See Prior Text in A - C]

1. the date on which each accumulation period began shall be clearly marked and visible for inspection, as specified in LAC 33:V.1109.E.1.e;

* * *

[See Prior Text in C.2 - C.7.b]

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:237 (April 1987), LR 16:220 (March 1990), repromulgated LR 18:1256 (November 1992), amended LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:

A public hearing will be held on May 26, 1998, at 1:30 p.m. in the Maynard Ketcham Building, Room 326, 7290 Bluebonnet Boulevard, Baton Rouge, LA 70810. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Patsy Deaville at the address given below or at (504) 765-0399.

All interested persons are invited to submit written comments on the proposed regulations. Commentors should reference this proposed regulation by HW065. Such comments must be received no later than June 2, 1998, at 4:30 p.m., and

should be sent to Patsy Deaville, Investigations and Regulation Development Division, Box 82282, Baton Rouge, LA 70884 or to FAX (504) 765-0486. Copies of this proposed regulation can be purchased at the above referenced address. You may contact the Investigations and Regulation Development Division at (504) 765-0399 for pricing information. Check or money order is required in advance for each copy of HW065.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 7290 Bluebonnet Boulevard, Fourth Floor, Baton Rouge, LA 70810; 804 Thirty-first Street, Monroe, LA 71203; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 3519 Patrick Street, Lake Charles, LA 70605; 3501 Chateau Boulevard, West Wing, Kenner, LA 70065; 100 Asma Boulevard, Suite 151, Lafayette, LA 70508; or on the Internet at <http://www.deq.state.la.us/olae/irdd/olaeregs.htm>.

H.M. Strong

Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Small Quantity Generator Additions

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No costs to state or local governmental units are anticipated as a result of implementation of this rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There should be no effect on revenue collections of state or local governmental units as a result of the implementation of this rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There may be a cost savings to directly affected persons or nongovernmental groups due to a lesser regulatory burden anticipated as a result of the implementation of this rule.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should be no effect on competition and employment as a result of implementation of this rule.

H.M. Strong
Assistant Secretary
9804#054

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Office of the Governor Office of Rural Development

Projects, Funding and Application Process
(LAC 4:VII.1901 and 1903)

Under the authority of the Rural Development Law, R.S. 3:311 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Office of Rural Development gives

notice that rulemaking procedures have been initiated to adopt LAC 4:VII.1901 and 1903.

The proposed regulation will serve as a guideline to apply for grants from the Office of Rural Development for proposed projects, for funding through a letter of commitment on awarded projects, for monitoring and closing projects, and for obligation and de-obligation of funds.

Title 4

ADMINISTRATION

Part VII. Governor's Office

Chapter 19. Rural Development

§1901. Projects or Activities

A. The Office of Rural Development (ORD) provides financial assistance to local units of government throughout the state mitigating the effects of natural and economic emergencies and funding units of local government projects essential to community well-being.

B. Municipalities with populations of less than 35,000 and parishes with populations of less than 100,000 inhabitants will be considered rural for the purposes of this program.

C. The ORD applies the following guidelines to any project or activity funded.

1. All projects or activities funded must be related to rural development revitalization of a rural area, as defined in R.S. 3:313.

2. All funds shall be used to mitigate the rapid deterioration or assist the improvement of rural health, education, agribusiness, transportation, public facilities, tourism, infrastructure, or other defined purposes essential to the socioeconomic well-being and quality of life of Louisiana's rural areas.

3. Projects or activities should further enhance community services and broaden rural employment opportunities whenever possible.

4. Projects or activities should further the provisions of the Rural Development Law, R.S. 3:311-323.

5. At the start of each fiscal year, the executive director shall determine the equal funding level for all eligible parishes, which includes villages, towns and cities within each parish as well as the parish government, based on the total amount budgeted as aid to local governments for rural development grants. The ORD shall make awards to all parishes throughout the year up to that equal funding level.

6. In cases where the eligibility of the parish is limited (parishes more than 100,000 in population with eligible unincorporated areas or eligible municipalities), the parish shall be funded to the maximum of those eligible levels so long as the amount does not exceed the amount to which rural parishes are eligible.

7. Parish governments may request funding for projects that serve a parish-wide area or an unincorporated area within the parish. In cases where a parish's application is for funding a project that is not parish-wide in scope and is designed to benefit an incorporated area within the parish, the governing body of the parish must submit a resolution of support for the project stating that determination.

8. Municipal governments (villages, towns, cities) may not exceed the total funding level as outlined in the ORD application guidelines for rural development grant funds for

any fiscal year by having a parish government submit an application to fund a project within the corporate limits of a village, town or city, unless the project is a service that extends beyond the corporate limits and serves an adjoining portion of the parish or unless the project is in response to an emergency officially declared as defined by state law (R.S. 38:2211 et seq.).

9. Grants approved by the ORD are expected to be completed within one year from the date of signing of the letter of commitment by the executive director of ORD. Extensions will be limited to two on each grant and an extension must be approved in writing by the executive director of ORD.

10. Rural development funds are not intended for salary only projects or ongoing salaried positions.

11. All invoices submitted for reimbursement must be in original form and marked by vendor to identify the invoice as expenses related to the approved ORD grant using the grant number furnished by ORD at the time of issuing the approved letter of commitment.

12. There shall not be awarded to any Local Governmental Agency (LGA), municipal or parish, an additional grant if a previous grant to that LGA is still open past a period of 24 months.

13. Changes or amendments to an application must be in writing and must be approved by the executive director in writing. If the change in an application is so great that it goes from one category to another, the request must include a new abstract and a new budget and must be accompanied by a new resolution of support from the LGA's governing body.

14. Multi-parish regional projects are not intended to be funded by ORD funds, however, if each parish in a region agrees to fund a project that meets the criteria of the ORD grants, with the agreement of its local governing authority and the legislative delegation of that region, the total amount of the regional grant shall be prorated to each parish in that region. The prorated amount shall come out of the total allocated to each participating parish for that fiscal year.

15. A regional project may be funded, provided the legislature appropriates funding for a named regional project above the general appropriation for the ORD. *Regional* is defined as more than one municipality collaborating on a project parish-wide or more than one parish.

D. The director of the ORD shall develop an application procedure satisfying the purposes, intentions, and the implications of regulatory provisions contained in the Rural Development Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:311 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Rural Development, LR 24:

§1903. Application Process

A. Rural development applications are available from the Office of Rural Development to all who request them. All requests for information may be submitted via mail to the Office of Rural Development, Box 94004, Baton Rouge, LA 70804-9004.

B. Municipalities, parish governments, school boards, other units of government, and special districts are eligible to

apply for rural development funds. All applicants must be authorized by law to perform governmental functions and be provided governmental body support, and must be subject to state audit.

C. Current population figures are used to determine the eligibility for funding of municipalities based on appropriations by the legislature. The funding is outlined in the ORD application guidelines for rural development grant funds.

D. Funds from this program cannot be used to pay consulting fees charged to a unit of government for the preparation of the application, for administrative costs by agents of the project sponsor or any third party, or for previously created debt.

E. Grant recipients are required to maintain an audit trail verifying that all funds received under this program were used to fulfill the criteria for funding.

F. Payment shall be made to the Local Governmental Agency which is the project sponsor upon production of invoices and approval of the LGA's request for payment by ORD, according to the agreed terms of a signed and executed letter of commitment.

G. Project funds shall be spent only for the project as described in the grant application designated by the same number as the project award. Changes in the project description and extension of the agreed time for completion must be made in writing, subject to the approval of ORD.

H. Use of grant funds for any project other than that described in the grant application or amended application, or in violation of any terms of the application or letter of commitment/agreement, will be grounds for ORD to terminate the agreement and revoke the funds for the project.

I. All invoices related to the project are the responsibility of the LGA project sponsor, and must be submitted to and approved by ORD before the funds will be released to the LGA, which remains responsible for payment to its vendors in the project.

J. The LGA as project sponsor will agree to hold harmless the State of Louisiana, Office of the Governor, and Office of Rural Development as a term and condition of the letter of commitment/agreement.

K. ORD will de-obligate funds from any unexpended amount, whether by failure to start a project in the agreed upon time frame in the letter of commitment or by unexpended funds in an officially closed project, and from revoked grant awards.

L. Failure of the LGA project sponsor to abide by any article of the local agency assurances section of the grant application or of the letter of commitment/agreement, including state audit procedures, federal and state laws, state ethical rules and policy guidelines of the ORD, shall result in revocation of the grant award and the responsibility of the LGA project sponsor to repay project funds released to it by ORD up to the full amount of the grant award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:311 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Office of Rural Development, LR 24:

All interested persons are invited to submit comments on the proposed regulations. Such comments should be submitted in writing no later than Friday, May 8, 1998, at 5 p.m., to Larry Kinlaw, Executive Director, Governor's Office of Rural Development, Box 94004, Baton Rouge, LA 70804-9004, or by FAX to (504) 342-1609.

Larry Kinlaw
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Projects and Funding**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is estimated that there will be no implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is estimated that 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)
It is estimated that there will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
It is estimated that the proposed rule change will have a positive effect on competition and employment in the rural areas which are awarded grants. The evaluation process for grants under the new rule will emphasize rural development needs in keeping with the original intent of the legislature in creating Rural Development Grant Program (Acts 216 and 396). There will be a positive impact on employment because the new grant application requests figures for local unemployment and estimates of job creation resulting from each project, and that information is one of the key factors to the grant scoring process. There will be a positive impact on competition at the local level because grant applicants are asked to provide more guarantees that funds will be spent in compliance with the state's public bid law, with Section 15(C) of Act 17 of 1996, and with other applicable laws. There also will be a positive impact on competition at the state level, as the rural development infrastructure needs that have been identified as keys to greater competitiveness for the state's economy are given greater weight in the criteria based scoring system.

Larry Kinlaw
Executive Director
9804#040

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Licensed Professional Counselors Board of Examiners**

Licensure (LAC 46:LX.703, 705, and 801)

The Licensed Professional Counselors Board of Examiners, under authority of the Louisiana Mental Health Counselor

Licensing Act, R.S. 37:1101-1115, and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby intends to amend the following with regard to licensing and renewal requirements.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part LX. Licensed Professional Counselors Board of
Examiners

Chapter 7. Requirements for Licensure

§703. Licensing Requirements

A.1. - 5. ...

6. can document a minimum of 3,000 hours of post-master's experience in professional mental health counseling under the clinical supervision of a board-approved supervisor, with said supervision occurring over a period of no less than two years and not more than seven years from the original date such supervision was approved. Five hundred hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the required master's degree, provided that such hours are clearly related to the field of mental health counseling, are earned from a regionally accredited institution, and are acceptable to the board provided that in no case the applicant has less than 2,000 hours of board-approved supervised experience within the aforementioned time limits;

7. ...

8. has received a graduate degree, the substance of which is professional mental health counseling in content from a regionally accredited institution of higher education offering a master's and/or doctoral program in counseling that is approved by the board and has accumulated at least 48 graduate semester hours as part of the graduate degree plan containing the eight required areas, the supervised mental health practicum and supervised internship in mental health counseling (as defined by rules adopted by the board listed under Chapter 5), which shall not be interpreted to exclude post-graduate course work in mental health counseling, as part of the degree plan containing 48 graduate hours including eight content areas, practicum and internship approved by the Licensed Professional Counselors (LPC) Board.

9. has provided to the board a Declaration of Practices and Procedures, with the content being subject to board review and approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Licensed Professional Counselors Board of Examiners, LR 14:83 (February 1988), amended by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:269 (March 1992), LR 22:102 (February 1996), LR 24:

§705. Supervision Experience

A. ...

1. ...

2. Pursuant to R.S. 37:1107(A), an applicant for licensure must document a minimum of 3,000 hours of post-master's experience in professional mental health counseling under the clinical supervision of a board-approved supervisor, with said supervision occurring over a period of no less than two years and not more than seven years from the

original date such supervision was approved. Five hundred hours of supervised experience may be gained for each 30 graduate semester hours earned beyond the required master's degree provided that such hours are clearly related to the field of mental health counseling, are earned from a regionally accredited institution, and are acceptable to the board, provided that in no case the applicant has less than 2,000 hours of board-approved supervised experience within the aforementioned time limits. Only those applicants already receiving board-approved supervision prior to June 30, 1998 are exempt from the aforementioned time allowance.

A.2.a. - D.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:269 (March 1992), amended LR 21:466 (May 1995), LR 22:102 (February 1996), LR 24:

Chapter 8. Renewal of License

§801. Renewal

A licensed professional counselor shall renew his license every two years in the month of June by meeting the requirement that 25 clock hours of continuing education be obtained prior to each renewal date every two years in an area of professional mental health counseling as approved by the board and by paying a renewal fee. The licensee should submit a declaration statement only if there has been a change in area of expertise, with the content being subject to board review and approval. The board, at its discretion, may require the licensee to present satisfactory evidence supporting any changes in areas of expertise noted in the declaration statement. The chairman shall issue a document renewing the license for a term of two years. The license of any mental health counselor who fails to have this license renewed biannually during the month of June shall lapse; however, the failure to renew said license shall not deprive said counselor the right of renewal thereafter. A lapsed license may be renewed within a period of two years after the expired renewal date upon payment of all fees in arrears and presentation of evidence of completion of the continuing education requirement. Application for renewal after two years from the date of expiration will not be considered for renewal; the individual must apply under the current licensure guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 18:271 (March 1992), amended LR 22:103 (February 1996), LR 24:

Interested parties may submit written comments to Gary S. Grand, Board Chairman, 8631 Summa Avenue, Suite A, Baton Rouge, LA 70809. Comments will be accepted through May 10, 1998.

A public hearing will be held on May 26, 1998, 5 p.m. at Central State Hospital, West Shamrock, Building 14, Room 127, Pineville LA.

Gary S. Grand
Board Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Licensure

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be a one time implementation cost to include printing of rule and forms—\$214, postage—\$45 and staff time—\$76.50 to equal \$335.50.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

If people take advantage of this rule, colleges and/or universities may have additional revenue from students picking up courses to fulfill the licensing requirements.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The Licensed Professional Counselor (LPC) applicants who choose to take advantage of these rules will incur the cost of additional courses and the fee to reapply.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be additional choices for the lay public to choose from in the mental health counseling arena.

Gary S. Grand
Chairman
9804#024

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Louisiana State University Medical Center
Office of the Chancellor**

Tumor Registry (LAC 48:V.8501-8513)

Under the authority of R.S. 40:1299.80 et seq. and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq. as amended, the Chancellor of the Louisiana State University Agricultural and Mechanical College, Louisiana State University Medical School gives notice of his intent to amend a rule to clarify the cancer-reporting responsibilities of medical care professionals and institutions; provide for intervention in cases of noncompliance; reinforce the confidentiality requirements to protect participants from civil liability; authorize the exchange of cancer incidence data with other states; and provide for related matters by supplanting Chapter 85 of Title 48 of the *Louisiana Administrative Code* in its entirety with the following.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Preventive Health Services

Subpart 31. Tumor Registry

Chapter 85. Statewide Tumor Registry Program

§8501. Purpose

Louisiana R.S. 40:1299.80 et seq. established a “statewide registry program for reporting cancer cases for the purpose of gathering statistical data to aid in the assessment of the presence, extent, possible causes of specific cancers, and other

related aspects of cancer . . . in Louisiana.” In carrying out this mandate, the Louisiana Tumor Registry collaborates with the National Cancer Institute, the Centers for Disease Control and Prevention, and other medical research institutions and public health agencies. The importance of cancer registration was reinforced by the passage of federal legislation in 1992 (Public Law 102-515) establishing the National Program of Cancer Registries, in which Louisiana participates. Acts Number 1197 of the 1995 Louisiana Legislative Session clarified the cancer-reporting responsibilities of medical care professionals and institutions, provided for intervention in cases of noncompliance, reinforced the confidentiality requirements to protect participants from civil liability, authorized the exchange of cancer incidence data with other states, and provided for related matters. Act Number 1138 of the 1995 Session transferred the Louisiana Tumor Registry Program and the Louisiana Cancer and Lung Trust Fund Board to the Board of Supervisors of the Louisiana State University Agricultural and Mechanical College, to be administered by the LSU Medical School at New Orleans. “Louisiana State University Medical Center” shall replace “office of public health” or “office” in R.S. 40:1299.80 et seq. and in Act 1197 of the 1995 Regular Session. “Chancellor of the LSU Medical Center or the chancellor’s designated representative” shall replace “Secretary” in Act Number 1197.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.82(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:

§8503. Definitions

Confidential Data—shall include any information that pertains to an individual case, as distinguished from group, aggregate, or tabular data. Confidential, case-specific data include, but are not limited to, primary or potential human identifiers.

Director—the director of the Louisiana Tumor Registry, who is appointed by the Chancellor of LSU Medical Center.

Follow-Up Information—information that is used to determine survival rates for various types of cancer. The information consists of the patient name, case number, vital status, and date of last contact with the patient.

Health Care Provider—every licensed health care facility and licensed health care provider, as defined in R.S. 40:1299.41(A)(1), in the state of Louisiana.

Louisiana Tumor Registry (LTR)—the program in the LSU Medical Center (LSUMC) that administers a population-based statewide cancer registry.

Regional Tumor Registry—an organization that has contracted with the *Louisiana Tumor Registry* to provide in its region such services as: screening medical records and abstracting data on all cancer cases; compiling and editing data; performing quality assurance programs; training personnel from hospital and other facilities; and furnishing abstracts of acceptable quality to the LTR from all medical facilities and health care providers in the parishes assigned to that region.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.82(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:

§8505. Participation in the Program

Responsibility for Reporting. All hospitals, pathology laboratories, radiation centers, physicians, dermatology offices, nursing homes, and other licensed health care facilities and providers, as defined in R.S. 40:1299.41(A)(1), shall participate in the cancer registry program defined by R.S. 40:1299:80 et seq. Each patient who receives screening, diagnostic or therapeutic services for cancer shall be registered, and the LTR shall have physical access to all records that would identify cases of cancer or would describe a patient's disease, treatment, or medical status. Patients admitted to a Louisiana hospital shall be registered through the hospital.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.82(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:

§8507. Cancer Case Reporting

A. Reportable Cancer Cases. Any newly diagnosed in situ or invasive neoplasm is considered a reportable diagnosis (these bear a behavior code of "2" or "3" in the *International Classification of Diseases for Oncology*, 2nd edition, published in 1992 by the World Health Organization). The two exceptions are:

1. carcinoma in situ of the cervix; and
2. basal cell and squamous cell carcinomas of the skin, unless they occur on the lips or on the genital organs. If a patient subsequently develops a new primary cancer, it shall be reported separately.

B. Format for Reporting. The format for reporting, the required codes, and the standards for completeness and quality are described in the *Standards for Cancer Registries*, compiled by the North American Association of Central Cancer Registries. Text is required for specified variables and shall be adequate to permit quality assurance evaluation of coding decisions. Abstracts shall be sent to the designated regional office, the address for which can be obtained from the Louisiana Tumor Registry.

C. Variables to be Reported

1. The standardized report of cancer shall include the following information as a minimum. Those followed by an asterisk must include enough text to permit quality assurance evaluation of coding decisions.

Report Source	
a.	reporting facility/physician*
b.	date of admission/first contact
c.	hospital medical record number
d.	hospital accession number

e.	class of case: analytic/non-analytic
f.	type of reporting source
g.	institutions referred to and from
h.	physicians: managing, surgeon, oncologist, follow-up, referring, other

Patient Information	
i.	patient's name: first, last, middle, maiden, alias, prefix and/or suffix
j.	date and place of birth
k.	age at diagnosis
l.	sex
m.	race
n.	address at diagnosis: number and street, city, parish, state, zip code
o.	telephone number
p.	Social Security number
q.	marital status
r.	religion
s.	Spanish/Hispanic origin
t.	usual occupation *
u.	usual industry *
v.	tobacco history
w.	family and patient history of cancer

Description of Disease	
x.	date of first diagnosis
y.	primary site*
z.	diagnostic procedures:* physical exam, x-rays, scans, scopes, lab tests, operative, pathology
aa.	type of diagnostic confirmation *
bb.	laterality
cc.	histology *
dd.	neoplasm behavior
ee.	grade/differentiation
ff.	tumor size
gg.	nodes examined
hh.	tumor extension and lymph node involvement
ii.	sites of distant metastasis
jj.	extent of disease/summary stage *
kk.	coding systems for site, morphology and treatment

ll.	sequence number at the facility
mm.	tumor markers (prostate, breast, testis)

Treatment	
nn.	dates of first course of treatment
oo.	descriptions and summaries of treatments:* surgery, chemotherapy, hormone, biological response modification, radiation (including to central nervous system), other
pp.	reason for no treatment, if applicable
qq.	surgery/radiation sequence
rr.	reconstructive surgery, immediate (breast only)

Survival	
ss.	date of inpatient discharge
tt.	name and address of parent/spouse/follow-up contact
uu.	date of last contact
vv.	place (state), date and cause of death
ww.	death certificate file number
xx.	ICD revision

Administration	
yy.	abstractor's initials
zz.	date case put in file to transmit to LTR
aaa.	remarks *

* must include enough text to permit quality assurance evaluation of coding decisions.

2. The report of cancer shall include the listed demographic, diagnostic, and treatment information as a minimum as required by U.S. Public Law 102-515. Standard variables and codes established by the North American Association of Central Cancer Registries (NAACCR) shall be used. Additional variables may be added to the list as they are needed to study Louisiana-specific cancer questions or as they are recommended by the NAACCR. Louisiana regional offices may require that other data, including follow-up information, be abstracted.

D. Deadline for Reporting. Each cancer case shall be reported to the designated regional registry within six months of diagnosis.

E. Failure to Report. If a facility fails to provide the required information in the format specified by the Louisiana Tumor Registry or if the data are of unacceptable quality, personnel from the Louisiana Tumor Registry may enter the facility to screen and abstract the information. In these cases,

the facility shall reimburse the Louisiana Tumor Registry or its contractor the actual cost of screening, abstracting, coding and editing, which is \$35 per case.

F. Quality Assurance. Staff members from the central registry and the regional registries shall perform periodic quality assurance studies at all reporting facilities. These studies shall include:

1. rescreening medical records, including those in hospital pathology and radiology departments and in freestanding facilities, to ensure that all cancer cases have been accessioned; and

2. reabstracting the records of cancer patients to ensure that all data have been transcribed and coded correctly. Reporting facilities shall assist LTR staff by compiling a list of cancer patients, if computer facilities permit, and obtaining the necessary medical records for its departments and patients. The LTR and the regional registries shall also offer tumor registrar training for hospital personnel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.82(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:

§8509. Confidentiality

A. Revised Statutes 40:1299.85 and 1299.87 of Act 1995, Number 1197, strengthen and enforce previous legislative provisions to ensure the confidentiality of cancer patients, health care providers, and health care facilities. These laws protect licensed health care providers and facilities that participate in the cancer registration program from liability, and they also specify confidentiality requirements for the expanded activities of the Louisiana Tumor Registry.

B. LTR Responsibilities. The Chancellor shall take strict measures to ensure that all case-specific information is treated as confidential and privileged. All employees or consultants, including auditors, of the Louisiana Tumor Registry and of its regional offices shall sign an "Agreement to Maintain Confidentiality of Data," and these agreements shall be kept on file. An employee who discloses confidential information through gross negligence or willful misconduct is subject to penalty under the law.

C. Protection of Report Sources. Health care providers who disclose cancer morbidity or mortality information to the Louisiana Tumor Registry or its employees in conformity with the law shall not be subject to actions for damages. Their licenses shall be not be denied, suspended, or revoked for good-faith release of confidential information to the Louisiana Tumor Registry.

D. Protection of Case-Specific Data from Obtained by Special Morbidity and Mortality Studies and Other Research Studies

1. Louisiana R.S. 40:3.1(A) through (H) and R.S. 40:1299.87(F) state that all confidential data such as records of interviews, questionnaires, reports, statements, notes, and memoranda that are procured or prepared by employees or agents of the Office of Public Health shall be used solely for statistical, scientific and medical research purposes. This applies also to data procured by any other

person, agency, or organization, including public or private colleges and universities acting jointly with the Office of Public Health in connection with special cancer studies, and health research investigations. No case-specific data shall be available for subpoena, nor shall they be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall such records be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason.

2. No part of the confidential data such as records of interviews, questionnaires, reports, statements, notes, and memoranda that procured by employees or agents of the Louisiana Tumor Registry or persons, agencies or organizations, including public or private colleges and universities acting in collaboration with the Louisiana Tumor Registry in special cancer studies, shall be available for subpoena. These data shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding, nor shall such records be deemed admissible as evidence in any civil, criminal, administrative, or other tribunal or court for any reason.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.82(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:

§8511. Release of Information

A. Reports published by the Louisiana Tumor Registry shall include aggregate, not case-specific, data. Information that would potentially identify a health care provider shall not be published.

B. Follow-up Information. Follow-up information about a patient shall be provided, if requested, to the physician or medical facility that originally reported the case.

C. Collaboration with Federal and State Public Health Agencies. The LTR is authorized to collaborate with the National Cancer Institute and the Centers for Disease Control and Prevention in providing cancer incidence statistics and participating in cancer studies. In addition, it shall work closely with the Louisiana Office of Public Health (LOPH) in investigating cancer clusters and other cancer-related issues and in evaluating programs. Because the LTR data are an integral part of the LOPH cancer prevention and control programs, the use of Registry data by public health officials shall be considered an in-house activity. Approval by LOPH's Institutional Review Board for specific projects and for compliance with confidentiality requirements is nevertheless required.

D. Requests for Case-Specific LTR Incidence Data. These data may be released to qualified persons or organizations for the purposes of cancer prevention, control, and research. Such data do not include confidential information collected for special morbidity and mortality studies or other research projects. Studies utilizing registry cancer data may investigate the causes of cancer, evaluate patient care and preventive services, or carry out any other clinical, epidemiological, or other cancer research, including the role of biomarkers in morbidity and survival.

1. Requests from outside researchers for case-specific

LTR incidence data, including data linkages, shall be reviewed and approved by a research committee following the established policies of the Louisiana Tumor Registry. These include the following:

- a. approval from the LSUMC Institutional Review Board and the researchers' Institutional Review Board;
- b. signature of the LTR confidentiality form, agreeing to adhere to the LTR confidentiality provisions;
- c. the written agreement to use data solely for the specified topic;
- d. the signature of a hold-harmless agreement with LSU Medical Center;
- e. the participation of the Director or designated staff in manuscript review to ensure compliance with confidentiality measures; and
- f. the destruction of data once the research is completed.

2. Data linkage with LTR files shall be performed only by the LTR staff, and the Registry may require the removal of identifiers to protect the identity of cases.

3. Researchers shall provide permission from the patient or his next-of-kin when requesting case-specific health information that includes primary identifiers; without such, consent shall be obtained from the reporting facility or health care provider. In addition, physician consent may be a prerequisite for contacting patients or their next-of-kin in some reporting facilities. A detailed description of the procedures for requesting Registry data can be obtained from the Louisiana Tumor Registry, at the address below. The Registry may charge a fee for providing data, and this fee shall be limited to actual costs incurred.

E. Requests for Aggregate Data

1. Data required by the LOPH for responding to concerns expressed about threats to the public health shall receive priority in determining the order of processing requests. Other requests shall be processed in the order of their receipt. The Registry shall respond to public requests as quickly as possible, subject to staffing constraints, provided that these requests meet certain requirements in conformity with R.S. 40:3.1(A) and (F) and R.S. 40:1299.87(F) et seq. Requesters may be asked to reimburse the LTR for actual costs for compiling data.

2. Requests for aggregate information shall be made in writing to the address listed below. The letter shall include a return address; a clear description of the requested data, including geographical area, year of diagnosis, and anatomical sites; and a legible version of the requester's name. The LTR staff shall provide aggregate figures, provided that complete and accurate data are available for the specified time period. If complete edited data are not available for the period requested, the LTR staff shall substitute information from the most recent years that meet its completeness and accuracy standards. The privacy of individuals shall be protected by suppressing small numbers in given geographic areas.

F. Annual Report. A detailed statistical report shall be prepared for the LSU Medical Center, the Louisiana Cancer and Lung Trust Fund Board, and each participating hospital and registry at the completion of each year's data collection cycle.

Phone and Address of the Louisiana Tumor Registry
Box P5-1, Pathology Department LSU Medical Center 1901 Perdido St. New Orleans, LA 70112 Phone: 504/568-4716 Fax: 504/599-1278

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.82(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:

§8513. Interstate Exchange of Data

A. Because cancer patients may be diagnosed or receive treatment in another state, the Louisiana Tumor Registry is authorized to sign agreements with other states to acquire cancer data concerning Louisiana residents and, in return, to provide those states with data relating to their residents. Each signatory state shall agree, in writing, to keep all case-specific data confidential and privileged, to abide by all Louisiana confidentiality regulations, and to sign a hold-harmless agreement with the LSU Medical Center.

B. Data shall be exchanged only by the state central registries.

C. Cancer information on residents of other states, if the case was originally recorded in Louisiana and forwarded to the other state, shall not be included in special studies unless the researchers have obtained consent from the Louisiana Tumor Registry. These researchers shall comply with Louisiana confidentiality procedures.

D. The following Interstate Agreement form shall be executed by a representative of the state central registry who is authorized to legally obligate the registry.

**LOUISIANA TUMOR REGISTRY
CANCER PATIENT INFORMATION
EXCHANGE AGREEMENT
with**

The Louisiana Tumor Registry, in cooperation with the Louisiana Office of Public Health, hereinafter referred to as "LTR," and _____, hereinafter referred to as "Other," agree as follows:

(1) Services:

By signing this agreement, the parties state their intention to exchange cancer incidence data concerning cancer patients who are residents of the other's state in order to provide more complete case enumeration among their residents. This exchange is predicated on the mutual assurance that the identifying information on the patient that is exchanged is protected by law from release and shall be kept strictly confidential. This exchange does not pertain to any data collected as part of special morbidity or mortality studies or other research projects.

In addition, the parties agree:

- a) to provide the information following a mutually agreeable format and time table. It is expressly agreed that the identity of the patient and facility, along with any other pertinent identifying information routinely collected by both LTR and Other, will be provided.
- b) to restrict carefully the use of information. The information may be used only for registry administration and for aggregated statistical tabulations and analyses.

- c) to prohibit cancer incidence data or identifiable information on a health care provider that was supplied under the terms of the agreement from being released to anyone not employed in the direct operation of the recipient registry. Employees may include those involved in the processing, administration, quality control review, and statistical surveillance of cancer incidence data.
- d) not to contact directly any subject cancer patients or their families covered by this agreement. Any request for additional or follow-up information shall be referred back to the other party to this agreement.
- e) to terminate this agreement immediately upon the written notification of either party to terminate the agreement.

(2) Confidentiality:

The parties agree that:

- a) any and all LTR incidence data that pertain to an individual case, as distinguished from group, aggregate, or tabular data,
- b) they shall require all officers, agents, and employees to keep all such data strictly confidential, shall communicate the requirements of this section to all officers, agents, and employees, shall discipline all persons who may violate the requirements of this section, and shall notify the collecting agency in writing within forty-eight (48) hours of any violation of this section, including full details of the violation and corrective actions to be taken.
- c) all data provided under the provisions of this agreement may be used only for the purposes named in this agreement. Any other or additional use of the data may result in immediate termination of this agreement by either party.
- d) all data provided under the provisions of this agreement shall be sent by certified mail or courier service and are the sole property of the reporting state. They may not be copied or reproduced in any form or manner without prior written permission of the collecting agency.
- e) in the event that either party receives a subpoena or other court order compelling disclosure of confidential LTR data, the parties agree to notify the registry that initially provided the data within forty-eight (48) hours of receipt of the subpoena or court order. Additionally, the parties agree that, should they receive such a subpoena, they shall take all legal steps reasonably necessary to oppose the subpoena.
- f) confidential information obtained under the terms of this agreement will not be released to parties conducting research or other activities, even if the study has met the recipient state's approval requirements. Instead, the researcher or other requester must contact the registry providing the original report for permission to use the data. Researchers using data originally abstracted in Louisiana must abide by Louisiana confidentiality procedures, a detailed description of which may be obtained from the Louisiana Tumor Registry at the address below.
- g) they shall sign agreements to hold the state that originally provided confidential data harmless should the recipient state release them in violation of the confidentiality provisions of this document.

(3) Data from Special Studies

As stated in subpart (1) above, this information exchange agreement does not encompass or apply to the confidential data of special morbidity or mortality studies and research investigations. These data are protected from disclosure by La. R.S. 40:3.1(A) through (H) and by R.S. 40:1299.87(F).

(4) Amendments:

This agreement shall not be amended without prior written approval of both parties to the agreement.

(5) Assignment:

The parties understand and agree that this agreement may not be sold, assigned, or transferred in any manner and that any actual or attempted sale, assignment, or transfer shall render this agreement null, void, and of no further effect.

- (6) This agreement shall be in effect from date of execution until terminated by either of the parties. This agreement may also be terminated without cause by either party at any time upon at least fifteen (15) days' written notice of termination to the other party. Termination shall be sent in writing pursuant to Section Six (6).
- (7) Notices:

All notices required or desired to be made by either party to this agreement shall be sent by certified mail or courier service to the following addresses: to LTR: Director

Louisiana Tumor Registry
Box P5-1, Pathology Department
LSU Medical Center
1901 Perdido Street
New Orleans, LA 70112

(8) The parties hereto agree and warrant by signing this agreement that their agency has the right to keep the information covered by this agreement confidential.

(9) Total Agreement:

The parties understand and agree that this agreement constitutes the total agreement between them and that no promises, terms, or conditions not recited herein or incorporated herein or referenced herein shall be binding upon either of the parties.

Signed:

Agency*: _____ Agency: _____

By: _____ By: _____

Typed name: _____ Typed name: _____

Title: _____ Title: _____

Date: _____ Date: _____

*Agency: Representative of Louisiana Tumor Registry

Phone and Address of the Louisiana Tumor Registry
Box P5-1, Pathology Department LSU Medical Center 1901 Perdido St. New Orleans, LA 70112 Phone: 504/568-4716 Fax: 504/599-1278

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.82(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:

Interested parties may submit written comments to Vivien Chen, Ph.D., Director, Louisiana Tumor Registry, Box P5-1, Pathology Department, LSU Medical Center, 1901 Perdido Street, New Orleans, LA 70112. Comments will be accepted through the close of business on May 11, 1998.

Mervin L. Trail, M.D.
Chancellor, LSU

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Tumor Registry

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Abstracting and processing cancer incidence data (1) for nonresidents of Louisiana and (2) at additional facilities that cannot carry out timely and complete ascertainment, as defined in the proposed rules, will increase the Louisiana Tumor Registry (LTR) workload. This is estimated to cost \$19,500 annually for fiscal years 1998-99 and 1999-2000.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The CDC's National Program of Cancer Registries (Public Law 102-515) will provide funds, estimated at \$2,000 per year, toward the cost of mandated activities. In addition, the proposed rules authorize the LTR to charge health care facilities for actual expenses, estimated conservatively at \$35 per case, of abstracting and editing data. Reimbursement is projected at \$17,500 per year. These sources total \$19,500/year.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Hospitals currently reimburse some of the regional LTR offices for abstracting cases, and the LTR estimates that health care providers will pay the \$35 fee for about 500 additional cases per year, or a total of \$17,500. Citizens and nongovernmental groups will benefit from the improved surveillance data base in designing cancer prevention and control programs, planning patient care facilities, and applying for outside research funds.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will have no effect on competition or employment.

Mervin L. Trail, M.D.
Chancellor, Louisiana State
University Medical Center
9804#063

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

**Disproportionate Share Hospital
Payment Methodologies**

The Department of Health and Hospitals, Bureau of Health Services Financing is proposing to amend the following rule under the Medical Assistance Program, as authorized by R.S. 46:153 et seq. and pursuant to Title XIX of the Social Security Act. This rule was promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Hospital Disproportionate Share (DSH) payment limits were established by the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), which amended §1923 of the Social Security Act. In order to comply with the budgetary limitations imposed by that federal legislation and to avoid a budget deficit in the Medical Assistance Program, the bureau amended the payment methodologies for public state-operated hospitals, private hospitals, and public nonstate hospitals effective July 1, 1995. Under the methodology, public state-owned hospitals received DSH payments equal to 100 percent of the hospital's net uncompensated cost, and private hospitals and public nonstate hospitals received DSH payments according to a formula based on an eight-pool methodology.

Effective March 20, 1997, the department adopted an emergency rule pursuant to Act 17 of House Bill Number 1 of the 1996 Legislative Session that provided for separate treatment of disproportionate share funds for uncompensated cost in small (60 beds or less) nonstate operated local government hospitals and small (60 beds or less) private rural hospitals (*Louisiana Register*, Volume 23, Number 3).

Effective November 3, 1997 and March 3, 1998, the department adopted subsequent emergency rule pursuant to Act 1485 of the 1997 Legislative Session which provides that all rural hospitals meeting the requirements of Act 1485 are to

receive maximum disproportionate share funding in amounts appropriated by the legislation to the extent authorized by federal law. A notice of intent was published in the December 20, 1997 *Louisiana Register* and a final rule was published in the March 20, 1998 (*Louisiana Register*, Volume 23, Number 12 and *Louisiana Register*, Volume 24, Number 3). The department now proposes to amend Section III of the March 20, 1998 rule regarding the reimbursement methodology for small rural hospitals.

Proposed Rule

The Department of Health and Hospitals, Bureau of Health Services Financing amends Section III.B.3. of Disproportionate Share Hospital Payment Methodologies rule which governs the reimbursement methodology for small rural hospitals for the following provision.

III. Reimbursement Methodologies

B. Small Rural Hospitals

3. For the 1998 fiscal year payment is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the cost reporting period ended during the period April 1, 1996 through March 31, 1997 multiplied by the amount set for each pool. If the cost reporting period is not a full period (12 months), actual uncompensated cost data from the previous cost reporting period may be used on a pro rata basis to equate a full year. Subsequent years' uncompensated cost for each hospital shall be limited to the lesser of its uncompensated cost which was determined from the cost reporting period ended during the period April 1, 1996 through March 31, 1997 trended forward using the lowest of the DRI Type Hospital Marketbasket Index, the Consumer Price Index - All Urban Consumers or the Medicare PPS Marketbasket Index or its uncompensated costs determined from the cost reporting period April 1 through March 31 of the preceding year.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for Tuesday, May 26, 1998 at 9:30 a.m. in the first floor auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Disproportionate Share Hospital Payment Methodologies

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this proposed rule will result in state costs of \$80 for SFY 1998 for the state's administrative expense of promulgating this amendment to the rule as well as the final

rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no effect on federal revenue collections. However, the federal share of promulgating this amendment to the rule as well as the final rule is \$80.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no additional cost or economic benefit to persons or nongovernmental groups. However, there are costs of \$160 for promulgating this amendment to the rule as well as the final rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9804#049

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Intermediate Care Facilities for the Mentally
Retarded—Standards for Payment
(LAC 50:II.Chapter 103)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule under the Medical Assistance Program as authorized by R.S. 46:153 et seq., and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Bureau of Health Services Financing provides coverage under the Medicaid Program for Intermediate Care Services for the Mentally Retarded (ICF/MR) provided in Intermediate Care Facilities. ICF/MR services are optional under Title XIX of the Social Security Act and states may choose the methodology for providing reimbursement for ICF/MR services. In October 1987, the department promulgated a rule that adopted standards for payment for ICF/MR facilities to provide these facilities with information necessary to fulfill vendor contracts with the state of Louisiana and to remain in compliance with federal and state laws (*Louisiana Register*, Volume 13, Number 10).

In order to remain consistent with federal regulations, the department proposes to repeal current regulations governing Standards for Payment for Intermediate Care Facilities for the Mentally Retarded (ICF/MR) by adopting the following provisions.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Medical Assistance

Subpart 3. Standards for Payment

Chapter 103. Standards for Payment for Intermediate Care Facilities for the Mentally Retarded (ICF/MR)

Subchapter A. Foreword, Definitions and Acronyms

§10301. Foreword

A. The ICF/MR Standards for Payment specify the requirements of federal and state law and regulations governing services provided by Intermediate Care Facilities for the Mentally Retarded and persons with other Developmental Disabilities (ICF/MR).

B. The Medicaid Program is administered by the Louisiana Department of Health and Hospitals (DHH) in cooperation with other federal and state agencies.

C. Standards are established to ensure minimum compliance under the law, equity among those served, provision of authorized services, and proper disbursement. If there is a conflict between material in these standards and the federal and state laws or policies governing the program, the state laws or policies governing the program have precedence. These standards provide the ICF/MR with information necessary to fulfill the provider enrollment contract with the agency. It is the ICF/MR facility's responsibility to keep these standards current. The standards are the basis for surveys by federal and state agencies, are part of the enrollment contract, and are necessary for the ICF/MR to remain in compliance with federal and state laws.

D. Monitoring of an ICF/MR's compliance with state and federal regulations is the responsibility of DHH's Bureau of Health Services Financing (BHFS).

E. The Bureau of Health Services Financing (BHSF) Health Standards Section (HSS) is responsible for determining an ICF/MR's compliance with state licensing requirements and compliance with specific Title XIX certification requirements which include physical plant, staffing, dietary, pharmaceuticals, active treatment, and other standards. Minimum Licensure Requirements for ICF/MRs are covered in the booklet entitled *Licensing Requirements for Residential Care Providers* and Subpart G of the *Code of Federal Regulations*, Chapter 42.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10303. Definitions and Acronyms Specific to Mental Retardation and other Developmental Disabilities

A. Definitions regarding Mental Retardation are adopted from the American Association on Mental Deficiency *Manual on Terminology and Classification in Mental Retardation*, 1977 Edition.

B. Definitions for Developmental Disabilities are taken from the 1983 amended R.S. 28:330-444 based on Public Law 95-602.

C. All clients must meet the criteria for mental retardation and other developmental disabilities in order to qualify for Title XIX reimbursement for ICF/MR services.

AAMR—American Association of Mental Retardation (formerly the AAMD—American Association of Mental Deficiency).

Abuse—the infliction of physical or mental injury to a client or causing a client's deterioration to such an extent that his/her health, moral or emotional well-being is endangered. Examples include, but are not limited to: sexual abuse, exploitation or extortion of funds or other things of value.

Active Treatment—an aggressive and consistent program of specialized and generic training, treatment, health and related services directed toward the acquisition of behaviors necessary for the client to function with as much self determination and independence as possible and the prevention and deceleration of regression or loss of current optimal functional status.

Adaptive Behavior—the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected for his age and cultural group. Since these exceptions vary for different age groups, deficits in adaptive behavior will vary at different ages.

Agency—See *Medicaid Agency*.

Ambulatory—an ability to walk about.

ANSI—American National Standards Institute.

Applicant—an individual whose written application for Medicaid has been submitted to the agency but whose eligibility has not yet been determined.

ART—Accredited Record Technician.

Attending Physician—a physician, currently licensed by the Louisiana State Board of Medical Examiners, designated by the client, family, agency, or responsible party as responsible for the direction of overall medical care of the client.

Autism—a condition characterized by disturbance in the rate of appearance and sequencing of developmental milestones: abnormal responses to sensations, delayed or absent speech and language skills while specific thinking capabilities may be present, and abnormal ways of relating to people and things.

BHSF—Bureau of Health Services Financing. See *Health Services Financing*.

Board Certified Social Worker (BCSW)—a person holding a Master of Social Work (MSW) degree who is licensed by the Louisiana State Board of Certified Social Work Examiners.

Capacity for Independent Living—the ability to maintain a full and varied life in one's own home and community.

Cerebral Palsy—a permanently disabling condition resulting from damage to the developing brain, which may occur before, during or after birth and results in loss or impairment of control over voluntary muscles.

Certification—a determination made by the Department of Health and Hospitals (DHH) that an ICF/MR meets the necessary requirements to participate in Louisiana as a provider of Title XIX (Medicaid) Services.

Change in Ownership (CHOW)—any change in the legal entity responsible for the operation of an ICF/MR.

Chief Executive Officer (CEO)—an individual licensed, currently registered, and engaged in the day to day administration/management of an ICF/MR.

Client—an applicant for or recipient of Title XIX (Medicaid) ICF/MR services.

Code of Federal Regulations (CFR)—the regulations published by the federal government. Section 42 includes regulations for ICF/MRs.

Comprehensive Functional Assessment—identifies the client's need for services and provides specific information about the client's ability to function in different environments, specific skills or lack of skills, and how function can be improved, either through training, environmental adaptations, or provision of adaptive, assistive, supportive, orthotic, or prosthetic equipment.

Developmental Disabilities (DD)—severe, chronic disabilities which are attributable to mental retardation, cerebral palsy, autism, epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation. This condition results in an impairment of general intellectual functioning or adaptive behavior similar to that of mental retardation, and requires treatment or services similar to those required for MR/DD are manifested before the person reaches age 22 and are likely to continue indefinitely.

Developmental Period—a period from birth to before a person reaches age 22.

DHH—Louisiana's Department of Health Hospitals.

DHHS—the federal Department of Health and Human Services in Washington, DC.

Dual Diagnosis—clients who carry diagnoses of both mental retardation and mental illness.

Enrollment—process of executing a contract with a licensed and certified ICF/MR provider for participation in the Medical Assistance Program. Enrollment includes the execution of the provider agreement and assignment of the provider number used for payment.

Epilepsy—disorder of the central nervous system which is characterized by repeated seizures which are produced by uncontrolled electrical discharges in the brain.

Facility—an Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled.

Fiscal Intermediary—the private fiscal agent with which DHH contracts to operate the Medicaid Management Information System. It processes the Title XIX (Medicaid) claims for services provided under the Medical Assistance Program and issues appropriate payment(s).

General Intellectual Functioning—results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose.

HCFA—Health Care Financing Administration.

Health Services Financing, Bureau of (BHSF)—a division of DHH responsible for administering, overseeing, and monitoring the state's Medicaid Program.

HSS—Health Standards Section within BHSF, the section responsible for licensing, certifying and enrolling ICFs/MR.

I.Q.—Intelligence Quotient.

Individual Habilitation Plan (IHP)—the written ongoing

program of services developed for each client by an interdisciplinary team in order for that client to achieve or maintain his/her potential. The plan contains specific, measurable goals, objectives and provides for data collection.

Individual Plan of Care (IPC)—same as *Individual Habilitation Plan*.

Individual Program Plan (IPP)—same as *Individual Habilitation Plan*.

Individual Service Plan (ISP)—same as *Individual Habilitation Plan*.

Interdisciplinary Team (IDT)—a group of individuals representing the different disciplines in the formulation of a client's Individual Habilitation Plan. That team meets at least annually to develop and review the plans, more frequently if necessary.

Intermediate Care Facility for the Mentally Retarded and Developmentally Disabled (ICF/MR)—same as Facility for the Mentally Retarded or Persons with Related Conditions.

Learning—general cognitive competence. The ability to acquire new behaviors, perceptions, and information and to apply previous experiences in new situations.

Legal Status—a designation indicative of an individual's competency to manage their affairs.

Level of Care (LOC)—service needs of the client based upon his/her comprehensive functional status.

Licensed—a determination by the Louisiana Department of Health and Hospitals, Bureau of Health Service Financing, that an ICF/MR meets the state requirements to participate in Louisiana as a provider of ICF/MR services.

Living Unit—a place where a client lives including sleeping, training, dining and activity areas.

LPN—Licensed Practical Nurse.

LSC—Life Safety Code.

LTC—Long Term Care.

Major Life Activities—any one of the following activities or abilities:

- a. self-care;
- b. understanding and use of language;
- c. learning;
- d. mobility;
- e. self-direction;
- f. capacity for independent living.

Measurable Outcomes—a standard or goal by which performance is measured and evaluated.

Mechanical Support—a device used to achieve proper body position or balance.

Medicaid—medical assistance provided according to the State Plan approved under Title XIX of the Social Security Act.

Medicaid Agency—the single state agency responsible for the administration of the Medical Assistance Program (Title XIX). In Louisiana, the Department of Health and Hospitals is the single state agency.

Medicaid Management Information System (MMIS)—the computerized claims processing and information retrieval system which includes all ICF/MR providers eligible for participation in the Medical Assistance Program. This system is an organized method for payment for claims for all Title XIX Services.

Medical Assistance Program (MAP)—another name for the Medicaid Program.

Medicare—the federally administered Health Insurance program for the aged, blind and disabled under the Title XVIII of the Social Security Act.

Medicare Part A—the Hospital Insurance program authorized under Part A of Title XVIII of the Social Security Act.

Medicare Part B—the Supplementary Medical Insurance program authorized under Part B of Title XVIII of the Social Security Act.

Mental Retardation (MR)—significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.

Note: It shall be emphasized that a finding of low I.Q. is never by itself sufficient to make the diagnosis of mental retardation or in evaluating its severity. A low I.Q. shall serve only to help in making a clinical judgement regarding the client's adaptive behavioral capacity. This judgement also includes present functioning including academic and vocational achievement, motor skills, and social and emotional maturity.

Mobility—motor development and ability to use fine and gross motor skills; the ability to move the extremities at will.

Mobil Nonambulatory—the inability to walk without assistance, but the ability to move from place to place with the use of a device such as a walker, crutches, wheelchair or wheeled platform.

Neglect—the failure to provide proper or necessary medical care, nutrition or other care necessary for a client's well being.

New Facility—an ICF/MR newly opened or recently began participating in the Medical Assistance Program.

Nonambulatory—the inability to walk without assistance.

Nursing Facility or Facility—health care facilities such as a private home, institution, building, residence, or other place which provides maintenance, personal care, or nursing services for persons who are unable to properly care for themselves because of illness, physical infirmity or age. These facilities serve two or more persons who are not related by blood or marriage to the operator and may be operated for profit or nonprofit.

Office for Citizens with Developmental Disabilities (OCDD)—the office within DHH responsible for programs serving the MR/DD population.

Operational—admission of at least one client, completion of functional assessments(s) and development of individual program plan(s) for the client(s); and implementation of the program plan(s) in order that the facility actually demonstrate the ability, knowledge, and competence to provide active treatment.

Overall Plan of Care (OPC)—see *Individual Habilitation Plan*.

Provider—any individual or entity enrolled to furnish Medicaid Services under a provider agreement with the Medicaid Agency.

Qualified Mental Retardation Professional (QMRP)—a person who has specialized training and at least one year or

more of experience in treating and/or working directly with and in direct contact with the Mentally Retarded clients. To qualify as a QMRP a person must meet the requirements of 42 CFR 483.430.

Recipient—an individual who has been determined eligible for Medicaid.

Registered Nurse (RN)—a nurse currently registered and licensed by the Louisiana State Board of Nursing.

Representative Payee—a person designated by the Social Security Administration to receive and disburse benefits in the best interest of and according to the needs of the beneficiary.

Responsible Party—a person authorized by the client, agency or sponsor to act as an official delegate or agent in dealing with the Department of Health and Hospitals and/or the ICF/MR.

Self-Care—daily activities which enable a person to meet basic life needs for food, hygiene, appearance and health.

Self-Direction—management and control over one's social and personal life and the ability to make decisions that affect and protect one's own interests. A substantial functional limitation in self-direction would require a person to need assistance in making independent decisions concerning social and individual activities and/or in handling personal finances and/or in protecting his own self-interest.

Significant Assistance—help needed at least one-half of the time for one activity or a need for some help in more than one-half of all activities normally required for self-care.

Significantly Sub-Average—for purposes of certification for ICF/MR an I.Q. score of below 70 on the Wechsler, Stanford-Binet, Cattell, or comparable test will be considered to establish significantly sub-average intellectual functioning.

SNF—Skilled Nursing Facility.

Sponsor—an adult relative, friend, or guardian of the client who has a legitimate interest in or responsibility for the client's welfare. Preferably, this person is designated on the admission forms as "responsible party."

Substantial Functional Limitation—a condition that limits a person from performing normal life activities or makes it unsafe for a person to live alone to such an extent that assistance, supervision, or presence of a second person is required more than half of the time.

Title XIX—see *Medicaid*.

Training and Habilitation Services—services intended to aid the intellectual, sensorimotor and emotional development of a client as part of overall plans to help the individual function at the greatest physical, intellectual, social and vocational level he/she can presently or potentially achieve.

Understanding and Use of Language—communication involving both verbal and nonverbal behavior enabling the individual both to understand others and to express ideas and information to others.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and

Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter B. Participation

§10305. General Provisions

Note: The federal regulation pertaining to this Section is 42 CFR 442-483.400.

A. Scope

1. The standards set forth in this and subsequent sections comply with the Title XIX requirements of the amended Social Security Act. That Act sets the standards for the care, treatment, health, safety, welfare and comfort of Medical Assistance clients in facilities providing ICF/MR services.

2. These standards apply to ICF/MRs certified and enrolled by the Louisiana Department of Health and Hospitals (DHH) for vendor participation.

3. These standards supplement current licensing requirements applicable to ICF/MRs. Any infraction of these standards may be considered a violation of the provider agreement between DHH and the ICF/MR.

4. In the event any of these standards are not maintained, DHH will determine whether facility certification will continue with deficiencies as is allowed under Title XIX regulations or whether termination of the Provider Agreement is warranted. Although vendor payment will not be suspended during the determination period, deficiencies which may affect the health, safety, rights and welfare of Medical Assistance clients must be corrected expeditiously in order for the ICF/MR to continue to participate.

5. If a certified ICF/MR is found to have deficiencies which immediately jeopardize the health, safety, rights and welfare of its Medical Assistance clients, DHH may initiate proceedings to terminate the ICF/MR's certification. In the event of less serious deficiencies, DHH may impose interim sanctions (see §10357, Sanctions).

B. General Admission and Funding Criteria

Note: The federal regulation pertaining to this Subsection is 42 CFR 483.440.

1. Capacity. The ICF/MR will admit only the number of individuals that does not exceed its rated capacity as determined by the BHSF's HSS and its capacity to provide adequate programming.

2. Admission Requirements. Except on a short term emergency basis, an ICF/MR may not admit individuals as clients unless their needs can be met and an interdisciplinary professional team has determined that admission is the best available plan for them. The team must do the following:

a. conduct a comprehensive evaluation of each individual that covers physical, emotional, social and cognitive factors; and

b. perform the following tasks prior to admission:

i. define the individual's need for service without regard to the availability of those services; and

ii. review all appropriate programs of care, treatment, and training and record the findings;

c. ensure that the ICF/MR takes the following action if admission is not the best plan but the individual must nevertheless be admitted:

i. clearly acknowledges that admission is inappropriate; and

ii. initiates plans to actively explore alternatives.

3. Prohibitions on Federal Financial Participation

a. Federal funds in the Title XIX ICF/MR program are not available for clients whose individual treatment plans are totally or predominately vocational and/or educational. ICF/MR services are designed essentially for those individuals diagnosed as developmentally disabled; having developmental lags which are considered amendable to treatment in a 24-hour managed care environment where they will achieve maximum growth. Services to treat educational and vocational deficits are available at the community level while the client lives in his own home or in another community level placement and are not considered amendable to treatment in a 24-hour managed care environment.

b. Admissions through the Court System

i. Court ordered admissions do not guarantee Medicaid vendor payment to a facility. A court can order that a client be placed in a particular facility but cannot mandate that the services be paid for by the Medicaid program.

ii. Incarcerated individuals are not eligible for Medicaid. The only instance in which such an individual may qualify is if he/she is paroled or released on medical furlough.

C. Enrollment of Intermediate Care Facilities for the Mentally Retarded in the Medicaid Program

1. An ICF/MR may enroll for participation in the Medical Assistance Program (Title XIX) when all the following criteria have been met:

a. the ICF/MR has received Facility Need Review approval from DHH;

b. the ICF/MR has received approval from DHH/OCDD;

c. the ICF/MR has completed an enrollment application for participation in the Medical Assistance Program;

d. the ICF/MR has been surveyed for compliance with federal and state standards, approved for occupancy by the Office of Public Health (OPH) and the Office of the State Fire Marshal, and has been determined eligible for certification on the basis of meeting these standards; and

e. the ICF/MR has been licensed and certified by DHH.

2. Procedures for Certification of New ICF/MRs. The following procedures must be taken in order to be certified as a new ICF/MR.

a. The ICF/MR shall apply for a license and certification.

b. DHH shall conduct or arrange for surveys to determine compliance with Title XIX, Title VI (Civil Rights), Life Safety, and Sanitation Standards.

c. Facilities must be operational a minimum of two weeks (14 calendar days) prior to the initial certification survey. Facilities are not eligible to receive payment prior to the certification date.

i. *Operational* is defined as admission of at least one client, completion of functional assessment and development of individual program plan for each client; and implementation of the program plan(s) in order for the facility to actually demonstrate the ability, knowledge, and competence to provide active treatment.

ii. Fire and health approvals must be obtained from the proper agencies prior to a client's admission to the facility.

iii. The facility must comply with all standards of the State of Louisiana Licensing Requirements for Residential Care Providers.

iv. A certification survey will be conducted to verify that the facility meets all of these requirements.

d. A new ICF/MR shall be certified only if it is in compliance with all conditions of participation found in 42 CFR 442 and 42 CFR 483.400 et seq.

e. The effective date of certification shall be no sooner than the exit date of the certification survey.

3. Certification Periods

a. DHH may certify an ICF/MR which fully meets applicable requirements for a maximum of 12 months.

b. Prior to the agreement expiration date, the provider agreement may be extended for up to two months after the agreement expiration date if the following conditions are met:

i. the extension will not jeopardize the client's health, safety, rights and welfare; and

ii. the extension is needed to prevent irreparable harm to the ICF/MR or hardship to its clients; or

iii. the extension is needed because it is impracticable to determine whether the ICF/MR meets certification standards before the expiration date.

D. Ownership

Note: The federal regulations pertaining to this Subsection are as follows: 42 CFR 420.205; 440.14; 442.15; 455.100; 455.101; 455.102 and 455.103.

1. Disclosure. All participating Title XIX ICF/MRs are required to supply the DHH Health Standards Section with a completed HCFA Form 1513 (Disclosure of Ownership) which requires information as to the identity of the following individuals:

a. each person having a direct or indirect ownership interest in the ICF/MR of 5 percent or more;

b. each person owning (in whole or in part) an interest of 5 percent or more in any property, assets, mortgage, deed of trust, note or other obligation secured by the ICF/MR;

c. each officer and director when an ICF/MR is organized as a corporation;

d. each partner when an ICF/MR is organized as a partnership;

e. within 35 days from the date of request, each provider shall submit the complete information specified by the BHSF/HSS regarding the following:

i. the ownership of any subcontractor with whom this ICF/MR has had more than \$25,000 in business transactions during the previous 12 months; and

ii. information as to any significant business transactions between the ICF/MR and the subcontractor or wholly owned suppliers during the previous five years.

2. The authorized representative must sign the Provider Agreement.

a. If the provider is a nonincorporated entity and the owner does not sign the provider agreement, a copy of power of attorney shall be submitted to the DHH/HSS showing that the authorized representative is allowed to sign on the owner's behalf.

b. If one partner signs on behalf of another partner in a partnership, a copy of power of attorney shall be submitted to the DHH/HSS showing that the authorized representative is allowed to sign on the owner's behalf.

c. If the provider is a corporation, the board of directors shall furnish a resolution designating the representative authorized to sign a contract for the provision of services under DHH's state Medical Assistance Program.

3. Change in Ownership (CHOW)

a. A Change in Ownership (CHOW) is any change in the legal entity responsible for the operation of the ICF/MR.

b. As a temporary measure during a change of ownership, the BHSF/HSS shall automatically assign the provider agreement and certification, respectively to the new owner. The new owner shall comply with all participation prerequisites simultaneously with the ownership transfer. Failure to promptly complete with these prerequisites may result in the interruption of vendor payment. The new owner shall be required to complete a new provider agreement and enrollment forms referred to in Continued Participation. Such an assignment is subject to all applicable statutes, regulations, terms and conditions under which it was originally issued including, but not limited to the following:

i. any existing correction action plan;

ii. any expiration date;

iii. compliance with applicable health and safety standards;

iv. compliance with the ownership and financial interest disclosure requirements;

v. compliance with Civil Rights requirements;

vi. compliance with any applicable rules for Facility Need Review;

vii. acceptance of the per diem rates established by DHH/BHSF's Institutional Reimbursement Section; and

viii. compliance with any additional requirements imposed by DHH/BHSF/HSS.

c. For an ICF/MR to remain eligible for continued participation after a change of ownership, the ICF/MR shall meet all the following criteria:

i. state licensing requirements;

ii. all Title XIX certification requirements;

iii. completion of a signed provider agreement with the department;

iv. compliance with Title VI of the Civil Rights Act; and

v. enrollment in the Medical Management Information system (MMIS) as a provider of services.

d. A facility may involuntarily or voluntarily lose its participation status in the Medicaid Program. When a facility loses its participation status in the Medicaid Program, a minimum of 10 percent of the final vendor payment to the facility is withheld pending the fulfillment of the following requirements:

i. submission of a limited scope audit of the client's personal funds accounts with findings and recommendations by a qualified accountant of the facility's choice to the department's Institutional Reimbursement Section:

(a). the facility has 60 days to submit the audit findings to Institutional Reimbursement once it has been

notified that a limited scope audit is required;

(b). failure of the facility to comply with the audit requirement is considered a Class E violation and will result in fines as outlined in §10357, Sanctions;

ii. the facility's compliance with the recommendations of the limit scope audit;

iii. submittal of an acceptable final cost report by the facility to Institutional Reimbursement;

iv. once these requirements are met, the portion of the payment withheld shall be released by the BHSF's Program Operations Section.

e. Upon notification of completion of the ownership transfer and the new owner's licensing, DHH/HSS will notify the Fiscal Intermediary regarding the effective dates of payment and to whom payment is to be made.

E. Provider Agreement

Note: Federal regulations pertaining to this subsection are as follows: 42 CFR 431.107, 442.10, 442.12, 442.13, 442.15, 442.16, 442.100 and 442.101.

In order to participate as a provider of ICF/MR services under Title XIX, an ICF/MR must enter into a provider agreement with DHH. The provider agreement is the basis for payments by the Medical Assistance Program. The execution of a provider agreement and the assignment of the provider's Medicaid vendor number is contingent upon the following criteria.

1. Facility Need Review Approval Required. Before the ICF/MR can enroll and participate in Title XIX, the Facility Need Review Program must have approved the need for the ICF/MR's enrollment and participation in Title XIX. The Facility Need Review process is governed by Department of Health and Hospitals regulations promulgated under authority of Louisiana R.S. 40:2116.

a. The approval shall designate the appropriate name of the legal entity operating the ICF/MR.

b. If the approval is not issued in the appropriate name of the legal entity operating the ICF/MR, evidence shall be provided to verify that the legal entity that obtained the original Facility Need Review approval is the same legal entity operating the ICF/MR.

2. The ICF/MR's Medicaid Enrollment Application. The ICF/MR shall request a Title XIX Medicaid enrollment packet from the Medical Assistance Program Provider Enrollment Section. The information listed below shall be returned to that office as soon as it is completed:

a. two copies of the Provider Agreement Form with the signature of the person legally designated to enter into the contract with DHH;

b. one copy of the Provider Enrollment Form (PE 50) completed in accordance with accompanying instructions and signed by the administrator or authorized representative;

c. one copy of the Title XIX Utilization Review Plan Agreement Form showing that the ICF/MR accepts DHH's Utilization Review Plan;

d. copies of information and/or legal documents as outlined in Subsection D (Ownership) of this section;

3. The Effective Date of the Provider Agreement. The ICF/MR must be licensed and certified by the BHSF/HSS in accordance with provisions in 42 CFR 442.100-115 and

provisions determined by DHH. The effective date of the provider agreement shall be determined as follows.

a. If all federal requirements (health and safety standards) are met on the day of the BHSF/HSS survey, then the effective date of the provider agreement is the date the on-site survey is completed or the day following the expiration of a current agreement.

b. If all requirements are specified in Subparagraph a above are not met on the day of the BHSF/HSS survey, the effective date of the provider agreement is the earliest of the following dates:

i. the date on which the provider meets all requirements; or

ii. the date on which the provider submits a corrective action plan acceptable to the BHSF/HSS; or

iii. the date on which the provider submits a waiver request approved by the BHSF/HSS; or

iv. the date on which both ii and iii above are submitted and approved.

4. The ICF/MR's "Per Diem" Rate. After the ICF/MR facility has been licensed and certified, a per diem rate will be issued by the department.

5. Provider Agreement Responsibilities. The responsibilities of the various parties are spelled out in the Provider Agreement Form. Any changes will be promulgated in accordance with the Administrative Procedure Act.

6. Provider Agreement Time Periods. The provider agreement shall meet the following criteria in regard to time periods.

a. It shall not exceed 12 months.

b. It shall coincide with the certification period set by the BHSF/HSS.

c. After a provider agreement expires, payment may be made to an ICF/MR for up to 30 days.

d. The provider agreement may be extended for up to two months after the expiration date under the following conditions:

i. it is determined that the extension will not jeopardize the client's health, safety, rights and welfare; and

ii. it is determined that the extension is needed to prevent irreparable harm to the ICF/MR or hardship to its clients; or

iii. it is determined that the extension is needed because it is impracticable to determine whether the ICF/MR meets certification standards before the expiration date.

7. Tuberculosis (TB) Testing as Required by the OPH. All residential care facilities licensed by DHH shall comply with the requirements found in Section 3, Chapter II, of the *State Sanitary Code* regarding screening for communicable disease of employees, residents, and volunteers whose work involves direct contact with clients. For questions regarding TB testing, contact the local office of Public Health.

8. Criminal History Checks. Effective July 15, 1996, the Office of State Police will perform criminal history checks on nonlicensed personnel of health care facilities, in accordance with R.S. 40:1300.51-R.S. 40:1300.56.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10307. Payments

Note: Regulations for this Section are found in the state's *Medicaid Eligibility Manual*, Chapter XIX (19).

A. Income Consideration in Determining Payment

1. Clients receiving care under Title XIX. The client's applicable income (liability) will be determined when computing the ICF/MR's vendor payments. Vendor payments are subject to the following conditions.

a. Vendor payments will begin with the first day the client is determined to be categorically and medically eligible or the date of admission, whichever is later.

b. Vendor payment will be made for the number of eligible days as determined by the ICF/MR per diem rate less the client's per diem applicable income.

c. If a client transfers from one facility to another, the vendors' payment to each facility will be calculated by multiplying the number of eligible days times the ICF/MR per diem rate less the client's liability.

2. Client Personal Care Allowance. The ICF/MR will not require that any part of a client's personal care allowance be paid as part of the ICF/MR's fee. Personal care allowance is an amount set apart from a client's available income to be used by the client for his/her personal use. The amount is determined by DHH.

B. Payment Limitations

1. Temporary Absence of the Client. A client's temporary absence from an ICF/MR will not interrupt the monthly vendor payment to the ICF/MR, provided the following conditions are met:

a. the ICF/MR keeps a bed available for the client's return; and

b. the absence is for one of the following reasons:

i. hospitalization, which does not exceed seven days per hospitalization; or

ii. leave of absence. A temporary stay outside the ICF/MR provided for in the client's written Individual Habilitation Plan. A leave of absence will not exceed 45 days per fiscal year (July 1 through June 30), and will not exceed 30 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 45-day limit as long as the leave does not exceed the 30-consecutive-day limit and is included in the written Individual Habilitation Plan. These exceptions are as follows:

- (a). Special Olympics;
- (b). roadrunner-sponsored events;
- (c). Louisiana planned conferences;
- (d). trial discharge leave;

Note: Elopements and unauthorized absences under the Individual Habilitation Plan count against allowable leave days. However, Title XIX eligibility is not affected if the absence does not exceed 30 consecutive days and if the ICF/MR has not discharged the client.

c. the period of absence shall be determined by counting the first day of absence as the day on which the first 24-hour period of absence expires;

d. a period of 24 continuous hours or more shall be considered an absence. Likewise, a temporary leave of absence for hospitalization or a home visit is broken only if the client returns to the ICF/MR for 24 hours or longer;

e. upon admission, a client must remain in the ICF/MR at least 24 continuous hours in order for the ICF/MR to submit a payment claim for a day of service or reserve a bed;

Example: A client admitted to an ICF/MR in the morning and transferred to the hospital that afternoon would not be eligible for any vendor payment for ICF/MR services.

f. if a client transfers from one facility to another, the unused leave days for the fiscal year also transfer. No additional leave days are allocated as a result of a transfer;

g. the ICF/MR shall promptly notify DHH of absences beyond the applicable 30- or seven-day limitations. Payment to the ICF/MR shall be terminated from the fifteenth or sixth day, depending upon the leave of absence. Payment will commence after the individual has been determined eligible for Title XIX benefits and has remained in the ICF/MR for 30 consecutive days;

h. the limit on Title XIX payment for leave days does not mean that further leave days are prohibited when provided for in the Individual Habilitation Plan. After the Title XIX payment limit is met, further leave days may be arranged between the ICF/MR and the client, family or responsible party. Such arrangements may include the following options:

i. the ICF/MR may charge the client, family or responsible party an amount not to exceed the Title XIX daily rate;

ii. the ICF/MR may charge the client, family or responsible party a portion of the Title XIX daily rate;

iii. the ICF/MR may absorb the cost into its operation costs.

2. Temporary Absence of the Client Due to Evacuations. When local conditions require evacuation of ICF/MR residents, the following payment procedures apply:

a. when clients are evacuated for less than 24 hours, the monthly vendor payment is not interrupted;

b. when staff is sent with clients to the evacuation site, the monthly vendor payment is not interrupted;

c. when clients are evacuated to a family's or friend's home at the ICF/MR's request, the ICF/MR shall not submit a claim for a day of service or leave day, and the client's liability shall not be collected;

d. when clients go home at the family's request or on their own initiative, a leave day shall be charged;

e. when clients are admitted to the hospital for the purpose of evacuation of the ICF/MR, Medicaid payment shall not be made for hospital charges.

3. Payment Policy in regard to Date of Admission, Discharge, or Death

a. Medicaid (Title XIX) payments shall be made effective as of the admission date to the ICF/MR. If the client is medically certified as of that date and if either of the following conditions is met:

i. the client is eligible for Medicaid benefits in the ICF/MR (excluding the medically needy); or

ii. the client was in a continuous institutional living arrangement (nursing home, hospital, ICF/MR, or a combination of these institutional living arrangements) for 30 consecutive days; the client must also be determined financially eligible for Medical Assistance.

b. The continuous stay requirement is:

i. considered met if the client dies during the first 30 consecutive days.

ii. not interrupted by the client's absence from the ICF/MR when the absence is for hospitalization or leave of absence which is part of the written Individual Habilitation Plan.

c. The client's applicable income is applied toward the ICF/MR fee effective with the date Medicaid payment is to begin.

d. Medicaid payment is not made for the date of discharge; however, neither the client, family, nor responsible party is to be billed for the date of discharge.

e. Medicaid payment is made for the day of client's death.

Note: The ICF/MR shall promptly notify DHH/BHSF of admissions, death, and/or all discharges.

4. Advance Deposits

a. An ICF/MR shall neither require nor accept an advance deposit from an individual whose Medicaid (Title XIX) eligibility has been established.

Exception: An ICF/MR may require an advance deposit for the current month only on that part of the total payment which is the client's liability.

b. If advance deposits or payments are required from the client, family, or responsible party upon admission when Medicaid (Title XIX) eligibility has not been established, such a deposit shall be refunded or credited to the person upon receipt of vendor payment.

5. Retroactive Payment. When individuals enter an ICF/MR before their Medicaid (Title XIX) eligibility has been established payment for ICF/MR services is made retroactive to the first day of eligibility after admission.

6. Timely Filing for Reimbursements. Vendor payments cannot be made if more than 12 months have elapsed between the month of initial services and submittal of a claim for these services. Exceptions for payments of claims over 12 months old can be made with authorization from DHH/BHSF only.

7. Refunds to Clients

a. When the ICF/MR receives vendor payments, it SHALL refund any fees for services collected from clients, family or responsible party by the end of the month in which vendor payment is received.

b. Advance payments for a client's liability (applicable income) shall be refunded promptly if he/she leaves the ICF/MR.

c. The ICF/MR shall adhere to the following procedures for refunds:

i. The proportionate amount for the remaining days of the month shall be refunded to the client, family, or the responsible party no later than 30 days following the date of discharge. If the client has not yet been certified, the procedures spelled out in (a) above shall apply.

ii. No penalty shall be charged to the client, family, or responsible party even if the circumstances surrounding the discharge occurred as follows:

(a). without prior notice; or

(b). within the initial month; or

(c). within some other "minimum stay" period established by the ICF/MR.

iii. Proof of refund of the unused portion of the applicable income shall be furnished to BHSF upon request.

8. ICF/MR Refunds to the Department

a. Nonparticipating ICF/MR. Vendor payments made for services performed while an ICF/MR is in a nonparticipating status with the Medicaid Program shall be refunded to the Office of Management and Financing, Post Office Box 629, Baton Rouge, LA 70821-0629. The refund shall be made payable to the "Department of Health and Hospitals-Medicaid Program."

b. Participating ICF/MR. A currently participating Title XIX, ICF/MR shall correct billing or payment errors by use of appropriate adjustment void or Patient Liability (PLI) adjustment forms.

9. Sitters. An ICF/MR will neither expect nor require a client to have a sitter. However, the ICF/MR shall permit clients, families, or responsible parties directly to employ and pay sitters when indicated, subject to the following limitations:

a. The use of sitters will be entirely at the client's, family's, or responsible party's discretion. However, the ICF/MR shall have the right to approve the selection of a sitter. If the ICF/MR disapproves the selection of the sitter, the ICF/MR will provide written notification to the client, family, and/or responsible party, and to the Department of Health and Hospitals stating the reasons for disapproval.

b. Payment to sitters is the direct responsibility of the client, family or responsible party, unless:

i. the hospital's policy requires a sitter;

ii. the attending physician requires a sitter; or

iii. the Individual Habilitation Plan (IHP) requires a sitter.

Note: Psychiatric Hospitals are excluded from this requirement.

c. Payment to sitters is the direct responsibility of the ICF/MR facility when:

i. the hospital's policy requires a sitter and the client is on hospital leave days;

ii. the attending physician requires a sitter;

iii. the IHP requires a sitter.

d. A sitter will be expected to abide by the ICF/MR's rules and regulations, including health standards and professional ethics.

e. The presence of a sitter does not absolve the ICF/MR of its full responsibility for the client's care.

f. The ICF/MR is not responsible for a sitter required while the resident is on hospital or home leave.

10. Tips. The ICF/MR shall not permit tips for services rendered by its employees.

C. Cost Reports

1. Providers shall use the same cost report form, budget

form, and cost determination methods prescribed by DHH/BHSF's Institutional Reimbursements Section.

a. All cost report information shall be submitted in accordance with generally accepted accounting principles (GAAP) as well as state and federal regulations.

b. The accrual method of accounting is the only acceptable method for private providers.

c. State institutions shall be allowed to submit data on the cash basis.

2. All costs submitted on cost reports and budgets must be client care related. For information regarding cost report instructions, reporting requirements, allowable and unallowable costs, etc. refer to BHSF's *Rate Setting for Residential Care System Manual*. Requests for a copy of the manual may be submitted to DHH/BHSF/Institutional Reimbursement Section, Post Office Box 546, Baton Rouge, Louisiana 70821-0546.

3. Another source for guidance regarding allowable and unallowable cost is the federal publication Medicare Provider Reimbursement Manual (HIM-15). This manual can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 24:

Subchapter C. Client Records

§10309. General Requirements

Note: Federal regulations which pertain to this Subsection are as follows: 42 CFR 433 and 42 CFR 483.400.

A. Written Policies and Procedures. An ICF/MR facility shall have written policies and procedures governing access to, publication of, and dissemination of information from client records.

B. Protection of Records. Client records are the property of the ICF/MR residents and as such shall be protected from loss, damage, tampering, or use by unauthorized individuals. Records may be removed from the ICF/MR's jurisdiction and safekeeping only in accordance with a court order, subpoena or statute.

C. Confidentiality. An ICF/MR facility shall ensure confidential treatment of client records, including information contained in automatic data banks.

1. The client's written consent, if the client is determined competent, shall be required for the release of information to any persons not otherwise authorized under law to receive it. If the client is not documented as competent, a member of the family, responsible party or advocate shall be required to sign.

Note: "Blanket" signed authorizations for release of information from client records are time limited.

2. A record of all disclosures from client's records shall be kept.

3. All staff shall be trained in the policies regarding confidentiality during orientation to the ICF/MR and in subsequent on-the-job and in-service training.

4. Any information concerning a client or family considered too confidential for general knowledge by the

ICF/MR staff shall be kept in a separate file by the chief executive officer, his designee, or social worker. A notation regarding the whereabouts of this information shall be made in the client's record.

D. Availability of Records. The ICF/MR shall make necessary records available to appropriate state and federal personnel upon request.

E. Records Service System

1. The ICF/MR shall maintain an organized central record service for collecting and releasing client information. Copies of appropriate information shall be available in the client living units.

2. A written policy shall be maintained regarding a "charge out system" by which a client's record may be located when it is out of file.

3. The ICF/MR shall maintain a master alphabetical index of all clients.

4. All records shall be maintained in such a fashion as to protect the legal rights of clients, the ICF/MR, and ICF/MR staff.

F. General Contents of Records. A written record shall be maintained for each client.

1. Records shall be adequate for planning and for continuously evaluating each client's habilitation plan and documenting each client's response to and progress in the habilitation plan.

2. Records shall contain sufficient information to allow staff members to execute, monitor and evaluate each client's habilitation program.

G. Specifics Regarding Entries into Client Records. The following procedures shall be adhered to when making entries into a client's record.

1. All entries shall be legible, signed, and dated by the person making the entry.

2. All corrections shall be initialed and completed in such a manner that the original entry remains legible.

3. Entries shall be dated only on the date when they are made.

4. The ICF/MR shall maintain a roster of signatures, initials and identification of individuals making entries in each record.

H. Components of Client Records. Components of client records shall include, but shall not be limited to, the following:

1. admission records;
2. personal property records;
3. financial records;
4. medical records.

a. This includes records of all treatments, drugs, and services for which vendor payments have been made, or which are to be made, under the Medical Assistance Program.

b. This includes the authority for and the date of administration of such treatment, drugs, or services.

c. The ICF/MR shall provide sufficient documentation to enable DHH to verify that each charge is due and proper prior to payment.

5. All other records which DHH finds necessary to determine a ICF/MR's compliance with any federal or state law, rule or regulation promulgated by the DHH.

I. Retention of Records. The ICF/MR shall retain records for whichever of the following time frames is longer:

1. until records are audited and all audit questions are answered;
2. in the case of minors, three years after they become 18 years of age; or
3. three years after the date of discharge, transfer, or death of the client.

J. Interdicted Client. If the ICF/MR client has been interdicted, a copy of the legal documents shall be contained in the client's records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10311. Admission Records

A. At the time of admission to the ICF/MR, information shall be entered into the client's record which shall identify and give a history of the client. This identifying information shall at least include the following:

1. a recent photograph;
2. full name;
3. sex;
4. date of birth;
5. ethnic group;
6. birthplace;
7. height;
8. weight;
9. color of hair and eyes;
10. identifying marks;
11. home address, including street address, city, parish and state;
12. Social Security Number;
13. medical assistance identification number;
14. Medicare claim number, if applicable;
15. citizenship;
16. marital status;
17. religious preference;
18. language spoken or understood;
19. dates of service in the United States Armed Forces, if applicable;
20. legal competency status if other than competent;
21. sources of support: social security, Veterans benefits, etc.;
22. father's name, birthplace, social security number, current address, and current phone number;
23. mother's maiden name, birthplace, social security number, current address, and current phone number;
24. name, address, and phone number of next of kin, legal guardian, or other responsible party;
25. date of admission;
26. name, address and telephone number of referral agency or hospital;
27. reason for admission;
28. admitting diagnosis;
29. current diagnosis, including primary and secondary DSM III diagnosis, if applicable;

30. medical information, such as allergies and general health conditions;

31. current legal status;
32. personal attending physician and alternate, if applicable;
33. choice of other service providers;
34. name of funeral home, if appropriate; and
35. any other useful identifying information. Refer to *Admission Review* for procedures.

B. First Month After Admission. Within 30 calendar days after a client's admission, the ICF/MR shall complete and update the following:

1. review and update the pre-admission evaluation;
2. develop a prognosis for programming and placement;
3. ensure that an interdisciplinary team completes a comprehensive evaluation and designs an Individual Habilitation Plan (IHP) for the client which includes a 24-hour schedule.

C. Entries into Client Records During Stay at the ICF/MR. The following information shall be added to each client's record during his/her stay at the ICF/MR:

1. reports of accidents; seizures, illnesses, and treatments for these conditions;
2. records of immunizations;
3. records of all periods where restraints were used, with authorization and justification for each, and records of monitoring in accordance with these standards;
4. reports of at least an annual review and evaluation of the program, developmental progress, and status of each client, as required in these standards;
5. behavior incidents and plans to manage inappropriate behavior;
6. records of visits and contacts with family and other persons;
7. records of attendance, absences, and visits away from the ICF/MR;
8. correspondence pertaining to the client;
9. periodic updates of the admission information (such updating shall be performed in accordance with the written policy of the ICF/MR but at least annually); and
10. appropriate authorizations and consents.

D. Entries at Discharge. At the time of a client's discharge, the QMRP or other professional staff, as appropriate, shall enter a discharge summary into the client's record. This summary shall address the findings, events, and progress of the client while at the ICF/MR and a diagnosis, prognosis, and recommendations for future programming.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 24:

§10313. Medical Records

A. General Requirements. The ICF/MR shall maintain medical records which include clinical, medical, and psychosocial information on each client.

B. Components of Medical Records. Each client's record shall consist of a current active medical section and the

ICF/MR's medical files or folders.

1. Active Medical Section. The active medical section shall contain the following information:

- a. at least six months of current pertinent information relating to the active ongoing medical care;
- b. physician certification of the clients' need for admission to the ICF/MR;
- c. physician recertification that the client continues to require the services of the ICF/MR;
- d. nurses quarterly physical assessment. See §10339, Client Health and Habilitation Services;
- e. quarterly, the pharmacy consultant must review the drug regimen of each client;
- f. certification that each IHP has been periodically reviewed and revised.

2. Medical Files. As the active medical section becomes bulky, the outdated information shall be removed and filed in the ICF/MR's medical files.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 24:

§10315. Client Personal Property Records

Note: The federal regulations pertaining to this Section are 42 CFR 483.420.

The ICF/MR shall permit clients to maintain and use their personal property. The number of personal possessions may be limited only for health and safety reasons. When such limitations are imposed, documentation is required in the client's records.

1. Within 24 hours after admission, the ICF/MR shall prepare a written inventory of the personal property a client brings to the ICF/MR.

2. The client's authorized representative shall sign and retain the written inventory and shall give a copy to the client, family or responsible party.

3. The ICF/MR shall revise the written inventory to show if acquired property is lost, destroyed, damaged, replaced or supplemented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10317. Client Financial Records

Note: Federal regulations which pertain to this Section are 42 CFR 483.420(b).

A. General Requirements. Clients have the right to maintain their personal funds or to designate someone to assume this responsibility for them. Clients' income may be from Social Security, Supplemental Security Income (SSI), optional State Supplementation, other sources (VA or insurance benefits, etc.) or earnings of the client. A portion of the clients' income is used to pay the clients' share (liability) of the monthly charges for the ICF/MR. The ICF/MR shall:

1. have written policies and procedures for protecting clients' funds and for counseling clients concerning the use of their funds;

2. develop written procedures for the recording and accounting of client's personal funds.

Note: ICF/MRs shall ensure the soundness and accuracy of the client fund account system.

3. train clients to manage as many of their financial affairs as they are capable. Documentation must support that training was provided and the results of that training.

4. maintain current records that include the name of the person (client or person designated) handling each client's personal funds.

5. be responsible for the disbursements, deposits, and accuracy of the records when arrangements are made with a federal or state insured banking institution to provide banking services for the clients.

Note: All bank charges, including charges for ordering checks, shall be paid by the ICF/MR and not charged to the clients' personal funds account(s).

6. maintain current, written individual records of all financial transactions involving client's personal funds which the facility is holding and safeguarding.

Note: ICF/MRs shall keep these records in accordance with requirements of law for a trustee in a fiduciary relationship.

7. make personal fund account records available upon request to the client, family, responsible party, and DHH.

B. Components Necessary for a Client Fund Account System. The ICF/MR shall maintain current, written individual records of all financial transactions involving clients' personal funds which the ICF/MR is holding, safeguarding, and accounting.

1. The ICF/MR shall keep these records in accordance with requirements of law for a trustee in a fiduciary relationship which exists for these financial transactions.

2. The ICF/MR shall develop the following procedures to ensure a sound and workable fund accounting system.

a. Individual Client Participation File. The file may consist of cards in a drawer or pages in a ledger and shall meet the following criteria.

i. A file shall exist for each participating client. Each file or record shall contain all transactions pertinent to the account, including the following information:

ii. Money Received

(a). source;

(b). amount; and

(c). date.

iii. Money Expended

(a). purpose;

(b). amount; and

(c). date of all disbursements to or on behalf of the client.

b. All monies, either spent on behalf of the client or withdrawn by the client, family, or responsible party, shall be supported on the individual ledger sheet by a receipt, invoice, canceled check, or signed voucher on file.

Note: It is highly recommended that the functions for actual disbursement of cash and reconciling of the cash disbursement record be performed by separate individuals.

c. Receipts or invoices for disbursements shall include the following information:

- i. the date of the disbursement;
- ii. the amount of the disbursement;
- iii. the purpose of the disbursement; and
- iv. the signature of the client, family, or other responsible party.

Note: A running list of disbursements and receipts may be kept for posting on ledger sheets of individual vouchers.

v. The file shall be available to the client, family, or other responsible party upon request during the normal administrative work day.

d. Client's Personal Funds Bank Account(s). ICF/MRs may deposit clients' money in individual or collective bank account(s). The individual or collective account(s) shall:

- i. be separate and distinct from all ICF/MR facility accounts;
- ii. consist solely of clients' money and shall not be commingled with the ICF/MR facility account(s);
- iii. be maintained at the facility; and
- iv. be available daily upon request during banking hours.

e. Receipt/Invoice File. It is necessary to keep a receipt/invoice file for disbursements on behalf of each client. For each withdrawal made in the individual participation file, a signature and/or receipt/invoice should be filed in the receipt/invoice file. Copies of checks and receipts shall be maintained in each client's file.

i. All receipts and invoices should show the following:

- (a). Monies Received
 - (i). name of person paying;
 - (ii). signature of payer;
 - (iii). description of goods or services paid for;
 - (iv). amount; and
 - (v). date received.
- (b). Disbursements
 - (i). name of person disbursing funds;
 - (ii). signature of payee;
 - (iii). purpose;
 - (iv). amount; and
 - (v). date of disbursement.

(c). An accounting of the funds shall be available during regular business hours at the request of the client, family or other responsible party.

ii. The Client's Ledger Sheets. ICF/MRs shall maintain individual ledger sheets for each client that include the following:

- (a). name of the client and date of admission;
- (b). deposits
 - (i). date;
 - (ii). source; and
 - (iii). amount.
- (c). withdrawals:
 - (i). date;
 - (ii). check/petty cash voucher number;
 - (iii). payee (if check is issued);
 - (iv). purpose of withdrawal; and
 - (v). amount.

Note: Checks shall not be payable to "cash" or employees of the facility.

- (d). supporting documentation for each withdrawal:
 - (i). cash register receipt with canceled check or petty cash voucher signed by the client; or
 - (ii). invoice with canceled check or petty cash voucher signed by the client; or
 - (iii). petty cash voucher signed by the client; or
 - (iv). canceled check.

Note: Canceled checks written to family members or responsible parties are sufficient receipt for disbursements if coupled with information regarding the purpose of expenditures.

- (e). fund balance after each transaction.
- iii. Reconciliations of Client's Personal Funds Account(s). There shall be a written reconciliation, at least monthly, by someone other than the custodian of the client's personal funds account(s). "Assets" (cash in bank, both checking and savings) must equal "liabilities" [ledger sheet balance(s)]. Collective bank accounts shall be reconciled to the total of client's ledger sheet balances. The reconciliation shall be reviewed and approved by someone other than the preparer or custodian of the client's personal funds account.

iv. Unallowable Charges to Client's Personal Funds Account(s). It is the intent of the State of Louisiana that ICF/MRs provide total maintenance for recipients. The client's personal funds should be set aside for individual wants or to spend as the client sees fit. In the event that a client desires to purchase a certain brand, he/she has the right to use his/her personal funds in this manner; however, the client must be made aware of what the facility is providing prior to making his/her decision. Written documentation must be maintained to support that the client was made aware of products or services the facility is obligated to provide. Listed below (but not limited to) are items that shall not be charged to a client's personal funds account(s), the client's family or responsible party(s):

- (a). clothing. If a client does not have adequate seasonal clothing (including shoes, etc.), it is the responsibility of the facility to provide the clothing;
- (b). personal hygiene items;
- (c). haircuts;
- (d). dentures/braces, etc.;
- (e). eyeglasses;
- (f). hearing and other communication aids;
- (g). support braces;
- (h). any other devices identified by the interdisciplinary team;
 - (i). wheelchairs;
 - (j). repair and maintenance of items (d). - (i);
 - (k). damage to facility property or the client's possessions; The client may not be charged for damage to facility property or the property of others caused by that individual's destructive behavior. ICF/MRs have a general responsibility to maintain the environment as a cost of doing business. Property of clients damaged or stolen by others must be replaced by the facility;
- (l). transportation;
- (m). prescription or over-the-counter drugs;
- (n). recreational costs included in the IHP;

- (o). medical expenses of any nature;
- (p). tips, gifts, expenses for staff;
- (q). supplies or items to meet goals of IHP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24: §10319. **Cash on Hand**

A. ICF/MRs shall have a minimum of cash on hand to meet client's spending needs. Cash on hand shall be maintained on the imprest petty cash system which includes pre-numbered petty cash vouchers. Petty cash shall be maintained at the facility and shall be available to the clients 24 hours a day, seven days a week.

B. The facility shall provide the funds to implement the petty cash system and replenish it, as necessary, from the clients' personal funds based on signed vouchers. Checks issued to replenish the fund should be made payable to "Custodian of Petty Cash." When funds are withdrawn from the clients' savings account to cover signed vouchers, a receipt signed by the custodian of petty cash shall be maintained in lieu of a canceled check.

C. There shall be a written reconciliation, at least weekly, by someone other than the custodian of the petty cash fund. The reconciliation shall be reviewed and approved by someone other than the preparer or custodian of the petty cash fund.

Note: The facility is responsible for shortages.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 24:

§10321. Access to Funds

Clients shall have access to their funds during hours compatible to banking institutions in the community where they live. Large ICF/MRs shall post the times when clients shall have access to their funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10323. Closing a Discharged Client's Fund Account

When a client is discharged, the ICF/MR shall refund the balance of a client's personal account and that portion of any advance payment not applied directly to the ICF/MR fee. The amount shall be refunded to the client, family or other responsible party within 30 days following the date of discharge. Date, check number, and "to close account" should be noted on the ledger sheet. When the facility is the payee for a Social Security check or other third party payments, the change in payee should be initiated immediately by the facility.

Note: The facility shall allow the client to withdraw a minimum of \$25 from his/her personal funds account on the date of discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24: §10325. **Disposition of a Deceased Client's Personal Funds**

A. ICF/MRs, upon a client's death, shall submit written notification within 10 business days to the next of kin disclosing the amount of funds in the deceased's account as of the date of death. The ICF/MR shall hold the funds until the next of kin notifies the ICF/MR whether a succession will be opened.

1. Succession Opened. If a succession is to be opened, the ICF/MR shall release the funds to the administrator of the estate, if one, or according to the judgment of possession.

2. Succession Not Opened. If no succession is to be opened, the ICF/MR shall make the funds payable to the deceased's estate and shall release the funds to the responsible party of record.

B. Release of Funds. In any case in which funds are released in accordance with a court order, judgment of possession, or affidavit, the funds shall be made available to the persons or parties cited by the court order. The signed statement shall be attached to the written authority and filed in the ICF/MR records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10327. Disposition of Deceased Client's Unclaimed Personal Funds

A. If the ICF/MR retains the funds and the responsible party (legal guardian, administrator of the estate, or person placed in possession by the court judgment) fails to obtain the funds within three months after the date of death, or if the ICF/MR fails to receive notification of the appointment of or other designation of a responsible party within three months after the death, the ICF/MR shall notify the secretary of the Department of Revenue, Unclaimed Property Section. The notice shall provide detailed information about the decedent, his next of kin, and the amount of funds.

1. The facility shall continue to retain the funds until a court order specifies that the funds are to be turned over to secretary of the Department of Revenue.

2. If no order or judgment is forthcoming, the ICF/MR shall retain the funds for five years after date of death.

3. Thereafter, the ICF/MR is responsible for delivering the unclaimed funds to the secretary of Revenue.

4. A termination date of the account and the reason for termination shall be recorded on the client's participation file. A notation shall read, "to close account." The endorsed canceled check with check number noted on the ledger sheet shall serve as sufficient receipt and documentation.

B. References. References for §§10325 and 10327 above are as follows:

1. *Civil Code* Article 2951 which deals with deposits of a deceased person.

2. *Code of Civil Procedure*, Articles 3421-3434, which deals with small successions requiring no judicial proceedings. Section 3431 specifically refers to persons who die intestate leaving no immovable property and whose sole heirs are his descendants, ascendants or surviving spouse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter D. Transfers and Discharges

§10329. Written Agreements with Outside Resources

Note: The federal regulations pertaining to this Section are 483.410(d) through 483.410(d) (2)(ii) and (b) through 483.440(5)(ii).

Each client must have the services which are required to meet his needs including emergency and other health care. If the service is not provided directly, there must be a written agreement with an outside resource. The written agreement for hospital transfers must be with hospitals within close proximity and must provide for prompt transfer of clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10331. Facility Responsibilities for Planned or Voluntary Transfer or Discharge Policies Requirements

A. Facility record shall document that the client was transferred or discharged for good cause which means for any reason that is in the best interest of the individual.

B. Any decision to move a client shall be part of an interdisciplinary team process. The client, family, legal representative, and advocate, if there is one, shall participate in the decision making process.

C. Planning for a client's discharge or transfer shall allow for at least 30 days to prepare the client and parents/guardian for the change except in emergencies.

D. Planning for release of a client shall include providing for appropriate services in the client's new environment, including protective supervision and other follow-up services which are detailed in his discharge plan.

E. The client and/or legal representative must give their written consent to all non-emergency situations. Notification shall be made to the parents or guardians as soon as possible.

F. Both the discharging and receiving facilities shall share responsibility for ensuring the interchange of medical and other programmatic information which shall include:

1. an updated active treatment plan;
2. appropriate transportation and care of the client during transfer; and
3. the transfer of personal effects and of information related to such items;

G. Representatives from the staff of both the sending and receiving facilities shall confer as often as necessary to share appropriate information regarding all aspects of the client's care and habilitation training. The transferring facility is responsible for developing a final summary of the client's developmental, behavioral, social, health, and nutritional status, and with the consent of the client and/or legal guardian, providing a copy to authorized persons and agencies.

H. The facility shall establish procedures for counseling clients or legal representatives, concerning the advantages and disadvantages of the possible release. This counseling shall include information regarding after care services available through agency and community resources.

I. All clients being transferred or discharged shall be given appropriate information about the new living arrangement. Counseling shall be provided if they are not in agreement. (See "Involuntary Transfers" if client is being transferred against his will).

J. The basic policy of client's right to the most appropriate placement which will meet his needs shall govern all transfer/discharge planning. Clients are not to be maintained in inappropriate placements or replacements in which their needs cannot adequately be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10333. Involuntary Transfer or Discharge

A. Conditions. Involuntary transfer or discharge of a client may occur only under the following conditions:

1. for medical reasons or for the welfare of other clients;
2. for nonpayment of a bill for care received;
3. for emergency situations such as fire, contagious disease, or a severe threat to client safety and well being.

B. Facility Responsibilities. Facility responsibilities when an involuntary transfer or discharge occurs shall include the following:

1. a written report detailing the circumstances leading up to the decision for involuntary discharge or transfer shall be placed in the client's clinical record;

2. interdisciplinary team conference shall be conducted with the client, family member or legal representative and appropriate agency representative to update the plan and develop discharge options that will provide reasonable assurances that clients will be transferred or discharged to a setting that can be expected to meet his needs;

3. a written notice of involuntary transfer shall be prepared; this notice shall be sent to the following individuals:

- a. client
 - b. legal representative
 - c. attending physician
 - d. Office for Citizens with Developmental Disabilities
 - e. DHH's Health Standards Section
 - f. appropriate educational authorities
 - g. representative of client's choice
4. time frames for written notice of involuntary transfer or discharge shall be:

a. at least 15 days before discharge or transfer in cases of nonpayment of bill for cost of care;

b. the written notice of transfer or discharge shall be given to appropriate individuals and agencies at least 72 hours prior to the final interdisciplinary team conference referred to above;

c. as soon as possible before discharge or transfer in emergency situations as determined by the interdisciplinary team.

5. written notice of transfer or discharge shall contain the following information:

a. the proposed date of transfer or discharge;

b. the reason(s) for transfer or discharge;

c. a date, time, and place for the follow-up interdisciplinary team conference to make final decision on the client's/legal representative choice of new facility or alternative living arrangement;

d. names of facility personnel available to assist client and family in decision making and transfer arrangements;

e. explanation of client's right to have personal and/or third party representation at all stages of the transfer or discharge process;

f. explanation of client's right to register a complaint with DHH within three days after the follow-up interdisciplinary team conference.

6. at the final conference, the chief executive officer and/or social service staff shall meet with the client and legal representative within the 72-hour written notice time period or earlier.

7. the facility shall provide all services required prior to discharge that are contained in the final update of the Individual Habilitation Plan and in the transfer or discharge plan.

8. the facility shall be responsible for keeping the client, whenever medical or other conditions warrant such action, for as long as necessary even if beyond the proposed date of transfer or discharge, except in emergency situations.

9. the facility shall provide transportation to the new residence unless other arrangements are preferred by the client/legal representative or the receiving facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10335. Mass Transfer of Clients

The following provisions shall apply to any mass transfer:

1. ICF/MR Decertification. When DHH/BHSF determines that an ICF/MR no longer meets state and federal Title XIX certification requirements, decertification action is taken. Usually an advance decertification date is set unless clients are in immediate danger.

2. ICF/MR Decertification Notice. On the date the ICF/MR is notified of its decertification, DHH shall begin notifying clients, families, responsible parties, and other appropriate agencies or individuals of the decertification action and of the services available to ensure an orderly transfer and continuity of care.

3. ICF/MR Closing or Withdrawing from Title XIX Program. In institutions where an ICF/MR either voluntarily or involuntarily discontinues its operations or participation in the Medical Assistance Program, clients, families, responsible parties, and other appropriate agencies or individuals shall be notified as far in advance of the effective date as possible to insure an orderly transfer and continuity of care.

a. If the ICF/MR is closing its operations, plans shall be made for transfer.

b. If the ICF/MR is voluntarily or involuntarily withdrawing from Title XIX participation, the client has the option of remaining in the ICF/MR on a private-pay basis.

4. Payment Limitation. Payments may continue for clients up to 30 days following the effective date of the ICF/MR's decertification.

a. There shall be NO payments approved for Title XIX clients admitted after an ICF/MR receives a notice of decertification.

b. The payment limitation also applies to Title XIX clients admitted prior to the decertification notice.

c. Payment is continued to the ICF/MR for clients certified prior to the decertification only if the ICF/MR totally cooperates in the orderly transfer of clients to other Title XIX facilities or other placements of their choice.

Note: The ICF/MR's failure to comply with the transfer team's requests may result in denial of reimbursement during the extension period.

Note: The ICF/MR still retains its usual responsibility during the transfer/discharge process to notify the BHSF Medicaid Eligibility Parish Office promptly of all changes in the client's status.

5. Client Rights. Nothing in the transfer or discharge plan shall interfere with client's exercise of his rights.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter E. Facility Records

§10337. General Requirements

Note: The federal regulations which pertain to this Section are 42 CFR 433 and 42 CFR 442.

A. The ICF/MR shall retain such records on file as required by DHH and shall have them available for inspection at request for three years from the date of service or until all audit exceptions are resolved, whichever period is longer.

B. Provider Agreement. The ICF/MR shall retain a copy of the Provider Agreement and any document pertaining to the licensing or certification of the ICF/MR.

C. Accounting Records

1. Accounting records must be maintained in accordance with generally accepted accounting principles as well as state and federal regulations. The accrual method of accounting is the only acceptable method for private providers.

Note: Purchase discounts, allowance and refunds will be recorded as a reduction of the cost to which they related.

2. Each facility must maintain all accounting records, books, invoices, canceled checks, payroll records, and other documents relative to client care costs for a period of three years or until all audit exceptions are resolved, whichever

period is longer.

3. All fiscal and other records pertaining to client care costs shall be subject at all times to inspection and audit by DHH, the legislative auditor, and auditors of appropriate federal funding agencies.

D. Daily Census Records. Each facility must maintain statistical information related to the daily census and/or attendance records for all clients receiving care in the facility.

E. Employee Records

1. The ICF/MR shall retain written verification of hours worked by individual employees.

a. Records may be sign-in sheets or time cards, but shall indicate the date and hours worked.

b. Records shall include all employees even on a contractual or consultant basis.

2. Verification of criminal background check.

3. Verification of employee orientation and in-service training.

4. Verification of the employee's communicable disease screening.

F. Billing Records

1. The ICF/MR shall maintain billing records in accordance with recognized fiscal and accounting procedures. Individual records shall be maintained for each client. These records shall meet the following criteria.

a. Records shall clearly detail each charge and each payment made on behalf of the client.

b. Records shall be current and shall clearly reveal to whom charges were made and for whom payments were received.

c. Records shall itemize each billing entry.

d. Records shall show the amount of each payment received and the date received.

2. The ICF/MR shall maintain supporting fiscal documents and other records necessary to ensure that claims are made in accordance with federal and state requirements.

G. Client Records. See Subchapter C, Client Records.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter F. Health Services

§10339. Client Health and Habilitative Services

A. *Intermediate Care Facilities for the Mentally Retarded (ICF/MR)* are defined as intermediate care facilities whose primary purpose is to provide health or habilitative services for mentally retarded individuals or persons with related conditions and meet the standards in 42 CFR 442 and 483.400.

B. The following health and habilitative services must be provided to all clients.

1. Active Treatment Services. The facility must provide or arrange for each client to receive a continuous active treatment program consisting of needed interventions and services in sufficient number and frequency to support the achievement of the objectives identified in the Individual Habilitation Plan (IHP). These services include but are not

limited to occupational, speech, physical and recreational therapies; psychological, psychiatric, audiology, social work, special education, dietary and rehabilitation counseling.

Note: Supplies, equipment, etc. needed to meet the goals of the IHP cannot be charged to the client or their responsible parties.

2. Active Treatment Components

a. Individual Habilitation Plan. Each client must have an Individual Habilitation Plan developed by an interdisciplinary team that represents the professions, disciplines or service areas that are relevant to identifying the client's needs as described by the programs that meet those needs.

i. The facility must document in the Individual Habilitation Plan (IHP) the presence, or the reason for absence, at the individual's staffing conference of the client, family members and relevant disciplines, professions or service areas as identified in the comprehensive functional assessment.

ii. Within 30 days after admission, the interdisciplinary team must do assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission.

iii. The comprehensive functional assessment must take into consideration the client's age and the implications for active treatment at each stage as applicable. It must contain the following components:

(a). the presenting problems and disabilities and where possible, their causes including diagnosis, symptoms, complaints and complications;

(b). the client's specific developmental strengths;

(c). the client's specific developmental and behavioral management needs;

(d). an identification of the client's needs for services without regard to the actual availability of the services.

iv. The comprehensive functional assessment must cover the following developmental areas:

(a). physical development and health;

(b). nutritional status;

(c). sensorimotor development;

(d). affective development;

(e). speech and language development;

(f). auditory functioning;

(g). cognitive development;

(h). social development;

(i). adaptive behaviors or independent living skills necessary for the client to be able to function in the community;

(j). vocational skills as applicable;

(k). psychological development.

b. Specific Objectives. Within 30 days after admission, the interdisciplinary team must prepare for each client an IHP that states specific objectives necessary to meet the client's needs, as identified by the comprehensive functional assessment, and states the plan for achieving these objectives.

i. Components for these objectives must be:

(a). stated separately, in terms of a single behavioral outcome;

- (b). be assigned projected completion dates;
- (c). be expressed in behavioral terms that provide measurable indices of performance;
- (d). be organized to reflect a developmental disability;
- (e). be assigned priorities.

ii. A copy of each client's Individual Habilitation Plan must be made available to all relevant staff, including staff of other agencies who work with the client, the client, parents if the client is a minor, or legal guardian. The Individual's Habilitation Plan must be implemented within 14 calendar days of its development.

iii. The facility must develop and make available to relevant staff an active treatment schedule that outlines the current active treatment program.

iv. Each written training program designed to implement these objectives in the Individual Habilitation Plan must specify:

- (a). the methods to be used;
- (b). the schedule for use of the methods;
- (c). the person responsible for the program;
- (d). the type of data and frequency of data collection

necessary to be able to assess progress toward the desired objectives;

(e). the inappropriate client behavior(s), if applicable; and

(f). a provision for the appropriate expression and the replacement of inappropriate behavior, if applicable, with behavior that is adaptive or appropriate.

v. The IHP must also:

(a). describe relevant interventions to support the individual toward independence;

(b). identify the location where program strategy information (which must be accessible to any person responsible for implementation) can be found;

(c). include, for those clients who lack them, training in personal skills essential for privacy and independence (including skills and activities of daily living) until it has been demonstrated that the client is developmentally incapable of applying them;

(d). plans for discharge.

vi. The IHP must identify mechanical supports, if needed, to achieve proper body position, balance, or alignment. This plan must specify:

- (a). the reason for each support;
- (b). the situation in which each is to be applied;
- (c). a schedule for the use of each support.

vii. Clients who have multiple disabling conditions must be provided the opportunity to spend a major portion of each working day out of bed and outside the bedroom area, moving about by various methods and devices whenever possible.

viii. The IHP must include opportunities for client choice and self management.

c. Documentation. The facility must document data relevant to the accomplishment of the criteria specified in the client's Individual Habilitation Plan objectives. This data must meet certain criteria.

i. Data must be documented in measurable outcomes;

ii. Significant events related to the client's Individual Habilitation Plan and assessment and that contribute to an overall understanding of his ongoing level and quality of function must be documented;

iii. The Individual Habilitation Plan must be reviewed by a qualified mental retardation professional at least quarterly or as needed and revised as necessary, including but not limited to situations in which the client:

(a). has successfully completed an objective or objectives identified in the Individual Habilitation Plan;

(b). is regressing or losing skills;

(c). is failing to progress toward identified objectives after reasonable efforts have been made;

(d). is being considered for training toward new objectives.

iv. At least annually, the comprehensive assessment of each client must be reviewed by the interdisciplinary team for relevancy and updated as needed. The Individual Habilitation Plan must be revised as needed or at least by the 365th day after the last review.

Note: For admission requirements, refer to §10301, Participation.

3. Health Services

a. Physician Services. The health care of each client shall be under the continuing supervision of a Louisiana licensed physician. The facility must ensure the availability of physician services 24 hours a day. The facility must provide or obtain preventive and general medical care plus annual physical examinations of each client.

i. The client, the family or the responsible party shall be allowed a choice of physicians.

ii. If the client does not have a personal physician, the ICF/MR shall provide referrals to physicians in the area, identifying physicians that participate in the Medicaid Program.

Note: The cost of physician services cannot be charged to the client or their responsible parties.

b. Nursing Services. The facility must provide each client nursing services as prescribed by a physician or as identified by the Individual Habilitation Plan and client needs.

Note: The cost for nursing services cannot be charged to the client or their legal representative.

i. Nursing services must include:

(a). the development, with a physician, of a medical care plan of treatment for a client when the physician has determined that an individual client requires such a plan;

(b). twenty-four-hour nursing service as indicated by the medical care plan or other nursing care as prescribed by the physician or as identified by client needs;

(c). review of individual client health status on a quarterly or more frequent basis;

(d). training clients and staff as needed in appropriate health and hygiene methods and self-administration of medications;

(e). notify the physician of any changes in the client's health status.

ii. If the facility utilizes only licensed practical nurses to provide health services, it must have a formal

arrangement with a registered nurse licensed to practice in Louisiana to be available for verbal or on-site consultation to the licensed practical nurse.

c. **Dental Services.** The facility must provide or arrange for comprehensive diagnostic and treatment services for each client from qualified personnel, including licensed dentists and dental hygienists either through organized dental services in-house or through arrangement. The facility must ensure that dental treatment services include dental care needed for relief of pain and infections, restoration of teeth and maintenance of dental health. The facility must ensure the availability of emergency treatment on a 24-hour per day basis by a licensed dentist.

Note: The cost for these dental services cannot be charged to the client or their responsible party.

d. **Pharmaceutical Services.** The facility must provide or arrange for the provision of routine and emergency drugs and biologicals to its clients. Drugs and biologicals may be obtained from community or contract pharmacists or the facility may maintain a licensed pharmacy.

i. Routine administration of medications shall be done at the facility where the client resides. Clients may not be transported elsewhere for the sole purpose of medication administration.

ii. The ICF/MR shall neither expect, nor require, any provider to give a discount or rebate for prescription services rendered by the pharmacists.

iii. The ICF/MR shall order at least a one month supply of medications from a pharmacy of the client's, family's, or responsible party's choice. Less than a month's supply is ordered only when the attending physician specifies that a smaller quantity of medication is necessary for a special medical reason.

iv. The ICF/MR Chief Executive Officer or the authorized representative shall certify receipt of prescribed medications by signing and dating the pharmacy billing.

Note: The costs for drugs and biologicals cannot be charged to the client, family or responsible party including any additional charges for the use of the unit dose or blister pack system of packing and storing medications.

v. **Aids and Equipment.** The facility must furnish, maintain in good repair, and teach clients to use and to make informed choices about the use of dentures, eyeglasses, hearing and other communication aids, braces, and other devices identified by the interdisciplinary team as needed by the client.

Note: The costs for aids and equipment cannot be charged to the clients or their legal representatives.

e. **Nutritional Services.** The facility must provide a nourishing, well-balanced diet for each client, including modified and specially prescribed diets. The nutritional component must be under the guidance of a licensed dietitian.

Note: Nutritional services are included in the per diem rate. Residents of ICF/MR facilities are not eligible for Food Stamps, Commodities, or other subsidized food programs.

f. **Clothing.** The facility should provide adequate seasonal clothing for the client. *Adequate* is defined as a seven-day supply in good repair and properly fitting. Work uniforms or special clothing/equipment for training will be provided in addition to the seven-day supply.

i. The facility must maintain a current clothing inventory for each client.

ii. A client with adequate clothing may purchase additional clothing using his/her personal funds if he/she desires.

iii. If a client desires to purchase a certain brand, the client has the right to use his/her personal funds in this manner; however, the client must be made aware of what the facility is providing prior to making his/her decision.

Note: For more information on services that must be provided by the ICF/MR facility or may be purchased by the client, see §10307, Payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10341. Client Behavior

Note: The federal regulations pertaining to this Section are 42 CFR 483.420, 483.440, and 483.450. The state laws pertaining to this Section are R.S. 40:2009.2-RS. 40:2009.20 and R.S. 403.2.

A. Written Policies and Procedures

1. A facility must develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures will:

a. specify conduct to be allowed and not allowed by staff and/or clients;

b. provide for client choice and self determination to the extent possible;

c. be readily available to all clients, parent(s), staff, and legal guardians;

d. be developed with the participation of clients to the extent possible.

2. A facility must develop and implement written policies and procedures for the management of inappropriate client behavior. These policies and procedures must:

a. specify all facility approved interventions to manage inappropriate client behavior;

b. designate these interventions on a hierarchy ranging from the most positive and least restrictive to the least positive and most restrictive;

c. insure that, prior to the use of more restrictive techniques, the client's record document that programs incorporating the use of less intrusive or more positive techniques have been tried first and found to be ineffective;

d. address the use of:

i. time-out rooms;

ii. physical restraints;

iii. drugs used to manage inappropriate behavior;

iv. application of painful or noxious stimuli;

v. the staff members who may authorize use of a particular intervention;

vi. a mechanism for monitoring and controlling use of the intervention.

B. Interventions to Manage Inappropriate Client Behavior

1. **Safety and Supervision.** Interventions to manage inappropriate client behavior must be used within sufficient

safeguards and supervision to insure that the safety, welfare, and civil and human rights of clients are adequately protected. These interventions must:

- a. never be used for disciplinary purposes, for the convenience of staff, or as a substitute for an active treatment program;
- b. never include corporal punishment;
- c. never include discipline of one client by another except as part of an organized system of self government as set forth in facility policy.

2. Individual Plans and Approval. Individual programs to manage inappropriate client behavior must be incorporated into the client's individual program plan and must be reviewed, approved, and monitored by the Specially Constituted Committee. Written informed consent by the client or legal representative is required prior to implementation of a behavior management plan involving any risks to client's rights. (See §10343, Client Rights, which addresses informed consent.)

3. Standing Programs. Standing or as needed programs to control inappropriate behavior are not permitted. To send a client to his room when his behavior becomes inappropriate is not acceptable unless part of a systematic program of behavioral interventions for the individual client.

4. Time-out Rooms

a. Use of time-out rooms is not permitted in group or community homes.

b. In institutional settings, it is permitted only when professional staff is on-site and only under the following conditions:

- i. the placement in a time-out room is part of an approved systematic behavior program as required in the individual program to manage inappropriate behavior discussed under Subsection B above; emergency placement is not allowed;
- ii. the client is under direct constant visual supervision of designated staff;
- iii. if the door to the room is closed, it must be held shut only by use of constant physical pressure from a staff member;
- iv. placement in time-out room does not exceed one hour;
- v. clients are protected from hazardous conditions while in time-out rooms;
- vi. a record is kept of time-out activities.

5. Physical Restraint. *Physical restraint* is defined as any manual method or physical or mechanical device that the individual cannot remove easily and which restricts free movement. Examples of manual methods include: therapeutic or basket holds and prone or supine containment. Examples of physical or mechanical devices include: barred enclosure which must be no more than 3 feet in height and must be; chair with a lap tray used to keep an ambulatory client seated; wheelchair tied to prevent movement of a wheelchair mobile client; straps used to prevent movement while client is in chair or bed. Physical restraints can be used only:

- a. when absolutely necessary to protect the client from injuring himself or others in an emergency situation;
- b. when part of an individual program plan intended

to lead to less restrictive means of managing the behavior the restraints are being used to control;

c. as a health related protection prescribed by a physician but only if absolutely necessary during a specific medical, dental, or surgical procedure or while a medical condition exists;

d. when the following conditions are met:

- i. orders for restraints are not obtained for use on a standing or on an as needed basis;
- ii. restraint authorizations are not in effect longer than 12 consecutive hours and are obtained as soon as possible after restraint has occurred in emergency situations;
- iii. clients in restraints are checked at least every 30 minutes and released as quickly as possible. Record of restraint checks and usage is required;
- iv. restraints are designed and used so as not to cause physical injury and so as to cause the least possible discomfort;
- v. opportunities for motion and exercise are provided for not less than 10 minutes during each two-hour period and a record is kept; and
- vi. restraints are applied only by staff who have had training in the use of these interventions.

6. Drugs. Drugs used for control of inappropriate behavior may be used only under the following conditions:

a. drugs must be used only in doses that do not interfere with the client's daily living activities;

b. drugs used for control of inappropriate behavior must be approved by the interdisciplinary team, the client, legal representative, and specially constituted committee. These drugs must be used only as part of the client's individual program plan that is directed toward eliminating the behavior the drugs are thought to control;

c. prior to the use of any program involving a risk to client protection and rights, including the use of drugs to manage inappropriate behavior, written informed consent must be obtained from:

i. client; or

ii. family, legal representative, or advocate if client is a minor or client is mentally unable to understand the intended program or treatment.

d. informed consent consists of permission given voluntarily on a time limited basis not to exceed 365 days by the client or the legally appropriate party after having been informed of the:

i. specific issue treatment or procedure;

ii. client's specific status with regard to the issue;

iii. attendant risks regarding the issue;

iv. acceptable alternatives to the issue;

v. right to refuse;

vi. consequences of refusal.

e. drugs must not be used until it can be justified that the beneficial effects of the drug on the client's behavior clearly outweighs the potentially harmful effects of the drug;

f. drugs must be clearly monitored in conjunction with the physician, the pharmacist, and facility staff;

g. unless clinical evidence justifies that this is contraindicated, drugs for control of inappropriate behavior must be gradually reduced at least annually in a carefully

monitored program conducted in conjunction with the interdisciplinary team.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10343. Client Rights

Note: *Code of Federal Regulations* pertaining to this Section are as follows: 42 CFR 483.420 and 483.410 (1), (2), (3). Federal laws pertaining to this Section are as follows: Section 601 of Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; and Age Discrimination Act of 1975. The state law pertaining to this Section is R.S. 40:2010.6-R.S. 40:2010.9.

A. Written Policies. The ICF/MR will establish written policies that safeguard clients' rights and define their responsibilities. The ICF/MR chief executive officer and ICF/MR staff will be trained in and will adhere to client rights policies and procedures. ICF/MR personnel will protect and promote clients' civil rights and rights to a dignified existence, self-determination, communication with and access to persons and services inside and outside the facility and to exercise their legal rights. The chief executive officer will be responsible for staff compliance with client rights policies.

B. Notification of Rights

1. All clients, families, and/or responsible parties will sign a statement that they have been fully informed verbally and in writing of the following information at the time of admission and when changes occur during the client's stay in the facility:

- a. the facility's rules and regulations;
- b. their rights;
- c. their responsibilities to obey all reasonable rules and regulations and respect the personal rights and private property of clients; and
- d. rules for conduct at the time of their admissions and subsequent changes during their stay in the facility.

2. Changes in client right policies will be conveyed both verbally and in writing to each client, family, and/or responsible party at the time of or before the change.

3. Receipt of the change will be acknowledged in writing by each client who is capable of doing so, family, and/or responsible party.

4. A client's written acknowledgment will be witnessed by a third person.

5. Each client must be fully informed in writing of all services available in the ICF/MR and of the charges for these services including any charges for services not paid for by Medicaid or not included in the facility's basic rate per day charges. The facility must provide this information either before or at the time of admission and on a continuing basis as changes occur in services or charges during the client's stay.

C. Civil Rights Act of 1964 (Title VI). Title VI of the Civil Rights Act of 1964 states the following: "No persons in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The facility will meet the following criteria in regards to the above-mentioned Act.

1. Compliance. The facility will be in compliance with Title VI of the Civil Rights Act of 1964 and will not discriminate, separate, or make any distinction in housing, services, or activities based on race, color, or national origin.

2. Written Policies. The facility will adopt and implement written policies for compliance with the Civil Rights Act. All employees and contract service providers who provide services to clients will be notified in writing of the Civil Rights policy.

3. Community Notification. The facility will notify the community that admission to the ICF/MR, services to clients, and other activities are provided without regard to race, color, or national origin.

a. Notice to the community may be given by letters to and meetings with physicians, local health and welfare agencies, paramedical personnel, and public and private organizations having interest in equal opportunity.

b. Notices published in newspapers and signs posted in the facility may also be used to inform the public.

4. Housing. All clients will be housed without regard to race, color, or national origin.

a. ICF/MRs will not have dual accommodations to effect racial segregation.

b. Biracial occupancy of rooms on a nondiscriminatory basis will be required. There will be a policy prohibiting assignment of rooms by race.

c. Clients will not be asked if they are willing to share a room with a person of another race, color, or national origin.

d. Client transfer will not be used to evade compliance with Title VI of the Civil Rights Act of 1964.

5. Open Admission Policy. An open admission policy and desegregation of ICF/MR will be required, particularly when the facility previously excluded or primarily serviced clients of a particular race, color, or national origin. Facilities that exclusively serve clients of one race have the responsibility for taking corrective action, unless documentation is provided that this pattern has not resulted from discriminatory practices.

6. Client Services. All clients will be provided medical, non-medical, and volunteer services without regard to race, color, or national origin. All administrative, medical and non-medical services are covered by this requirement.

7. All ICF/MR staff will be permitted to provide client services without regard to race, color, or national origin.

a. Medical, paramedical, or the professional persons, whether engaged in contractual or consultative capacities, will be selected and employed in a nondiscriminatory manner.

b. Opportunity for employment will not be denied to qualified persons on the basis of race color, or national origin.

c. Dismissal from employment will not be based upon race, color, or national origin.

D. Section 504 of the Rehabilitation Act of 1973. Facilities will comply with Section 504 of the Rehabilitation Act of 1973 that states: "No qualified person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from

federal financial assistance."

E. Age Discrimination Act of 1975. This Act prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance. All ICF/MRs must be in compliance with this Act.

F. Americans with Disabilities Act of 1990. All ICF/MR facilities must be in compliance with this Act.

G. Client Rights. The facility must comply with 42 CFR 483.420 and the provisions below.

1. Each client must:

a. be fully informed by a physician of his health and medical condition unless the physician decides that informing the client is medically contraindicated;

b. be given the opportunity to participate in planning his total care and medical treatment;

c. be given the opportunity to refuse treatment; and

d. give informed, written consent before participating in experimental research.

2. If the physician decides that informing the client of his health and medical condition is medically contraindicated, he must document this decision in the client's record.

3. Each client must be transferred or discharged only in accordance with the discharge plans in the IHP (see §10339, Client Health and Habilitation).

4. Each client must be:

a. encouraged and assisted to exercise his rights as a client of the facility and as a citizen; and

b. allowed to submit complaints or recommendations concerning the policies and services of the ICF/MR to staff or to outside representatives of the client's choice or both, free from restraining, interference, coercion, discrimination, or reprisal. This includes the right to due process.

5. Each client must be allowed to manage his personal financial affairs and taught to do so to the extent of individual capability. If a client requested assistance from the facility in managing his personal financial affairs:

a. the request must be in writing; and

b. the facility must comply with the record keeping requirements of Subchapter C, Client Records and Subchapter E, Facility Records.

6. Freedom from Abuse and Restraints

a. Each client must be free from physical, verbal, sexual or psychological abuse or punishment.

b. Each client must be free from chemical and physical restraints unless the restraints are used in accordance with §10339, Client Health and Habilitation.

7. Privacy

a. Each client must be treated with consideration, respect, and full recognition of his dignity and individuality.

b. Each client must be given privacy during treatment and care of personal needs.

c. Each client's records, including information in an automatic data base, must be treated confidentially.

d. Each client must give written consent before the facility may release information from his record to someone not otherwise authorized by law to receive it.

e. A married client must be given privacy during visits by his spouse.

Note: If both husband and wife are residents of the facility, they must be permitted to share a room.

8. No client may be required to perform services for the facility. Those clients who by choice work for the facility must be compensated for their efforts at prevailing wages and commensurate with their abilities.

9. Each client must be allowed to:

a. communicate, associate, and meet privately with individuals of his choice, unless this infringes on the rights of another client;

b. send and receive personal mail unopened; and

c. have access to telephones with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within his individual program plan.

10. Each client must be allowed to participate in social, religious, and community group activities.

11. Each client must be allowed to retain and use his personal possessions and clothing as space permits.

12. Each client may be allowed burial insurance policy(s). The facility administrator or designee, with the client's permission, may assist the resident in acquiring a burial policy, provided that the administrator, designee, or affiliated persons derive no financial or other benefit from the resident's acquisition of the policy.

H. Violation of Rights. A person who submits or reports a complaint concerning a suspected violation of a client's rights or concerning services or conditions in an ICF/MR or who testifies in any administrative or judicial proceedings arising from such complaints will have immunity from any criminal or civil liability therefore, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justifiable issue of either law or fact by the complaining party.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10345. Complaints

A. Purpose and Scope. Under the provisions of Louisiana R.S. 40:2009.2-40:2009.20, federal regulation 42 CFR 483.405, 483.420, 483.440 and the state Operations Manual published by the Department of Health and Hospitals and Health Care Financing Administration, the following procedures are established for receiving, evaluating, investigating, and correcting grievances concerning client care in ICF/MR licensed and certified ICF/MR facilities. The following procedures also provide mandatory reporting of abuse and neglect in ICF/MR facilities.

B. Applicability

1. Any person having knowledge of the alleged abuse or neglect of a client or knowledge of a client being denied care and treatment may submit a complaint, preferably in writing.

2. Any person may submit a complaint if he/she has knowledge that a state law, standard, rule, regulation, correction order, or certification rule issued by the Department of Health and Hospitals has been violated.

C. Duty to Report. All incidents or allegations of abuse

and/or neglect must be reported by telephone or FAX within 24 hours to DHH's Health Standards Section. This must be followed by a copy of the results of the facility's internal investigation within five working days. Complete investigative reports with all pertinent documents shall be maintained at the facility. Failure to submit this information timely could result in a deficiency and/or a sanction. Those who must make a report abuse and/or neglect are:

1. physicians or other allied health professionals;
2. social services personnel;
3. facility administration;
4. psychological or psychiatric treatment personnel;
5. registered nurses;
6. licensed practical nurses; and
7. direct care staff.

D. Penalties for Failure to Make Complaint. Any person who knowingly and willfully fails to report an abuse or neglect situation shall be fined not more than \$500 or imprisoned not more than six months or both. The same sanctions shall apply to an individual who knowingly and willingly files a false report. Penalties for committing cruelty or negligent mistreatment to a resident of a health care facility shall be not more than \$10,000 or imprisoning with or without hard labor for more than 10 years, or both.

E. Where to Submit Complaint

1. A complaint can be filed as follows:
 - a. it may be submitted in writing to the Health Standards Section at Box 3767, Baton Rouge, LA 70821-3767; or
 - b. it may be made by calling Health Standards Section at (504) 342-0082.
 - c. In addition, it may be submitted to any local law enforcement agency.
2. DHH'S Referral of Complaints for Investigation
 - a. Complaints involving clients of ICF/MRs received by DHH shall be referred to the Health Standards Section.
 - b. If it has been determined that complaints involving alleged violations of any criminal law concerning a facility are valid, the investigating office of DHH shall furnish copies of the complaints for further investigation to the Medicaid Fraud Control Unit of the Louisiana Attorney General Office.

F. Disposition of Complaints. After the investigation DHH may take any of the following actions.

1. Valid Complaint with Deficiencies Written. The Department of Health and Hospitals shall notify the administrator who must provide an acceptable plan of correction as specified below.

a. If it is determined that a situation presents a threat to the health and safety of the client, the facility shall be required to take immediate corrective action. DHH may certify noncompliance, revoke or suspend the license, or impose sanctions.

b. In all other instances of violation, an expeditious correction, not to exceed 90 days, shall be required. If the provider is unable or unwilling to correct the violation, DHH may take any of the actions listed in Paragraph 1.a.

c. In cases of abuse and/or neglect, referral for appropriate corrective action shall be made to the Medicaid Fraud Control Unit of the Attorney General's Office.

2. Unsubstantiated Complaint. DHH shall notify the complainant and the facility of this finding.

3. Repeat Violations. When violations continue to exist after the corrective action was taken, the Department of Health and Hospitals may take any of the actions listed in Paragraph 1.a.

G. Informal Reconsideration. A complainant or a facility dissatisfied with any action taken by DHH's response to the complaint investigation may request an informal reconsideration as provided in R.S. 40:2009.11 et seq.

H. Retaliation by ICF/MR Facility. Facilities are prohibited from taking retaliatory action against complainants. Persons aware of retaliatory action or threats in this regard should contact DHH.

I. Tracking of Incidents. For each client who is involved in an accident or incident, an incident report shall be completed including the name, date, time, details of accident or incident, circumstances under which it occurred, witnesses and action taken.

1. Incidents or accidents involving clients must be documented in the client's record. These records should also contain all pertinent medical information.

2. The examples listed below are not all inclusive, but are presented to serve as a guideline to assist those facility employees responsible for reporting incident reports.

a. Suspicious Death. Death of a client or on-duty employee when there is suspicion of death other than by natural causes.

b. Abuse and/or Neglect. All incidents or allegations of abuse and/or neglect.

c. Runaways. Runaways considered to be dangerous to self or others.

d. Law Enforcement Involvement. Arrest, incarceration, or other serious involvement of residents with Law Enforcement Authorities.

e. Mass Transfer. The voluntary closing of a facility or involuntary mass transfer of residents from a facility.

f. Violence. Riot or other extreme violence.

g. Disasters. Explosions, bombings, serious fires.

h. Accidents/Injuries. Severe accidents or serious injury involving residents or on-duty employees caused by residents such as life threatening or possible permanent and/or causing lasting damage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Subchapter G. Admission Review

§10347. The Admission Process

Note: Federal regulations pertaining to this Section are 42 CFR 456.360-456.381. ICF/MRs will be subject to a review of each client's need for ICF/MR services.

A. Interdisciplinary Team (ID Team). Before admission to an ICF/MR, or before authorization for payment, an interdisciplinary team of health professionals will make a comprehensive medical, social and psychological evaluation of each client's need for care in the ICF/MR.

1. Other professionals as appropriate will be included on the team, and at least one member will meet the definition of Qualified Mental Retardation Professional (QMRP) as stated in these standards.

2. Appropriate participation of nursing services on this team should be represented by a Louisiana licensed nurse.

B. Exploration of Alternative Services. If the comprehensive evaluations recommend ICF/MR services for a client whose needs could be met by alternative services that are currently unavailable, the ICF/MR will enter this fact in the client's record and begin to look for alternative services.

C. ICF/MR Submission of Data

1. Evaluative data for medical certification for ICF/MR level of care will be submitted to the appropriate Regional Health Standards Office on each client. This will include the following information:

- a. initial application;
- b. applications for clients transferring from one ICF/MR to another;
- c. applications for clients transferring from an acute care hospital to an ICF/MR;
- d. applications for clients who are patients in a mental health facility; and
- e. applications for clients already in an ICF/MR program.

2. Time Frames for Submission of Data. A complete packet of admission information must be received by BHSF/HSS within 20 working days following the completion of the ISP for newly admitted clients.

a. Notice within the 20-day time frame will also be required for readmissions and transfers.

b. If an incomplete packet is received, denial of certification will be issued with the reasons(s) for denial.

c. If additional information is subsequently received within the initial 20-working-day time frame, and the client meets all requirements, the effective date of certification is the date of admission.

d. If the additional information is received after the initial 20-working-day time frame and the client meets all requirements, the effective date of is no earlier than the date a completed packet is received by HSS.

3. Data may be submitted before admission of the client if all other conditions for the admission are met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10349. Requirements for Certification

The following documentation and procedures are required to obtain medical certification for ICF/MR Medicaid vendor payment. The documentation should be submitted to the appropriate HSS Regional Office.

1. Social evaluation:

a. must not be completed more than 90 days prior to admission and no later than date of admission; and

b. must address the following:

i. family, educational and social history including any previous placements;

ii. treatment history that discusses past and current interventions, treatment effectiveness, and encountered negative side effects;

iii. current living arrangements;

iv. family involvement, if any;

v. availability and utilization of community, educational, and other sources of support;

vi. habilitation needs;

vii. family and/or client expectations for services;

viii. prognosis for independent living; and

ix. social needs and recommendation for ICF/MR placement.

2. Psychological evaluation:

a. must not be completed more than 90 days prior to admission and no later than the date of admission; and

b. must include the following components:

i. comprehensive measurement of intellectual functioning;

ii. a developmental and psychological history and assessment of current psychological functioning;

iii. measurement of adaptive behavior using multiple informants when possible;

iv. statements regarding the reliability and validity of informant data including discussion of potential informant bias;

v. detailed description of adaptive behavior strengths and functional impairments in self-care, language, learning, mobility, self-direction, and capacity for independent living;

vi. discussion of whether impairments are due to a lack of skills or noncompliance and whether reasonable learning opportunities for skill acquisition have been provided; and

vii. recommendations for least restrictive treatment alternative, habilitation and custodial needs and needs for supervision and monitoring to ensure safety.

3. A psychiatric evaluation must be completed if the client has a primary or secondary diagnosis of mental illness, is receiving psychotropic medication, has been hospitalized in the past three years for psychiatric problems, or if significant psychiatric symptoms were noted in the psychological evaluation or social assessment. The psychiatric evaluation:

a. shall not be completed more than 90 days prior to admission and no later than the date of admission;

b. should include a history of present illness, mental status exam, diagnostic impression, assessment of strengths and weaknesses, recommendations for therapeutic interventions, and prognosis; and

c. may be requested at the discretion of HSS to determine the appropriateness of placement if admission material indicates the possible need for psychiatric intervention due to behavior problems.

4. Physical, occupational, or speech therapy evaluation(s) may be requested when the client receives services or is in need of services in these areas.

5. An Individual Service Plan (ISP) developed by the interdisciplinary team, completed within 30 days of admission that describes and documents the following:

- a. habilitation needs;
- b. specific objectives that are based on assessment data;
- c. specific services, accommodations, and/or equipment needed to augment other sources of support to facilitate placement in the ICF/MR; and
- d. participation by the client, the parent(s) if the client is a minor, or the client's legal guardian unless participation is not possible or inappropriate.

Note: Document the reason(s) for ANY non-participation by the client, the client's parent(s), or the client's legal guardian.

6. Form 90-L (Request for Level of Care Determination) must be submitted on each admission or readmission. This form must:

- a. not be completed more than 30 days before admission and not later than the date of admission;
- b. be completed fully and include prior living arrangements and previous institutional care;
- c. be signed and dated by a physician licensed to practice in Louisiana. Certification will not be effective any earlier than the date the Form 90-L is signed and dated by the physician;
- d. indicate the ICF/MR level of care; and
- e. include a diagnosis of mental retardation/developmental disability or related condition as well as any other medical condition.

7. Form 148 (Notification of Admission or Change):

- a. must be submitted for each new admission to the ICF/MR;
- b. must be submitted when there is a change in a client's status: death, discharge, transfer, readmission from a hospital;
- c. for clients' whose application for Medicaid is later than date of admission, the date of application must be indicated on the form.

8. Transfer of a Client

a. Transfer of a Client Within an Organization

i. Form 148 must be submitted by both the discharging facility and the admitting facility. It should indicate the date the client was discharged from the transferring facility plus the name of the receiving facility and the date admitted.

ii. An updated individual service plan must be submitted from the discharging facility to the receiving facility. The previous plan can be used but must show any necessary revisions that the receiving facility ID team feel are appropriate and/or necessary.

iii. The receiving facility must submit minutes of an ID team meeting addressing the reason(s) for the transfer, the family and client's response to the move, and the signatures of the persons attending the meeting.

b. Transfer of a Client Not Within the Same Organization. Certification requirements involving the transfer of a client from one ICF/MR facility to another not within the same organization or network will be the same as for a new admission.

i. The discharging facility will notify HSS of the discharge by submitting Form 148 giving the date of discharge and destination.

ii. The receiving facility must follow all steps for a new admission.

9. Readmission of a Client Following Hospitalization

a. Form 148 must be submitted showing the date Medicaid billing was discontinued and the date of readmission to the facility.

b. Documentation must be submitted that specifies the client's diagnosis, medication regime, and includes the physician's signature and date. The documentation can be:

- i. Form 90-L;
- ii. hospital transfer form;
- iii. hospital discharge summary; or
- iv. physician's orders.

c. An updated ISP must be submitted showing changes, if any, as a result of the hospitalization.

10. Readmission of a Client Following Exhausted Home Leave Days

a. Form 148 must be submitted showing the date billing was discontinued and the date of readmission.

b. An updated ISP must be submitted showing changes, if any, as a result of the extended home leave.

11. Transfer of a Client From an ICF/MR Facility to a Nursing Facility. When a client's medical condition has deteriorated to the extent that they cannot participate in or benefit from active treatment and require 24-hour nursing care, the ICF/MR may request prior approval from HSS to transfer the client to a nursing facility by submitting the following information:

a. Form 148 showing that transfer to a nursing facility is being requested;

b. Form 90-L completed within 30 days prior to request for transfer indicating that nursing facility level of care is needed;

c. Level 1 PASARR completed within 30 days prior to request for transfer;

d. ID team meeting minutes addressing the reason for the transfer, the family and client's response to the move, and the signatures of the persons attending the meeting; and

e. any other medical information that will support the need for nursing facility placement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10351. Audits

Note: The federal regulation which pertains to this Section is 42 CFR 447.202.

A. ICF/MRs shall be subject to financial and compliance audits.

B. All providers who elect to participate in the Medicaid Program shall be subject to audit.

1. A representative sample of ICF/MR providers shall be fully audited to ensure the fiscal integrity of the program

and compliance of providers with program regulations governing reimbursement.

2. Limited scope and exception audits shall also be conducted as determined by DHH.

3. DHH conducts desk reviews of all the cost reports received. DHH also conducts on-site audits of provider records and cost reports.

a. DHH seeks to maximize the number of on-site audited cost reports available for use in its cost projections although the number of on-site audits performed each year may vary.

b. Whenever possible, the records necessary to verify information submitted to DHH on Medicaid cost reports, including related-party transactions and other business activities engaged in by the provider, must be accessible to DHH audit staff in the state of Louisiana.

C. Cost of Out-of-State Audits

1. When records are not available to DHH audit staff within Louisiana, the provider must pay the actual costs for DHH staff to travel and review the records out-of-state.

2. If a provider fails to reimburse DHH for these costs within 60 days of the request for payment, DHH may place a hold on the vendor payments until the costs are paid in full.

D. In addition to the exclusions and adjustments made during desk reviews and on-site audits, DHH may exclude or adjust certain expenses in the cost-report data base in order to base rates on the reasonable and necessary costs that an economical and efficient provider must incur.

E. The facility shall retain such records or files as required by DHH's BHSF and shall have them available for inspection for three years from the date of service or until all audit exceptions are resolved, whichever period is longer.

F. If DHH's auditors determine that a facility's records are unauditible, the vendor payments may be withheld until the facility submits an acceptable plan of correction to reconstruct the records. Any additional costs incurred to complete the audit shall be paid by the provider. (Refer to §10357, Sanctions, regarding applicable sanctions.)

G. If a facility fails to submit corrective action plans in response to financial and compliance audit findings within 15 days after receiving the notification letter, vendor payment may be withheld. (Refer to §10357, Sanctions, for more information.)

H. If a facility fails to respond satisfactorily to DHH's request for information within 15 days after receiving the department's letter, vendor payment may be withheld. (Refer to §10357, Sanctions, for more information.)

I. If DHH's audit of the residents' Personal Funds Account indicates a material number of transactions were not sufficiently supported or material noncompliance, then DHH shall initiate a full scope audit of the account. The cost of the full scope audit shall be withheld from the vendor payments. (Refer to §10357, Sanctions and §10355, Appeals, for more information.)

J. The ICF/MR shall cooperate with the audit process by:

1. promptly providing all documents needed for review;
2. providing adequate space for uninterrupted review of records;

3. making persons responsible for facility records and cost report preparation available during the audit;

4. arranging for all pertinent personnel to attend the exit conference;

5. insuring that complete information is maintained in client's records; and

6. correcting areas of noncompliance with state and federal regulations immediately after the exit conference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10353. Utilization Reviews

Note: Federal regulations pertaining to ICFs are found at 42 CFR 456.350 through 456.438.

A. If it is determined by HSS that continued stay is not needed, the client's attending physician or Qualified Mental Retardation Professional (QMRP) shall be notified within one working day and given two working days from the notification date to present his/her views before a final decision on continued stay is made.

B. If the attending physician or QMRP does not present additional information or clarification of the need for continued stay, the decision of the UR group is final.

C. If the attending physician or QMRP presents additional information or clarification, the need for continued stay is reviewed by the physician member(s) of the UR group in cases involving a medical determination.

D. The decision of the UR group is the final medical eligibility decision. Recourse for the client is to exercise his/her appeal rights according to the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10355. Appeals

Note: Code of Federal Regulations that pertain to this Section are as follows: 42 CFR 431.151 through 431.154.

A. DHH reserves the right to reject a request for Title XIX participation, impose sanctions or terminate participation status when an ICF/MR:

1. fails to abide by the rules and regulations promulgated by DHH;

2. fails to obtain compliance or is otherwise not in compliance with Title VI of the Civil Rights Act;

3. engages in practice not in the best interest of Medicaid (Title XIX) clients;

4. has previously been sanctioned for violation of state and/or federal rules and regulations; or

5. has previously been decertified from participation as a Title XIX provider. Prior to such rejection or termination, DHH may conduct an Informal Reconsideration at the ICF/MR's request. The ICF/MR also has the right to an

Administrative Appeal pursuant to the Administrative Procedure Act.

B. **Informal Reconsideration.** When an ICF/MR receives a written notification of adverse action and a copy of the findings upon which the decision was based, the ICF/MR may provide written notification to BHSE/HSS within 10 calendar days of receiving the notification, and request an Informal Reconsideration.

1. The ICF/MR may submit written documentation or request an opportunity to present oral testimony to refute the findings of DHH on which the adverse action is based.

2. DHH will review all oral testimony and documents presented by the ICF/MR and, after the conclusion of the Informal Reconsideration, will advise the ICF/MR in writing of the results of the reconsideration which may be that:

- a. the original decision has been upheld;
- b. the original decision has been modified; or
- c. the original decision has been reversed.

C. **Evidentiary Hearing—General Requirements.** The ICF/MR may also request an Administrative Appeal. To request such an appeal, the facility must submit their request in writing within 30 days of the receipt of the adverse action to the Bureau of Appeals, Box 4183, Baton Rouge, LA 70821-4183. The Bureau of Appeals will attempt to conduct the hearing within 120 days of the original notice of adverse action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

§10357. Sanctions

A. **Noncompliance.** When ICF/MRs are not in compliance with the requirements set forth in the ICF/MR Standards for Payment, DHH may impose sanctions. Sanctions may involve:

1. withholding of vendor payments;
2. civil fines;
3. denial of payments for new admissions; or
4. nonfinancial measures such as termination of the ICF/MR's certification as a Title XIX provider.

B. **Authority.** Public Law 95-142, dated October 25, 1977, permits the federal government's Health Care Financing Administration (HCFA) to impose a fine and/or imprisonment of facility personnel for illegal admittance and retention practices. HCFA is also authorized to terminate an agreement with a Title XIX ICF/MR provider as a result of deficiencies found during their surveys, which are re-reviews of the state's surveys. Furthermore, the federal government's Office of Inspector General (OIG) is authorized to terminate an agreement with a Title XIX ICF/MR provider for willful misrepresentation of financial facts or for not meeting professionally recognized standards of health care.

C. **Special Staffing Requirements.** When the secretary of DHH determines that additional staffing or staff with specific qualifications would be beneficial in correcting deficient practices, DHH may require a facility to hire additional staff on a full-time or consultant basis until the deficient practices

have been corrected. This provision may be invoked in concert with, or instead of, the sanctions cited below.

D. **Withholding of Vendor Payments.** DHH may withhold vendor payments in whole or in part in the following situations, which are not all inclusive.

1. **Delinquent Staffing Report.** When the ICF/MR provider fails to timely submit a required, completed staffing report. After DHH notifies the provider of the delinquent report, vendor payment may be withheld until the completed report is received.

2. **Unapproved Staffing Shortage.** When a staffing report indicates an unapproved staffing shortage, vendor payment may be withheld until staffing is brought into compliance.

3. **Incorrect/Inappropriate Charges.** When DHH determines that the ICF/MR provider has incorrectly or inappropriately charged clients, families, or responsible parties, or there has been misapplication of client funds, vendor payment may be withheld until the provider does the following:

- a. makes restitution; and
- b. submits documentation of such restitution to BHSE's Institutional Reimbursement Section.

4. **Delinquent Cost Report.** When an ICF/MR provider fails to submit a cost report within 90 days from the fiscal year end closing date, a penalty of 5 percent of the total monthly payment for the first month and a progressive penalty of 5 percent of the total monthly payment for each succeeding month may be levied and withheld from the vendor's payment for each month that the cost report is due, not extended, and not received. The penalty is nonrefundable.

Note: DHH's Institutional Reimbursement Section may grant a 30-day extension of the 90-day time limit, when requested by the ICF/MR provider, if just cause has been established. Extensions beyond 30 days may be approved for situations beyond the ICF/MR provider's control.

5. **Cost Reports Errors.** Cost reports errors greater than 10 percent in the aggregate for the ICF/MR provider for the cost report year may result in a maximum penalty of 10 percent of the current per diem rate for each month the cost report errors are not correct. The penalty is nonrefundable.

6. **Corrective Action for Audit Findings.** Vendor payments may be withheld when an ICF/MR facility fails to submit corrective action in response to financial and compliance audit findings within 15 days after receiving the notification letter until such time compliance is achieved.

7. **Failure to Respond or Adequately Respond to Requests for Financial/Statistical Information.** When an ICF/MR facility fails to respond or adequately respond to requests from DHH for financial and statistical information within 15 days after receiving the notification letter, vendor payments may be withheld until such time the requested information is received.

8. **Insufficient Medical Recertification.** When an ICF/MR provider fails to secure recertification of a client's need for care and services, the vendor's payment for that individual may be withheld or recouped until compliance is achieved.

9. **Inadequate Review/Revision of Plan of Care (IHP).** When an ICF/MR provider repeatedly fails to ensure that an

adequate plan of care for a client is reviewed and revised at least at required intervals, the vendor's payment may be withheld or recouped until compliance is achieved.

10. Failure to Submit Response to Survey Reports. When an ICF/MR provider fails to submit an acceptable response within 30 days after receiving a Survey Report from DHH, HCFA, OIG and the legislative auditor, vendor payments may be withheld until an adequate response is received, unless the appropriate agency extends the time limit.

11. Corrective Action on Complaints. When an ICF/MR fails to submit an adequate corrective action plan in response to a complaint within seven days after receiving the complaint report, vendor payments may be withheld until an adequate corrective action plan is received, unless the time limit is extended by the DHH.

12. Delinquent Utilization Data Requests. Facilities will be required to timely submit utilization data requested by the DHH. Providers will be given written notice when such utilization data has not been received by the due date. Such notice will advise the provider of the date the utilization data must be received by to avoid withholding of vendor payments. The due date will never be less than 10 days from the date the notice is mailed to the provider. If the utilization data is not received by the due date provided in the notice, the medical vendor's payment will be withheld until the utilization data is received.

13. Termination or Withdrawal from the Medicaid Program. When a provider is terminated or withdraws from the Medicaid Program, vendor payment will be withheld until all programmatic and financial issues are resolved.

E. Civil Fines. Louisiana R.S. 40:2199 authorized DHH to impose monetary sanctions on those health care facilities found to be out of compliance with any state or federal law or rule concerning the operation and services of the health care provider.

1. Any ICF/MR found to be in violation of any state or federal statute, regulation, or any Department of Health and Hospitals (DHH) rule adopted pursuant to the Act governing the administration and operation of the facility may be sanctioned as provided in the schedule of fines listed under Paragraph 2 below.

a. Repeat Violation. A *repeat violation* is defined as a violation of a similar nature as a previously cited violation that occurs within 18 months of the previously cited violation. DHH has the authority to determine when a violation is a *repeat violation*.

b. Opening or Operating a Facility Without a License. The opening or operation of a facility without a license or registration will be a misdemeanor, punishable upon conviction by a fine of not less than \$1,000 nor more than \$5,000.

i. Each day's violations will constitute a separate offense.

ii. On learning of such an operation, DHH will refer the facility to the appropriate authorities for prosecution.

c. Any ICF/MR found to have a violation that poses a threat to the health, safety, rights, or welfare of a resident or client may be liable for civil fines in addition to any criminal action that may be brought under other applicable laws.

2. Description of Violations and Applicable Civil Fines

a. Class A Violations. A Class A violation is a violation of a rule or regulation that creates a condition or occurrence relating to the maintenance or operation of a facility that results in death or serious harm to a resident or client.

i. Examples of Class A violations include, but are not limited to, the following:

(a). acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in the death of a resident or client; and

(b). acts or omissions by an employee or employees of a facility that either knowingly or negligently resulted in serious harm to a resident or client.

ii. Civil fines for Class A violations may not exceed:

(a). \$2,500 for the first violation; or

(b). \$5,000 per day for repeat violations.

b. Class B Violations. A Class B violation is a violation of rule or regulation in which a condition or occurrence relating to the maintenance or operation of a facility is created that results in the substantial probability that death or serious harm to the client or resident will result if the condition or occurrence remains uncorrected.

i. Examples of Class B violations include, but are not limited to, the following:

(a). medications or treatments improperly administered or withheld;

(b). lack of functioning equipment necessary to care for clients;

(c). failure to maintain emergency equipment in working order;

(d). failure to employ a sufficient number of adequately trained staff to care for clients; and

(e). failure to implement adequate infection control measures.

ii. Civil fines for Class B violations may not exceed:

(a). \$1,500 for the first violation; or

(b). \$3,000 per day for repeat violations.

c. Class C Violations. A Class C violation is a violation of a rule or regulation in which a condition or occurrence relating to the maintenance or operation of the facility is created that threatens the health, safety, or welfare of a client or resident.

i. Examples of Class C violations include, but are not limited to, the following:

(a). failure to perform treatments as ordered by the physician;

(b). improper storage of poisonous substances;

(c). failure to notify physician and family of changes in condition of the client or resident;

(d). failure to maintain equipment in working order;

(e). inadequate supply of needed equipment;

(f). lack of adequately trained staff necessary to meet clients' needs; and

(g). failure to adhere to professional standards in giving care to the client.

- ii. Civil fines for Class C violations may not exceed:
 - (a). \$1,000 for the first violation;
 - (b). \$2,000 per day for repeat violations.
 - d. Class D Violations. Class D violations are violations of rules or regulations related to administrative and reporting requirements that do not threaten the health, safety, rights, or welfare of a client or resident.
 - i. Examples of Class D violations include, but are not limited to, the following:
 - (a). failure to submit written reports of accidents;
 - (b). failure to timely submit a Plan of Correction;
 - (c). falsification of a record; and,
 - (d). failure to maintain clients financial records as required by rules or regulations.
 - ii. Civil fines for Class D violations may not exceed:
 - (a). \$100 for the first violation;
 - (b). \$250 per day for repeat violations.
 - e. Class E Violations
 - i. Class E violations occur when a facility fails to submit a statistical or financial report in a timely manner when such a report is required by rule or regulation.
 - ii. Civil fines for Class E violations may not exceed:
 - (a). \$50 for the first violation;
 - (b). \$100 per day for repeat violations.
 - f. Maximum Amount for a Civil Fine
 - i. The aggregate fines assessed for violations determined in any one month may not exceed \$10,000 for a Class A and Class B violations.
 - ii. The aggregate fines assessed Class C, Class D, and Class E violations determined in any one month may not exceed \$5,000.
 - g. DHH will have the authority to determine whether a violation is a repeat violation and sanction the provider accordingly. Violations may be considered repeat violations by DHH when the following conditions exist:
 - i. when DHH has established the existence of a violation as of a particular date and the violation is one that may be reasonably expected to continue until corrective action is taken, DHH may elect to treat said continuing violation as a repeat violation subject to appropriate fines for each day following the date on which the initial violation is established, until such time as there is evidence that the violation has been corrected; or
 - ii. when DHH has established the existence of a violation and another violation that is the same or substantially similar to the cited violation occurs within 18 months, the second and all similar subsequent violations occurring within the 18-month time period will be considered repeat violations and sanctioned accordingly.
3. Notice and Appeal Procedure
- a. When DHH imposes a sanction on a health care provider, it will give the provider written notice of the imposition. The notice will be given by certified mail and will include the following:
 - i. The nature of the violation(s) and whether the violation(s) is classified as a repeat violation;

- ii. The legal authority that established the violation(s);
 - iii. The civil fine assessed for each violation;
 - iv. Inform the administrator of the facility that the facility has 10 days from receipt of the notice within which to request an informal reconsideration of proposed sanction;
 - v. Inform the administrator of the facility that the facility has 30 days from receipt of the notice within which to request an administrative appeal of the proposed sanction and that the request for an informal reconsideration does not extend the time limit for requesting an administrative appeal; and
 - vi. Inform the administrator of the facility that the consequences of failing to request an informal reconsideration and/or an administrative appeal will be that DHH's decision is final and that no further administrative or judicial review may be had.
- b. The provider may request an Informal Reconsideration of DHH's decision to impose a civil fine. This request must be written and made to DHH within 10 days of receipt of the notice of the imposition of the fine.
 - i. This reconsideration will be conducted by designated employees of DHH who did not participate in the initial decision to recommend imposition of a sanction.
 - ii. Oral presentation can be requested by the provider representative, and if requested, will be made to the designated employees.
 - iii. Reconsideration will be made on the basis of documents and oral presentations made by the provider to the designated employees at the time of the reconsideration.
 - (a). Correction of the deficient practice for which the sanction was imposed will not be the basis of the reconsideration.
 - (b). The designated employees will only have the authority to confirm, reduce or rescind the civil fine.
 - iv. DHH will notify the provider of the results of the reconsideration within 10 working days after the oral presentation.
 - v. This process is not in lieu of the administrative appeal and does not extend the time limits for filing an administrative appeal.
 - c. The facility may request an administrative appeal. If an administrative appeal is requested in a timely manner, the appeal will be held as provided in the Administrative Procedure Act (R.S. 49:950 et seq.) An appeal bond will be posted with the Bureau of Appeals as provided in R.S. 40:2199(D) or the provider may choose to file a devolutive appeal. A devolutive appeal means that the civil fine must be paid in full within 10 days of filing the appeal.
 - d. The provider may request judicial review of the administrative appeal decision as provided in the Administrative Procedure Act.
4. Collection of Fines
- a. Fines are final when:
 - i. an appeal is not requested within the specified time limits;
 - ii. the facility admits the violations and agrees to pay the fine; or
 - iii. the administrative hearing affirms DHH's findings

of violations and time for seeking judicial review has expired.

b. When civil fines become final, they will be paid in full within 10 days of their commencement unless DHH allows a payment schedule in light of documented financial hardship. Arrangements with DHH for a payment schedule must commence within 10 days of the fines becoming final. Interest will begin to accrue at the current judicial rate on the day the fines become final.

c. If payment of assessed fines is not received within the prescribed time period after becoming final and the provider is a Medicaid provider, DHH will deduct the full amount plus the accrued interest from money otherwise due to the provider as Medicaid reimbursement in its next (quarterly or monthly) payment. If the provider is not a Medicaid provider, DHH will institute civil actions as necessary to collect fines due.

d. No provider may claim imposed fines or interest as reimbursable costs, nor increase charges to residents, clients, or patients as a result of such fines or interest.

e. Civil fines collected will be deposited in the Health Care Facility Fund maintained by the state treasury.

F. Termination of Certification (Decertification) of an ICF/MR

Note: Federal regulations pertaining to this Subsection are 42 CFR 442.12- 442.117.

An ICF/MR may voluntarily or involuntarily lose its participating status in the Medical Assistance Program.

1. Reasons for a Decertification of an ICF/MR

a. The ICF/MR may voluntarily withdraw from the program for reasons of its own. The owner and administrator will submit a written notice of withdrawal to the DHH's HSS at least 60 days in advance.

b. A new owner may decide against participation in the program. A written 60-day notice of withdrawal will be submitted to DHH's HSS.

c. DHH may decertify an ICF/MR for failure to comply with Title XIX standards, thus canceling the facility's provider agreement.

d. DHH may decertify an ICF/MR if deficiencies pose immediate jeopardy to the client's health, safety, rights, or welfare.

e. The ICF/MR may allow its provider agreement to expire. A written 60-day advance notice of withdrawal will be submitted to the DHH's HSS.

f. DHH may cancel the provider agreement if and when it is determined that the ICF/MR is in material breach of the contract.

2. Recertification of an Involuntarily Decertified ICF/MR. After involuntary decertification, an ICF/MR cannot participate as a Medical Assistance provider unless the following conditions are met:

a. the reasons for the decertification or nonrenewal of the contract no longer exist;

b. reasonable assurance exists that the factors causing the decertification will not recur;

c. the ICF/MR demonstrates compliance with the required standards for a 60-day period prior to reinstatement in a participating status; and

d. a professional medical review reports that clients are receiving proper care and services.

3. Denial of Payments for New Admissions

a. New Admissions. New admissions refer to the admission of a person who has never been a Title XIX client in the ICF/MR or, if previously admitted, had been discharged or had voluntarily left the ICF/MR. This term does not include the following:

i. individuals who were in the ICF/MR before the effective date of denial of payment for new admissions, even if they become eligible for Title XIX after that date.

ii. individuals who, after a temporary absence from the ICF/MR, are readmitted to beds reserved for them in accordance with the admission process.

b. Basis for Denial of Payment. DHH may deny payment for new admissions to an ICF/MR that no longer meets applicable requirements as specified in these standards.

i. ICF/MR's deficiencies do not pose immediate jeopardy (serious threat). If DHH finds that the ICF/MR's deficiencies do not pose immediate jeopardy to clients' health, safety, rights, or welfare, DHH may either terminate the ICF/MR's provider agreement or deny payment for new admissions.

ii. ICF/MR's deficiencies do pose immediate jeopardy (serious threat). If DHH finds that the ICF/MR's deficiencies do pose immediate jeopardy to clients' health, safety, rights, or welfare, and thereby terminates the ICF/MR's provider agreement, DHH may additionally seek to impose the denial of payment for new admissions.

c. DHH Procedures. Before denying payments for new admissions, DHH will be responsible for the following:

i. providing the ICF/MR a time frame of up to 60 days to correct the cited deficiencies and comply with the standards for ICF/MRs;

ii. giving the ICF/MR notice of the intent to deny payment for new admissions and an opportunity to request an Informal Reconsideration if the facility has not achieved compliance at the end of the 60-day period;

iii. providing an informal hearing if requested by the ICF/MR that included the following:

(a). giving the ICF/MR the opportunity to present before a State Medicaid official not involved in the initial determination, evidence or documentation, in writing or in person, to refute the decision that the ICF/MR is out of compliance with the applicable standards for participation; and

(b). submitting a written decision setting forth the factual and legal basis pertinent to a resolution of the dispute.

iv. providing the facility and the public at least 15 days advance notice of the effective date of the sanction and reasons for the denial of payments for new admissions should the informal hearing decision be adverse to the ICF/MR.

d. Duration of Denial of Payments and Subsequent Termination

i. Period of Denial. The denial of payments for new admissions will continue for 11 months after the month it was imposed unless, before the end of that period, DHH determines:

(a). the ICF/MR has corrected the deficiencies or is making a good faith effort to achieve compliance with the standards for ICF/MR participation; or

(b). the deficiencies are such that it is now necessary to terminate the ICF/MR's provider agreement.

ii. Subsequent Termination. DHH must terminate an ICF/MR's provider agreement under the following conditions:

(a). upon finding that the ICF/MR has been unable to achieve compliance with the standards for participation during the period that payments for new admissions had been denied;

(b). effective the day following the last day of the denial of payments;

(c). in accordance with the procedures for appeal of termination set forth in §10355, Appeals.

4. Examples of Situations Determined to Pose Immediate Jeopardy (Serious Threat). Listed below are some examples of situations determined to pose immediate jeopardy (serious threat) to the health, safety, rights, and welfare of clients in ICF/MR. These examples are not intended to be all inclusive. Other situations adversely affecting clients could constitute sufficient basis for the imposition of sanctions.

a. Poisonous Substances. An ICF/MR fails to provide proper storage of poisonous substances, and this failure results in death of or serious injury to a client or directly threatens the health, safety, or welfare of a client.

b. Falls. An ICF/MR fails to maintain required direct care staffing and/or a safe environment as set forth in the regulations, and this failure directly causes a client to fall resulting in death or serious injury or directly threatens the health, safety, or welfare of a client.

Examples: Equipment not properly maintained or personnel not responding to a client's request for assistance.

c. Assaults

i. By Other Clients. An ICF/MR fails to maintain required direct care staffing and fails to take measures when it is known that a client is combative and assaultive with other clients, and this failure causes an assault upon another client, resulting in death or serious injury or directly threatens the health, safety, and welfare of another client.

ii. By Staff. An ICF/MR fails to take corrective action (termination, legal action) against an employee who has a history of client abuse and assaults a client causing death or the situation directly threatens the health, safety, and welfare of a client.

d. Physical Restraints Results in Permanent Injury. ICF/MR personnel improperly apply physical restraints contrary to published regulations or fail to check and release restraints as directed by regulations or physician's written instructions, and such failure results in permanent injury to a client's extremity or death or directly threatens the health, safety and welfare of a client.

e. Control of Infections. An ICF/MR fails to follow or meet infection control standards as ordered in writing by the physician, and this failure results in infections leading to the death of or serious injury to a client or directly threatens the health, safety, and welfare of a client.

f. Medical Care

i. An ICF/MR fails to secure proper medical assistance for a client, and this failure results in the death of or serious injury to the client.

ii. A client's condition declined and no physician was informed, and this failure directly threatens the health, safety, or welfare of the client. This would also include the following:

(a). failure to follow up on unusual occurrences of negative findings;

(b). failure to obtain information regarding appropriate care before and after a client's hospitalization;

(c). failure to timely hospitalize a client during a serious illness.

iii. ICF/MR personnel have not followed written physician's orders, and this failure directly threatens the health, safety, or welfare of a client. This includes failure to fill prescriptions timely.

g. Natural Disaster/Fire. An ICF/MR fails to train its staff members in disaster/fire procedures as required by state rules and regulations for licensing of ICF/MRs or an ICF/MR fails to meet staffing requirements, and such failures result in the death of or serious injury to a client during natural disaster, fire or directly threatens the health, safety, or welfare of a client.

h. Decubitus Ulcers (Bed Sores). An ICF/MR fails to follow decubitus ulcer care measures in accordance with a physician's written orders, and such failure results in the death of, serious injury to, or discomfort of the client or directly threatens the health, safety, and welfare of a client.

i. Elopement. An ICF/MR fails to provide necessary supervision of its clients or take measures to prevent a client with a history of elopement problems from wandering away and such failure results in the death of or serious harm to the client or directly threatens the health, safety, and welfare of the client. Examples of preventive measures include, but are not limited to:

i. documentation that the elopement problem has been discussed with the client's family and the Interdisciplinary Team; and,

ii. that personnel have been trained to make additional efforts to monitor these clients.

j. Medications

i. An ICF/MR knowingly withholds a client's medications and such actions results in the death of or serious harm to the client or directly threatens the health, safety, and welfare of the client.

Note: The client does have the right to refuse medications. Such refusal must be documented in the client's record and brought to the attention of the physician and ID team.

ii. medication omitted without justification;

iii. excessive medication errors;

iv. improper storage of narcotics or other prescribed drugs, mishandling of drugs or other pharmaceutical problems.

k. Environment/Temperature. An ICF/MR fails to reasonably maintain its heating and air-conditioning system as required by regulations, and this failure results in the death of, serious harm to, or discomfort of a client or creates the

possibility of death or serious injury. Isolated incidents of breakdown or power failure will not be considered immediate jeopardy.

1. Improper Treatments

i. ICF/MR personnel knowingly perform treatment contrary to a physician's order, and such treatment results in the death of or serious injury to the client or directly threatens the health, safety, and welfare of the client.

ii. An ICF/MR fails to feed clients who are unable to feed themselves as set forth in physician's instructions.

Note: Meals should be served at the required temperature.

iii. An ICF/MR fails to obtain a physician's order for use of chemical or physical restraints; the improper application of a physical restraint; or failure of facility personnel to check and release the restraints periodically as specified in state regulations.

m. Life Safety. An ICF/MR knowingly fails to maintain the required Life Safety Code System such as the following:

i. properly functioning sprinklers, fire alarms, smoke sensors, fire doors, electrical wiring;

ii. practice of fire or emergency evacuation plans; or

iii. stairways, hallways and exits free from obstruction; and noncompliance with these requirements results in the death of or serious injury to a client or directly threatens the health, safety, and welfare of a client.

n. Staffing. An ICF/MR consistently fails to maintain minimum staffing that directly threatens the health, safety, or welfare of a client. Isolated incidents where the facility does not maintain staffing due to personnel calling in sick or other emergencies are excluded.

o. Dietary Services. An ICF/MR fails to follow the minimum dietary needs or special dietary needs as ordered by a physician, and failure to meet these dietary needs threatens the health, safety or welfare of a client. The special diets must be prepared in accordance with physician's orders or a diet manual approved by the American Dietary Association.

p. Sanitation. An ICF/MR fails to maintain state and federal sanitation regulations, and those violations directly affect and threaten the health, safety, or welfare of a client.

Examples: Strong odors linked to a lack of cleanliness; Dirty buildup on floors and walls; Dirty utensils, glasses and flatware; Insect or rodent infestation

q. Equipment and Supplies. An ICF/MR fails to provide equipment and supplies authorized in writing by a physician as necessary for a client's care, and this failure directly threatens the health, safety, welfare or comfort of a client.

r. Client Rights

i. An ICF/MR violates its clients' rights and such violations result in the clients' distress to such an extent that their psychosocial functions are impaired or such violations directly threaten their psychosocial functioning. This includes psychological abuse.

ii. The ICF/MR permits the use of corporal punishment.

iii. The ICF/MR allows the following responses to clients by staff members and employment supervisors:

(a). physical exercise or repeated physical motions;

(b). excessive denial of usual services;

(c). any type of physical hitting or other painful physical contacts except as required by medical, dental, or first aid procedures necessary to preserve the individual's life or health;

(d). requiring the individual to take on an extremely uncomfortable position;

(e). verbal abuse, ridicule, or humiliation;

(f). requiring the individual to remain silent for a long period of time;

(g). denial of shelter, warmth, clothing or bedding;

or

(h). assignment of harsh physical work.

iv. The ICF/MR fails to afford the client with the opportunity to attend religious services.

v. The ICF/MR denies the client the right to bring his or her personal belongings to the program, to have access, and to acquire belongings in accordance with the service plan.

vi. The ICF/MR denies a client a meal without a doctor's order.

vii. The ICF/MR does not afford the client with suitable supervised opportunities for interaction with members of the opposite sex, except where a qualified professional responsible for the formulation of a particular individual's treatment/habilitation plan writes an order to the contrary and explains the reasons.

Note: The secretary of DHH has the final authority to determine what constitutes "immediate jeopardy" or serious threat.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:

Interested persons may submit written comments to Thomas D. Collins, Office of the Secretary, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing will be held on this matter on Tuesday, May 26, 1998 at 9:30 a.m. in the auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Intermediate Care Facilities for the Mentally
Retarded Standards for Payment**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The only fiscal impact resulting from this proposed rule is the portion of the rule which increases the leave of absence days

from five to seven for hospitalization. State costs are approximately \$60,363 for SFY 1998-99, \$59,843 for SFY 1999-2000, and \$61,637 for SFY 2000-2001. Included is \$2,400 in SFY 1998 for the state's administrative expense of promulgating this proposed rule as well as the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Estimated federal revenue collections for implementing the portion of the rule that increases the leave of absence days for hospitalization are \$139,992 for SFY 1998-99, \$141,579 for SFY 1999-2000, and \$145,827 for SFY 2000-2001. Included in SFY 1998-99 is the federal share of \$2,400 for promulgating this proposed rule as well as the final.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Providers of ICF/MR services will experience increased reimbursements of approximately \$200,355 for SFY 1998-99, \$201,422 for SFY 1999-2000, and \$207,464 for SFY 2000-2001 for an increase in the number of leave of absence days from five to seven for hospitalization. The ICF/MR residents may remain in the hospital and continue to possess a bed within the facility. Included is \$4,800 in SFY 1998-99 for promulgating this proposed rule as well as the final rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9804#048

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Medicaid—Cochlear Device Implantation

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is proposing to adopt the following rule as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This proposed rule is in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The bureau seeks to establish coverage and clinical criteria for cochlear implantation for recipients with a profound bilateral sensorineural hearing loss under the Medicaid Program and is proposing the following rule for adoption. The following criteria have not previously been promulgated under the Administrative Procedure Act.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, proposes to establish the following coverage and criteria for cochlear implantation for recipients 2 years of age through 20 years of age with profound bilateral sensorineural hearing loss.

I. Recipient Criteria

A. General Criteria for Cochlear Device Implantation. The following criteria apply to all candidates. Recipient must:

1. have a profound bilateral sensorineural hearing loss which is a pure tone average of 1,000, 2,000, and 4,000 Hz of 90dB HL or greater;
2. be a profoundly deaf child, age 2 years or older or be a post linguistically deafened adult through the age of 20 years;
3. receive no significant benefit from hearing aids as validated by the cochlear implant team;
4. have high motivation to be part of the hearing community as validated by the cochlear implant team;
5. have appropriate expectation;
6. have had radiologic studies that demonstrate no intracranial anomalies or malformations which would contraindicate implantation of the receiver-stimulator or the electrode array;
7. have no medical contraindications for undergoing implant surgery or post-implant rehabilitation; and
8. show that he and his family are well-motivated, possess appropriate post-implant expectations and are prepared and willing to participate in and cooperate with pre and post implant assessment and rehabilitation programs as recommended by the implant team and in conjunction with Federal Drug Administration (FDA) guidelines.

B. Specific Criteria

1. Children 2 Years through 9 Years. In addition to documentation that candidates meet general criteria the requestor shall provide documentation:

a. that profound-to-total bilateral sensorineural hearing loss which is a pure tone average of 1,000, 2,000, and 4,000 Hz of 90dB HL or greater;

b. that appropriate tests were administered and no significant benefit from a hearing aid was obtained in the best aided condition as measured by age-appropriate speech perception materials; and

c. that no responses were obtained to Auditory Brainstem Response or Otoacoustic Emission testing.

2. Children 10 Years through 17 Years. In additional to documentation that candidates meet general criteria, the requestor shall provide documentation:

a. that profound-to-total bilateral sensorineural hearing loss which is a pure tone average of 1,000, 2,000, and 4,000 Hz of 90dB HL or greater;

b. that appropriate tests were administered and no significant benefit from a hearing aid was obtained in the best aided condition as measured by age and language-appropriate speech perception materials;

c. that no responses were obtained to Auditory Brainstem Evoked Response or Otacoustic Emission Test;

d. the candidate has received consistent exposure to effective auditory or phonological stimulation in conjunction with oral method of education and auditory training;

e. that candidate utilizes spoken language as his primary mode of communication through one of the following:
an oral/aural (re)habilitational program or a total communications educational program with significant oral/aural; and

f. that the individual has at least six months' experience with a hearing aid or vibrotactile device except in

the case of meningitis (in which case the six-month period will be reduced to three months).

3. Adults 18 Years through 20 Years. In addition to documentation that candidates meet general criteria, the requestor shall provide documentation:

a. that the candidate for implant is post linguistically deafened with severe to profound bilateral sensorineural hearing loss which is a pure tone average of 1,000, 2,000, and 4,000 Hz of 90dB HL or greater;

b. that no significant benefit from a hearing aid was obtained in the best aided condition for speech/sentence recognition material;

c. that no responses were obtained to Auditory Brainstem Response or Otoacoustic Emission testing;

d. that the candidate has received consistent exposure to effective auditory or phonological stimulation or auditory communication;

e. that the candidate utilizes spoken language as his primary mode of communication through one of the following:

an oral/aural (re)habilitation program or a total communications educational program with significant oral/aural training; and

f. that the candidate has had at least six months' experience with hearing aids or vibrotactile device except in the case of meningitis (in which case the six-month period will be reduced to three months).

4. Multi-Handicapped Children. Criteria appropriate for the child's age group are applied.

II. Minimal Requirements for Cochlear Implant Team

The implant team shall be composed of the following members at a minimum:

- A. physician/otologist;
- B. audiologist;
- C. speech/language pathologist;
- D. psychiatrist; and
- E. educator of the deaf with experience in oral/auditory instruction.

III. Prior Authorization

All implantations (CPT code 69930) must be prior authorized. The request to perform surgery shall come from the cochlear implant team (made up of professionals as described in II.A-E) who assessed the recipient's hearing sensitivity and determined him/her to be a potential candidate for implantation. The team's recommendation and the results of all preoperative testing (audiogram, tympanogram, acoustic reflexes, auditory brainstem response, otoacoustic emission, speech and language evaluation, social/psychological evaluation, medical evaluation, and any other pertinent testing or evaluation etc.) shall be submitted simultaneously to the Prior Authorization Unit for review.

Only one device per lifetime, per eligible recipient shall be reimbursed unless the device fails, in which case reimbursement for a second device will be considered. Reimbursement for a second surgery will also be considered if the first surgery fails or if the device is damaged beyond repair.

Ongoing speech, language and hearing therapy services for cochlear implant recipients must be prior authorized like all other rehabilitation services.

IV. Covered Expenses

The following expenses related to the maintenance of the cochlear device will be covered if prior authorized:

A. all costs for upgrades and repairs to the component parts of the device; and

B. all costs for cords and batteries.

V. Noncovered Expenses

The following expenses related to the maintenance of the cochlear device are the responsibility of either the recipient or his family or care giver(s):

A. all costs for service contracts and/or extended warranties;

B. all costs for insurance to protect against loss and theft.

Interested persons may submit written comments to Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this rule.

A public hearing will be held on this matter on Tuesday, May 26, 1998 at 9:30 a.m. in the auditorium of the Department of Transportation and Development, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested parties will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all comments is 4:30 p.m. on the day following the public hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Medicaid—Cochlear Device Implantation

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that implementation of this proposed rule will result in increased expenditures of approximately \$23,172 for SFY 1998-99; \$23,662 for SFY 1999-2000 and \$24,429 for SFY 2000-2001. Included in SFY 98-99 is \$200 for the state's share of printing this rule as well as the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
It is anticipated that federal revenue collections for implantation of cochlear devices will be \$54,733 for SFY 1998-99; \$56,168 for SFY 1999-2000 and \$57,796 for SFY 2000-2001. Included in SFY 98-99 is \$200 for the federal share of printing this rule as well as the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
As a result of established clinical criteria for cochlear implant devices, enrolled Medicaid providers performing cochlear device implantations will experience combined state and federal

reimbursements of approximately \$77,905 for SFY 1998-99; \$79,830 for SFY 1999-2000 and \$82,225 for SFY 2000-2001. Included in SFY 98-99 is \$400 for printing this proposed rule as well as the final rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no known effect on competition and employment.

Thomas D. Collins
Director
9804#047

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Qualified Individuals Medicare Part B Buy-In

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing proposes to adopt the following rule in the Medical Assistance Program as authorized by R.S. 46:153 and pursuant to Title XIX of the Social Security Act. This rule is in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Section 4732 of the Balanced Budget Act of 1997 requires the Medicaid Program to establish a mechanism for payment of Medicare Part B premiums for two new mandatory eligibility groups of low-income Medicare beneficiaries, called Qualifying Individuals (QIs). This provision amends section 1902(a)(10)(E) of the Social Security Act concerning Medicare cost-sharing for Qualified Medicare Beneficiaries (QMBs) and Specified Low-income Medicare Beneficiaries (SLMBs). It also amends section 1905(b) of the Act concerning the Federal Medical Assistance Percentage (FMAP) by incorporating reference to and establishing a new section 1933 for Qualifying Individuals (QIs). Qualified Medicare Beneficiaries (QMBs) are individuals entitled to Medicare Part A, whose income does not exceed 100 percent of the federal poverty level, and whose resources do not exceed twice the Supplemental Security Income (SSI) limit. Specified Low-income Medicare beneficiaries (SLMBs) are individuals entitled to Part A of Medicare, whose income is above 100 percent, but not exceeding 120 percent of the federal poverty level, and whose resources do not exceed twice the SSI limit. Medicaid eligibility for these groups is limited to payment of Medicare Part B premiums.

QIs are individuals who would be a QMB but for the fact that their income exceeds the income levels established for QMBs and SLMBs. This means that QIs must be entitled to Medicare hospital insurance under Part A and have resources that do not exceed twice the maximum amount established for Supplemental Security Income (SSI) eligibility. Unlike QMBs and SLMBs, who may be determined eligible for Medicaid benefits in addition to their QMB/SLMB benefit, QIs cannot be otherwise eligible for medical assistance under the state plan.

Individuals in the first group of QIs (QI-1s) are eligible if

their incomes are above 120 percent of the federal poverty line, but less than 135 percent. The Medicaid benefit for QI-1s consists of payment of the full Medicare Part B premium.

Individuals in the second group of QIs (QI-2s) are eligible if their incomes are at least 135 percent of the federal poverty line, but less than 175 percent. The Medicaid benefit for this group consists only of the portion of the Medicare Part B premium that is attributable to the shift of cost for some home health benefits from Part A to Part B, which increased the Part B premium. Payment for the Medicare premiums described are provided by 100 percent federal funds, which are provided as a capped annual grant. The number of QIs certified is limited by availability of these funds.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the provisions of Section 4732 of the Balanced Budget Act of 1997 governing the payment of Medicare Part B premiums for Qualifying Individuals. These provisions are effective for premiums payable beginning January 1, 1998 and ending with December 31, 2002. A capped allocation is available for each of the five years beginning January 1998, for payment of premiums for the following two mandatory groups:

1) Qualified Individuals-1 (QI-1s): individuals who are entitled to Part A of Medicare, with income above 120 percent, but less than 135 percent of the federal poverty level. In addition their resources cannot exceed twice the SSI limit and they cannot otherwise be eligible for Medicaid. Eligibility for Medicaid benefits is limited to full payment of Medicare Part B premiums. The amount of the capped allocation limits the number of eligible individuals.

2) Qualified Individuals-2 (QI-2s): individuals who are entitled to Part A of Medicare, with income at least 135 percent, but less than 175 percent of the federal poverty level. In addition, their resources cannot exceed twice the SSI limit and they cannot otherwise be eligible for Medicaid. Eligibility for Medicaid benefits is limited to partial payment of Medicare Part B premiums. The amount of the capped allocation limits the number of eligible individuals.

Once an individual is selected to receive assistance in a calendar month, he is entitled to receive assistance for the remainder of the calendar year, as long as the individual continues to meet QI criteria. However, the fact that an individual receives assistance at any time during the year does not necessarily entitle the individual to continued assistance for any succeeding year. For calendar years after 1998, the state shall give preference to individuals who were QIs, QMBs, SLMBs, or Qualified Disabled and Working Individuals (QDWIs) in the last month of the previous year and who continue to be or become QIs. Selection of QIs shall be on a first-come, first-serve basis (in the order in which they apply).

Interested persons may submit written comments to the following address: Thomas D. Collins, Bureau of Health Services Financing, Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed rule.

A public hearing on this proposed rule is scheduled for

Tuesday, May 26, 1998 at 9:30 a.m. in the Department of Transportation and Development Auditorium, First Floor, 1201 Capitol Access Road, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

David W. Hood
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**
RULE TITLE: Qualified Individuals Medicare Part B Buy-In

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The fiscal impact for this proposed rule cannot be determined, as the number of the two new mandatory eligibility groups of low income Medicare Beneficiaries, termed Qualifying Individuals, must be individually evaluated at application. However, \$133 will be incurred in SFY 1998-99 for the state's share of promulgating this proposed rule and the final rule.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Federal revenue collections are approximately \$3,439,000 for FFY 98-99; \$3,542,170 for FFY 99-2000; and \$3,648,435 for FFY 2000-01 for reimbursement for the Medicare premiums for Qualifying Individuals as a result of an annual capped grant. Printing costs in the amount of \$133 will be incurred for the federal share of printing this rule and the final rule.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
Individuals who failed to meet previous Qualified Medicare Beneficiary criteria because their income and resources did not exceed the percentage of the federal poverty level may qualify under the new percentage federal poverty level to receive assistance in Medicare Part "A" and Part "B" payments as Qualifying Individuals. However, the number of qualified individuals certified is limited by availability of funds that will be administered on a first come first serve basis.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no known effect on competition and employment.

Thomas D. Collins
Director
9804#050

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Health and Hospitals
Office of the Secretary
Medical Disclosure Panel**

Informed Consent—Oral Surgery; Gastric Lap Band for Obesity; Gastric Bypass with or without Liver Biopsy for Obesity; Thoracentesis; Cancer Chemotherapy
(LAC 48:I.Chapter 23)

As authorized by R.S. 40:1299.40(E), as enacted by Act

1093 of 1990 and later amended by Act 962 of 1992 and Act 633 of 1993, the Department of Health and Hospitals, Office of the Secretary, in consultation with the Medical Disclosure Panel, is proposing to amend rules which require which risks must be disclosed under the Doctrine of Informed Consent to patients undergoing medical treatments or procedures and the consent form to be signed by the patient and physician before undergoing any such treatment or procedure.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Chapter 23. Informed Consent

§2317. Oral Surgery

A.1. - 10. ...

11. Possible injury to TMJ (Temporomandibular Joint Dysfunction or joy joint).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 18:1391 (December 1992), repromulgated LR 19:1581 (December 1993), amended LR 23:75 (January 1997), LR 24:

§2451. Gastric Lap Band for Obesity

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for the particular procedure.

A. Risks of Surgery

1. Damage to surrounding organs:

- a. bowel, pancreas, liver, requiring more surgery;
- b. blood vessels and/or spleen with bleeding requiring transfusion;
- c. with removal of spleen.

B. Risks of Recovery Period

1. Abdominal wound problems:

- a. infection, failure to heal, severe scarring, hernia.

2. Blood clots in the legs and/or pulmonary embolism (clots moving to lungs).

3. Pneumonia or other breathing problems requiring prolonged need for ventilator (breathing machine).

C. Need for additional surgery due to:

1. gallstones with possible inflammation of the liver and/or pancreas;
2. stomach or intestinal blockage from trapped food or scarring;
3. abdominal infection with abscess;
4. bleeding.

D. Other long term risks:

1. extreme weight loss;
2. failure to lose weight;
3. large folds of loose skin;
4. depression as a result of weight loss, required diet change, or complications of surgery;
5. failure of the procedure;
6. vitamin and/or mineral deficiency, possibly requiring lifelong injections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 24:

§2453. Gastric Bypass with or without Liver Biopsy for Obesity

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for the particular procedure.

A. Risks of Surgery

- 1. Damage to surrounding organs:
 - a. bowel, pancreas, liver, requiring more surgery;
 - b. blood vessels and/or spleen with bleeding requiring transfusion;
 - c. with removal of spleen.

B. Risks of Recovery Period

- 1. Abdominal wound problems:
 - a. infection, failure to heal, severe scarring, hernia.
- 2. Blood clots in the legs and/or pulmonary embolism (clots moving to lungs).
- 3. Pneumonia or other breathing problems requiring prolonged need for ventilator (breathing machine).

C. Need for additional surgery due to:

- 1. gallstones with possible inflammation of the liver and/or pancreas;
- 2. stomach or intestinal blockage from trapped food or scarring;
- 3. abdominal infection with abscess;
- 4. bleeding.

D. Other long term risks:

- 1. extreme weight loss;
- 2. failure to lose weight;
- 3. large folds of loose skin;
- 4. depression as a result of weight loss, required diet change, or complications of surgery;
- 5. failure of the procedure;
- 6. excessive flatulence (passing bowel gas);
- 7. severe, persistent diarrhea;
- 8. vitamin and/or mineral deficiency, possibly requiring lifelong injections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 24:

§2455. Thoracentesis (insertion of needle or tube for drainage of chest cavity fluid)

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for the particular procedure.

- A. Bleeding.
- B. Pneumothorax (lung collapse).
- C. Infection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 24:

§2457. Cancer Chemotherapy (treatment of cancer using anti-cancer medications)

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for the particular procedure.

- A. Hair loss.
- B. Damage to blood forming organ (bone marrow) which may result in bleeding, infection, anemia, and possible need for transfusion.
- C. Damage to brain, heart, kidneys, liver, lungs, nervous system, and skin.
- D. Serious allergic reaction including shock.
- E. Sterility.
- F. Nausea and/or vomiting.
- G. Constipation or diarrhea.
- H. Sores on lips and/or ulcers in the lips, mouth, throat, stomach, rectum.
- I. Loss of lining of intestinal tract from mouth to anus.
- J. Secondary cancer (cancers in the future caused by chemotherapy).
- K. Local damage at injection site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Medical Disclosure Panel, LR 24:

§2459. Intravenous Conscious Sedation

Note: Itemization of the procedures and risks under a particular specialty does not preclude other qualified practitioners from using those risks identified for the particular procedure.

The risks for Intravenous Conscious Sedation will be covered by 4, (c), as stated in the main consent form [death, brain damage, disfiguring scars, quadriplegia (paralysis for neck down), paraplegia (paralysis from waist down), the loss or loss of function of any organ or limb, infection, bleeding, and pain].

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1299.40(E) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Louisiana Medical Disclosure Panel, LR 24:

Interested persons may submit written comments to Donald J. Palmisano, M.D., J.D., Chairman of the Medical Disclosure Panel, Box 1349, Baton Rouge, LA 70821-1349. He is responsible for responding to inquiries regarding these proposed rules.

A public hearing on the proposed rules will be held at 2 p.m., May 27, 1998, Department of Health and Hospitals, Third Floor Library, 1201 Capitol Access Road, Baton Rouge, LA 70802. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing.

David W. Hood
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Informed Consent—Oral Surgery, Gastric Lap Band for Obesity; Gastric Bypass with or without Liver Biopsy for Obesity; Thoracentesis; Cancer Chemotherapy

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The implementation costs will be \$120 for publishing.

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rules will have no effect on revenue collection of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no costs and/or economic benefits to directly affected persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no effect projected on competition and employment from implementation of these rules.

David W. Hood
Secretary
9804#058

Richard W. England
Assistant to the
Legislative Fiscal Officer

- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections of state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no additional costs or economic benefits directly affecting persons or nongovernmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated impact on competition and employment.

E. Peggy Landry
Vice Chairman
9804#059

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Board of Parole

Board Administration: Meetings, Decisions and Code of Ethics; Parole: Eligibility, Types, Conditions, Violations, Time Served and Suspension/Termination
(LAC 22:XI.Chapters 1-19)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to implement R.S. 15:574.2 et seq., R.S. 15:535 et seq., and R.S. 15:540 et seq., the Department of Public Safety and Corrections, Board of Parole hereby gives notice of its intent to adopt, amend, and repeal rules and regulations for the effective running of the Board of Parole.

The text of this proposed rule may be viewed in its entirety in the emergency rule section of this issue of the *Louisiana Register*.

Interested persons may submit oral or written comments to Fred Clark, Chairman, Board of Parole, Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (504) 342-6622. Comments will be accepted through the close of business at 4:30 p.m. on May 20, 1998.

Fred Clark
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Board Administration: Meetings, Decisions and Code of Ethics; Parole: Eligibility, Types, Conditions, Violations, Time Served and Suspension/Termination

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
No fiscal impact is anticipated.

NOTICE OF INTENT

Department of Public Safety and Corrections Corrections Services

Sex Offender Treatment Plan
and Program (LAC 22:I.337)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and in order to implement R.S. 15:538(C), the Department of Public Safety and Corrections, Corrections Services hereby gives notice of its intent to adopt regulations for sex offender treatment plans and programs.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter A. General

§337. Sex Offender Treatment Plan and Program

A. Policy—to institute the secretary's policy and procedures for providing a sex offender treatment plan and program as set forth pursuant to the laws of this state.

B. Applicability—assistant secretary/Office of Adult Services, director of probation and parole, Board of Parole, all wardens of adult institutions, and local facility administrators.

C. Sex Offender Treatment Plan Pursuant to R.S. 15:538(C)

1. No sexual offender, whose offense involved a minor child who is 12 years old or younger or who is convicted two or more times of a violation of the following shall be eligible for probation, parole or suspension of sentence, or diminution of sentence if imposed as a condition by the sentencing court pursuant to R.S. 15:537, unless, as a condition thereof, the offender undergoes a treatment plan based upon a mental health evaluation:

- a. R.S. 14:42 aggravated rape;
- b. R.S. 14:42.1 forcible rape;
- c. R.S. 14:43 simple rape;

- d. R.S. 14:43.1 sexual battery;
- e. R.S. 14:43.2 aggravated sexual battery;
- f. R.S. 14:43.3 oral sexual battery;
- g. R.S. 14:43.4 aggravated oral sexual battery;
- h. R.S. 14:78 incest;
- i. R.S. 14:78.1 aggravated incest; or
- j. R.S. 14:89.1 aggravated crime against nature.

2. Mental health evaluation means an examination by a qualified mental health professional with experience in treating sex offenders. Each institution and the Division of Probation and Parole shall make arrangements with qualified mental health professionals for the purpose of conducting evaluations and to develop and implement treatment plans. At the time of sentencing of a sex offender convicted of a crime enumerated in §337.C.1.a - j, the Division of Probation and Parole shall request that the sentencing court order that the sex offender submit to chemical therapy, if it is recommended by a mental health evaluation as part of the offender's treatment plan, pursuant to R.S. 15:538(C) and if the court so desires.

3. The treatment plan shall be based upon a mental health evaluation and shall effectively deter recidivist sexual offenses by the offender, thereby reducing the risk of reincarceration of the offender and increasing the safety of the public, and under which the offender may reenter society.

4. The treatment plan may include:

a. the utilization of medroxyprogesterone acetate treatment or its chemical equivalent as a preferred method of treatment;

b. a component of defined behavioral intervention if the evaluating qualified mental health professional determines that such is appropriate for the offender.

5. The provisions of R.S. 15:538(C) shall only apply if parole, probation or suspension of sentence, or conditioned diminution of sentence is permitted by law and the offender is otherwise eligible.

6. If on probation or parole or subject to a sentence that has been suspended, the offender shall begin medroxyprogesterone acetate, or chemical equivalent treatment as ordered by the court [which will generally be done at the time of sentencing, subject to the provisions of any future treatment plans developed in accordance with R.S. 15:537 or 15:538(C)].

7. If medroxyprogesterone acetate or chemical equivalent treatment is part of an incarcerated inmate's treatment plan, the inmate shall begin such treatment at least six weeks prior to release on parole, if ordered by the court in accordance with §337.C.6, or prior to release on diminution of sentence [if participation is made a condition of release on diminution of sentence by the sentencing judge in accordance with R.S. 15:537 or 15:538(C)].

8. Once a treatment plan is initiated based upon a mental health evaluation, it shall continue unless it is determined by a physician or qualified mental health professional that it is no longer necessary.

9. If an offender voluntarily undergoes a permanent, surgical alternative to hormonal chemical treatment for sex offenders, he shall not be subject to these provisions.

10. Before beginning medroxyprogesterone acetate or chemical equivalent therapy, the offender shall be informed

about the uses and side effects of medroxyprogesterone therapy, and shall acknowledge in writing that he has received this information (see §337.F).

11. The offender shall be responsible for the costs of the evaluation, the treatment plan, and the treatment.

a. If the offender is not indigent, these services will be rendered by an outside mental health provider based upon a fee schedule established by the Department of Public Safety and Corrections. If the offender is on probation or under parole supervision, services will be rendered at the provider's place of business. If the offender is housed in an institution, services will be rendered by the provider at the state or local facility.

b. Indigent offenders who are on probation or under parole supervision will be responsible for seeking services through the Department of Health and Hospitals, Office of Mental Health. If the offender is housed in a state institution, services will be provided by Department of Public Safety and Corrections' mental health staff. A set-up fee will be charged to the inmate based upon the fee scale for non-indigent inmates and the inmate's account shall reflect the cost of the service as a debt owed. Indigent offenders housed in local facilities requiring these services should be transferred, if possible, to ARDC/WRDC. In unusual circumstances when this is not possible, services for these offenders shall be coordinated by the facility administrator with the Department of Health and Hospitals, Office of Mental Health (with assistance, as needed, of the Office of Adult Services or the Basic Jail Guidelines Regional Team Leader.)

12. Chemical treatment shall be administered through a licensed medical practitioner. Any physician or qualified mental health professional who acts in good faith in compliance with this regulation in the administration of treatment shall be immune from civil or criminal liability for his actions in connection with the treatment. The inmate may decline to participate in the evaluation or treatment plan by signing the Consent for Medroxyprogesterone Acetate Treatment indicating that he acknowledges his decision renders him ineligible for probation, parole, suspension of sentence or diminution of sentence if conditioned by the court. However, the inmate may still fall under the provisions of R.S. 15:828 or C.Cr.P.Art. 895(J).

13. Failure to continue or complete treatment shall be grounds for revocation of probation, parole, or suspension of sentence, or, if so conditioned by the Parole Board, revocation of release on diminution of sentence as if on parole. Good time earned may be forfeited pursuant to R.S. 15:571.4. Should an inmate in an institutional setting fail to continue or complete his sex offender treatment plan, an Incident Report shall be initiated and good time forfeited, if appropriate, pursuant to the provisions of the *Disciplinary Rules and Procedures for Adult Inmates*.

14. During the preclass verification process, it will be the responsibility of staff at ARDC/WRDC to identify those inmates whose sentence places them under the provisions of R.S. 15:538(C). It is preferable that state inmates in this category be transferred from local facilities to ARDC/WRDC. Staff at ARDC/WRDC shall be responsible for assuring the transport of these inmates to the department's custody.

However, if this is not done, then the Office of Adult Services or the Basic Jail Guidelines Regional Team Leader shall assist the local facility with any questions or concerns regarding the provisions of R.S. 15:538(C). If an inmate assigned to an institution should receive a new sentence for an identified sex offense, it will be the responsibility of the warden to determine if they are subject to the conditions of R.S. 15:538(C).

15. The director of the Division of Probation and Parole and all wardens shall establish procedures to implement the policy provisions of this regulation to ensure strict adherence to the procedures outlined herein.

D. Sex Offender Treatment Program Pursuant to R.S. 15:828

1. Sex offenders for the purpose of this statute are defined as persons committed to the custody of the Department of Public Safety and Corrections, for any of the following crimes:

- a. R.S. 14:41 rape;
- b. R.S. 14:42 aggravated rape;
- c. R.S. 14: 42.1 forcible rape;
- d. R.S. 14:43 simple rape;
- e. R.S. 14:43.1 sexual battery;
- f. R.S. 14:43.2 aggravated sexual battery;
- g. R.S. 14:43.3 oral sexual battery;
- h. R.S. 14:43.4 aggravated oral sexual battery;
- i. R.S. 14:43.5 intentional exposure of aids virus;
- j. R.S. 14:76 bigamy;
- k. R.S. 14:77 abetting in bigamy;
- l. R.S. 14:78 incest;
- m. R.S. 14:78.1 aggravated incest;
- n. R.S. 14:80 carnal knowledge of a juvenile;
- o. R.S. 14:81 indecent behavior with juveniles;
- p. R.S. 14:81.1 pornography involving juveniles;
- q. R.S. 14:81.2 molestation of a juvenile;
- r. R.S. 14:89 crime against nature; or
- s. R.S. 14:89.1 aggravated crime against nature.

2. Subject to the availability of resources and appropriate individual classification criteria, sex offenders as enumerated in §337.D.1.a - s. and who are housed in a state correctional facility should be provided counseling and therapy by institutional mental health staff in a sex offender treatment program until successfully completed or until expiration of sentence, release on parole in accordance with and when permitted by R.S. 15:574.4, or other release in accordance with law, whichever comes first.

3. A sex offender treatment program means one which includes either or both group and individual therapy and may include arousal reconditioning. Group therapy should be conducted by two therapists, one male and one female. Subject to availability of staff, at least one of the therapists should be licensed as a psychologist, board-certified as a psychiatrist, or a clinical social worker. A therapist may also be an associate to a psychologist under the supervision of a licensed psychologist.

4. Reports, assessments, and clinical information, as available, including any testing and recommendations by mental health professionals, shall be made available to the Board of Parole.

5. If the inmate falls under the provisions of R.S. 15:538(C), then he should be treated in accordance with that statute and not R.S. 15:828.

E. Sex Offender Treatment Program Pursuant to C.Cr.P. Art. 895(J). In addition to other requirements of law, in cases where a defendant has been convicted of an offense involving criminal sexual activity, the court shall order as a condition of probation that the defendant successfully complete a sex offender treatment program. As part of the sex offender treatment program, the offender shall participate with a victim impact panel or program providing a forum for victims of criminal sexual activity and sex offenders to share experiences on the impact of the criminal sexual activity in their lives. The Director of Probation and Parole shall establish procedures to implement victim impact panels. All costs for the sex offender treatment program, pursuant to this Subsection shall be paid by the offender.

F. Consent for Medroxyprogesterone Acetate Treatment Form

Consent for Medroxyprogesterone Acetate Treatment

By my signature below, I hereby confirm that I have been informed of the uses and side effects involved with medroxyprogesterone acetate treatment or its chemical equivalent, hereinafter referred to as "the Treatment."

My initials before each section of this consent form indicate that each section has been read and discussed with me by the physician or his designee on this date.

_____ I understand that this medication is an accepted treatment for sex offender behavior, but the Treatment is not a "cure."

_____ I understand that the Treatment will be given in addition to counseling and I agree to participate in counseling during the course of the Treatment.

_____ I shall be responsible for the costs of the evaluation, the treatment plan, and the Treatment. If I am not indigent these services will be rendered by an outside mental health provider based upon a fee schedule established by the Department of Public Safety and Corrections. If I am on probation or under parole supervision, services will be rendered at the provider's place of business. If I am housed in an institution, services will be rendered by the provider at the state or local facility. If I am indigent and on probation or under parole supervision, I will be responsible for seeking services through the Department of Health and Hospitals, Office of Mental Health. If I am housed in a state institution, services will be provided by the Department of Public Safety and Corrections' mental health staff and I will be charged a set-up fee based upon the fee scale for non-indigent inmates and my account will reflect the cost of the service as a debt owed.

_____ I agree to cooperate with any psychological and medical evaluations, including but not limited to a complete physical examination and any laboratory, radiological, or neurological testing deemed necessary by the physician, with appropriate counseling by the physician or his designee prior to initiation of the Treatment to assess the possible effectiveness of the Treatment.

_____ I understand that the following are possible or potential side effects associated with the Treatment:

Minor Side Effects

- Acne, dizziness, hair growth, headache, nausea, or vomiting. These side effects should disappear as your body adjusts to the medication.
- This medication can increase your sensitivity to sunlight. Avoid prolonged exposure to sunlight and sunlamps. Wear protective clothing and use an effective sunscreen.
- This medication may cause tenderness, swelling or bleeding of the gums. Brushing and flossing your teeth regularly may prevent this. Also, you should see your dentist regularly while you are taking this medication.
- If you feel dizzy or light-headed, sit or lie down for a while; get up slowly from a sitting or reclining position, and be careful of stairs.

Major Side Effects

- Tell your doctor about any side effects that are persistent or particularly bothersome. IT IS ESPECIALLY IMPORTANT TO TELL YOUR DOCTOR if you experience breast tenderness; chest pain; depression; fainting; hair loss; itching; pain in the calves; rapid weight gain (three to five pounds within a week); rash; slurred speech; sudden, severe headache; swelling of the feet or ankles; or yellowing of the eyes or skin.

_____ I understand that the Treatment should not interact with other medications if it is used according to the physician's directions and monitoring.

_____ Promptly consulting your doctor is the best path to a quick and successful resolution of any medical problem or question you may have about the Treatment. I understand the following "Warnings" and agree to participate in my care by informing my physician of any problem, including but not limited to the following:

- Unusual or allergic reactions I have had to any medications, especially to medroxyprogesterone acetate (the Treatment), progesterin, or progesterone.
- Any history of cancer of the breast or genitals, clotting disorders, diabetes mellitus, depression, epilepsy, gallbladder disease, asthma, heart disease, kidney disease, liver disease, migraines, porphyria, or stroke.
- Dizziness or drowsiness (do not take part in any activities that require alertness, such as driving a car or operating potentially dangerous machinery).

_____ I understand that any physician or qualified mental health professional who acts in good faith in compliance with the provisions of La. R.S. 15:538(C), in the administration of the Treatment or the provision of counseling shall be immune from civil or criminal liability for his actions in connection with the Treatment or counseling as a means of altering sexual offender behavior.

_____ I understand that in some individuals the Treatment may not be effective at all for the problem of sexual offender behavior.

_____ If a relapse or recurrence of sexual offender behavior occurs while receiving the Treatment or after discontinuation of the Treatment, I agree to in-patient treatment if deemed appropriate by a physician, whether or not incarcerated at the time of recurrence of the sexual offender behavior.

_____ I agree to a full psychological and medical evaluation with laboratory examination(s), radiological or neurological evaluation(s) as determined by the attending physician with appropriate counseling by the physician or his designee prior to release from custody or if I choose to discontinue the Treatment at any time.

_____ I understand that once the Treatment is initiated, it shall continue unless it is determined by the physician or mental health professional that it is no longer necessary. I also understand that discontinuation of the Treatment at any time in the future would stop the therapeutic effect of the Treatment until it is resumed.

_____ I understand that failure to continue or complete the Treatment shall be grounds for revocation of probation, parole, or suspension of sentence, or, if so conditioned by the Parole Board, revocation of release on diminution of sentence as if on parole. I also understand that if I am housed in an institution and fail to continue or complete the Treatment, good time earned may be forfeited pursuant to La. R.S. 15:571.4.

I, _____, on this date _____, have been informed of the uses and side effects involved with taking medroxyprogesterone acetate as a treatment for sex offenders. I agree to take the Treatment of my own free will and with full understanding of the possible risks versus potential benefit.

I, _____, on this date _____, have been informed of the uses and side effects involved with taking medroxyprogesterone acetate and refuse to participate in the Treatment. I understand that failure to participate will render me ineligible for probation, parole, suspension of sentence or diminution of sentence if conditioned by the court.

I, _____, on this date _____, give Dr. _____ permission to treat me with medroxyprogesterone acetate and agree to testing and counseling as stated above.

As the physician of record or his designee (medical or mental health), I attest to my counseling this patient of the use and side effects of medroxyprogesterone acetate or its chemical equivalent as treatment for sex offenders. _____
(Signature and date).

_____ Patient Signature	_____ Date	_____ Physician Signature	_____ Date
_____ Witness (of Patient signature)	_____ Date	_____ Witness (of MD signature)	_____ Date
_____ Witness (of Patient signature)	_____ Date	_____ Witness (of MD signature)	_____ Date

The consent form must be completed in its entirety with all three pages constituting a total consent form in Louisiana before the administration of medroxyprogesterone acetate treatment or its chemical equivalent for sexual offender behavior regardless of the sexual offender's current, prior, or future status of incarceration.

- White copy consent Chart
- Yellow copy consent Court
- Blue copy consent Physician

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:538(C).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 24:

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (504) 342-6741. Comments will be accepted through the close of business at 4:30 p.m. on May 20, 1998.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Sex Offender Treatment Plan and Program**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The total implementation cost is indeterminable. However, the cost per offender treated includes a one-time evaluation at approximately \$80 - \$150 and an annual cost of approximately \$840 per offender.
- 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)
The total costs and/or economic benefits are indeterminable.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no anticipated impact on competition or employment.

Bernard E. "Trey" Boudreaux, III Undersecretary 9804#056	H. Gordon Monk Staff Director Legislative Fiscal Office
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NOTICE OF INTENT

Department of Public Safety and Corrections Gaming Control Board

Riverboat Gaming—Internal Controls;
Tips or Gratuities (LAC 42:XIII.2721)

The Gaming Control Board hereby gives notice that it intends to amend LAC 42:XIII.2721 in accordance with R.S. 27:1 et seq. and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part XIII. Riverboat Gaming

Chapter 27. Accounting Regulations

§2721. Internal Controls; Tips or Gratuities

A. - B. ...

C. All tips and gratuities given to gaming employees other than slot machine gaming employees shall be:

1. - 3. ...

4. the licensee may elect to handle tips generated in its poker room separately from the pro rata distribution pool. Tips or gratuities may be assigned to the dealer generating the tip or gratuity, and the following procedures shall be used.

a. Each dealer shall have a locked transparent box marked with the dealer's name or otherwise coded for identification. Keys to these boxes shall be maintained by the cage department. When not in use, these boxes shall be stored in a locked storage cabinet or other approved lockable storage medium in the poker room itself. Keys to the storage cabinet shall be maintained by someone other than a dealer, hereinafter referred to as the keyholder.

b. When a poker dealer arrives at his assigned poker table, the dealer and the keyholder shall obtain the dealer's marked transparent locked box from the locked storage cabinet. The box shall be placed at the poker table in the same manner as any other dealer token box. If the dealer leaves the poker table for any reason, the dealer's marked box shall be removed from the table by the dealer and the keyholder and returned to the storage cabinet.

c. At the end of the dealer's shift, the dealer along with an independent verifier (an employee independent of the table games and cage departments), shall take that dealer's marked transparent locked box to the cage for counting. The cage employee shall unlock, empty, and relock the box. The cage employee shall count the contents of the box in the presence of the dealer and the independent verifier. The amount shall be recorded on a three-part voucher, and signed by the cage employee, the dealer, and the independent verifier. The three parts of the voucher shall be distributed as follows:

i. one part shall be given to the dealer;

ii. one part shall be maintained by the cage; and

iii. one part shall be forwarded to the payroll department.

d. Tips or gratuities counted above shall be deposited into the licensee's payroll account. Distribution to the dealer for the tips or gratuities earned by the dealer at poker tables

shall be made in accordance with the licensee's payroll accounting practices and shall be subject to all applicable state and federal withholding taxes and regulations. No distributions shall be made to the dealer in any other manner.

e. A poker room dealer may tip any cashier working as the poker room cashier during the poker room dealer's shift. Any such tip shall be handled when the poker room dealer's tips are counted as defined above. A section of the dealer's tip voucher shall be marked to allow the dealer to indicate which cashier the dealer wishes to tip and the amount of the tip. The tip shall be deducted from the dealer's total tips at the time of the count. Tips given to a cashier in this manner shall be distributed to the cashier in accordance with the licensee's payroll accounting practices and shall be subject to all applicable state and federal withholding taxes and regulations. No tips from a poker room dealer shall be made to a cashier in any other manner.

f. The licensee shall maintain a minimum level of supervision, as approved by the Division, over the poker room tables. Surveillance shall be required to continuously monitor and record open poker tables.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Riverboat Gaming Enforcement Division, LR 21:705 (July 1995), amended by the Gaming Control Board, LR 24:

All interested persons may contact Tom Warner, Assistant Attorney General, Attorney General's Gaming Division, at (504) 342-2465, and may submit written comments relative to these proposed rules through May 12, 1998 to 339 Florida Boulevard, Suite 500, Baton Rouge, LA 70801.

Hillary J. Crain
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Riverboat Gaming—Internal Controls; Tips or Gratuities

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no implementation costs to state or local government units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There is no effect on revenue collections of state or local government units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
No significant costs and/or economic benefits to directly affected persons or non-governmental group are estimated.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
No effect on competition or employment are estimated.

Hillary J. Crain
Chairman
9804#006

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Public Safety and Corrections Public Safety Services Office of Motor Vehicles

Driver's License—Reciprocity Agreements
with Foreign Countries (LAC 55:III.171-181)

The Department of Public Safety and Corrections, Public Safety Services, Office of Motor Vehicles, hereby gives notice of intent to adopt rules pertaining to the implementation of the law authorizing the department to enter into reciprocity agreements with foreign countries which would allow citizens of the foreign countries to apply for and obtain Louisiana driver's licenses without having to take the written test or the skills test.

The fiscal and economic impact statement for administrative rules has been approved by the Legislative Fiscal Office and follows this notice of intent.

Title 55

PUBLIC SAFETY AND CORRECTIONS

Part III. Motor Vehicles

Chapter 1. Driver's License

Subchapter B. Reciprocity Agreements with Foreign Countries

§171. General

A. The department may enter into reciprocity agreements with a foreign country which would allow citizens of that foreign country to apply for and be issued a Louisiana driver's license without having to take the written test and the skills test. Similarly, citizens of Louisiana would be able to apply for and be issued a driver's license in the same foreign country without having to take a written test or a skills test, or in the alternative, the foreign country may allow the Louisiana resident to drive in the foreign country with the Louisiana driver's license.

B. The deputy secretary of Public Safety Services may sign the reciprocity agreement on behalf of the department. A duly authorized representative of the foreign government may sign the agreement on behalf of the foreign government.

C. Prior to entering into such a reciprocity agreement, both parties shall undertake a review process of the other party's licensing requirements to determine that the licensing requirements are compatible. The nature, scope and extent of the review shall be at the sole discretion of the party conducting the review. The parties may enter into the reciprocity agreement only if both parties determine the licensing requirements of both parties are compatible.

D. The reciprocity agreement shall specify the rights and obligations of both parties. To the extent the laws of Louisiana regarding public contracts are applicable to the reciprocity agreement, the reciprocity agreement shall be subject to those laws.

E. The reciprocity agreement shall provide that any action against the state or the department, or both, arising out of the reciprocity agreement, shall be brought in the 19th Judicial District Court for the Parish of East Baton Rouge.

F. The reciprocity agreement shall provide that all persons who are issued a Louisiana driver's license pursuant to the agreement shall be subject to all criminal, civil, and administrative laws governing the operation of a motor vehicle including, but not limited to, laws regulating traffic on public highways, roads and streets, the Implied Consent Law, the compulsory automobile liability insurance law, and the vehicle registration and titling laws. The reciprocity agreement shall also provide that persons issued driver's licenses pursuant to the agreement shall be subject to sanctions for violating state laws and rules promulgated pursuant to state law in the same manner as resident of the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:404(F).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:

§173. Application for a Driver's License Pursuant to a Reciprocity Agreement; Graduated Driver's License; Reports of Driver Condition or Behavior

A. Only in those cases in which a foreign country has entered into a reciprocity agreement with the department, may a citizen of that foreign country apply for a Louisiana driver's license pursuant to a reciprocity agreement. The application shall be on a form approved by the department for an application for a driver's license. The person shall meet all the requirements contained in state law regarding eligibility for a driver's license, except that the person applying pursuant to the reciprocity agreement does not have to take the written or the road skills test.

B. Regardless of the nature of the license from the foreign country, a person under the age of 17 must comply with the graduated license requirements in order to obtain a driver's license.

C. Nothing in these rules shall be construed as prohibiting the department from requiring a person licensed pursuant to a reciprocity agreement from submitting to a special examination in the event the department receives a report of driver condition or behavior. If the department receives such a report, the department may require the person to submit to any examination that would be required of a Louisiana resident including a medical examination, a written test or a road skills test. The department may suspend or revoke any such driver's license if the person does not successfully complete the special examination.

D. The person applying for a Louisiana driver's license pursuant to a reciprocity agreement shall present a valid driver's license from his country. The person shall be required to keep the license from his country valid during the entire time he possesses a Louisiana license. If at any time, the person has his foreign country driver's license suspended, canceled, or revoked, he shall immediately surrender his Louisiana driver's license and cease operating a motor vehicle in Louisiana.

E. The person applying for a Louisiana driver's license pursuant to a reciprocity agreement shall sign a statement in which the person agrees to be bound by the terms of the reciprocity agreement and the rules contained in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:404(F).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:

§175. Revocations, Suspensions; Compact State

A. A person who has a revoked or suspended Louisiana driver's license, or who has been denied a Louisiana driver's license because of failure to meet a statutory qualification, shall neither apply for, nor be issued, a driver's license pursuant to a reciprocity agreement.

B. A person who has a driver's license suspended or revoked by a state which is a member of the driver's license compact, shall neither apply for, nor be issued, a driver's license pursuant to a reciprocity agreement.

C. In those case described in either §175.A or B in which the driver's license has been suspended or revoked, the person must clear all suspensions or revocations before being eligible to apply for a driver's license pursuant to a reciprocity agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:404(F).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:

§177. Effective Dates of Reciprocity Agreements; Policy and Procedure Statements

A. All reciprocity agreements shall provide for an effective date and a termination date. The reciprocity agreement may provide for automatic renewals at the end of the specified term, but the agreement shall state that either party may choose not to renew the reciprocity agreement upon 60 days' written notice to the other party. All licenses issued pursuant to a canceled reciprocity agreement shall be revoked 30 days after a public announcement of the cancellation of the reciprocity agreement, or upon the expiration of the 60 days after the issuance of the written notice of cancellation, whichever is longer.

B. In the event of an imminent threat to the public health, safety, and welfare, either party may suspend a reciprocity agreement upon written notice to the other party. If a reciprocity agreement is suspended, no new driver's licenses and no renewals of driver's licenses shall be issued pursuant to the reciprocity during the period of suspension. The party suspending the reciprocity agreement shall specify the duration of the suspension, or specify that the suspension is indefinite.

C. Any new reciprocity agreement, or any amendment to a reciprocity agreement shall not take effect until sufficient time has been given for the department to implement any necessary changes to its policies and procedures.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:404(F).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:

§179. Commercial Driver's Licenses; Class of License

A. A commercial driver's license, Class "A," "B," or "C," shall not be issued pursuant to any reciprocity agreement.

B. Except as provided in §179.A, the class of license issued by the department pursuant to a reciprocity agreement

shall be of the same class or of a similar class of license issued by the foreign country.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:404(F).

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:

§181. Declaratory Orders

A. Any person desiring a ruling on the applicability of any statute, or the applicability or validity of any rule, to the regulation of the reciprocity agreements with foreign countries for the issuance of driver's licenses shall submit a written petition to the assistant secretary. The written petition shall cite all constitutional provisions, statutes, ordinances, cases, and rules which are relevant to the issue presented or which the person wishes the assistant secretary to consider prior to rendering an order or ruling in connection with the petition. The petition shall be typed, printed or written legibly, and signed by the person seeking the ruling or order. The petition shall also contain the person's full printed name, the complete physical and mailing address of the person, and a daytime telephone number.

B. The assistant secretary may request the submission of legal memoranda to be considered in rendering any order or ruling. The assistant secretary or his designee shall base the order or ruling on the documents submitted including the petition and legal memoranda. If the assistant secretary or his designee determines that the submission of evidence is necessary for a ruling, the matter may be referred to a hearing officer prior to the rendering of the order or ruling for the taking of such evidence.

C. Notice of the order or ruling shall be sent to person submitting the petition as well as the persons receiving notice of the petition at the mailing addresses provided in connection with the petition.

D. The assistant secretary may decline to render an order or ruling if the person submitting the petition has failed to comply with any requirement in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:404(F) and R.S. 49:962.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Motor Vehicles, LR 24:

Persons having comments or inquiries may contact Stephen A. Quid, attorney for the Office of Motor Vehicles by writing to Box 66614, Baton Rouge, LA 70896, by calling (504) 925-4068, or by sending a FAX to (504) 925-3974. These comments and inquiries should be received by May 22, 1998.

A public hearing on these rules is currently scheduled for Tuesday, May 26, 1998, at 9:00 a.m. in the Middle Management Conference Room at the Office of Motor Vehicle Headquarters at 109 South Foster Drive, Baton Rouge, LA 70806. Any person wishing to attend the public hearing should call to confirm the time and the location of the hearing.

Thomas Normile
Undersecretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Driver's License—Reciprocity Agreements
with Foreign Countries**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There should be no costs or savings to state government in connection with the adoption and implementation of the rules adopted pursuant to R.S. 32:404(F) regarding reciprocity agreements with foreign countries for the issuance of driver's licenses.
These rules will not affect local governments as only the state issues driver's licenses.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There should be no change in the fees collected by the state in connection with driver's licenses issued pursuant to a reciprocity agreement. The current statutory fees will still be collected at the time of the issuance of the driver's license.
These rules will not affect local governments as only the state issues driver's licenses.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There will be no additional cost to individuals from foreign countries who desire to obtain a Louisiana driver's license while temporarily residing in Louisiana. These individuals will still have to pay the mandated statutory fees for a driver's license. The individuals will benefit from the fact that they will not have to take the written test or the skills test in connection with their application for a Louisiana driver's license.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should be no effect on competition or employment.

Thomas Normile
Undersecretary
9804#003

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Alcohol and Tobacco Control**

**Expiration Dates on Permits
(LAC 55:VII.321)**

In accordance with the provisions of R.S. 49:950 et seq., and the authority of R.S. 26:794, notice is hereby given that the Department of Revenue and Taxation, Office of Alcohol and Tobacco Control intends to amend LAC 55:VII.321, which governs the expiration dates of retail alcohol permits.

The purpose of the amendment is to stagger the expiration dates of new retail permits and readjust the expiration dates of existing retail permits at the time of their renewal. This new system allows for the year-round equal distribution of expiring permits based upon the location of the licensed establishment.

**Title 55
PUBLIC SAFETY
Part VII. Alcohol and Tobacco Control
Subpart 1. Beer and Liquor**

**Chapter 3. Liquor Credit Regulations
§321. Staggering of Expiration Dates**

A. In accordance with the authority of R.S. 26:794(B), the expiration dates of retail permits issued by the Office of Alcohol and Tobacco Control shall be staggered in accordance with the provisions of this Section.

1. - 8. Repealed.

B. Purpose. The purpose of this staggering process is to provide for the even distribution of expiration dates of new and existing permits based upon the parish in which the licensed establishment is located. This will allow the Office of Alcohol and Tobacco Control to concentrate its limited resource to the particular region of the state in which all retail permits are scheduled to expire. The expiration date of retail permits will be easy to determine and thereby assist both state and local enforcement agents, retail and wholesaler dealers in the enforcement of the licensing requirements contained in Title 26. This in turn will reduce the ever-increasing number of delinquent renewal applications filed with this office and eliminate the purchase and resale of alcoholic beverages by unlicensed establishments.

C. New Business Application and Related Fees

1. Beginning February 18, 1998, the expiration date of all retail permits issued pursuant to new-business applications shall have an expiration date to be determined by the Office of Alcohol and Tobacco Control in accordance with Subsection G of this Section.

2. The fee for all such new business permits shall be as set forth in Sections 71 and 271 of Title 26.

D. Renewal of Existing Permits and Related Fees

1. The renewal of an existing permit during this staggering process shall be for a period of not less than seven months nor more than 18 months, which period shall be determined by the Office of Alcohol and Tobacco Control in accordance with Subsection G of this Section.

2. The fee for such a permit shall be determined by a proration of the annual fee as established by Title 26 over the appropriate number of months.

E. Renewal Deadline: Penalties

1. Applications for the renewal of permits issued pursuant to this regulation shall be due in the Office of Alcohol and Tobacco Control not later than 30 days prior to the date of expiration on current permit.

2. The monetary penalties established in Sections 88 and 285 of Title 26 for those permittees who fail to timely file their renewal application shall remain in effect. The permittee shall be charged the delinquency penalty over and above the prorated fee.

F. Gross Sales. The payment of an additional permit fee by retailers based on the amount of their gross liquor sales as provided in Section 71 of Title 26 shall continue and shall be

assessed on the gross sales made during the preceding calendar year. In renewal permits issued pursuant to this regulation, the additional fee shall be prorated over the appropriate number of months.

G. Expiration Date of Retail Permit. All retail permits issued after February 18, 1998, by the Office of Alcohol and Tobacco Control shall expire in accordance with the following schedule:

Parish Code	Parish Name	Expire Month
1	Acadia	October
2	Allen	March
3	Ascension	January
4	Assumption	November
5	Avoyelles	July
6	Beauregard	March
7	Bienville	September
8	Bossier	September
9	Caddo	September
10	Calcasieu	March
11	Caldwell	December
12	Cameron	March
13	Catahoula	December
14	Claiborne	September
15	Concordia	December
16	DeSoto	September
17	East Baton Rouge	January
18	East Carroll	December
19	East Feliciana	August
20	Evangeline	July
21	Franklin	December
22	Grant	December
23	Iberia	October
24	Iberville	July
25	Jackson	December
26	Jefferson	February
27	Jefferson Davis	March
28	Lafayette	October
29	Lafourche	November
30	LaSalle	December
31	Lincoln	September
32	Livingston	August
33	Madison	December

34	Morehouse	December
35	Natchitoches	December
36	Orleans	May
37	Ouachita	December
38	Plaquemines	April
39	Point Coupee	July
40	Rapides	July
41	Red River	September
42	Richland	December
43	Sabine	September
44	St. Bernard	April
45	St. Charles	April
46	St. Helena	August
47	St. James	April
48	St. John	April
49	St. Landry	July
50	St. Martin	October
51	St. Mary	November
52	St. Tammany	August
53	Tangipahoa	August
54	Tensas	December
55	Terrebonne	November
56	Union	December
57	Vermillion	March
58	Vernon	March
59	Washington	August
60	Webster	September
61	West Baton Rouge	July
62	West Carroll	December
63	West Feliciana	August
64	Winn	December

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:794.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of Alcoholic Beverage Control, LR 12:247 (April 1986), amended by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

Interested persons may submit data, views, or arguments, in writing to Murphy J. Painter, Commissioner of the Office of Alcohol and Tobacco Control, Department of Revenue, Box 66404, Baton Rouge, LA 70896 or by FAX (504)925-3975. All

comments must be submitted by 4:30 p.m., Tuesday, May 26, 1998.

A public hearing will be held on Wednesday, May 27, 1998, at 1 p.m. in the 7th floor conference room, 1885 Wooddale Boulevard, Baton Rouge, LA.

Murphy Painter
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Expiration Dates on Permits**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Implementation of this proposed amendment should have no impact on state costs. Staggering the permit renewals by parish location should provide a more efficient use of existing resources and manpower.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
This proposed amendment should have minimal impact on retail alcoholic beverage permit revenues. Renewals are presently staggered based on the first letter of the applicant's name. The initial permits and renewals that are changed to the expiration according to parish location will be prorated based on appropriate number of months before the next renewal month.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
This proposed amendment will impact retail alcoholic beverage permit holders. The amount of their permit fee will not be affected, but the due date may be changed.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This proposed amendment should have no impact on competition or employment.

Murphy J. Painter
Commissioner
9804#037

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Office of Alcohol and Tobacco Control**

Tobacco Permits (LAC 55:VII.3101-3113)

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and R.S. 26:922, the Department of Revenue, Office of Alcohol and Tobacco Control proposes to adopt LAC 55:VII.3101-3113 to regulate the sale of tobacco products.

In order to comply with the Prevention of Youth Access to Tobacco Law, Act 1370 of the 1997 Regular Session of the Louisiana Legislature, comprised of R.S. 26:901-922, was enacted to provide for the Office of Alcohol and Tobacco Control (previously the Office of Alcoholic Beverage Control) to issue licenses to dealers who sell tobacco products at

wholesale, retail, or through vending machines, effective October 1, 1997. The Act, which also provides for definitions, fees, and fines, directed the Office of Alcohol and Tobacco Control to promulgate rules and regulations to implement the Act by July 1, 1998.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 2. Tobacco

Chapter 31. Tobacco Permits

§3101. Definitions

For the purposes of this Chapter, the following terms are defined.

Dealer—every person who manufactures or purchases cigars, cigarettes, or other tobacco products for distribution or resale in this state. The term also means any person who imports cigars, cigarettes, or other tobacco products from any state or foreign country for distribution, sale, or consumption in this state.

Manufacturer—anyone engaged in the manufacture, production, or foreign importation of tobacco products who sells to wholesalers.

Retail Dealer—every dealer, other than a wholesale dealer or manufacturer, who sells or offers for sale cigars, cigarettes, or other tobacco products, irrespective of quantity or the number of sales.

Vending Machine—any mechanical, electric, or electronic self-service device that, upon insertion of money, tokens, or any other form of payment, automatically dispenses tobacco products.

Vending Machine Operator—any person who controls the use of one or more vending machines as to the supply of cigarettes or any tobacco products in the machine or the receipts from cigarettes vended through such machines.

Wholesale Dealer—dealers whose principal business is that of a wholesaler, who sells cigars, cigarettes, or other tobacco products to retail dealers for purpose of resale, who is a bona fide wholesaler, and 50 percent of whose total tobacco sales are to retail stores other than their own or their subsidiaries within Louisiana. Wholesale dealer shall include any person in the state who acquires cigarettes solely for the purpose of resale in vending machines, provided such person services 50 or more cigarette vending machines in Louisiana other than his own, and those Louisiana dealers who were affixing cigarette and tobacco stamps as of January 1, 1974.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:901.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

§3103. Identifying Information for Licenses

A. Certificate and Permits

1. A Retail Dealer Registration Certificate shall be issued to any dealer, not otherwise required by Title 26 to obtain a permit, other than a wholesale dealer or vending machine operator for each retail outlet where cigars, cigarettes, or other tobacco products are offered for sale either over the counter or by vending machine.

2. A Retail Dealer Permit shall be issued to a dealer other than a wholesale dealer or vending machine operator for each retail outlet where cigars, cigarettes, or other tobacco

products are offered for sale either over the counter or by vending machine.

3. A Vending Machine Operator Permit shall be issued to a vending machine operator operating one or more vending machines. Licensed wholesale dealers who operate vending machines shall not be required to obtain a vending machine operator permit.

4. A Vending Machine Permit shall be issued to the vending machine operator or wholesale dealer for each vending machine he operates and such permit shall be affixed to the upper front surface of the vending machine.

5. A Wholesale Dealer Permit shall be issued to a wholesale dealer for each wholesale place of business operated by the wholesale dealer.

B. The following identifying information shall be listed on the face of all retail dealer registration certificates, retail dealer permits, vending machine operator permits, and wholesale dealer permits:

1. the name of the license holder;
2. the name and address of the establishment for which the license is obtained;
3. the license number;
4. the dates of issuance and expiration;
5. the amount paid for the license.

C. The following identifying information shall be listed on the face of all vending machine permits:

1. the name of the license holder;
2. the vending machine operator permit number;
3. the vending machine permit number;
4. the address for the location of the vending machine;
5. the date of expiration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:902.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

§3105. Additional Information for Licenses: Partnership, Corporation, Limited Liability Company (LLC)

A. In addition to all other information required of an applicant by Title 26, any partnership, corporation, or limited liability company applying for a tobacco license shall provide the written agreement (partnership) or certificate (corporation and LLC) to the Office of Alcohol and Tobacco Control.

B. This requirement is waived for any applicant who also has a liquor license with the Office of Alcohol and Tobacco Control, provided the applicant includes the liquor license number on the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:906(D).

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

§3107. Expiration of Licenses

A. The expiration of Retail Dealer Registration Certificates and Retail Dealer Permits shall be staggered to expire in accordance with the following schedule:

Parish Code	Parish Name	Month Permit Expires
01	Acadia	October
02	Allen	March
03	Ascension	January

04	Assumption	November
05	Alveolus	July
06	Beauregard	March
07	Bienville	September
08	Bossier	September
09	Caddo	September
10	Calcasieu	March
11	Caldwell	December
12	Cameron	March
13	Catahoula	December
14	Claiborne	September
15	Concordia	December
16	DeSoto	September
17	East Baton Rouge	January
18	East Carroll	December
19	East Feliciana	August
20	Evangeline	July
21	Franklin	December
22	Grant	December
23	Iberia	October
24	Iberville	July
25	Jackson	December
26	Jefferson	February
27	Jefferson Davis	March
28	Lafayette	October
29	Lafourche	November
30	LaSalle	December
31	Lincoln	September
32	Livingston	August
33	Madison	December
34	Morehouse	December
35	Natchitoches	December
36	Orleans	May
37	Ouachita	December
38	Plaquemines	April
39	Point Coupee	July
40	Rapides	July
41	Red River	September
42	Richland	December
43	Sabine	September
44	St. Bernard	April
45	St. Charles	April
46	St. Helena	August

47	St. James	April
48	St. John	April
49	St. Landry	July
50	St. Martin	October
51	St. Mary	November
52	St. Tammany	August
53	Tangipahoa	August
54	Tensas	December
55	Terrebonne	November
56	Union	December
57	Vermillion	March
58	Vernon	March
59	Washington	August
60	Webster	September
61	West Baton Rouge	July
62	West Carroll	December
63	West Feliciana	August
64	Winn	December

B. All Vending Machine Operator Permits shall expire each year on June 30.

C. All Vending Machine Permits shall expire each year on June 30.

D. All Wholesale Dealer Permits shall expire each year on December 31.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:904.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

§3109. Initial Application and Related Fees

A. Retail Dealer Registration Certificate

1. The initial \$25 annual fee for a Retail Dealer Registration Certificate shall be prorated over the appropriate number of months.

2. The annual renewal fee will be \$25 as established in Title 26 of the Revised Statutes.

B. The fee for a Retail Dealer Permit shall be \$75 per year or any portion thereof, as established in Title 26 of the Revised Statutes.

C. The fee for a Vending Machine Operator Permit shall be \$75 per year or any portion thereof, as established in Title 26 of the Revised Statutes.

D. The fee for a Vending Machine Permit shall be \$5 per machine per year or any portion thereof, as established in Title 26 of the Revised Statutes.

E. The fee for a Wholesale Dealer Permit shall be \$75 per year or any portion thereof, as established in Title 26 of the Revised Statutes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:903 and R.S. 26:904.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

§3111. Renewal Deadline: Penalties

A. For a renewal application to be timely filed, the application and the appropriate fee must be received by the Office of Alcohol and Tobacco Control on or before the license expiration date.

B. Failure to timely file the renewal application will subject the license holder to the delinquency penalties authorized by R.S. 26:905.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:905.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

§3113. Special Event Permits and Related Fees

A. The Office of Alcohol and Tobacco Control may issue a special event permit for a duration of three consecutive days, with no more than 12 such permits issued to any one person within a single calendar year.

B. The fee for a special event permit shall be \$25.

AUTHORITY NOTE: Promulgated in accordance with R.S. 26:923.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Office of Alcohol and Tobacco Control, LR 24:

Interested persons may submit data, views, or arguments, in writing to Murphy J. Painter, Commissioner of the Office of Alcohol and Tobacco Control, Department of Revenue, Box 66404, Baton Rouge, LA 70896 or by FAX to (504) 925-3975. All comments must be submitted by 4:30 p.m., Friday, May 22, 1998.

A public hearing will be held on Tuesday, May 26, 1998, at 1 p.m. in the Seventh Floor Conference Room, 1885 Wooddale Boulevard, Baton Rouge, LA.

Murphy J. Painter
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Tobacco Permits**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Act 1370 of the 1997 Regular Session of the Louisiana Legislature was enacted to comply with the Prevention of Youth Access to Tobacco Law. The Act, comprised of R.S. 26:901-922, provides for the Office of Alcohol and Tobacco Control (formerly the Office of Alcoholic Beverage Control) to issue licenses to dealers who sell tobacco products at wholesale, retail, or through vending machines.

Implementation of the provisions of Act 1370 will require the Office of Alcohol and Tobacco Control to print, process, and issue registration certificates and permits; provide training for servers and sellers; conduct inspections; assess and collect fines and penalties; suspend and revoke registrations and permits; and conduct administrative hearings. Additional personnel, equipment, supplies, and office space will be required as follows:

C \$480,000 to fund 20 new positions, which will include an administrative manager, one compliance section field supervisor and nine field inspectors, one certification section office manager and seven accounting clerks, and one paralegal assistant.

C \$175,000 to purchase computers, printers, office equipment and furniture, and state vehicles.

C \$100,000 to fund general operating and travel expenses, computer programming and design, and office space rental.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Act 1370 requires that dealers who sell tobacco products at wholesale, retail, or through vending machines obtain an annual tobacco certificate or permit. R.S. 26:906(C) provides that the license permit fees shall be retained by the Office of Alcohol and Tobacco Control to help defray the costs of administering the program. It is estimated that the office's self-generated fees will increase by \$746,250 annually. This estimate is based on the following:

Permit Type	Number	Permit Fee	Revenues
Retail Dealer Registration Certificate	27,000	\$25	\$675,000
Vending Machine Operator	30	\$75	\$2,250
Vending Machines	12,000	\$5	\$60,000
Wholesalers	120	\$75	\$9,000
Total Revenues			<u>\$746,250</u>

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Dealers who sell tobacco products at wholesale, retail, or through vending machines will be required to pay an annual registration or permit fee as follows:

Retail Dealer Registration Certificate	\$25
Retail Dealer Permit	\$75
Vending Machine Operator	\$75
Vending Machine (each machine)	\$5
Wholesale Dealer	\$75

In addition to the certificate and permit fee costs, tobacco dealers will incur the cost of the additional paperwork required to complete and file the registration/permit application with the Office of Alcohol and Tobacco Control.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendment should have no impact on competition or employment.

Murphy J. Painter
Commissioner
9804#036

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Social Services
Office of Family Support**

Family Independence Temporary Assistance Program (FITAP)—Drug Testing Program (LAC 67:III.1301, 1302, 1303)

The Department of Social Services, Office of Family

Support proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 2, the Family Independence Temporary Assistance Program (FITAP).

Pursuant to Act 1459 of the 1997 Regular Session of the Legislature, the Department of Social Services in consultation with the Department of Health and Hospitals will establish mandatory drug screening, testing, education and rehabilitation for adult FITAP recipients. This rule proposes to effect the requirements of this eligibility condition to assure that adult recipients are free from the use of or dependency on illegal drugs.

The agency anticipates that all current adult recipients will have been screened within 6 to 12 months of the date of implementation. Although agency policy is routinely effective the first day of the month following publication of the final rule, this action will be effective upon publication.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 2. Family Independence Temporary Assistance Program (FITAP)

Chapter 13. Special Conditions of Eligibility

Subchapter A. Drug Screening, Testing, Education and Rehabilitation Program

§1301. Compliance

All adult recipients of FITAP must be free from the use of or dependency on illegal drugs. All applicants for and recipients of FITAP benefits, age 18 and over, must satisfactorily comply with the requirements of the drug screening, testing, education and rehabilitation process. An illegal drug is a controlled substance as defined in R.S. 40:961 et seq.—*Controlled Dangerous Substance*.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:460.4.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§1302. Screening and Referral Process

A. All adult applicants for and recipients of FITAP will be screened for the use of or dependency on illegal drugs at initial application and redetermination of eligibility using a standardized drug abuse screening test approved by the Department of Health and Hospitals, Office of Alcohol and Drug Abuse (OADA).

1. When the screening process indicates that there is a reason to suspect that a recipient is using or dependent on illegal drugs, or when there is other evidence that a recipient is using or dependent on illegal drugs, the caseworker will refer the recipient to OADA to undergo a formal substance abuse assessment which may include urine testing. The referral will include a copy of the screening form, a copy of the release of information form, and a photograph of the individual for identification purposes.

2. Additionally, if at any time the Office of Family Support (OFS) has reasonable cause to suspect that a recipient is using or dependent on illegal drugs based on direct observation or if OFS judges to have reliable information of use or dependency on illegal drugs received from a reliable source, the caseworker will refer the recipient to OADA to undergo a formal substance abuse assessment which may include urine testing. All such referrals will require prior

approval by the supervisor of the caseworker.

B. The Office of Alcohol and Drug Abuse will advise OFS of the results of the formal assessment. If the formal assessment determines that the recipient is not using or dependent on illegal drugs, no further action will be taken unless subsequent screening or other evidence indicates a reasonable suspicion of illegal drug dependency or use. If the formal assessment determines that the recipient is using or dependent on illegal drugs, OADA will determine the extent of the problem and recommend the most appropriate and cost-effective method of education and rehabilitation. The education or rehabilitation plan will be provided by OADA or by a contract provider and may include additional testing and monitoring. The OADA assessment will include a determination of the recipient's ability to participate in activities outside of the rehabilitation program.

C. Child care and transportation costs required for participation in the drug screening, testing, education and rehabilitation program will be paid by the Office of Family Support.

D. If residential treatment is recommended by OADA and the recipient is unable to arrange for the temporary care of dependent children, OFS and/or OADA will coordinate with the Office of Community Services to arrange for the care of such children.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:460.4.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§1303. Failure to Cooperate

A. Failure or refusal of a recipient to participate in drug screening, testing, or participation in the education and rehabilitation program, without good cause, will result in the following.

1. The recipient's needs will be removed from the FITAP cash benefits for three months. Eligibility of the other family members will continue during this three-month period.

2. If the recipient cooperates during this three-month period, the recipient will regain eligibility for cash benefits effective the fourth month.

3. If the recipient does not cooperate during this three-month period, the FITAP cash case for the entire family will be closed effective the fourth month and will remain closed until the individual cooperates.

4. A subsequent failure to cooperate will result in case closure until the recipient cooperates.

5. *Cooperation* is defined as participating in the component in which the recipient previously failed to cooperate. This includes drug screening, drug testing, or satisfactory participation for two weeks in an education and rehabilitation program.

B. If after completion of education and rehabilitation, the recipient is subsequently determined to use or be dependent on illegal drugs, the recipient will be ineligible for FITAP cash benefits until such time that OADA determines that the individual has successfully completed the recommended education and rehabilitation program and is drug free. The

eligibility of other family members will not be affected as long as the individual participates in the education and rehabilitation program.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193 and R.S. 46:460.4.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

Interested persons may submit written comments by May 27, 1998 to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-4065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on May 27, 1998 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504) 342-4120 (voice and TDD).

Madlyn B. Bagneris
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Family Independence Temporary Assistance Program (FITAP)—Drug Testing Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of this rule will increase agency costs for FY 98/99 by \$5,840,663; FY 99-00 and 00-01 by \$4,921,522. These funds are available from Louisiana's Temporary Assistance to Needy Families (TANF) Block Grant and the Child Care Development Block Grant. Policy revisions and form issuances will also be required. These costs will be within the normal budget constraints. There are no anticipated costs or savings to local governmental units.

The proposed action requires the involvement of the Office of Community Services (OCS) which will assist in the placement of children for those recipients who require inpatient care and the Office of Drug and Alcohol Abuse (OADA) which will perform the formal assessment and provide education and rehabilitation services. The costs for OCS child care services for such recipients will be derived from the Child Care Development Block Grant; therefore these costs have been included in the fiscal year projection. In addition to the above costs, OADA projects costs of \$1,964,375.

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)

All adult FITAP applicants and/or recipients will be required to satisfactorily comply with the requirements of drug screening, testing, education and rehabilitation. Failure to meet

the requirements of this program, without good cause, will result in loss of benefits.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9804#045

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Social Services Office of Family Support

Family Independence Temporary Assistance Program (FITAP)—Electronic Benefits Transfer (LAC 67:III.402, 407)

The Department of Social Services, Office of Family Support proposes to amend the *Louisiana Administrative Code*, Title 67, Part III, Subpart 1, General Administrative Procedures.

The Electronic Benefits Issuance System known as EBT now provides Food Stamp Program benefits to recipients and cash benefits for the Family Independence Temporary Assistance Program (FITAP). This rule proposes in §402.A to certify the time frame for delivery of these benefits which supersedes the issuance of FITAP checks and food stamp ATP cards. As proposed in §402.B, benefits not accessed in a 90-day period will be moved to dormant status and the affected case may eventually be closed and benefits expunged. This action is allowed pursuant to waiver authority granted by 7 CFR 272.3(c)(1)(ii) and authorized by the United States Department of Agriculture (USDA), Food and Nutrition Service Waiver Number 980027. Unaccessed FITAP cash benefits will be treated the same as food stamp benefits for consistency purposes.

In order to enable acceptance of Food Stamp Program benefits through use of EBT at establishments other than retail grocery stores, the agency has been granted demonstration authority that will permit these facilities to be equipped with Point-Of-Sale (POS) terminals or paper vouchers for debiting benefits and crediting the benefits to the financial account of the facility. As proposed in §407, this action is allowed pursuant to waiver authority granted by 7 CFR 282.1(a) and authorized by the USDA Food and Nutrition Service Waiver Number 970311.

Title 67

SOCIAL SERVICES

Part III. Office of Family Support

Subpart 1. General Administrative Procedures

Chapter 4. Electronic Benefits Issuance System

§402. Delivery of Benefits

A. Family Independence Temporary Assistance Program (FITAP) and Food Stamp Program benefits shall be delivered through Electronic Benefits Transfer (EBT) in staggered cycles to ongoing households beginning on the first day of each month. The last digit of the Social Security number determines the date that benefits are issued. Family Independence

Temporary Assistance Program benefits will be available within the first five days of each month. Food stamp benefits will be available within the first 14 days of each month. Food stamp cases that contain elderly or disabled persons will have benefits available during the first four days of each month. Other issuance authorizations will be posted to the EBT account the day after they are authorized.

B. Benefits are delivered in this manner for households certified on an ongoing basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 90 days from the date of availability will be moved to dormant status and the case may be closed. These benefits can be returned to active status at the local Office of Family Support offices upon request of the head-of-household. Benefits that remain in dormant status for a period of 270 days will be expunged and will not be available to the household after expungement. Family Independence Temporary Assistance Program benefits which have been expunged may be reauthorized for availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

§407. Participation of Approved Prepared-meal Facilities

A. Facilities providing prepared meals that are authorized by the United States Department of Agriculture, Food and Nutrition Service and, in some instances, the agency, to accept food stamp benefits for prepared meals may be authorized redemption points using the EBT card. Participating facilities are subject to all applicable regulations of this provision. If found guilty of abuse, misuse or fraud by using the EBT card or benefits in a manner or intent contrary to the purpose of the Food Stamp Program, a facility may be permanently disqualified from participation and have all equipment provided by the vendor disconnected and removed from the facility after due process.

1. A facility must maintain confidentiality in accordance with Food Stamp Program rule by requiring privacy when accepting payments or payment/contributions from recipients.

2. Settlement of funds to a facility will be made electronically as a direct deposit to the financial institution selected by the facility.

3. A facility must sign a contract with the agency's EBT vendor and be certified to the vendor's system prior to participation.

B. Types of Facilities

1. Duly authorized non-residential facilities such as communal dining facilities or Meals-on-Wheels may accept food stamp benefits for single meals.

2. Duly authorized residential facilities such as homeless shelters or battered women's shelters may accept food stamp benefits for multiple meals or ongoing food maintenance. Such establishments may accept food stamp payments or contributions not to exceed the biweekly rate of the facility. This requirement will ensure that recipients have

adequate benefits remaining in their accounts upon departure from the establishment.

C. A facility with redemption of food stamp benefits of \$100 or more per month will be provided a Point-Of-Sale (POS) terminal to enable acceptance of the EBT card. A facility with redemption of less than \$100 per month will utilize paper voucher authorizations for the acceptance of food stamp benefits.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 282.1(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:

Interested persons must submit written comments by May 27, 1998 to Vera W. Blakes, Assistant Secretary, Office of Family Support, Box 94065, Baton Rouge, LA 70804-9065. She is responsible for responding to inquiries regarding this proposed rule.

A public hearing on the proposed rule will be held on May 27, 1998 at the Department of Social Services, Second Floor Auditorium, 755 Third Street, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504) 342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Family Independence Temporary Assistance
Program (FITAP)—Electronic Benefits Transfer**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There are no state costs or savings associated with this administrative rule except the minimal cost of publishing the rule and printing of policy revisions. There are no costs or savings to local governmental units associated with this rule.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF
STATE OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no effect on revenue collection of state or local governmental units.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS
TO DIRECTLY AFFECTED PERSONS OR
NONGOVERNMENTAL GROUPS (Summary)**

This proposed rule has the potential to affect recipients of FITAP and food stamp benefits who do not access benefits for 90 days as benefits will be moved to dormant status and the case may eventually be closed and benefits expunged. However, there is no way to estimate the number of recipients that may be affected by this. Certain facilities such as homeless shelters which previously participated in the Food Stamp Program by accepting food stamps for meals will again be able to participate through EBT.

**IV. ESTIMATED EFFECT ON COMPETITION AND
EMPLOYMENT (Summary)**

The proposed rule will have no impact on competition and employment.

Vera W. Blakes
Assistant Secretary
9804#046

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Social Services
Office of the Secretary
Bureau of Licensing**

Adult Residential Care Facility (LAC 48:I.Chapter 88)

The Department of Social Services, Office of the Secretary, Bureau of Licensing proposes to amend the *Louisiana Administrative Code*, Title 48, Part I, Subpart 3, Licensing and Certification.

This proposed rule is mandated by R.S. 40:2151-2161 and 42 U.S.C. 1382e(e)(1,2).

These standards are being revised to supersede any previous regulations heretofore published.

(Editor's Note: The following Chapter was originally promulgated as Chapter 89, and will now be found at Chapter 88 and cited as LAC 48:I.Chapter 88.)

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 88. Adult Residential Care Home

§8801. Authority; Purpose/Intent; Policy

A. Authority

1. The legislative authority for these licensing regulations and of the Department of Social Services (DSS) rulemaking authority is located in the following statutes:

a. R.S. 40:2151-2161 (The Adult Residential Care Licensing Law);

b. R.S. 46:51 (DSS's rulemaking authority).

2. Other statutes that may have a direct or indirect impact on these licensing regulations include, but are not limited to, 42 U.S.C. 1382e(e)(1,2) (The Keys Amendment of the Social Security Act). The Keys Amendment requires states to establish, maintain and ensure the enforcement of standards for group living arrangements in which recipients of Supplemental Security Income (SSI) benefits reside or are likely to reside.

B. Intent/Purpose

1. It is the intent of the legislature to protect the health, safety and well-being of the elderly and disabled adults of the state.

2. Toward that end, it is the purpose of the law to provide for uniform statewide minimum standards for the safety and well-being of the elderly and disabled in such

facilities, and to regulate conditions in these facilities through a program of licensing.

3. The purpose of these regulations is to establish standards for adult residential care facilities that:

a. promote the availability of appropriate services for elderly and disabled persons in a residential environment;

b. enhance the dignity, independence, individuality, privacy, choice and decision-making ability of the resident; and

c. promote the concept of "aging in place" by making personal care and health related services available as resident's needs change so long as it does not require the facility to provide continuous nursing care.

4. Adult residential care facilities shall deliver services to residents and design the physical environment in a way that supports the dignity, independence, individuality, privacy, choice, and decision-making abilities of individual residents.

C. Policy. It shall be the policy of the State of Louisiana to ensure the protection of all individuals under care in adult residential care facilities and to encourage and assist in the improvement of programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8803. Licensing Procedure

A. Regulated Services

1. All adult residential care facilities (also known as board and care facilities, assisted living facilities, personal care homes, sheltered care homes, foster homes, etc.), including facilities or agencies owned or operated by any governmental, profit, nonprofit, private, or church organization shall be licensed.

2. Adult residential care facilities provide personal assistance, lodging and meals for compensation to two or more adults who are unrelated to the residence licensee, owner, or director.

3. A license is not required under this licensing law if a facility does not provide at least one personal service, as defined under §8813, in addition to lodging and meals.

B. Application Procedure

1. An applicant for a license must submit one copy of a completed license application form to the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821, telephone (504) 922-0015, FAX (504) 922-0014.

2. All fees must be paid in full by certified check or money order, only.

3. Documentation from local/city authorities that the facility or location is properly zoned must be submitted to the Bureau of Licensing.

4. Upon receipt of an application for a license, the Bureau of Licensing will request that the State Fire Marshal and the Office of Public Health inspect the facility. (The Bureau of Licensing makes these requests, however, it is the responsibility of the applicant to obtain the inspections and get the approvals.)

5. The Bureau of Licensing will conduct an inspection of the facility and program.

C. Issuance of a License

1. A license will be issued only when the applicant has met the following items and written verification is received by the bureau:

a. zoning approval;

b. state fire marshal approval;

c. Office of Public Health approval;

d. licensure survey verifying substantial compliance;

e. city fire department approval, if applicable; and

f. license fee paid.

2. A license is valid only for the listed location and only for that applicant. The license may not be transferred to another location or to another agency or individual.

3. A license shall not be issued to any other facility or location, licensed by the State of Louisiana, unless the area to be licensed as an adult residential care facility is totally separated from the currently licensed area.

a. The area to be licensed as an adult residential care facility shall meet all licensing regulations as established for adult residential care facilities and the appropriate module for which application has been made.

b. The adult residential care facility shall have a separate entrance, separate dining area and separate common areas.

c. Direct care staff shall not be shared between two licensed facilities during the same shift.

d. An adult residential care facility may contract for food services, laundry and/or maintenance services from another licensed or unlicensed agency.

4. The month that the initial license is issued becomes the anniversary month and the license shall be renewed by that month each year as long as the facility is operated at that location and by that owner. Relicensure requires a new application, fee paid, fire and health approval and approval by the Bureau of Licensing.

5. The facility or home shall not begin operation until a license has been issued.

6. The license must be displayed in an area that can be observed by the public.

D. Types of License

1. Full. Issued when there are no substantial licensing deficiencies. May be issued for any length of time, but may not be for longer than 12 months.

2. Extended. A license may be extended when a situation arises which is not the fault of the licensee.

3. Provisional. Issued when there are license deficiencies that are not detrimental to the health and safety of residents, but that must be corrected.

Note: A license may not be issued when the facility or home has been disapproved by any approving agency (fire, health, DSS, zoning).

E. Types of Programs (Modules) Licensed

1. All facilities licensed under the Adult Residential Care Licensing Law shall follow the same procedures for licensure as stipulated in §8803.B.

2. All facilities licensed as an adult residential care home/facility shall meet all applicable licensure requirements as established by these regulations.

3. Any applicant wishing to be licensed under one of the modules established by these regulations shall meet the adult residential care home/facility or core licensing regulations plus the regulations established for that individual module.

4. The types of modules of adult residential care are:
- assisted living (see also §§8813 and 8831);
 - personal care home (see also §§8813 and 8833);
 - shelter care facility (see also §§8813 and 8835).

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification. LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8805. License and Other Fees

A. License Fees. There shall be a license fee of \$75.

Note: License fees must be paid annually and must be received by the Bureau of Licensing prior to renewal of a license. License fees, and all other fees, must be paid by certified check or money order. Fees are nonrefundable.

B. Other Fees

1. Initial Application Fee. An initial application fee of \$25 is required to be submitted with all initial applications. This nonrefundable fee will be applied toward the license fee, when the facility is licensed.

2. Change Fee. A charge of \$25 is required for making changes in a license. (Change in capacity, name change, etc.) However, a fee is not required when the request for a change coincides with a regular renewal of a license.

3. Processing Fee. A processing fee of \$5 is required for issuing a duplicate copy of an existing license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification. LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8807. Denial, Revocation or Nonrenewal of License, Appeal Procedure

A. Denial of a License. A license may be denied for any of the following reasons:

- failure to comply with any published rule or regulation of the Department of Social Services relating to adult residential care facilities;
- failure to comply with any provision of the licensing law;
- failure to obtain approval from any required local authority (zoning, local building codes, city fire, etc.);
- failure to obtain approval from the state fire marshal;
- failure to obtain approval from the Office of Public Health;
- a felony conviction of any board member, owner or any staff member, if the act that caused the conviction, could cause harm to a resident if the act were to be repeated;
- revocation or nonrenewal of a previous license if the cause of the revocation or nonrenewal was the failure to comply with any provisions of the licensing law or the regulations promulgated to apply that law.

B. Revocation or Nonrenewal of a License. A license may be revoked or not renewed for any of the following reasons:

- failure to comply with any published rule or regulation of the Department of Social Services relating to adult residential facilities;
- failure to comply with any provision of the licensing law;
- failure to obtain approval from the state fire marshal;
- failure to obtain approval from the Office of Public Health;
- cruelty or indifference to the welfare of any resident of the facility, when a facility failed to take appropriate action;
- any validated instance of abuse to a resident, when a facility failed to take appropriate action;
- nonpayment of licensure fee;
- a criminal conviction of any board member, owner or any staff member, if the act that caused the conviction could cause harm to a resident if the act were to be repeated;
- a criminal conviction of any board member, owner or staff member against a resident if that board member, owner or staff member remains associated with the facility.

C. Denial, Revocation or Nonrenewal—Written Notice

1. If a license is denied, revoked or not renewed, the bureau must notify the applicant or facility of this action immediately by certified letter.

2. The written notice must contain the following:

- the reason(s) for the action; and
- notification of the right to appeal the decision and the procedures for doing so.

D. Appeal Procedures

1. The applicant or provider may appeal any adverse action taken against them by submitting a written request for appeal detailing their reason(s) that the action should not be taken.

2. This written letter of appeal must be addressed to the Appeals Bureau, Box 2994, Baton Rouge, LA 70821 and be post marked within 30 days of the receipt of the adverse action letter.

3. An appeal hearing officer or administrative law judge shall set a hearing date and conduct the hearing as outlined in the Administrative Procedure Act and the provisions of R.S. 46:107.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8809. Operating Without a License or in Violation of Departmental Regulations; Penalty; Injunctive Relief

A. Penalty; Fines

1. The department may issue fines to anyone who operates an adult residential care facility without a license issued by the department or in violation of departmental regulations.

2. The fines shall not exceed \$250 for each day of offense and shall be levied in accordance with R.S. 40:2160.

B. Injunctive Relief. If the adult residential care facility continues to operate without a license or in violation of

departmental regulations, the Department of Social Services may file suit in the district court in the parish in which the facility is located for injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8811. General Authority and Regulations

A. Inspections

1. As authorized and directed under R.S. 40:2156, the bureau shall inspect at regular intervals, not to exceed one year or such shorter periods as may be deemed necessary by the bureau, and without previous notice, all adult residential care facilities as defined in R.S. 40:2153 and LAC 48:I.8813.

2. The bureau shall also develop and facilitate coordination with other authorized local, state, and federal agencies making inspections of adult residential care homes.

B. Complaints

1. All complaints shall be reviewed to determine if they fall under the authority of the Department of Social Services or of another local, state or federal agency.

2. Complaints shall be investigated by the bureau, referred to another agency or returned to the complainant if not accepted. A record of all complaints shall be retained by the bureau in accordance with laws governing retention of records.

C. Waiver; Standards Deemed to be Met

1. The secretary, Department of Social Services, in specific instances, may waive compliance with a minimum standard upon determination that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the staff and/or residents are not imperiled.

2. All waivers must be reviewed at least annually for continuance. A waiver may be withdrawn when it is determined that it was issued in error, situations have changed as to why the waiver was first issued, or when the provider has not complied with agreed upon stipulations.

3. If it is determined by the Bureau of Licensing that a facility is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

D. Waivers; General

1. Any adult residential care facility that was licensed, or that had made an application for licensure and was in the licensure process, prior to the effective date of these regulations and that does not meet these regulations for room size and/or capacity may be issued a waiver for room size and/or capacity, if all other regulations are met and the following is documented:

a. the economic impact is sufficiently great to make compliance impractical;

b. the facility remains in compliance with all other current licensing regulations; and

c. the health and well-being of the residents and/or staff are not at risk.

2. Failure to adhere to the waiver requirements will result in the revocation of the waiver and the facility will be required to meet all current regulations.

3. Any addition or renovation to the facility must meet all current licensing regulations including room size.

4. Any facility that has a change of location, or that has had a license revoked, upon reapplication must be relicensed according to current regulations. Their right to a waiver will have been forfeited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8813. Definitions

A. The following definitions shall apply unless the text clearly indicates otherwise.

Abuse—the infliction of physical or mental injury on an adult by other parties, including but not limited to such means as sexual abuse, exploitation, or extortion of funds or other things of value, to such an extent that his/her health, self-determination, or emotional well-being is endangered.

Activities of Daily Living (ADLs)—these activities are considered the basic, vital, daily activities for persons and are identified as: bathing, grooming, dressing, dining, toileting, ambulation/transfer, assistance with self medication, etc.

Administrator—the individual designated by the owner or governing body as responsible for the management, administration and supervision of the facility.

Adult—a person who has attained 18 years of age.

Adult Residential Care Home or Facility—a public or privately operated (24-hour) residence that provides personal assistance, lodging and meals for compensation to two or more adults who are unrelated to the residence licensee, owner, or director.

Adult Residential Service Plan—a written description of the functional capabilities of an individual, the individual's need for personal assistance and the services to be provided to meet the individual's needs.

Advocate—an impartial agent of an agency or organization designated by state legislation, state plan, the governor or the resident to represent the interests of the resident and speak on behalf of the resident of an adult residential care home.

Assisted Living Home/Facility—an Adult Residential Care Home/Facility that provides room, board and personal services, for compensation, to two or more residents that reside in individual living units which contain, at a minimum, one room with a kitchenette and a private bathroom. For licensure, an assisted living home/facility shall comply with licensing regulations established as core standards plus those in the assisted living module.

Assisted Living Services—a coordinated array of supportive personal services, 24-hour supervision and assistance (scheduled and unscheduled), activities, and health-related services that are designed to allow the individual to reside in the least restrictive setting of his/her

choice, to accommodate individual resident's changing needs and preferences, to maximize the resident's dignity, autonomy, privacy and independence, and to encourage family and community involvement. Assisted living services may be provided in facilities licensed as adult residential/assisted living facility, adult residential/personal care home or adult residential/shelter care facility.

Bureau of Licensing or Bureau—the agency or office within the Department of Social Services with the responsibility for the inspection and licensure of Adult Residential Care Homes or Facilities.

Common Area—interior congregate space(s) that is made available for the free and informal use of residents or the guests thereof of the adult residential care home/facility. Common area may include congregate dining rooms, living rooms, T.V. rooms, other sitting rooms, etc.

Core Standards—the licensing regulations established for adult residential care home/facility and contained in §§8801-8829.

Department—the Department of Social Services (DSS) of the State of Louisiana.

Direct Care Staff—an employee of the facility that provides personal services to the residents.

Director—the administrator or person designated by the administrator as responsible for carrying on the day-to-day management, supervision, and operation of the facility.

Duty Care Giver—a person that is not employed by the facility but provides care or services to the resident. (Private aid, home health nurses, therapist, and anyone else contracted with by the resident.)

Facility—shall refer to the licensed provider of adult residential care (assisted living, personal care home or shelter care facility).

Imminent Danger—a danger that could reasonably be expected to cause death or life threatening physical or mental harm.

Instrumental Activities of Daily Living (IADLs)—these activities are considered to be instrumental, essential activities for persons, but are not usually considered as basic or vital activities of daily living, and may not be daily activities. Such activities would include, but are not limited to: socialization, managing personal affairs, financial management, shopping, housekeeping, appropriate transportation, correspondence, behavior and health management, etc.

License—a certificate which may be either provisional, extended, or full that is issued by the Bureau of Licensing to indicate a facility's authority to operate an adult residential care home/facility in compliance with the law.

Living Unit—an efficiency, one or two bedroom apartment or cottage that contains at a minimum a living/dining/bedroom area, kitchen/kitchenette, bathroom and storage space. There shall be not more than two bedrooms to a living unit.

Neglect—the failure to provide food, shelter, clothing, medical or other health services, appropriate security and supervision, or other personal services necessary for a resident's well-being.

Personal Care Home—an adult residential care home/facility that provides room and board and personal

services, for compensation, to two but not more than eight residents in a congregate living and dining setting and is in a home that is designed as any other private dwelling in the neighborhood. For licensure, a personal care home shall comply with licensing regulations established as core standards plus those in the personal care home module.

Personal Services—includes, but is not limited to, individual assistance with or supervision of one or more activities of daily living or instrumental activities of daily living.

Personnel—any person who in any manner serves or administers aid or assistance for the facility to a resident.

Provider—the owner of a facility and the representatives, agents and employees of the facility. If the owner is a closely-held corporation or a nonprofit organization, *provider* includes the natural persons with actual ownership or control over the corporation, and the corporation's officers, directors and shareholders.

Representative—a person who voluntarily, with the resident's written authorization, may act upon the resident's direction regarding matters concerning the health and welfare of the resident, including having access to personal records contained in the resident's file and receiving information and notices about the resident's overall care and condition. No member of the governing body, administration, or staff of an adult residential facility or any member of their family may serve as the representative for a resident unless they are related to the resident by blood or marriage. In the case of an individual that has been interdicted, *representative* means the court-appointed curator or his designee.

Resident—an adult who resides in an adult residential care facility and receives lodging, meals, and at least one personal service.

Responsible Staff Person—the employee designated by the director to be responsible for supervising the operation of the facility during periods of temporary absence of the director.

Shall—indicates mandatory requirements.

Shelter Care Home—an adult residential care facility that provides room, board and personal services, for compensation, to nine or more residents in a congregate living and dining setting. For licensure, a shelter care facility shall comply with licensing regulations established as core standards plus those in the shelter care home module.

Should—indicates recommendations.

B. The above definitions are not intended to be all inclusive. Other definitions are included in the text as appropriate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8815. Organization and Administration

A. General Requirements. A provider shall allow designated representatives of DSS in the performance of their mandated duties to inspect all aspects of a provider's functioning which impact on residents and to interview any

staff member or resident (if the resident agrees to said interview).

1. A provider shall make any information or records that the provider is required to have and any information reasonably related to assessment of compliance with these requirements available to DSS.

2. The resident's rights shall not be considered abridged by this requirement.

B. Governing Body. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the program/agency.

1. A provider shall have documents identifying all members of the governing body, their addresses, their terms of membership, and officers of the governing body, and terms of office of any officers.

2. When the governing body of a provider is comprised of more than one person, the governing body shall hold formal meetings at least twice a year. There shall be written minutes of all formal meetings and bylaws specifying frequency of meetings and quorum requirements.

3. When the governing body is composed of only one person, this person shall assume all responsibilities of the governing body.

C. Responsibilities of a Governing Body. The governing body of a provider shall:

1. ensure the provider's compliance and conformity with the provider's charter or other organizational documents;

2. ensure the provider's continual compliance and conformity with all relevant federal, state, local, and municipal laws and regulations;

3. ensure that the provider is adequately funded and fiscally sound;

4. review and approve the provider's annual budget;

5. designate a person to act as administrator and delegate sufficient authority to this person to manage the provider (a sole owner may be the administrator);

6. formulate and annually review, in consultation with the administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices, job descriptions and fiscal management;

7. annually evaluate the administrator's performance (if a sole owner is not acting as administrator);

8. have the authority to dismiss the administrator (if a sole owner is not acting as administrator);

9. meet with designated representatives of DSS whenever required to do so;

10. inform designated representatives of DSS prior to initiating any substantial changes in the services provided by the provider; and

11. notify the Bureau of Licensing in writing at least 30 days prior to any change in ownership. When a change of director occurs, the bureau shall be notified in writing of the following within 10 working days of the change:

a. name and address of the new director;

b. hire date; and

c. résumé and credentials documenting qualifications as a director (See §8819.B).

D. Jurisdictional Approvals. The provider shall comply and show proof of compliance with all relevant standards,

regulations and requirements established by state, local, and municipal regulatory bodies. It is the provider's responsibility to secure the following approvals:

1. the DSS Bureau of Licensing;

2. the Office of Public Health;

3. the Office of State Fire Marshal;

4. the city fire department, if applicable; and

5. the applicable local governing authority (e.g., zoning, building department or permit office).

E. Accessibility to Executive. The director or person authorized to act on behalf of the director shall be accessible to facility staff or designated representatives of DSS at all times.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8817. Management Responsibilities

A. Administrative File. A provider shall have an administrative file to include:

1. articles of Incorporation or certified copies thereof, if incorporated, or partnership documents, if applicable;

2. current copy of the approved constitution and/or bylaws of the governing authority, with a current roster of the membership to include addresses of the governing authority;

3. written policies and procedures approved by the owner/governing body that address the following:

a. confidentiality and security of files;

b. publicity;

c. personnel;

d. resident's rights;

e. grievance procedure;

f. safekeeping of personal possessions, if applicable;

g. residents' funds, if applicable;

h. emergency and evacuation procedures;

i. abuse and neglect;

j. critical incidents;

k. admissions and discharge procedures; and

l. medication;

4. minutes of formal governing body meetings;

5. organizational chart of the provider;

6. all leases, contracts, and purchase-of-service agreements to which the provider is a party, which includes all appropriate credentials;

7. insurance policies. Every provider shall maintain in force at all times a comprehensive general business insurance policy or policies in an amount adequate to cover all foreseeable occurrences. The insurance shall include coverage for any personal or professional negligence, malpractice or misconduct by facility owners or employees; coverage for any injuries received by any resident while being transported by facility staff or third-party contractors; and coverage for any injuries sustained by any resident while in the facility. The policies shall be without limitations or exclusions of any kind; and

8. copies of incident/accident reports.

B. Organizational Communication

1. A provider shall establish procedures to assure written communication among staff to provide continuity of services to all residents.

2. Direct care employees shall have access to information concerning residents that is necessary for effective performance of the employee's assigned tasks.

C. Confidentiality and Security of Files. A provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records and to whom records may be released. Procedures shall address the following.

1. A provider shall maintain the confidentiality of all residents' records. Employees of the facility shall not disclose or knowingly permit the disclosure of any information concerning the resident or his/her family, directly, or indirectly, to any unauthorized person.

2. A provider shall obtain the resident's or legal representative's written, informed permission prior to releasing any information from which the resident or his/her family might be identified, except to the DSS, Bureau of Licensing. Identification information may be given to appropriate authorities in cases of an emergency.

3. The provider shall have a procedure by which representatives or family of residents are given an opportunity to receive information about the individual resident in care of the facility.

4. A provider may use material from records for teaching and research purposes, if names are deleted and other identifying information is disguised or deleted.

D. Publicity. A provider shall have written policies and procedures regarding the photographing and audio or audiovisual recordings of residents.

1. No resident shall be photographed or recorded without the resident's prior informed, written consent. Such consent cannot be made a condition for admission into, remaining in, or participating fully in the activities of, the facility. Consent agreements must clearly notify the resident of his/her rights under this regulation, must specify precisely what use is to be made of the photograph or recordings, and are valid for a maximum of one year from the date of execution. Residents are free to revoke such agreements at any time, either orally or in writing.

2. All photographs and recordings shall be used in a way that respects the dignity and confidentiality of the resident.

E. Personnel Policies. A provider shall have written personnel policies that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision, and performance evaluation of staff members;

2. written job descriptions for each staff position including volunteers;

3. policies which provide for staff, upon offer of employment, to have a health assessment as defined in the provider's policy and procedures. These policies shall, at a minimum, require that the individual has no evidence of active tuberculosis and that staff shall be retested on a time schedule

as mandated by the Office of Public Health. Test results dated within one year prior to offer of employment are acceptable for initial employment;

4. an employee grievance procedure;

5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether that abuse or mistreatment is done by another staff member, a family member, a resident, or any other person;

6. a written policy to prevent discrimination.

F. Orientation

1. A provider's orientation program shall include training in the following topics for all employees:

a. the policies and procedures of the facility;

b. emergency and evacuation procedures;

c. resident's rights;

d. procedures for and legal requirements concerning the reporting of abuse and critical incidents; and

e. instruction in the specific responsibilities of the employee's job.

2. Orientation for direct care staff shall include an additional five days of supervised training. Training, at a minimum, shall include the following:

a. training in resident care services (ADLs and IADLs) provided by the facility;

b. infection control to include blood borne pathogens; and

c. any specialized training to meet residents' needs.

3. A new employee shall not be given sole responsibility for the implementation of a client's program plan until this training is completed.

4. The staff member shall sign a statement certifying that such training has occurred.

5. Orientation and five days of supervised training shall meet the first year's annual training requirements.

6. All direct care staff shall receive certification in adult first aid within the first 30 days of employment.

G. Annual Training

1. A provider shall ensure that each direct care worker participates in in-service training each year. Normal supervision shall not be considered for meeting this requirement.

2. The provider shall document that direct care staff receive training on an annual basis in:

a. facility's policies and procedures;

b. emergency and evacuation procedures;

c. resident's rights;

d. procedures and legal requirements concerning the reporting of abuse and critical incidents;

e. resident care services (ADLs and IADLs);

f. infection control to include blood borne pathogens;

g. any specialized training to meet residents' needs.

3. All direct care staff shall have documentation of current certification in first aid.

4. The director shall participate annually in at least 12 hours of continuing education in the field of geriatrics, assisted living concepts, specialized training in the population served and/or supervisory/management techniques.

5. The employee shall sign a statement of understanding certifying that such training has occurred.

H. Evaluation. An employee's annual performance evaluation shall include his/her interaction with residents, family, and other providers.

I. Personnel Files

1. A provider shall maintain a personnel record for each employee. As a minimum, this file shall contain the following:
 - a. the application for employment and/or résumé of education, training, and experience;
 - b. a criminal history check, prior to an offer of employment, in accordance with state law;
 - c. evidence of applicable professional credentials/certifications according to state law;
 - d. documentation of TB test results and any other provider required medical examinations;
 - e. documentation of three reference checks;
 - f. annual performance evaluation;
 - g. employee's hire and termination dates;
 - h. documentation of orientation and annual training;and
 - i. documentation of driver's license (if driving or transporting residents).

2. A provider shall not release an employee's personnel file without the employee's written permission, except as required by state law.

J. Resident's Records

1. A provider shall maintain a separate record for each resident. Such record shall be current and complete and shall be maintained in the facility or in a central administrative location readily available to facility staff and to the Bureau of Licensing staff.

2. Each record shall contain at least the following information:

- a. resident's name, marital status, date of birth, sex, Social Security number, and previous home address;
- b. dates of admission and discharge;
- c. names, addresses, and telephone numbers of responsible persons to be notified in case of accident, death, or other emergency;
- d. name, address, and telephone number of a physician and dentist to be called in an emergency;
- e. ambulatory status;
- f. resident's plan/authorization for routine and emergency medical care as required in §8823.D.1;
- g. resident's written authorization for a representative and their name, address, and telephone number, if applicable;
- h. the preadmission appraisal and admission agreement;
- i. reports of the assessment specified in §8827.A.1 and of any special problems or precautions;
- j. individual service plan, updates, and quarterly reviews;
- k. continuing record of any illness, injury, or medical or dental care, when it impacts the resident's ability to function or the services he or she needs;
 - l. a record of all personal property and funds which the resident has entrusted to the home/facility;
 - m. reports of any resident complaints or grievances and the conclusion or disposition of these reports;
 - n. incident reports; and

o. written acknowledgments that the resident has received clear verbal explanations and copies of his/her rights, the house rules, written procedures for safekeeping of valuable personal possessions of residents, written statement explaining the resident's rights regarding personal funds, and the right to examine his/her record.

3. All information and records obtained from or regarding residents shall be stored and kept confidential.

K. Records

1. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of in accordance with state laws.

2. A provider shall have sufficient space, facilities, and supplies for providing effective record keeping services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8819. Required Staffing

A. Each Adult Residential Home/facility shall be staffed to properly safeguard the health, safety and welfare of the residents, as required by these regulations.

B. At a minimum the following staff positions are required, however, one person may occupy more than one position.

1. Director

a. Each facility shall have a qualified director who is an on-site employee and is responsible for the day-to-day management, supervision, and operation of the facility.

b. During periods of temporary absence of the director, there shall be a responsible staff person designated to be in charge that has the knowledge and responsibility to handle any situation that may occur.

c. There shall be a director or a responsible staff person on the premises 24 hours per day.

d. The director shall have the responsibility and authority to carry out the policies of the licensee.

e. The director shall be at least 21 years of age.

2. Designated Recreational/Activity Staff. There shall be an individual designated to organize and oversee the recreational and social program of the facility.

3. Direct Care Staff. Direct care staff may include care assistants, social workers, activities personnel, or other staff who clearly provide direct care services to residents on a regular basis.

a. The provider shall demonstrate that sufficient staff is scheduled and available (working) to meet the 24-hour scheduled and unscheduled needs of the residents.

b. A facility shall not share direct care staff with another licensed facility. (Staff cannot fill two staff positions on the same shift at different licensed facilities.)

c. The provider shall maintain a current work schedule for all employees, including relief workers, showing adequate coverage for each day and night.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8821. Resident Protection

A. Resident's Rights

1. A provider shall have a written policy on resident's civil rights and the practices of the provider shall assure:

a. no resident of a facility shall be deprived of civil or legal rights, benefits or privileges guaranteed by law or the Constitution of the United States solely by reason of status as a resident of a facility;

b. a resident is not denied admission, segregated or otherwise subjected to discrimination on the basis of race, sex, handicap, creed, national background or ancestry;

c. a religious organization may limit admissions to its own adherents;

d. residents shall live within the least restrictive environment possible in order to retain their individuality and personal freedom.

2. In addition to the basic rights enjoyed by other adults, the provider's written policy on rights shall assure that residents have the right to:

a. be treated as individuals and with dignity, be assured choice and privacy and the opportunity to act autonomously, take risks to enhance independence, and share responsibility for decisions;

b. participate, and have family participate, if desired, in the planning of activities and services;

c. receive or refuse care and services that are adequate, appropriate, and in compliance with conditions of residency, relevant federal and state laws and rules and regulations;

d. receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services;

e. be free from mental, emotional, and physical abuse and neglect and assured that no chemical restraints will be used;

f. have records and other information about the resident kept confidential and released only with a resident's expressed written consent;

g. have a service animal for medical reasons;

h. receive a timely response to a request, from the director and/or staff;

i. have visitors of their choice without restrictions, as long as the rights of others are not infringed upon;

j. have access to private telephone communication;

k. send and receive mail promptly and unopened;

l. furnish their own rooms and use and maintain personal clothing and possessions as space permits;

m. manage his or her personal funds unless such authority has been delegated to another. If authority to manage personal funds has been delegated to the provider, the resident has the right to examine the account during business hours;

n. be notified in writing by the provider when the facility's license status is suspended, revoked or limited, and to be informed of the basis of the licensing agency's action. The

resident's representative must also be notified;

o. have freedom to participate by choice in accessible community activities and in social, political, medical, and religious activities and to have freedom to refuse such participation;

p. arrange for third-party services at their own expense, that are not available through the facility as long as the resident remains in compliance with the conditions of residency;

q. share a room with a spouse or other consenting resident of the facility;

r. be encouraged and assisted to exercise rights as a citizen; to voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of restraint, interference, coercion, discrimination, or reprisal;

s. be given written notice of not less than 30 days prior to discharge from the facility, except in life-threatening emergencies and when the resident is a danger to him/her self or to others;

t. remain in the current facility, foregoing a recommended transfer to obtain additional services, if a mutually agreed upon risk agreement is signed by the resident, the responsible representative (if any) and the provider so long as it does not place the facility in conflict with these or other laws or regulations;

u. remain in their room/living unit unless a change in room/unit is related to resident preference or to transfer conditions stipulated in their contract that relate to the need for higher levels of service;

v. be fully informed of all resident rights and all rules governing resident conduct and responsibilities;

w. consult freely with counsel of their choice; and

x. live in a physical environment which ensures their physical and emotional security and well-being.

3. Each resident shall be fully informed of these rights and of all rules and regulations governing residents' conduct and responsibilities, as evidenced by written acknowledgment, prior to or at the time of admission and when changes occur. Each resident's file shall contain a copy of the written acknowledgment which shall be signed and dated by the director/designee, resident and/or representative.

4. A copy of these rights shall be posted conspicuously in the facility.

B. Resident Association. The provider shall provide a formal process and structure by which residents, in representative groups and/or as a whole, are given the opportunity to advise the director regarding resident services and life at the facility. Any resident requests, concerns or suggestions presented through this process will be addressed by the director within a reasonable time frame, as necessitated by the concern, request or suggestion.

C. Grievance Procedure. A provider shall establish and have written grievance procedures to include, but not limited to:

1. a formal process to present grievances;

2. a formal appeals process for grievances; and

3. a process to respond to resident association requests and written grievances in a timely manner.

D. Personal Possessions. The provider may, at its discretion, offer to residents the service of safekeeping of valuable possessions. The provider shall have a written statement of its policy.

1. If the provider offers such a service, a copy of the written policy and procedures shall be given to a resident at the time of his/her admission.

2. The provider shall give the resident a receipt listing each item that it is holding in trust for the resident. A copy of the receipt shall be placed in the resident's record.

E. Resident Funds

1. If a provider offers the service of safekeeping and/or management of residents' personal funds, the facility's admission agreement shall include the resident's rights regarding personal funds and list the services offered and charges, if any.

2. If a provider offers the service of safekeeping and if a resident wishes to entrust funds, the provider:

a. shall obtain written authorization from the resident and/or his/her representative to safekeeping of funds;

b. shall provide each resident with a receipt listing the amount of money the facility is holding in trust for the resident;

c. shall maintain a current balance sheet containing all financial transactions to include the signatures of staff and the resident for each transaction; and

d. shall not accept more than \$200 of a resident's money.

3. If a provider offers the service and if a resident wishes the provider to assist with the management of all their funds, the provider:

a. shall receive written authorization to manage the resident's funds from the resident and the representative, if applicable;

b. shall only manage a resident's money when such management is mandated by the resident's service plan; and

c. shall keep funds received from the resident for management in an individual account in the name of the resident.

4. Unless otherwise provided by state law, upon the death of a resident, the provider shall provide the executor or administrator of the resident's estate or the representative of the resident as agreed upon in the admission agreement with a complete accounting of all the resident's funds and personal property of the resident being held by the provider.

F. Emergency and Evacuation Procedures

1. The facility shall have telephone service on a 24-hour daily basis.

2. The provider shall either post telephone numbers of emergency services, including the fire department, police department, medical services, poison control and ambulance or else show evidence of an alternate means of immediate access to these services.

3. The provider shall have a detailed written plan and procedures to meet all potential emergencies and disasters such as fire, severe weather, evacuation of residences, and missing residents. These emergency and evacuation procedures shall include:

a. evacuation of residents to safe or sheltered areas;

b. means for an ongoing safety program including continuous inspection of the facility for possible hazards, continuous monitoring of safety equipment and investigation of all accidents or emergencies;

c. fire control and evacuation plan. In addition, such plan shall be posted in each residential unit in a conspicuous place and kept current;

d. fire drills shall be documented for each shift at least four times a year. The drills may be announced in advance to the residents. The drills shall involve the participation of the staff in accordance with the emergency plan (resident participation is not required);

e. transportation arrangements for hospitalization or any other services which are appropriate; and

f. maintenance of a first aid kit for emergencies.

4. The provider shall train all employees in emergency and evacuation procedures when they begin to work in the facility. The provider shall review the procedures with existing staff at least once in each 12-month period.

5. A provider shall immediately notify DSS and other appropriate agencies of any fire, disaster or other emergency that may present a danger to residents or require their evacuation from the facility.

G. Critical Incidents

1. A provider shall have written procedures for the reporting and documentation of unusual incidents and other situations or circumstances affecting the health, safety or well-being of a resident or residents. (i.e., death of unnatural causes, injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect).

a. Such procedures shall ensure timely verbal reporting to the director or designee and a preliminary written report within 24 hours of the incident.

b. Copies of all critical incident reports shall be kept as part of the client's record and a separate copy shall be kept in the administrative file of the provider.

2. Incident/Accident Report. When and if an incident occurs, a detailed report of the incident shall be made. As a minimum, the incident report shall contain the following:

a. circumstances under which the incident occurred;

b. date and time the incident occurred;

c. where the incident occurred (bathroom, bedroom, street, lawn, etc.);

d. immediate treatment and follow-up care;

e. name and address of witnesses;

f. date and time family or representative was notified;

g. symptoms of pain and injury discussed with the physician; and

h. signatures of the staff completing the report, resident, and director.

3. When an incident results in death of a resident, involves abuse or neglect of a resident, or entails any serious threat to the resident's health, safety or well-being a provider shall:

a. immediately report verbally to the Administrator and submit a preliminary written report within 24 hours of the incident;

b. immediately notify Department of Health and Hospitals Adult Protection Services or Office of Elderly Affairs in the Office of the Governor, the Bureau of Licensing, and other appropriate authorities, according to state law, with written notification to the above agencies to follow within 24 hours of the suspected incident;

c. immediately notify the family or representative of the resident, with written notification to follow within 24 hours;

d. immediately notify the appropriate law enforcement authority in accordance with state law;

e. provide follow-up written reports to all the above persons and agencies;

f. take appropriate corrective action to prevent future incidents; and

g. the provider shall document its compliance with all of the above procedures for each incident, and shall keep such documentation (including any written reports or notifications) in the resident's file. A separate copy of all such documentation shall be kept in the provider's administrative file.

H. Abuse and Neglect. A provider shall have comprehensive written procedures concerning resident abuse and neglect to include provisions for:

1. training and maintaining staff awareness of abuse prevention, current definitions of abuse and neglect, reporting requirements and applicable laws;

2. ensuring that regulations stipulated in §8821.G.3 for reporting critical incidents involving abuse and neglect are followed;

3. ensuring that the administrator completes an investigation report within 10 working days;

4. ensuring that the resident is protected from potential harassment during the investigation;

5. disciplining staff members who abuse or neglect residents; and

6. protecting residents from abuse inflicted by other residents or third parties, including, but not limited to, criminal prosecution of the offending person and his/her permanent removal from the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8823. Admission

A. Admission Criteria. Residents considered for admission may include those who need, or wish to have available for themselves or their spouse, room, board, personal care and supervision due to age, infirmity, physical disability or social dependency. Residents with advanced or higher care needs may be accepted or retained under the circumstances set forth in §8823.A.2.

1. The facility shall have a clear and specific written description of admission policies and procedures. This written description shall include, but is not limited to the following:

a. the application process and the possible reasons for the rejection of an application;

b. types of residents suitable to the facility;

c. services offered and allowed in the facility; and

d. facility's house rules.

2. A facility may accept or retain residents in need of additional care beyond routine personal care provided that:

a. the resident, the representative, if applicable, and the provider agree that acceptance or retention of the resident is appropriate;

b. the resident can provide or arrange for his or her own care and this care can be provided through appropriate private duty personnel;

c. the level of care required in order to accommodate the resident's additional needs does not amount to continuous nursing care except as follows:

i. the reason for the need for continuous nursing care is temporary (not to exceed 90 days) and the provider has the capability of meeting the needs of the resident; or

ii. the resident or the legal representative of the resident provides for private duty care, or other health-related home and community-based services and assumes, in writing, full legal responsibility for the manner in which care is provided to the resident. In addition, this care and responsibility shall be in compliance with the facility rules for private duty care givers; and

iii. care given, as allowed under this section shall not interfere with facility operations or create a danger to others in the facility.

3. A provider shall not enter into contracts with outside providers to give health related services to individual residents. All such services shall be arranged for by the individual resident, the resident's family or the resident's representative.

4. The provider shall encourage residents with impairments that impact their decision-making to arrange to have a representative.

5. A resident shall have the opportunity to request and consent to sharing a living unit with another resident. A facility shall not force any resident to share a living unit.

B. Preadmission Appraisal

1. The provider shall complete and maintain a preadmission appraisal on each applicant. This initial screening shall assess the applicant's needs and appropriateness for admissions and shall include the following:

a. the resident's physical and mental status;

b. the resident's need for personal services and for assistance with instrumental activities of daily living; and

c. the resident's ability to evacuate the facility in the event of an emergency.

2. The preadmission appraisal shall be completed and dated before the contract/admissions agreement is signed.

C. Admissions Agreement

1. The provider shall complete and maintain individual written admission agreements with all persons admitted to the facility or with their legally responsible person or persons. The facility contract/admissions agreement shall specify the following:

a. clear and specific occupancy criteria and procedures (admission, transfer, and discharge);

- b. basic services to be made available;
- c. optional services which are available;
- d. payment provisions, including the following:
 - i. covered and noncovered services;
 - ii. service packages and "à la carte" services;
 - iii. regular and extra fees;
 - iv. payor;
 - v. due date; and
 - vi. funding source, provided that the resident may refuse to disclose sources;
- e. modification conditions, including provision of at least 30 days prior written notice to the resident of any basic rate change, or for SSI/SSP rate changes, as soon as the provider is notified. Agreements involving persons whose care is funded at government-prescribed rates may specify that operative dates of government modifications shall be considered operative dates for basic service rate modification;
- f. refund conditions;
- g. that the Bureau of Licensing has the authority to examine residents' records as part of the evaluation of the facility;
- h. general facility policies which are for the purpose of making it possible for residents to live together, including policies and rules regarding third-party providers arranged by the resident (the use of private duty nurses or assistants);
 - i. division of responsibility between the facility, the resident, family, or others (e.g., arranging for or overseeing medical care, purchase of essential or desired supplies, emergencies, monitoring of health, handling of finances);
 - j. residents' rights;
 - k. explanation of the grievance procedure and appeals process, including information on outside agencies to which appeals may be made; and
 - 1. the availability of a service plan specific to the individual resident.
 - 2. The provider shall allow review of the contract/admissions agreement by an attorney or other representative chosen by the resident.
 - 3. The admissions agreement shall be signed by the director and by the resident and the representative, if applicable.
 - 4. The admissions agreement shall conform to all relevant federal, state and local laws and requirements.

D. Other Admission Criteria. At the time of admission the provider shall:

- 1. obtain from the resident or the resident's family or representative, their plan for both routine and emergency medical care to include the name of physician(s) and provisions and authorization for emergency medical care;
- 2. document that the resident was informed of the facility's emergency and evacuation procedures;
- 3. provide the resident with a copy of the house rules; and
- 4. obtain a copy of health power of attorney and living will if the resident or the resident's representative wants the facility to keep it on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing

and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8825. Discharge

A. Mandatory Transfer or Discharge. The director shall, in consultation with the resident and the representative, if applicable, assist in planning and implementing the transfer or discharge of the resident when:

- 1. the resident's physician certifies that the resident needs continuous nursing care, other than on a temporary basis not to exceed 90 days, as allowed under §8823.A.2, and the resident or responsible person is unable or unwilling to provide private duty care and assume full responsibility for such care. In this situation, plans for other placement must be made as soon as possible;
- 2. the resident's condition is such that he or she is a danger to self or others or is consistently disruptive to the peace and order of the facility, staff services, or other residents; or
- 3. the resident gives notice to vacate the facility.

B. Optional Transfer or Discharge

1. The director may, in consultation with the resident and the representative, if applicable, plan and implement the transfer or discharge of the resident when:

a. the resident's adjustment to the facility is not satisfactory as determined by the director in consultation with the resident or his or her representative. It is the responsibility of the director to contact the resident's representative, if applicable, and request assistance to help the resident in adjusting. This request is to be made at the first indication of an adjustment problem;

b. the resident or representative has failed to pay all fees and costs stated in the admission agreement or otherwise materially breached the admission agreement.

2. It is the responsibility of the adult residential facility to assure that needed services are provided, even if those services are to be provided by the resident's family or by an outside source under contract with the resident. When it comes to the attention of a provider that a resident is being neglected (as defined under §8813.A) due to the failure of the family or the contracted outside agency to provide needed services, the Adult Residential facility may initiate a transfer or discharge of the resident.

C. Requirements for Discharge or Transfer

1. When a discharge or transfer is initiated by the provider, the director must provide the resident, and his/her representative, if applicable, with 30 days prior written notice citing the reason for the discharge or transfer, except shorter notice may be given in cases where the resident is a danger to self or others or is in need of services that the provider cannot provide.

2. At the request of the resident or representative, copies of all pertinent information shall be given to the director of the licensed facility to which the resident moves.

D. Discharge Records

1. The following discharge information shall be recorded in the resident's record:

- a. date of discharge;
- b. destination, if known; and

- c. reason(s) for leaving, if known.
2. Discharge records shall be retained for at least three years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8827. Services

A. Assessment, Service Coordination, and Monitoring

1. Once the resident is admitted, the provider shall conduct an assessment to determine the needs and preferences of the resident which will be kept in the resident's record and shall at a minimum, include:

- a. the resident's interests, likes and dislikes;
- b. review of physical health, psycho-social status, and cognitive status and determination of services necessary to meet those needs;
- c. a summary of the resident's health needs, if any, including medication, treatment and special diet orders obtained from professionals with responsibility for the resident's physical or emotional health;
- d. a written description of the activities of daily living and instrumental activities of daily living for which the resident requires assistance, if any, obtained from the resident, the resident's physician, family, or representative;
- e. recreational and social activities which are suitable or desirable;
- f. a plan for handling special emergency evacuation needs, if any; and
- g. additional information or documents pertinent to the resident's service planning, such as guardianship papers, power of attorney, living wills, do-not-resuscitate orders, or other relevant medical documents.

2. Within 30 days after admission, the provider, with input from the resident, and/or his/her representative shall develop a service plan using information from the assessment.

3. The service plan shall be responsive to the resident's needs and preferences.

4. The service plan shall include:
- a. the resident's needs;
 - b. the scope, frequency, and duration of services and monitoring that will be provided to meet the resident's needs; and
 - c. staff/providers responsible for providing the services inclusive of third-party providers.

5. The resident's service plan shall be revised when a resident's condition or preferences change. The revised service plan shall be signed by the resident and the representative, if applicable, and the designated facility staff.

6. The service plan shall be monitored on an ongoing basis to determine its continued appropriateness and to identify when a resident's condition or preferences have changed. A documented review of the service plan shall be made at least every quarter. However, changes to the plan may be made at any time, as necessary.

7. All plans and reviews shall be signed by the resident, facility staff, and the representative, if applicable.

B. Personal and Supportive Services

1. The facility shall provide adequate services and oversight/supervision including adequate security measures, around the clock as needed for any resident.

2. The facility shall provide or coordinate, to the extent needed or desired by residents, the following services:

- a. some assistance with all activities of daily living and all instrumental activities of daily living;
- b. up to three varied, appetizing meals a day, seven days a week, that take into account residents' preferences and needs;
- c. basic personal laundry services;
- d. opportunities for individual and group socialization and to utilize community resources to create a normal and realistic environment for community interaction within and outside the facility (i.e., barber/beauty services, social/recreational opportunities);
- e. services for residents who have behavior problems requiring ongoing staff support, intervention, and supervision to ensure no danger or infringement of the rights of other residents or individuals;
- f. household services essential for the health and comfort of resident (e.g., floor cleaning, dusting, bed making, etc.);
- g. assistance with self-administration of medications; and
- h. a program of recreational activities.

3. Each provider shall, if requested by the resident and/or the representative, if applicable, assist in arranging for access to another provider for residents who, due to a mental, medical, or emotional condition, cannot benefit from the facility's program.

C. Medications

1. The provider shall have clear written policies and procedures on medication assistance.

2. The provider shall assist residents in the self-administration of prescription and non-prescription medication as agreed to in their contract or service plan and as allowed by state statute/regulations.

3. Assistance with self-administration of medications shall be limited to the following.

- a. The resident may be reminded to take his/her medications.
- b. The medication regimen, as indicated on the container may be read to the resident.
- c. The dosage may be checked according to the container label.
- d. The staff may open the medicine container (i.e., bottle, mediset, blister pak, etc.), if the resident lacks the ability to open the container.
- e. The resident may be physically assisted in pouring or otherwise taking medications, so long as the resident is cognitive of what the medication is, what it is for and the need for the medication.

4. If desired by the resident, the resident's family, other relatives, the resident's representative, or other close friend may transfer medication from the original container to a medication reminder container (pill organizer box).

5. The resident may contract with an outside source for medication administration just as they can if they were living in their private home.

6. A provider shall not contract from an outside source for medication administration for residents.

7. An employee that provides assistance with the self-administration of medications to a resident shall have documented training on the policies and procedures for medication assistance including the limitations of this assistance. Documentation shall include the signature of the employee. This training shall be repeated at least annually.

8. Medications may be stored in the resident's own living unit/bedroom or in a secure central location.

a. Residents who do not require assistance with self administration of medications shall be allowed to keep prescription and non-prescription medication in their living unit/bedroom as long as they keep them secured from other residents.

b. If a resident requires assistance with self-administration of medication, the medication may be kept in a secure area in the resident's living unit/bedroom or in a secure central area.

i. If medications are kept in a secure central area, facility staff shall handle them in the same manner as if they were kept in the resident's living unit/bedroom.

ii. Medications kept in a secure central area shall be delivered to the individual resident at the appropriate time regardless of where the resident may be in the facility. Residents shall not be required to come to a "medication" area to receive medications.

D. Health Related Services

1. Each resident shall have the right to control his/her receipt of health related services including but not limited to:

a. the right to retain the services of his/her own personal physician, dentist or other health care provider;

b. the right to confidentiality and privacy concerning his/her medical and dental condition and treatment; and

c. the right to select the pharmacy or pharmacist of their choice.

2. The provider shall plan or arrange in conjunction with the resident, the resident's family and/or representative for the following:

a. health assessment;

b. assistance with health tasks as needed/requested by the resident; and

c. healthcare monitoring. (Healthcare monitoring consists of a regularly occurring process designed by the facility to identify changes in a resident's healthcare status.)

3. A provider shall only provide health related services as allowed by these regulations. Health related services above those allowed for by these regulations shall not be arranged for or contracted for by a provider. These services shall be arranged for by the resident and/or the resident's representative.

4. The provider shall have a reporting procedure in place for notifying appropriate individuals of observed or reported changes in a resident's condition.

E. Transportation

1. The provider shall have the capacity to provide or to arrange transportation for the following:

a. medical services, including ancillary services for medically related care (e.g., physician, pharmacist, therapist, podiatrist);

b. personal services, including barber/beauty services;

c. personal errands; and

d. social/recreational opportunities.

2. The provider shall ensure and document that any vehicle used in transporting residents, whether such vehicles are operated by a staff member or any other person acting on behalf of the provider, is inspected and licensed in accordance with state law and has current commercial liability insurance in an amount sufficient to ensure payment of any resident losses resulting from that transportation, including uninsured motorist coverage.

3. When transportation services are provided by the facility, whether directly or by third-party contract, the provider shall document and ensure that drivers have a valid Louisiana driver's license, that drivers have a clean driving record, and that they are trained/experienced in assisting residents.

F. Meals

1. The facility's menus, at a minimum, are reviewed and approved by a nutritionist or dietician to assure their nutritional appropriateness for the setting's residents.

2. The provider shall make reasonable accommodations, as contracted for by the residents, to:

a. meet dietary requirements;

b. meet religious and ethnic preferences;

c. meet the temporary need for meals delivered to the resident's room;

d. meet residents' temporary schedule changes as well as residents' preferences (e.g., to skip a meal or prepare a simple late breakfast); and

e. make snacks, fruits, and beverages available to residents when requested.

3. All food preparation areas(excluding areas in residents' units) are maintained in accordance with state and local sanitation and safe food handling standards.

4. Staff shall be available in the dining area to serve the food and to give individual attention as needed.

5. Written reports of inspections by the Department of Health and Hospitals, Office of Public Health, Sanitarian Services shall be kept on file in the facility.

6. Specific times for serving meals shall be established and posted.

7. Meals shall be prepared and served in a way that assures that they are appetizing, attractive, and nutritional and that promotes socialization among the residents.

8. Foods shall be prepared by methods that conserve the nutritive value, flavor, and appearance. It shall be palatable, properly prepared and sufficient in quantity and quality.

G. Menus

1. Menus shall be planned and written at least one week in advance and dated as served. The current week's menu shall be posted in one or more conspicuous places in the facility.

2. The provider shall furnish medically prescribed diets to residents for which it contracts either in the contract or in the service plan. These menus shall be planned or approved by a registered licensed dietician.

3. Records of all menus as served shall be kept on file for at least 30 days.

4. All substitutions made on the master menu shall be recorded in writing.

H. Food Supplies

1. All food in the facility shall be safe for human consumption.

2. Grade "A" pasteurized fluid milk and fluid milk products shall be used or served. Dry milk products may not be used, except for cooking purposes.

I. Food Protection

1. If food is prepared in a central kitchen and delivered to separate facilities, provision shall be made and approved by the Department of Health and Hospitals, Office of Public Health, Sanitarian Services for proper maintenance of food temperatures and a sanitary mode of transportation.

2. Facility's refrigerator(s) shall be maintained at a temperature of 45°F or below. Freezers shall be maintained at a temperature of 0°F or below. Thermometers shall be provided for all refrigerators and freezers.

3. Food stored in the refrigerator shall be covered.

4. Poisonous and toxic materials shall be identified, and placed in cabinets which are used for no other purpose.

5. Pets are not allowed in food preparation and service areas.

J. Ice and Drinking Water

1. The water supply shall be adequate, of a safe sanitary quality and from an approved source. Clean sanitary drinking water shall be available and accessible in adequate amounts at all times. Disposable cups, if used, shall be stored in such a way as to prevent contamination.

2. The ice scoop shall be maintained in a sanitary manner with the handle at no time coming in contact with the ice.

K. Recreation

1. The facility shall have a range of indoor and outdoor recreational and leisure opportunities to meet the needs and preferences of residents.

2. The provider shall provide and/or coordinate access to community-based activities.

3. A monthly posted list of recreational and leisure activities in the facility and the community shall be available to the residents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8829. Environment

A. General

1. The facility shall be designed throughout to meet the accessibility needs of the residents.

2. Handrails and sufficient lighting are integrated into public areas as appropriate to assist residents in ambulation.

3. Windows used for ventilation to the outside and exterior doors used for ventilation shall be screened and in good repair.

4. The facility shall be constructed, equipped, and maintained in good repair and kept free of hazards.

5. The facility shall have sufficient storage space for administration records, locked areas for medications, cleaning supplies (janitorial), food service (supplies) and lawn maintenance (equipment).

6. There shall be evidence of routine maintenance and cleaning programs in all areas of the facility. The facility shall replace or repair broken, worn or defective furnishings and equipment promptly.

B. Exterior Space

1. A provider shall ensure that all structures on the grounds of the facility accessible to residents are maintained in good repair and are free from any excessive hazard to health and safety.

2. A provider shall maintain the grounds of the facility in an acceptable manner and shall ensure that the grounds are free from any hazard to health or safety.

a. Garbage and rubbish that are stored outside shall be stored securely in covered containers and shall be removed on a regular basis.

b. Trash collection receptacles and incinerators shall be separate from outdoor recreational space and located as to avoid being a nuisance to neighbors.

c. Areas determined to be unsafe, including but not limited to steep grades, cliffs, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced off or have natural barriers to protect residents.

d. Fences shall be in good repair.

3. A provider shall have access to the outdoors for recreational use. The parking lot shall not double as recreational space.

4. If a provider accepts residents that have dementia or other conditions that may cause them to leave or walk away from the home/facility, an enclosed area shall be provided adjacent to the home/facility so that the residents may go outside safely.

5. The facility's address or name shall be displayed so as to be easily visible from the street.

C. Common Space

1. A facility shall not share common living, or dining space with another facility licensed to care for individuals on a 24-hour basis.

2. The facility shall provide common areas to allow residents the opportunity for socialization.

3. Common areas for leisure shall be at least 60 square feet per licensed capacity.

4. Dining rooms and leisure areas shall be available for use by residents at appropriate times to provide periods of social and diversified individual and group activities.

5. The facility, with the exception of small personal care homes, shall provide public restrooms of sufficient number and location to serve residents and visitors. (Public restrooms are located close enough to activity hubs to allow residents with incontinence to participate comfortably in activities and social opportunities.)

6. The facility's common areas shall be accessible and maintained to provide a clean, safe, and attractive environment for the residents.

7. Leisure common areas shall not be confined to a single room.

8. Space used for administration, sleeping, or passage shall not be considered as dining or leisure space.

9. These informal areas shall be maintained at a comfortable temperature at all times.

10. An effective pest control service shall be in place.

11. Living and/or recreational rooms shall be furnished according to the activities offered. Furniture for living rooms and sitting areas shall include comfortable chairs, tables, and lamps of good repair and appearance.

12. The facility shall prominently post the grievance procedure, resident's rights, house rules, abuse and neglect procedures in an area assessable to all residents.

D. Food Service

1. The facility shall have appropriately furnished dining room(s) that can accommodate residents in a comfortable dining environment. Dining room(s) may be sized to accommodate residents in either one or two settings.

2. The facility shall have a central or a warming kitchen.

3. The kitchen and food preparation area shall be well lighted, ventilated, and located apart from other areas which could occasion food contamination.

4. All kitchens and dining facilities shall be adequate to serve the number of residents residing in the facility and shall meet all applicable sanitation and safety standards.

E. Lighting

1. Sufficient lighting shall be provided for general lighting and reading in bedrooms/living units and common areas.

2. Night lights for corridors, emergency situations and the exterior shall be provided as needed for security and safety.

F. HVAC/Ventilation. The facility shall provide safe HVAC systems sufficient to maintain comfortable temperatures (65-80EF) in all indoor public and private areas in all seasons of the year.

G. Laundry

1. The facility shall have a laundry service, either on-site or off-site, that is adequate to handle the needs of the residents, including those with incontinence.

2. On-site laundry facilities shall be located in a specifically designated area, and there shall be adequate rooms and spaces for sorting, processing, and storage of soiled material. Laundry rooms shall not open directly into resident common areas or food service areas. Domestic washers and

dryers which are for the exclusive use of residents may be provided in resident areas, provided they are installed in such a manner that they do not cause a sanitation problem or offensive odors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8831. Assisted Living

A. General. Assisted Living Facilities shall provide apartment-type units with doors that are capable of being locked to help ensure residents their privacy, dignity, and independence.

B. Director Qualifications

1. The director shall, at least, meet one of the following criteria upon date of hire:

a. a bachelor's degree plus two years of experience in the fields of health, social services, geriatrics, management or administration; or

b. in lieu of a degree, six years of experience in health, social services, geriatrics, management, administration or a combination of undergraduate education and experience for a total of six years; or

c. a master's degree in geriatrics, health care administration, or in a human service related field or their equivalent.

2. Documentation of director qualifications shall be on file at the facility.

C. Staffing

1. An assisted living facility shall have staff sufficient in number and qualifications on duty at all times to meet the needs of residents.

2. The facility shall have at least one person on duty and awake 24 hours per day.

3. Additional night-time staff may be required as deemed necessary by the Bureau of Licensing and/or Office of State Fire Marshal depending upon the location of the facility, the response time of emergency agencies, the availability of other staff, and the number and condition of residents.

D. Resident's Living Units

1. The facility shall provide private, single or double-occupancy living units which residents may share if they choose. There shall be no more than two bedrooms per living unit and each unit shall include at a minimum:

a. a food preparation area consisting of a sink with hot and cold running water, electrical outlets, mini refrigerator, cooking appliance (such as microwave or stove), food storage cabinets, and counter space;

b. a private bath which includes a toilet, sink, and shower or tub. The bathrooms must be ADA accessible, as required by the state fire marshal;

c. dining/sitting/bedroom area; and

d. storage/closet space.

2. In addition, all units shall contain:

a. an operating emergency call system (wired or wireless) that is easily accessible to the resident in the event of

an emergency and that registers at a location that is monitored at all hours of the day and night. Facilities having more than one wing, floor or building shall be permitted to have a separate emergency call system in each provided all systems meet the above criteria;

b. a lockable front door that is controlled by the resident;

c. HVAC thermostats that can be individually controlled by the resident, with a locking mechanism provided, if required, to prevent harm to a resident; and

d. at least one telephone outlet. All monthly user charges may be the responsibility of the individual resident.

3. Privacy of residents shall be maintained in all living units and residents in double occupancy units shall have the right to select their roommates.

4. Residents shall be allowed to keep keys to their individual living unit.

5. Staff shall knock and request entrance before entering any occupied living unit.

6. Staff may have and utilize pass keys to units as is necessary for service or emergencies.

E. Efficiency/Studio Living Units

1. Efficiency/studio living units shall have a minimum of 250 net square feet of floor space, excluding bathrooms and closets.

2. An efficiency/studio living unit may be shared by two individuals only if the second individual is a husband/wife/relative or live-in companion and only then if both parties agree, in writing, to the arrangement.

F. Living Units with Separate Bedrooms

1. Living units with separate bedrooms shall have a living area (living/dining/kitchenette) of at least 190 net square feet, excluding bathroom and closets.

2. Each separate bedroom shall have a minimum of 120 net square feet, excluding bathroom and closet or wardrobe space.

3. Bedrooms designed for one individual (120 net square feet) may only be shared with another individual if that individual is a husband/wife/relative or live-in companion and only then if both parties agree, in writing, to the arrangement.

4. Bedrooms designed for two individuals shall have a minimum of two hundred 200 net square feet excluding bathrooms and closet or wardrobe space. Residents sharing a living unit with a two-person bedroom shall be allowed to choose their roommate. Both individuals must agree, in writing, to this arrangement.

5. No bedrooms shall accommodate more than two residents.

6. Bedrooms shall contain an outside window. Skylights are not acceptable for use as windows.

7. A room where access is through a bathroom or another bedroom shall not be approved or used as a resident's bedroom.

G. Bathrooms

1. Entrance to a bathroom from one bedroom shall not be through another bedroom.

2. Grab bars and nonskid surfacing or strips shall be installed in all showers and bath areas.

3. Bathrooms shall have floors and walls of impermeable, cleanable, and easily sanitized materials.

4. Resident bathrooms must not be utilized for storage or purposes other than those indicated by this Subsection.

5. Hot and cold water faucets shall be easily identifiable.

H. Storage. The facility shall provide adequate portable or permanent closet(s) in the resident's unit for clothing and personal belongings.

I. Furnishings and Supplies. Each facility shall strive to maintain a residential environment and encourage residents to use their own furnishings and supplies. However, if the resident does not bring their own furniture, the facility shall assist in planning and arranging for obtaining:

1. a bed, including a frame and a clean mattress and pillow;

2. basic furnishings, such as a private dresser or similar storage area for personal belongings that is readily accessible to the resident;

3. a closet, permanent or portable, to store clothing and aids to physical functioning, if any, which is readily accessible to the resident;

4. a minimum of two chairs;

5. blankets, and linens appropriate in number and type for the season and the individual resident's comfort;

6. towels and washcloths; and

7. provisions for dining in the living unit.

J. Determination of Licensed Capacity. The following criteria shall be followed in determining licensed capacity of an assisted living facility.

1. Each efficiency/studio designed living unit shall be counted as one in determining licensed capacity.

2. Each living unit with one private bedroom, of at least 120 net square feet, shall be counted as one in determining capacity.

3. Each living unit with two private bedrooms, of at least 120 net square feet each, shall be counted as two in determining licensed capacity. There shall be no more than two bedrooms in each living area.

4. Each living unit with a bedroom, of at least 200 net square feet, shall be counted as two in determining licensed capacity. There shall be no more than two bedrooms in each living unit.

5. There shall also be at least 60 net square feet of common space for each licensed unit. (Example: 60 x total licensed capacity equals required common space.)

6. It is recognized that there may be more individuals in a facility due to husbands and wives sharing a living unit than is listed as the total licensed capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8833. Personal Care Home

A. General. As home-like an atmosphere as possible shall be provided. Restrictive rules shall be kept to a minimum.

While some rules are necessary in group living to maintain a balance between individual wishes and group welfare, they shall not infringe upon a resident's civil rights of self-determination, privacy of person or thought and personal dignity.

B. Director Qualifications

1. The director of a personal care home shall meet one of the following criteria upon date of hire:

a. have at least two years of college training plus one year of experience in the fields of health, social services, geriatrics, management or administration; or

b. in lieu of two years of college training, three years of experience in health, social services, geriatrics, management, administration or a combination of undergraduate education and experience for a total of three years; or

c. a bachelor's degree in geriatrics, social services, nursing, health care administration or related field.

2. Documentation of director qualifications shall be on file.

C. Staffing

1. A home shall have staff sufficient in number and qualifications on duty at all times to meet the needs of the residents.

2. Additional day and/or nighttime staff may be required as deemed necessary by the bureau and/or Office of State Fire Marshal depending upon the location of the facility, the response time of emergency agencies, the availability of other staff, and the number and condition of residents.

D. House Rules. Each home shall have house rules pertaining to the following rights of residents:

1. the reasonable use of tobacco and alcohol;

2. the times and frequency of use of the public or communal telephone;

3. visitors;

4. hours and volume for viewing and listening to television, radio, and other media;

5. movement of residents in and out of the home;

6. use of personal property; and

7. care of pets.

E. Employment

1. Each resident may voluntarily perform work or services for the home but not serve as unpaid staff for the required staffing.

2. A home shall assign as unpaid work for residents only housekeeping tasks similar to those performed in a normal home.

3. Each resident shall have the right to refuse to perform services for the home except as contracted for by the resident and the provider or as provided in the service care plan.

F. Religion. A home shall have a written description of its religious orientation, particular religious practices that are observed and any religious restrictions on admission.

G. Food Service

1. A home shall ensure that a resident is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day. Meal time shall be comparable to those in a normal home.

2. When meals are provided to staff, a home shall ensure that staff members eat substantially the same food served to residents in care.

H. Sleeping Accommodations

1. A home shall ensure that each single occupancy bedroom space has a floor area of at least 100 net square feet and that each multiple occupancy bedroom space has a floor area of at least 70 net square feet for each resident. There shall be no more than two residents per bedroom.

2. A home shall not use a room with a ceiling height of less than 7 feet, 6 inches as a bedroom, unless, in a room with varying ceiling heights, the portions of the room where the ceiling is at least 7 feet, 6 inches allow a usable floor space as required by this section.

3. A home shall not use any room which does not have a window opening to the outside as a bedroom. Skylights shall not substitute for a window.

4. Each resident in care of the home shall have his/her own bed. A double bed shall be provided for a married couple, if requested. Cots, bunk beds or portable beds are not allowed.

5. A home shall ensure that sheets, pillows and pillow cases, bedspreads and blankets are provided for each resident, as needed.

a. Enuretic residents shall have mattresses with moisture resistance covers.

b. Sheets and pillow cases shall be changed and laundered at least weekly and more often, if needed.

6. Each resident shall be provided with individual space, in the bedroom, for personal possessions or clothing such as dressers, chest of drawers, etc.

7. Residents shall be allowed to decorate their own bedrooms with pictures, etc. as they wish.

8. Each bedroom shall have a closet which opens directly into the room and be of sufficient size to serve the occupant(s) of the bedroom. If the bedroom does not have a closet opening into the room, there shall be a moveable closet or armoire available in the bedroom. If a moveable closet or armoire is used, this space shall not be counted in the net floor space.

I. Bathrooms

1. There shall be adequate toilet, bathing and hand washing facilities in accordance with the current edition of the *State Sanitary Code*.

2. Each bathroom shall contain wash basins with hot and cold water, flush toilets and bath or shower facilities with hot and cold water according to resident care needs.

3. Bathrooms shall be located so that they open into a hallway, common area or directly into the bedroom. If the bathroom opens directly into a bedroom, it shall be for the use of the occupants of that bedroom only.

4. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless residents are individually given such items.

5. Tubs and showers shall have slip-proof surfaces.

6. A home shall provide toilets, baths and showers which allow for individual privacy unless residents in care require assistance.

7. A home's bathrooms shall contain mirrors secured to the walls at convenient heights and other furnishings necessary

to meet the resident's basic hygienic and grooming needs.

8. A home's bathrooms shall be equipped to facilitate maximum self-help by residents. Grab bars are to be provided in bathrooms if needed by any resident in care.

9. Toilets, wash basins and other plumbing or sanitary facilities in a home shall at all times, be maintained in good operating condition and shall be kept free of any material that might clog or otherwise impair their operation.

J. Staff Quarters. A home utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff. This private bathroom is not to be counted as available to residents in care.

K. Administrative and Counseling Space

1. A home shall provide a space that is distinct from the resident's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

2. A home shall have a designated space to allow private discussions and/or counseling sessions between individual residents and staff or others.

L. Determination of Licensed Capacity. The following criteria shall be followed in determining licensed capacity of a personal care home:

1. each bedroom with at least 100 net square feet shall be counted as one in determining capacity;

2. each bedroom with at least 140 net square feet shall be counted as two in determining capacity. There shall be no more than two residents in each bedroom;

3. there shall also be at least 60 net square feet of common space for the licensed capacity. (Example: 60 x total licensed capacity equals required common space or the net square feet of common space divided by 60 equals total licensed capacity.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§8835. Shelter Care Facility

A. Shelter care facilities shall provide living areas that are as home-like as possible. Restrictive rules shall be kept to a minimum and be such that they do not infringe upon a resident's civil rights of self-determination, privacy of person or thought, personal dignity, and independence.

B. Director Qualifications

1. The director of a shelter care facility shall meet one of the following upon date of hire:

a. have at least two years of college training plus two years of experience in the field of health, social services, geriatrics, management or administration; or

b. in lieu of two years of college training, four years' experience in health, social services, geriatrics, management, administration or a combination of undergraduate education and experience for a total of four years; or

c. a bachelor's degree in geriatrics, social service, nursing, health care administration or related field or their equivalent.

2. Documentation of director qualifications shall be on file at the facility.

C. Staffing

1. A shelter care facility shall have staff sufficient in number and qualifications on duty at all times to meet the needs of the residents.

2. The facility shall have at least one person on duty and awake 24 hours per day.

3. Additional day and/or nighttime staff may be required as deemed necessary by the Bureau of Licensing and/or state fire marshal depending upon the location of the facility, the response time of emergency agencies, the availability of other staff, and the number and condition of residents.

D. Food Service

1. A facility shall ensure that a resident is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day. Meal time shall be comparable to those of a normal home.

2. A facility shall hire a full-time cook. A full-time cook means someone to prepare three meals a day seven days a week.

E. Bedrooms

1. A facility shall ensure that each single occupancy bedroom space has a floor area of at least 100 net square feet and that each double occupancy bedroom has a floor area of at least 80 net square feet for each resident. There shall be no more than two residents per bedroom.

2. Both residents sharing a double occupancy bedroom shall agree, in writing, to the shared living arrangement. (Husbands and wives do not have to sign such an agreement.)

3. A facility shall not use a room with a ceiling height of less than 7 feet, 6 inches as a bedroom, unless, in a room with varying ceiling heights, the portions of the room used to meet the room size are in compliance with the ceiling heights.

4. Each resident shall have a bed, mattress, pillow and bed linens to meet individual needs. Residents may bring beds and/or other furniture with them upon admittance so long as it does not interfere with the operation of the facility.

5. A husband and wife may bring and use a double bed.

6. Bunk beds or portable beds shall not be allowed.

7. Each resident shall be provided with individual space, in the bedrooms, for personal possessions or clothing such as dressers, chest of drawers, etc.

8. Residents shall be allowed to decorate their own bedrooms with pictures, etc., as they wish.

9. Each bedroom shall have a closet which opens directly into the room and be of sufficient size to serve the occupant(s) of the bedroom. If the bedroom does not have a closet opening into the room, there shall be a moveable closet or armoire available in the bedroom. If a moveable closet or armoire is used, this space shall not be counted in the net floor space.

10. All rooms used as bedrooms shall contain an outside window. Skylights are not acceptable for use as windows.

11. A room where access is through a bathroom or another bedroom shall not be approved or used as a resident's bedroom.

F. Bathrooms

1. There shall be adequate toilet, bathing and hand washing facilities in accordance with the current edition of the *State Sanitary Code*.

2. Bathrooms shall be located so that they open into a hallway, common area or directly into the bedroom. If the bathroom opens directly into a bedroom, it shall be for the use of the occupant(s) of that bedroom only.

3. Each bathroom shall be equipped with toilet paper, towels, soap, etc.

4. Tubs and showers shall have slip-proof surfaces.

5. Grab bars shall be installed in all tubs and showers and around toilets as needed by the residents.

6. Bathrooms shall have floors and walls of impermeable, cleanable, and easily sanitized materials.

G. Determination of Licensed Capacity. The following criteria shall be followed in determining licensed capacity of a Shelter Care facility:

1. each bedroom with at least 100 net square feet shall be counted as one in determining capacity;

2. each bedroom with at least 160 net square feet shall be counted as two in determining capacity;

3. no more than two residents may share a bedroom;

4. there shall be at least 60 net square feet of common space per resident. (Example: 60 x total licensed capacity equals the required common space needed.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2151-2161.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 14:27 (January 1988), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

Interested persons may submit written comments within 30 days of this publication to Steve Phillips or Thalia Millican, Department of Social Services, Office of the Secretary, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078. The deadline for receiving these comments is May 20, 1998 at 4:30 p.m.

A public hearing on this proposed rule will be held on Friday, May 29, 1998, at Department of Transportation, First Floor Auditorium, Baton Rouge, LA at 9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at said hearing. Individuals with disabilities who require special services should contact the Bureau of Appeals at least seven working days in advance of the hearing. For assistance, call (504) 342-4120 (Voice and TDD).

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Adult Residential Care Facility

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The estimated implementation costs to state government associated with this rule will be the cost of printing the changes

to the licensing standards, announcing the change, and the cost of printing approximately 128 copies of the Adult Residential Care licensing manual to incorporate the changes into existing policy. The projected cost of the printing is \$522 including postage to mail copies to licensed Adult Residential Care providers.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be no effect on revenue collection of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no anticipated costs or economic benefit to any persons or nongovernmental unit.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule will have no impact on competition or employment.

William M. Hightower
Deputy Secretary
9804#069

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Social Services
Office of the Secretary
Bureau of Licensing**

Child Residential Care (LAC 48:I.Chapter 79)

The Department of Social Services, Office of the Secretary, Bureau of Licensing, proposes to amend the *Louisiana Administrative Code*, Title 48, Part I, Subpart 3, Licensing and Certification.

This proposed rule is mandated by Louisiana Revised Statutes 46:1401 through 1425.

These standards are being revised to supersede any previous regulations heretofore published.

Title 48

SOCIAL SERVICES

Part I. General Administration

Subpart 3. Licensing and Certification

* * *

Chapter 79. Child Residential Care

* * *

§7901. Purpose

It is the intent of the legislature to protect the health, safety, and well-being of the children of the state who are in out-of-home care on a regular or consistent basis. Toward that end, it is the purpose of Chapter 14 of Title 46 of the Louisiana Revised Statutes of 1950 to establish statewide minimum standards for the safety and well-being of children, to ensure maintenance of these standards, and to regulate conditions in these facilities through a program of licensing. It shall be the policy of the state to ensure protection of all individuals under care in child care facilities and to encourage and assist in the improvement of programs. It is the further intent of the legislature that the freedom of religion of all citizens shall be inviolate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7903. Authority

A. Legislative Provisions

1. The State of Louisiana, Department of Social Services, is charged with the responsibility of developing and publishing standards for the licensing of child residential facilities.

2. The licensing authority of the Department of Social Services is established by R.S. 46:1401-1425 and R.S. 46:51 which mandate the licensing of all child care facilities and child placing agencies, including child residential facilities. A child residential facility is defined as any place, facility or home operated by any institution, society, agency, corporation, person or persons or any other group to provide full-time care (twenty-four hour residential care) for four or more children under the age of 18 years who are not related to the operators, and whose parents or guardians are not residents of the same facility, with or without transfer of custody.

B. Penalties

1. All child care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private or church agency, shall be licensed.

2. As stipulated in R.S. 46:1421, whoever operates any child care facility without a valid license shall be fined not less than \$75 nor more than \$250 for each day of such offense.

C. Inspections

1. According to law, it shall be the duty of the Department of Social Services "through its duly authorized agents, to inspect at regular intervals not to exceed one year, or as deemed necessary by the department, and without previous notice, all child care facilities and child placing agencies subject to the provisions of the Chapter (R.S. 46:1417)."

2. When the department is advised or has reason to believe that any person, agency or organization is operating a nonexempt child residential facility without a license or provisional license, the department shall make an investigation to ascertain the facts.

3. When the department is advised or has reason to believe that any person, agency or organization is operating in violation of the Child Residential Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment received by the department will be investigated.

D. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies (The Class A Child Care Committee)

1. The Louisiana Advisory Committee on Child Care Facilities and Child Placing Agencies was created by Act 286 of 1985 to serve three functions:

a. to develop new minimum standards for licensure of Class A facilities ("new" meaning the first regulations written after Act 286 of 1985);

b. to review and consult with the Department of Social Services on all revisions written by the Bureau of Licensing after the initial regulations and to review all standards, rules and regulations for Class A facilities at least every three years;

c. to advise and consult with the Department of Social Services on matters pertaining to decisions to deny, revoke or refuse a Class A license.

2. The committee is composed of 20 members, appointed by the governor, including provider and consumer representatives from all types of child care services and the educational and professional community.

E. Waivers

The secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard upon determination that the economic impact is sufficiently great to make compliance impractical, as long as the health, safety, and well-being of the staff/children are not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, then the standard or regulation may be deemed to be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7905. Procedures

A. Initial Application

1. New buildings shall be noninstitutional in design and appearance and physically harmonious with the neighborhood in which they are located considering such issues as scale, appearance, density and population. A child residential facility shall not occupy any portion of a building licensed by another agency.

2. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services, Bureau of Licensing. The following steps should be followed.

a. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances for the area in which you are planning to locate. Guidelines from the Office of Public Health, Sanitarian Services; the Office of State Fire Marshal, Code Enforcement and Building Safety; and the City Fire Department (if applicable) should be obtained.

b. After securing property, obtain an application form issued by:

Department of Social Services

Bureau of Licensing

P.O. Box 3078

Baton Rouge, La. 70821-3078

Phone: (504)922-0015

FAX: (504)922-0014

c. After the facility's location has been established, complete and return the application form. It is necessary to

contact the following offices prior to building or renovating a facility:

- i. Office of Public Health, Sanitarian Services;
- ii. Office of State Fire Marshal, Code Enforcement and Building Safety;
- iii. Office of City Fire Department (if applicable);
- iv. Zoning Department (if applicable);
- v. City or Parish Building Permit Office.

d. Upon receipt of the facility's application by the Bureau of Licensing, a request will be made to the Office of State Fire Marshal, Code Enforcement and Building Safety; Office of City Fire Department (if applicable); Office of Public Health and any known required local agencies to inspect the location as per their standards. It is the applicant's responsibility to obtain these inspections and approvals. A licensing specialist shall visit the facility to conduct a licensing inspection.

e. A license will be issued on an initial application when the following requirements have been met and verification is received by the Bureau of Licensing:

- i. approval by the Office of Public Health;
- ii. approval by the Office of State Fire Marshal, Code Enforcement and Building Safety;
- iii. approval by the city fire department (if applicable);
- iv. approval by the city or parish zoning (if applicable);
- v. approval by the city or parish building permit (if applicable);
- vi. a completed licensure inspection verifying substantial compliance with these standards;
- vii. full license fee paid.

3. When a facility changes location, it is considered a new operation and a new application and fee for licensure shall be submitted. All items listed in §7905. A.1.e. shall be in compliance for the new location.

4. When a facility changes ownership, a new application and fee shall be submitted. All approvals listed in §7905.A.1.e. shall be current. Documentation is required from the previous owner assuring change of ownership, i.e., letter from previous owner, copy of Bill of Sale or a lease agreement.

5. All new construction or renovation of a facility requires approval from agencies listed in §7905.A.1.c. and the Bureau of Licensing.

6. The department is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued unless it is revoked for facility's failure to maintain compliance with minimum standards.

7. A license is not transferable to another person or location.

8. If an administrator or member of his immediate family has had a previous license revoked, refused or denied, upon reapplication, the applicant shall provide written evidence that the reason for such revocation, refusal or denial no longer exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal or denial have been corrected and the administrator/facility is in substantial

compliance with all minimum standards.

B. Fees

1. An initial application fee of \$25 shall be submitted with all initial license applications. This fee will be applied toward the license fee when the facility is licensed. This fee is to be paid by all initial and change of location providers. The full licensure fee shall be paid on all changes of ownership. All fees shall be paid by certified check or money order only and are nonrefundable.

2. License fees are required prior to issuance or renewal of a license. Fee schedules (based on licensed capacity) are listed below:

a. Four to six children	\$400
b. Seven to fifteen children	\$500
c. Sixteen or more children	\$600

3. Other licensure fees include:

a. a replacement fee of \$25 for replacing a license when changes are requested, i.e., change in capacity, name change, age range, etc. (no replacement charge when the request coincides with the regular renewal of a license.);

b. a processing fee of \$5 for issuing a duplicate license with no changes.

C. Relicensing

1. A license shall be renewed on an annual basis. The month of issue of the initial license becomes the anniversary month for all renewals. Generally all licenses expire on the last day of the month.

2. Approximately 90 days prior to the annual expiration of a license, a notice and an application form will be mailed to the licensee. The completed application along with the full license fee shall be returned prior to relicensure.

3. A relicensing inspection will be made by staff of the Bureau of Licensing to determine continued compliance with licensing regulations.

4. A current approval from the Office of State Fire Marshal, Code Enforcement and Building Safety; the City Fire Department (if applicable); and the Office of Public Health, Sanitarian Services shall be received by the Bureau of Licensing. It is the responsibility of the licensee to obtain these inspections and approvals.

5. The Department of Social Services, Bureau of Licensing, shall be notified prior to making changes which might have an effect upon the license, i.e., age range of children served, usage of indoor and outdoor space, administrator, hours/months/days of operation, ownership, location, etc.

D. Denial, Revocation, or Nonrenewal of License

1. An application for a license may be denied for any of the following reasons:

a. failure to meet any of the minimum standards for licensure;

b. conviction of a felony, as shown by a certified copy of the record of the court of conviction, of the applicant;

i. or if the applicant is a firm or corporation, of any of its members or officers;

ii. or of any staff providing care, supervision, or treatment to a resident of the facility.

2. A license may be revoked or renewal denied for any

of the following reasons:

- a. cruelty or indifference to the welfare of the children in care;
- b. violation of any provision of the minimum standards, rules, regulations, or orders of the Department of Social Services;
- c. disapproval from any agency whose approval is required for licensure;
- d. nonpayment of licensure fee or failure to submit a licensure application;
- e. any validated instance of child abuse, corporal punishment, physical punishment, or cruel, severe or unusual punishment may result in revocation, denial or nonrenewal of the license if the owner is responsible or if the staff member who is responsible remains in the employment of the licensee;
- f. the facility is closed with no plans for reopening and no means of verifying compliance with minimum standards for licensure;
- g. any act of fraud such as falsifying or altering documents required for licensure.

E. Appeal Procedure. If the license is refused or revoked because the facility does not meet minimum requirements for licensure, the procedure is as follows:

1. The Department of Social Services, Bureau of Licensing, by certified letter, shall advise the licensee or applicant of the reasons for the denial or revocation and the right of appeal.

2. The administrator or owner may appeal this decision by submitting a written request with the reasons to the secretary of the Department of Social Services. Write to Department of Social Services, Bureau of Appeals, P.O. Box 2994, Baton Rouge, LA 70821-9118. This written request shall be postmarked within 30 days of the receipt of the notification in §7905.E.1 above.

3. The Bureau of Appeals shall set a hearing to be held within 30 days after receipt of such a request.

4. An appeals hearing officer shall conduct the hearing. Within 90 days after the date the appeal is filed, the hearing officer shall advise the appellant by certified letter of the decision, either affirming or reversing the original decision. If the license is refused or revoked, the facility shall terminate operation immediately.

5. If the facility continues to operate without a license, the Department of Social Services may file suit in the district court in the parish in which the facility is located for injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7907. Definitions

Abuse—any one of the following acts which seriously endangers the physical, mental, or emotional health of the child:

1. the infliction, attempted infliction, or, as a result of inadequate supervision, the allowance of the infliction or attempted infliction of physical or mental injury upon the child

by a parent or any other person;

2. the exploitation or overwork of a child by a parent or any other person;

3. the involvement of the child in any sexual act with a parent or any other person, or the aiding or toleration by the parent or the caretaker of the child's pornographic displays or any other involvement of a child in sexual activity constituting a crime under the laws of this state.

Administrator—the person responsible for the on-site, daily implementation and supervision of the overall facility's operation.

Behavior Management—techniques, measures, interventions and procedures applied in a systematic fashion to promote positive behavioral or functional change fostering the child's self-control, and to prevent or interrupt a child's behavior which threatens harm to the child or others.

Bureau—the Bureau of Licensing within the Department of Social Services.

Department—the Department of Social Services.

Director—the person who has program authority.

Discipline—the ongoing practice of helping children or juveniles to develop inner control so that they can manage their own behavior in an appropriate and acceptable manner.

Documentation—written evidence or proof, including signatures of appropriate staff and date, on site and available for review.

Group (or unit)—refers to the number of children or juveniles who share a common space and relate to one primary staff person (who may be assisted by others) on a consistent or daily basis.

Human Service Field—Psychology, Sociology, Special Education, Rehabilitation Counseling, Juvenile Justice, Corrections, Nursing, etc.

License—the legal authority to operate.

Phases of Behavior Escalation:

- a. a change in or an abnormal behavior occurs;
- b. there is more agitation and the child begins to disrupt the environment;

- c. finally, the child's behavior escalates to the level of possibly harming others or himself/herself at which time a physical restraint may occur;

- d. following escalation there is a period of de-escalation.

Residential Parenting Facility—a facility in which teenage mothers and their children reside for the purpose of keeping mother and child together, teaching parenting and life skills to the mother and assisting teenage mothers in obtaining educational or vocational training and skills.

Shall or Must—a mandatory requirement.

Should—a requirement that is urged or advised.

Therapeutic Wilderness Program—an incorporation of a primitive camping program with a nonpunitive environment, and an experience curriculum for residents 9 years of age and older who cannot function in home, school and community.

Treatment Plan Manager—the individual who is assigned responsibilities as outlined in §7917 "Treatment Planning."

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing

and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7909. Administration and Organization

A. General Requirements

1. A provider shall allow representatives of DSS in the performance of their mandated duties to inspect all aspects of a program's functioning that impact on children and to interview any staff member or child. DSS representatives shall be admitted immediately and without delay, and shall be given free access to all areas of a facility, including its grounds. If any portion of a facility is set aside for private use by the facility's owner, DSS representatives shall be permitted to verify that no children are present in that portion and that the private areas are inaccessible to children. Any area to which children have or have had access is presumed to be part of the facility and not the private quarters of the owner/operator.

2. A provider shall make any information that the provider is required to have under the present requirements, and any information reasonably related to assessment of compliance with these requirements available to DSS. The child's rights shall not be considered abridged by this requirement.

3. A provider accepting any child who resides in another state shall show proof of compliance with the terms of the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children and the Interstate Compact on Mental Health. Proof of compliance shall include clearance letters from the Compact officers of each state involved.

B. Other Jurisdictional Approvals. The provider shall comply and show proof of compliance with all relevant standards, regulations and requirements established by federal, state, local and municipal regulatory bodies including initial and annual approval by the following:

1. the Office of Public Health, Sanitarian Services;
2. Office of the State Fire Marshal, Code Enforcement and Building Safety;
3. the City Fire Department (if applicable);
4. the local governing authority or zoning approval (if applicable);
5. the Department of Education (if applicable).

C. Governing Body. A provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the provider.

1. A provider shall have documents identifying all members of the governing body; their addresses; their terms of membership (if applicable); officers of the governing body (if applicable) and terms of office of all officers (if applicable).

2. When the governing body of a provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

3. When the governing body is composed of more than one person, a provider shall have written minutes of all formal meetings of the governing body and bylaws specifying frequency of meetings and quorum requirements.

D. Responsibilities of a Governing Body. The governing body of a provider shall:

1. ensure the provider's compliance and conformity with the provider's charter;

2. ensure the provider's continual compliance and conformity with all relevant federal, state, local and municipal laws and regulations;

3. ensure the provider is adequately funded and fiscally sound by reviewing and approving the provider's annual budget or cost report;

4. ensure the provider is housed, maintained, staffed and equipped appropriately considering the nature of the provider's program;

5. designate a person to act as administrator/director and delegate sufficient authority to this person to manage the provider;

6. formulate and annually review, in consultation with the administrator/director, written policies concerning the provider's philosophy, goals, current services, personnel practices and fiscal management;

7. have the authority to dismiss the administrator/director;

8. meet with designated representatives of DSS whenever required to do so;

9. inform designated representatives of DSS prior to initiating any substantial changes in the program, services or physical plant of the provider.

E. Administrative File. A provider shall have an administrative file including:

1. organizational chart of the provider;

2. all leases, contracts and purchase-of-service agreements to which the provider is a party;

3. insurance policies: every provider shall maintain in force at all times a comprehensive general liability insurance policy. This policy shall be in addition to any professional liability policies maintained by the provider and shall extend coverage to any staff member who provides transportation for any child in the course and scope of his/her employment;

4. all written agreements with appropriately qualified professionals, or a state agency, for required professional services or resources not available from employees of the provider;

(Note: The provider shall not contract with outside sources for any direct care staff, including one-on-one trainers or attendants.)

5. written policies and procedures governing all aspects of the provider's activities.

F. Accessibility of Executive. The chief administrator or a person authorized to act on behalf of the chief administrator shall be accessible to provider staff or designated representatives of DSS at all times (twenty-four hours per day, seven days per week).

G. Documentation of Authority to Operate

1. A private provider shall have documentation of its authority to operate under state law.

2. A privately owned provider shall have documents identifying the names and addresses of owners.

3. A corporation, partnership or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, articles of association or bylaws.

H. Accounting and Record Keeping

1. A provider shall establish a system of business management and staffing to assure maintenance of complete and accurate accounts, books and records.

2. A provider shall ensure that all entries in records are legible, signed by the person making the entry and accompanied by the date on which the entry was made.

3. All records shall be maintained in an accessible, standardized order and format, and shall be retained and disposed of according to state and federal law.

4. A provider shall have sufficient space, facilities and supplies for providing effective record keeping services.

I. Statement of Philosophy and Goals. A provider shall have a written statement describing its philosophy and describing both long-term and short-term goals.

J. Program Description

1. A provider shall have a written program plan describing the services and programs offered by the provider.

2. A provider shall have a written policy regarding participation of children in activities related to fundraising and publicity. Consent of the child and, where appropriate, the child's parent(s) or legal guardian(s) shall be obtained prior to participation in such activities.

3. A provider shall have written policies and procedures regarding the photographing and audio or audio-visual recordings of children.

a. The written consent of the child and, where appropriate, the child's parent(s) or legal guardian(s) shall be obtained before the child is photographed or recorded for research or program publicity purposes.

b. All photographs and recordings shall be used in a manner that respects the dignity and confidentiality of the child.

4. A provider shall have written policies regarding the participation of children in research projects. No child shall participate in any research project without the express written consent of the child and the child's parent(s) or legal guardian(s).

K. Representation at Hearings. A provider shall, when required by law, have a representative present at all judicial, educational or administrative hearings that address the status of a child in care of the provider.

L. Children's Rights

1. All children shall be guaranteed the following rights, unless expressly contraindicated by the treatment plan. A provider shall have a comprehensive written policy on children's rights that assures each of those rights.

a. A child's civil rights are not abridged or abrogated solely as a result of placement in the provider's program.

b. A child has the right to consult freely and privately with his/her parent(s) or legal guardian(s).

c. A child has the right to consult freely and privately with legal counsel, as well as the right to employ legal counsel of his/her choosing.

d. A child is not denied admission, segregated into programs or otherwise subjected to discrimination on the basis of race, color, religion, national origin, sexual orientation, handicap, political beliefs, or any other nonmerit factor.

e. A child has the right to receive preventive, routine and emergency health care.

f. A child has the right to make complaints without fear of reprisal.

g. A child is protected from abuse and neglect.

h. A child has the right to participate in religious services in accordance with his/her faith, but shall not be forced to attend religious services.

i. A child is afforded the opportunity for telephone communication.

j. A child is allowed to send and receive mail.

k. A child is allowed visits to and from his/her family and friends.

l. A child is allowed to possess and use personal money and belongings, including personal clothing.

m. A child is explained the provider's policy on involvement of children in work.

n. A child is afforded opportunities for recreation and leisure.

o. A child has the right to adequate and appropriate food service.

p. A child has access to professional and specialized services as appropriate.

q. A child has the right to a timely (within 30 days of admission) treatment plan.

r. A child has the right to communicate freely and privately with state and local regulatory officials.

2. None of the rights guaranteed above shall be infringed or restricted in any way unless such restriction is necessary to the child's individual treatment plan. No treatment plan shall restrict the access of a child to legal counsel or restrict the access of state or local regulatory officials to a child.

3. Prior to admission, a provider shall clearly explain all of the child's civil rights to both the child and the child's parent(s) or legal guardian(s) and shall clearly explain any restrictions or limitations on those rights, the reasons that make those restrictions medically necessary in the child's individual treatment plan and the extent and duration of those restrictions. Documentation shall consist of a statement of children's civil rights, together with any restrictions thereon, the reasons for those restrictions and the extent and duration of those restrictions, signed by provider staff, the child and the child's parent(s) or legal guardian(s).

M. Confidentiality and Security of Files

1. A provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. Records shall be the property of the provider, and the provider as custodian shall secure records against loss, tampering or unauthorized use.

2. A provider shall maintain the confidentiality of all children's case records. Employees of the provider shall not disclose or knowingly permit the disclosure of any information concerning the child or his/her family, directly or indirectly, to any unauthorized person.

3. When the child is of majority age and noninterdicted, a provider shall obtain the child's written, informed permission prior to releasing any information from which the child or his/her family might be identified, except for authorized state and federal agencies.

4. When the child is a minor or is interdicted, the provider shall obtain written, informed consent from the parent(s) or legal guardian(s) prior to releasing any information from which the child might be identified, except for authorized state and federal agencies.

5. A provider shall, upon written authorization from the child or his/her parent(s) or legal guardian(s), make available information in the case record to the child, his counsel or the child's parent(s) or legal guardian(s). If, in the professional judgement of the administration of the provider, it is felt that information contained in the record would be injurious to the health or welfare of the child, the provider may deny access to the record. In any such case the provider shall prepare written reasons for denial to the person requesting the record and shall maintain detailed written reasons supporting the denial in the child's file.

6. A provider may use material from case records for teaching for research purposes, development of the governing body's understanding and knowledge of the provider's services, or similar educational purposes, provided names are deleted, other identifying information are disguised or deleted, and written authorization is obtained from the child or his/her parent(s) or legal guardian(s).

7. Children's records shall be retained in accordance with state/federal regulations.

N. Child's Case Record. A provider shall have a written record for each child that shall include administrative, treatment and educational data from the time of admission until the time the child leaves the provider. All children's records shall be available for inspection by the Department of Social Services. A child's case record shall include:

1. the name, home address, home telephone number, name of parent(s) or legal guardian(s), home address and telephone number of parent(s) or legal guardian(s) (if different from child's), sex, race, religion, birth date and birthplace of the child;

2. other identification data including documentation of court status, legal status or legal custody and who is authorized to give consents;

3. placement agreement, including proof of compliance with the Interstate Compact on Juveniles, the Interstate Compact on the Placement of Children and the Interstate Compact on Mental Health. Proof of compliance shall include clearance letters from the compact officers of each state involved;

4. child's history including family data, educational background, employment record, prior medical history and prior placement history;

5. a copy of the child's individual service plan and any modifications thereto and an appropriate summary to guide and assist direct service workers in implementing the child's program;

6. quarterly status reports;

7. reports of any incidents of abuse, neglect, accidents or critical incidents, including use of passive physical restraints;

8. reports of any child's grievances and the conclusions or dispositions of these reports. If the child's grievance was in writing, a copy of the written grievance shall be included;

9. a summary of family visits and contacts including dates, the nature of such visits/contacts and feedback from the family;

10. a summary of attendance and leaves from the provider;

11. a summary of court visits;

12. medical and dental records;

13. written summaries from providers of professional or specialized services;

14. discharge summary at time of discharge;

15. a copy of the child's original intake evaluation/assessment. If the child was admitted as an emergency admission, a copy of the emergency admission note shall be included as well;

16. a copy of the physical assessment report;

17. a copy of all annual reports.

O. Medical and Dental Records

1. A provider shall maintain complete health records of a child including:

a. a complete record of all immunizations provided;

b. records of physical, dental and vision examinations;

c. a complete record of any treatment and medication provided for a specific illness or medical emergencies.

2. A provider shall compile a past medical history on every child. This history shall include:

a. allergies, and abnormal reactions to medication;

b. immunization history;

c. history of serious illness, serious injury or major surgery;

d. developmental history;

e. current use of prescribed medication;

f. current or former use of alcohol or nonprescribed drugs;

g. medical history.

P. Personnel File

1. A provider shall have a personnel file for each employee that shall contain:

a. the application for employment/resume;

b. documentation of contact with three references;

c. all required documentation of appropriate status that includes:

i. current driver's license for operating provider or private vehicles in transporting children;

ii. professional credentials/certification required to hold the position;

d. periodic, at least annual performance evaluations;

e. staff member's starting and termination dates;

f. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the facility;

g. documentation of satisfactory criminal record check;

h. documentation of employee's orientation and any training received.

2. The staff member shall have reasonable access to his/her file and shall be allowed to add any written statement he/she wishes to make to the file at any time.

3. A provider shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7911. Human Resources

A. Staff Plan

1. A provider shall have a written plan for recruitment, screening, orientation, ongoing training, development, supervision and performance evaluation of staff members whether directly employed, contract or volunteer.

2. A provider shall have written personnel policies and written job descriptions for each staff position.

3. A provider shall have a written employee grievance procedure.

B. Nondiscrimination. The provider shall have a written nondiscrimination policy that shall ensure the provider does not discriminate in employment of individuals because of race, color, religion, sex, age, national origin, handicap, political beliefs, veteran's status or any non-merit factor in accordance with all state and federal regulations.

C. Staff Medical Requirement

1. Upon offer of employment, all staff shall be required to obtain a statement of good health signed by the physician or physician's designee. A statement of good health dated within three months prior to offer of employment or within one month after date of employment is acceptable. A health statement is due every three years.

2. All persons prior to or at time of employment shall be free of tuberculosis in a communicable state as evidenced by:

a. a negative Mantoux skin test for tuberculosis;

b. a normal chest x-ray if the aforementioned skin test is positive; or

c. a statement from a licensed physician certifying that the individual is noninfectious if the chest x-ray is other than normal.

3. Any employee who has a positive Mantoux skin test for tuberculosis, in order to remain employed, shall complete an adequate course of therapy as prescribed by a licensed physician or shall present a signed statement from a licensed physician stating that therapy is not indicated.

D. Screening

1. A provider's screening procedures shall address the prospective employee's qualifications, as related to the appropriate job description.

a. Prior to employment, each prospective employee shall complete an employment application. The application/resume shall contain complete information about an applicant's education, employment history, and criminal background, including any arrests or convictions.

b. No provider shall knowingly employ or continue in employment any person convicted of a felony or any crime involving a juvenile victim.

2. Prior to employing any person, a provider shall obtain three written references for each prospective staff member or telephone notes from contact with these references.

3. A provider shall maintain documentation of satisfactory criminal record check, as required by R.S. 15:587.1. A criminal record check shall be requested by the provider prior to the employment of any person who will have supervisory or disciplinary authority over children.

E. Orientation

1. A provider's orientation program shall provide a minimum of 24 hours of training in the following topics for all direct care staff within one week of the date of employment:

a. philosophy, organization, program, practices and goals of the provider;

b. instruction in the specific responsibilities of the employee's job;

c. implementation of treatment plans;

d. the provider's emergency and safety procedures including medical emergencies;

e. detecting and reporting suspected abuse and neglect;

f. reporting critical incidents;

g. children's rights;

h. health practices;

i. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

j. basic skills required to meet the health needs and problems of the children;

k. crisis de-escalation and the management of aggressive behavior including acceptable and prohibited responses;

l. passive physical restraint which is to include a practice element in the chosen method;

m. safe administration and handling of all medications including psychotropic drugs, dosages and side effects.

2. The employee shall sign a statement of understanding certifying that such training has occurred.

3. A new employee shall not be given sole responsibility for the implementation of a child's program plan until this training is completed.

4. All new employees shall receive certification in CPR and First Aid within the first 30 days of employment.

F. Training

1. A provider shall document that all support and direct care employees receive training on an annual basis in the following topics:

a. provider's administrative procedures and programmatic goals;

b. provider's emergency and safety procedures including medical emergencies;

c. children's rights;

d. detecting and reporting suspected abuse and neglect.

2. Direct care employees shall receive additional annual training to include but not be limited to the following topics:

- a. implementation of treatment plans;
- b. reporting critical incidents;
- c. health practices;
- d. detecting signs of illness or dysfunction that warrant medical or nursing intervention;
- e. basic skills required to meet the health needs and problems of the children;
- f. crisis de-escalation and the management of aggressive behavior including acceptable and prohibited responses;
- g. passive physical restraint which is to induce a practice element in the chosen method;
- h. safe administration and handling of all medication including psychotropic drugs, dosages and side effects.

3. All direct care staff shall have documentation of current certification in CPR and First Aid.

G. Supervision and Evaluation

1. A provider shall complete an annual performance evaluation of all staff members. For any person who interacts with children, a provider's performance evaluation procedures shall address the quality and nature of a staff member's relationships with children.

2. A provider shall be responsible and have the authority for the supervision of the performance of all persons involved in any service delivery/direct care to children.

H. Staffing Requirements

1. A provider shall employ a sufficient number of qualified staff and delegate sufficient authority to such staff to perform the following functions:

- a. administrative;
- b. fiscal;
- c. clerical;
- d. housekeeping, maintenance and food service;
- e. direct child service and treatment planning;
- f. supervisory;
- g. recordkeeping and reporting;
- h. social service;
- i. ancillary service;
- j. treatment plan management.

2. A provider shall ensure that all staff members are properly certified, licensed as legally required and appropriately qualified for their position.

a. Director: the director shall have a bachelor's degree plus one year experience relative to the population being served.

b. Treatment plan manager: the treatment plan manager shall have one of the following:

- i. a bachelor's degree in a human service field plus a minimum of three years' experience with the relevant population;
- ii. a master's degree in a human service field plus a minimum of one year with the relevant population.

3. A provider shall ensure that an adequate number of qualified direct service staff are present with the children as necessary to ensure the health, safety and well-being of children. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the provider, the ages and needs of the children, and shall assure the continual safety, protection, direct care and supervision of children.

a. The provider shall have at least one adult staff present for every six children when children are present and awake.

b. The provider shall have at least one adult staff present and awake for every 12 children when children are present and asleep. In addition to required staff, at least one staff person shall be on call in case of emergency.

c. When children are at school, work or recreation outside the facility, the provider shall have a plan ensuring the availability and accessibility of direct care staff to handle emergencies or perform other necessary direct care functions.

d. At least one child care staff person for every five infants or toddlers shall be present in a residential parenting facility to provide care and supervision to children in the absence of teenage mothers.

e. A residential parenting facility shall not permit a teenage mother to provide care or supervision to any child other than her own in the absence of the child's mother or child care staff.

f. Children of staff members and children of residents living at the residential parenting facility shall be counted in all child care/staff ratios.

4. A provider shall make sufficient provisions for housekeeping and maintenance to ensure that direct service staff are able to adequately perform direct care functions.

5. A provider utilizing live-in staff shall have sufficient relief staff to ensure adequate off duty time for live-in staff.

I. Volunteers/Student Interns. A provider that utilizes volunteers or student interns on a regular basis shall be responsible for the actions of the volunteers and interns and shall have a written plan detailing the scope of the volunteers'/interns' work with the children. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

1. have direct supervision by a paid staff member. They shall never be left alone or in charge of a child or group of children without a paid staff member present;

2. have orientation and training in the philosophy of the facility and the needs of children and methods of meeting those needs;

3. have three documented reference checks as required for regular paid staff.

J. Staff Communications. A provider shall establish procedures to assure adequate communication among staff to provide continuity of services to the child. This system of communication shall include recording and sharing of daily information noting unusual circumstances, individual and group problems of children, and other information requiring continued action by staff. Documentation shall be legible, signed and dated by staff.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7913. Quality of Life

A. Family Involvement

1. A provider shall have a written description of

strategies used in the provider's program to foster ongoing positive communication and contact between children and their families, their friends and others significant in their lives.

2. A provider shall have evidence that the child's parent(s) or legal guardian(s), when appropriate, and the placing agency have been informed in writing of:

- a. the philosophy and goals of the provider;
- b. behavior management and disciplinary practices of the provider;
- c. the provider's arrangements for children's participation in religious observances;
- d. any specific treatment or treatment strategy employed by the provider to be implemented for a particular child;
- e. visiting hours, visiting rules and procedures, arrangements for home visits and procedures for communicating with children by mail or telephone;
- f. a procedure for registering complaints with the provider, the contracting/funding agency and the licensing agency concerning the child's care or treatment;
- g. the name, telephone number and address of a staff person who may be contacted by the family or the legally responsible person to ask questions or register concerns on an ongoing basis.

B. Telephone Communication. A provider shall allow a child to receive and place telephone calls in privacy subject only to reasonable rules and to any specific restrictions in the child's treatment plan. There shall be no restrictions on communication between a child and the child's legal counsel. Any restriction on telephone communication in a child's treatment plan shall be formally approved by the treatment plan manager.

C. Mail

1. A provider shall allow children to receive mail unopened, uncensored and unread by staff unless contraindicated by the child's treatment plan. This restriction shall be reviewed every 30 days by the treatment plan manager. No treatment plan shall restrict the right to write letters in privacy and to send mail unopened, uncensored and unread by any other person. Correspondence from a child's legal counsel shall not be opened, read or otherwise interfered with for any reason.

2. A provider shall ensure that children have access to all materials necessary for writing and sending letters and shall, when necessary, ensure that children who wish to correspond with others are given any required assistance.

D. Visits. A provider shall allow a child to visit or be visited by family and friends subject only to reasonable rules and to any specific restrictions in the child's treatment plan.

1. Special restrictions shall be imposed only to prevent serious harm to the child. The reasons for any special restrictions shall be recorded in the child's treatment plan.

2. Special restrictions shall be reviewed every 30 days by the treatment plan manager and, if restrictions are renewed, the reasons for renewal shall be recorded in the child's treatment plan.

3. No treatment plan shall restrict home visits without approval from the legal custodian.

E. Routines. A provider shall have a written set of daily routines for children designed to provide for reasonable consistency and timeliness in daily activities, in the delivery of essential services to children and in the provision of adequate periods of recreation, privacy, rest and sleep.

F. Money and Personal Belongings

1. A provider shall permit and encourage a child to possess his/her own money either by giving an allowance/ by providing opportunities for paid work, unless otherwise indicated by the child's treatment plan, and reviewed every 30 days by the treatment plan manager.

a. Money earned, or received either as a gift or an allowance by a child, shall be deemed to be that child's personal property.

b. Limitations may be placed on the amount of money a child may possess or have unencumbered access to when such limitations are considered to be in the child's best interests and are duly recorded in the child's treatment plan.

c. A provider shall, as appropriate to the child's age and abilities, provide training in budgeting, shopping and money management.

d. Children's monetary restitution for damages shall only occur when there is clear evidence of individual responsibility for the damages and the restitution is approved by the treatment team. The child and his/her parent(s) or legal guardian(s) shall be notified in writing within 24 hours of any claim for restitution and shall be provided with specific details of the damages, how, when and where the damages occurred, and the amount of damages claimed. If the amount is unknown, an estimate of the damages shall be provided and an exact figure provided within 30 days. The child and his/her parent(s) or legal guardian(s) shall be given a reasonable opportunity to respond to any claim for damages.

2. A provider shall allow a child to bring his/her personal belongings to the program and to acquire belongings of his/her own in accordance with the child's treatment plan. However, the provider may, as necessary, limit or supervise the use of these items while the child is in care. Where extraordinary limitations are imposed, the child shall be informed by staff of the reasons, and the decisions and reasons shall be recorded in the child's case record. Reasonable provisions shall be made for the protection of the child's property.

G. Work

1. A provider shall have a written description regarding the involvement of children in work including:

- a. description of any unpaid tasks required of children;
- b. description of any paid work assignments including the pay scales for such assignments;
- c. description of the provider's approach to supervising work assignments;
- d. assurance that the conditions and compensation of such work are in compliance with applicable state and federal laws.

2. A provider shall demonstrate that any child's work assignments are designed to provide a constructive experience

and are not used as a means of performing vital provider functions at low cost. All work assignments shall be in accordance with the child's treatment plan.

3. A provider shall assign as unpaid work for children only housekeeping tasks similar to those performed in a normal family home. Any other work assigned shall be compensated, at such rate and under such conditions as the child might reasonably be expected to receive for similar work in outside employment. The provider shall ensure that all such employment practices comply fully with state and federal laws and regulations. No child shall be employed in any industrial or hazardous occupation, nor under any hazardous conditions.

4. When a child engages in off-grounds work, the provider shall document that:

- a. such work is voluntary and in accordance with the child's treatment plan;
- b. the treatment plan manager approves such work;
- c. the conditions and compensation of such work are in compliance with applicable state and federal laws;
- d. such work does not conflict with the child's program.

H. Recreation

1. A provider shall have a written plan for insuring that a range of indoor and outdoor recreational and leisure opportunities are provided for children. Such opportunities shall be based on both the individual interests and needs of the children and the composition of the living group.

2. A provider shall be adequately staffed and have appropriate recreation spaces and facilities accessible to children. Recreation equipment and supplies shall be of sufficient quantity and variety to carry out the stated objectives of the provider's recreation plan.

3. A provider shall utilize the recreational resources of the community whenever appropriate. The provider shall arrange the transportation and supervision required for maximum usage of community resources. Access to such community resources shall not be denied or infringed except as may be necessary to the child's treatment plan; and any such restrictions shall be specifically described in the treatment plan, together with the reasons such restrictions are necessary and the extent and duration of such restrictions.

I. Religion

1. A provider shall have a written description of its religious orientation, particular religious practices that are observed and any religious restrictions on admission. This description shall be provided to the child and the child's parent(s) or legal guardian(s).

a. Every child shall be permitted to attend religious services in accordance with his/her faith. The provider shall, whenever possible, arrange transportation and encourage participation by those children who desire to participate in religious activities in the community.

b. Children shall not be forced to attend religious services.

2. When the child is a minor, the provider shall determine the wishes of the parent(s) or legal guardian(s) with regard to religious observance and instruction at the time of

placement and shall make every effort to ensure that these wishes are carried out.

J. Clothing

1. A provider shall ensure that children are provided with clean, well-fitting clothing appropriate to the season and to the child's age, sex and individual needs.

2. Clothing shall be maintained in good repair.

3. All clothing provided to a child shall go with the child at discharge.

4. Clothing shall belong to the individual child and not be shared in common.

K. Independent Life Training. A provider shall have a program to ensure that children receive training in independent living skills appropriate to their age and functioning level. This program shall include instruction in:

1. hygiene and grooming;
2. family life;
3. sex education including family planning and venereal disease counseling;
4. laundry and maintenance of clothing;
5. appropriate social skills;
6. housekeeping;
7. use of transportation;
8. budgeting and shopping;
9. cooking;
10. punctuality, attendance and other employment related matters;
11. use of recreation and leisure time.

L. Food Service

1. A provider shall ensure that a child is, on a daily basis, provided with food of such quality and in such quantity as to meet the recommended daily dietary allowances adjusted for age, gender and activity of the Food Nutrition Board of the National Research Council.

a. Menus shall be written and approved annually in writing by a registered dietician.

b. A provider shall develop written menus at least one week in advance.

c. Written menus and records of foods purchased shall be maintained on file for 30 days. Menus shall provide for a sufficient variety of foods, vary from week to week and reflect all substitutions.

2. A person designated by the administrator/director shall be responsible for the total food service of the provider. This person shall be responsible for:

- a. initiating food orders or requisitions;
- b. establishing specifications for food purchases and insuring that such specifications are met;
- c. storing and handling of food;
- d. food preparation;
- e. food serving;
- f. orientation, training and supervision of food service personnel;
- g. maintaining a current list of children with special nutritional needs;
- h. having an effective method of recording and transmitting diet orders and changes;
- i. recording information in the child's record relating to special nutritional needs;

- j. providing information on children's diets to staff.
- 3. A provider shall ensure that any modified diet for a child shall be:
 - a. prescribed by the child's physician and treatment plan with a record of the prescription kept on file;
 - b. planned, prepared and served by persons who have received instruction from the registered dietician who has approved the menu for the modified diet.
- 4. A provider shall ensure that a child is provided at least three meals or their equivalent daily at regular times with not more than 14 hours between the evening meal and breakfast of the following day.
- 5. The provider shall ensure that the food provided to a child in care by the provider is in accord with his/her religious beliefs.
- 6. No child shall be denied food or force-fed for any reason except as medically required pursuant to a physician's written order. A copy of the order shall be maintained in the child's file.
- 7. When meals are provided to staff, a provider shall ensure that staff members eat the same food served to children in care, unless special dietary requirements dictate differences in diet.
- 8. A provider shall purchase and provide to children only food and drink of safe quality. The storage, preparation and serving techniques shall ensure that nutrients are retained and spoilage is prevented. Milk and milk products shall be Grade A and pasteurized.
- 9. A provider shall ensure that food served to a child and not consumed is discarded.
- 10. A provider shall show evidence of effective procedures for cleaning all equipment and work areas.
- M. Professional and Special Programs and Services
 - 1. A provider shall ensure services in the following areas to meet the specialized needs of the child:
 - a. physical/occupational therapy;
 - b. speech pathology and audiology;
 - c. psychological and psychiatric services;
 - d. social work services;
 - e. individual, group and family counseling.
 - 2. A provider shall ensure that all providers of professional and special services:
 - a. record all significant contacts with the child;
 - b. provide quarterly written summaries of the child's response to the service, the child's current status relative to the service and the child's progress;
 - c. participate, as appropriate, in the development, implementation and review of treatment plans and aftercare plans and in the interdisciplinary team responsible for developing such plans;
 - d. provide services appropriately integrated into the overall program and provide training to direct service staff as needed to implement treatment plans;
 - e. provide child assessments/evaluations as needed for treatment plan development and revision.
 - 3. A provider shall ensure that any provider of professional or special services (internal or external to the agency) meets the following:

- a. adequately qualified and, where appropriate, currently licensed or certified staff according to state or federal law;

- b. adequate space, facilities and privacy;
- c. appropriate equipment;
- d. adequate supplies;
- e. appropriate resources.

N. Health Care. The provider shall have a written plan for providing preventive, routine and emergency medical and dental care for children and shall show evidence of access to the resources outlined in the plan. This plan shall include:

- 1. ongoing appraisal of the general health of each child;
- 2. provision of health education, as appropriate;
- 3. provisions for keeping children's immunizations current;
- 4. approaches that ensure that any medical treatment administered will be explained to the child in language suitable to his/her age and understanding;
- 5. an ongoing relationship with a licensed physician, dentist and pharmacist to advise the provider concerning medical and dental care;
- 6. availability of a physician on a 24-hour, seven days a week basis;
- 7. reporting of communicable diseases and infections in accordance with law.

O. Medical Care

1. A provider shall arrange a general medical examination by a physician for each child within a week of admission unless the child has received such an examination within 30 days before admission and the results of this examination are available to the provider. This examination shall include:

- a. an examination of the child for physical injury and disease;
- b. vision, hearing and speech screening;
- c. a current assessment of the child's general health.

2. The provider shall arrange an annual physical examination of all children.

3. Whenever indicated, the child shall be referred to an appropriate medical specialist for either further assessment or treatment, including gynecological services for female children.

4. A provider shall ensure that a child receives timely, competent medical care when he/she is ill or injured. A provider shall notify the child's parent or legal guardian, verbally /in writing, within 24 hours of a child's illness or injury that requires treatment from a physician or hospital.

5. Records of all medical examinations, follow-ups and treatment together with copies of all notices to parent(s) or guardian(s) shall be kept in the child's file.

P. Dental Care

1. A provider shall have an organized system for providing comprehensive dental services for all children that shall include:

- a. provision for dental treatment;
- b. provision for emergency treatment on a 24-hour, seven days a week basis by a licensed dentist

c. a recall system specified by the dentist, but at least annually.

2. A provider shall arrange a dental exam for each child within 90 days of admission unless the child has received such an examination within six months before admission and the results of this examination are available to the provider.

3. Records of all dental examinations, follow-ups and treatment shall be documented in the child's file.

4. Provider shall notify the child's parent(s) or legal guardian(s), verbally/in writing, within 24 hours when a child requires or receives dental treatment. The notification shall include the nature of the dental condition and any treatment required.

Q. Immunizations. Within 30 days of admission, a provider shall obtain documentation of a child's immunization history, insuring the child has received all appropriate immunizations and booster shots that are required by the Office of Public Health.

R. Medications

1. A provider shall have written policies and procedures that govern the safe administration and handling of all drugs as appropriate to the provider.

2. A provider shall have a written policy governing the self-administration of both prescription and nonprescription drugs.

3. A provider shall ensure that medications are either self-administered or administered by qualified persons according to state law.

4. A provider shall have a written policy for handling medication taken from the facility by children on pass.

5. A provider shall ensure that any medication given to a child for therapeutic and medical purposes is in accordance with the written order of a physician.

a. There shall be no standing orders for prescription medications.

b. There shall be standing orders, signed by the physician, for nonprescription drugs with directions from the physician indicating when he/she is to be contacted. Standing orders shall be updated annually by the physician.

c. Copies of all written orders shall be kept in the child's file.

d. Medication shall not be used as a disciplinary measure, a convenience for staff or as a substitute for adequate, appropriate programming.

6. The provider shall ensure that the prescribing physician is immediately informed of any side effects observed by staff, or any medication errors. Any such side effects or errors shall be promptly recorded in the child's file and the parent(s) or legal guardian(s) notified in writing within 24 hours.

7. Each drug shall be identified up to the point of administration.

8. Discontinued and outdated drugs and containers with worn, illegible or missing labels shall be properly disposed of.

9. Drugs shall be stored under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation and security.

a. Drugs used externally and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations.

b. All drugs, including refrigerated drugs, shall be kept under lock and key.

10. A provider using psychotropic medications on a regular basis shall have a written description of the use of psychotropic medications including:

a. a description of procedures to ensure that medications are used as ordered by the physician for therapeutic purposes and in accordance with accepted clinical practice;

b. a description of procedures to ensure that medications are used only when there are demonstrable benefits to the child unobtainable through less restrictive measures;

c. a description of procedures to ensure continual physician review of medication and discontinuation of medication when there are no demonstrable benefits to the child;

d. a description of an ongoing program to inform children, staff, and where appropriate, children's parent(s) or legal guardian(s) on the potential benefits and negative side-effects of medication and to involve children and, where appropriate, their parent(s) or legal guardian(s) in decisions concerning medication;

e. no child shall be given any psychotropic medication except on written authorization from a physician, a copy of which shall be kept in the child's file. Such written authorizations shall be reviewed and renewed at least every 90 days.

S. Grievance Procedure for Children

1. A provider shall have a written grievance procedure for children designed to allow children to make complaints without fear of retaliation.

2. The provider shall document that the child and the child's parent(s) or legal guardian(s) are aware of and understand the grievance procedure.

3. The provider shall document the resolution of the grievance in the child's record.

T. Abuse and Neglect

1. A provider shall have comprehensive written procedures concerning child abuse including:

a. a description of ongoing communications strategies used by the provider to maintain staff awareness of abuse prevention, current definitions of abuse and neglect, mandated reporting requirements to the Office of Community Services Child Protection Agency and applicable laws;

b. a procedure for insuring that the child is protected from potential harassment during the investigation;

c. a procedure for disciplining staff members who abuse or neglect children;

d. a procedure for insuring that the staff member involved does not work directly with the child involved or any other child in the program until the investigation is complete.

2. Any case of suspected child abuse or neglect shall be reported immediately to the Bureau of Licensing and other

appropriate authorities, according to state law. Written notification shall follow within 24 hours. The child's record shall include:

- a. date and time the suspected abuse or neglect occurred;
- b. description of the incident;
- c. action taken as a result of the incident; and
- d. name of the person to whom the report was made.

U. Reports on Critical Incidents

1. Any serious incident, accident or injury to a child, elopements, hospitalizations, overnight absence from the facility without permission, and any other unexplained absence shall be reported to the parent/legal guardian/placing agency within 24 hours. The child's record shall contain:

- a. the date and time the incident occurred;
- b. a brief description of the incident;
- c. the action taken as a result of the incident;
- d. the name of the person who completed the report; and the names of the person(s) who witnessed the incident;
- e. the name of the person who made the report to the parent/legal guardian or placing agency; and
- f. the name of the person to whom the report was made.

2. Any incident which involves the death of a child or any serious threat to the child's health, safety or well-being shall be reported to the parent/legal guardian/placing agency, Bureau of Licensing and other appropriate authorities. Written notification shall follow within 24 hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7915. Direct Service Management

A. Admission Policies

1. A provider shall have a written description of admission policies and criteria that shall include the following information:

- a. policies and procedures related to intake;
- b. the age and sex of children served;
- c. the needs, problems, situations or patterns best addressed by the provider's program;
- d. any other criteria for admission;
- e. criteria for discharge;
- f. any replacement requirements on the child, the legally responsible person, DSS or other involved agencies;
- g. procedures for insuring that placement within the program is the least restrictive alternative, appropriate to meet the child's needs.

2. A provider shall only accept children for placement from the parent(s), legal guardian(s), custodial agency or a court of competent jurisdiction.

3. The written description of admission policies and criteria shall be available to the parent(s) or legal guardian(s) for any child referred for placement.

4. A provider shall not admit more children into care than the number specified on the provider's license.

5. A provider shall not accept any child for placement

whose needs cannot be adequately met by the provider's program.

6. A provider shall not admit any child into care whose presence will be seriously damaging to the ongoing functioning of the provider or to children already in care.

7. When refusing admission to a child, a provider shall notify the referring agency of the reason for refusal of admission in writing. If the child was referred by his/her parent(s) or legal guardian(s) he/she shall be provided written reasons for the refusal. Copies of the written reasons for refusal shall be kept in the provider's administrative file.

8. A provider shall ensure that the child, the child's parent(s) or legal guardian(s) and others, as appropriate, are provided reasonable opportunity to participate in the admission process and decisions. Proper consents shall be obtained before admission.

9. No child shall be admitted unless the provider has first complied with all applicable provisions of the Interstate Compact on Juveniles, the Interstate Compact on Placement of Children and the Interstate Compact on Mental Health. Proof of such prior compliance shall be obtained prior to admission and shall be kept in the child's file.

B. Intake Evaluation

1. The provider shall accept a child into care only when a current, comprehensive intake evaluation/assessment, not over one year old, has been completed including, health and family history, medical, social, psychological and, as appropriate, developmental, vocational or educational assessment. This evaluation shall contain evidence that a determination has been made that the child cannot be maintained in a least restrictive environment within the community.

2. In emergency situations necessitating immediate placement into care, the provider shall gather as much information as possible about the child to be admitted and the circumstances requiring placement, formalize this in an "emergency admission note" within two days of admission and then proceed with an intake evaluation as quickly as possible. The intake evaluation shall be completed within 30 days of admission.

C. Clarification of Expectations to Children. The provider shall, consistent with the child's maturity and ability to understand, make clear its expectations and requirements for behavior and provide the child referred for placement with an explanation of the provider's criteria for successful participation in, and completion of the program.

D. Placement Agreement

1. The provider shall ensure that a written placement agreement is completed. A copy of the placement agreement, signed by all parties involved in its formulation, shall be kept in the child's record.

2. The placement agreement shall include, by reference or attachment, at least the following:

- a. discussion of the child's and the family's expectations regarding family contact and involvement, the nature and goals of care including any specialized services to be provided, the religious orientation and practices of the child and the anticipated discharge date;

- b. a delineation of the respective roles and

responsibilities of all agencies and persons involved with the child and his/her family;

- c. authorization to care for the child;
- d. authorization to obtain medical care for the child;
- e. arrangements regarding visits, vacation, mail, gifts and telephone calls;
- f. arrangements regarding the nature and frequency of reports to, and meetings involving, the legally responsible person and referring agency;
- g. provision for notification of the child's parent(s) or legal guardian(s) in the event of unauthorized absence, illness, accident or any other significant event regarding the child.

3. The provider shall ensure that an assessment of each child is conducted upon placement for illness, fever, rashes, bruises and injury. The child shall be asked if he/she has any physical complaints. The results of this procedure shall be documented and kept in the child's record.

4. The provider shall assign a staff member to orient the child and, where available, the family to life at the facility.

E. Discharge

1. The provider shall have a written policy concerning unplanned discharge. This policy shall ensure that emergency discharges initiated by the provider take place only when the health and safety of a child or other children might be endangered by the child's further placement at the agency. The provider shall have a written report detailing the circumstances leading to each unplanned discharge.

2. When a child is discharged, the provider shall compile a complete written discharge summary within 30 days of discharge. The discharge summary is to be kept in the child's record and shall include:

- a. the name and home address of the child and, where appropriate, the child's parent(s) or legal guardian(s);
- b. the name, address and telephone number of the provider;
- c. the reason for discharge and, if due to child's unsuitability for provider's program, actions provider undertook to maintain placement;
- d. a summary of services provided during care including medical, dental and health services;
- e. a summary of the child's progress and accomplishments during care;
- f. the assessed needs that remain to be met and alternate service possibilities that might meet those needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7917. Treatment Planning

A. The Treatment Plan Manager. A provider shall ensure that a qualified treatment plan manager is assigned to each child and given responsibility for and authority over:

1. supervision of the implementation of the child's treatment plan;
2. integration of the various aspects of the child's program;

3. recording of the child's progress as measured by objective indicators and making appropriate changes/modifications;

4. reviewing and approving quarterly status reports of the successes and failures of the child's program, including the child's educational program, with recommendations for any modifications deemed necessary. These reports may be prepared by designated staff, but the treatment plan manager shall also sign and date the report;

5. insuring the timely release, whenever appropriate, of the child to a least restrictive setting;

6. monitoring any extraordinary restriction of the child's freedom including use of any form of restraint, any special restriction on a child's communication with others and any behavior management plan;

7. asserting and safeguarding the human and civil rights of children and their families and fostering the human dignity and personal worth of each child;

8. helping the child and family to consider alternative services and make a responsible choice regarding whether and when placement is indicated during the evaluation process, that may or may not lead to admission;

9. serving as liaison between the child, provider, family and community during the child's admission to and residence in the facility, or while the child is receiving services from the provider in order to:

- a. assist staff in understanding the needs of the child and his/her family in relation to each other;
- b. assist staff in understanding social factors in the child's day-to-day behavior, including staff/child relationships;
- c. assist staff in preparing the child for changes in his/her living situation;
- d. help the family to develop constructive and personally meaningful ways to support the child's experience in the facility, through counseling concerned with problems associated with changes in family structure and functioning, and referral to specific services, as appropriate;
- e. help the family to participate in planning for the child's return to home or other community placement.

B. The Treatment Plan

1. A provider shall ensure that a child has a current, (within the prior 12 months) comprehensive, written psychiatric/psychological, social and, as appropriate, educational assessment. This assessment shall be the basis of a comprehensive, time limited, goal oriented individual treatment plan addressing the needs identified by the assessment within 30 days of admission.

a. The assessment shall identify the child's strengths and needs, establish priorities to assist in the development of an appropriate plan and conclude with recommendations concerning approaches and techniques to be used.

b. All methods used in assessing a child shall be appropriate considering the child's age, development and cultural background and dominant language or mode of communication.

2. Individual treatment plans shall be developed by an interdisciplinary team including the treatment plan manager, representatives of the direct service staff working with the

child on a daily basis, representatives of other placing/funding agencies, the child, the child's parent(s) or legal guardian(s) and any other person(s) significantly involved in the child's care on an ongoing basis.

3. The provider shall document that, where applicable, the designated representative of the placing agency and the child's parent or legal guardian have been invited to participate in the planning process. When they do not participate, the provider shall document the reasons for nonparticipation.

4. A provider shall include in a child's treatment plan any community resources or programs providing treatment or training to that child, and shall involve representatives of such services and programs in the treatment planning process whenever feasible and appropriate. Any community resource or program involved in a treatment plan shall be appropriately licensed or shall be a part of an approved school program.

5. The completed treatment plan shall be signed by all team participants.

6. A provider shall complete a treatment plan at least annually and shall evaluate the degree to which the goals have been achieved.

7. A provider shall ensure that all persons working directly with the child are appropriately informed of the treatment plan and have access to information from the child's records that is necessary for effective performance of the employee's assigned tasks.

8. A child's treatment plan shall not be composed solely of activities and programs provided by agencies and organizations external to the provider.

9. A provider shall ensure that the treatment plan for each child includes the following components:

a. the findings of the assessment. The assessment shall describe the severity, duration and frequency of the targeted behavior;

b. a statement of goals to be achieved for the child and his/her family;

c. plan for fostering positive family relationships for the child, when appropriate;

d. schedule of the daily activities including training/education for children and recreation to be pursued by the program staff and the child in attempting to achieve the stated goals;

e. any specific behavior management plan;

f. any specialized services that will be provided directly or arranged for, stated in specific behavioral terms that permit the problems to be assessed, and methods for insuring their proper integration with the child's ongoing program activities;

g. overall goals and specific objectives that are time limited;

h. methods for evaluating the child's progress;

i. any restriction to "children's rights" deemed necessary to the child's individual treatment plan. Any such restriction shall be expressly stated in the treatment plan, shall specifically identify the right infringed upon, and the extent and duration of the infringement, and shall specify the reasons such restriction is necessary to the treatment plan, and the reasons less restrictive methods cannot be employed;

j. goals and preliminary plans for discharge;

k. identification of each person responsible for implementing or coordinating implementation of the plan.

C. Education

1. A provider shall ensure that each child has access to appropriate educational services consistent with the child's abilities and need, taking into account his/her age and level of functioning.

2. All children of school age shall be enrolled in and attending a school program approved by the Department of Education or an alternative educational program approved by the local school board.

3. The provider shall notify both the placing agency and the child's parent(s) or legal guardian(s) verbally/in writing within 24 hours of any truancy, expulsion or suspension from school. Notification shall be documented in the child's record.

D. Reports. The chief administrator of a provider or his/her designee shall report in writing to the child's parent or legal guardian at least annually, or as otherwise required by law, with regard to the child's progress with reference to the goals and objectives in the treatment plan. This report shall include a description of the child's medical condition.

E. Arrangement of Children into Groups

1. A provider shall arrange children into groups that effectively address the needs of children.

2. All children shall have privacy during periods of relative quiet and inactivity.

3. All children shall have an opportunity to build relationships within small groups.

4. Children shall be involved in decision making regarding the roles and routines of their living group to the degree possible considering their level of functioning.

F. Behavior Management

1. The provider shall have a written description of the methods of behavior management to be used on facility-wide level, insuring that procedures begin with the least restrictive, most positive measures and follow a hierarchy of acceptable measures. This description shall be provided to all provider staff and shall include:

a. appropriate and inappropriate behaviors of children;

b. consequences of inappropriate behaviors of children;

c. the phases of behavior escalation and appropriate intervention methods to be used at each level.

2. Use of any methods other than those outlined in the written description required above is prohibited unless addressed in an individual behavior management plan approved by the treatment plan manager.

G. House Rules and Regulations. A provider shall have a clearly written list of rules and regulations governing conduct for children in care and shall document that these rules and regulations are made available to each staff member, child and, where appropriate, the child's parent(s) or legal guardian(s).

H. Limitations on Potentially Harmful Responses. A provider shall have a written list of prohibited responses to children by staff members and shall document that this list is made available to each staff member, child and, where

appropriate, the child's parent(s) or legal guardian(s). This list shall include the following prohibited responses:

1. any type of physical hitting or other painful physical contact except as required for medical, dental or first aid procedures necessary to preserve the child's life or health;
2. requiring a child to take an extremely uncomfortable position;
3. verbal abuse, ridicule or humiliation;
4. withholding of a meal, except under a physician's order;
5. denial of sufficient sleep, except under a physician's order;
6. requiring a child to remain silent for a long period of time;
7. denial of shelter, warmth, clothing or bedding;
8. assignment of harsh physical work.

I. Limitations on Punishments

1. A provider shall have a written list of prohibited responses to children by staff when such responses are used as punishments and shall document that this list is made available to each staff member, child and, where appropriate, the child's parent(s) or legal guardian(s). This list shall include the following prohibited responses:

- a. physical exercise or repeated physical motions;
- b. excessive denial of usual services;
- c. denial of visiting or communication with family or legal guardian;
- d. extensive withholding of emotional response;
- e. any other cruel and unusual punishment.

2. A provider shall not punish groups of children for actions committed by an individual.

3. Children shall neither punish nor supervise other children except as part of an organized therapeutic self government program that is conducted in accordance with written policy and is supervised directly by staff. Such programs shall not be in conflict with all regulations regarding behavior management.

4. Punishment shall not be administered by any persons who are not known to the child.

J. Restraints

1. A provider shall not use any form of mechanical, physical or chemical restraint. Passive physical restraint shall only be utilized when the child's behaviors escalate to a level of possibly harming himself/herself or others.

2. Passive physical restraints are only to be performed by two trained staff personnel in accordance with an approved curriculum. A single person restraint can be initiated in a life threatening crisis with support staff in close proximity to provide assistance.

K. Time-Out Procedures

1. A provider using time-out rooms for seclusion of children for brief periods shall have a written policy governing the use of time-out procedures. This policy shall ensure that:

- a. the room shall be unlocked;
- b. time-out procedures are used only when less restrictive measures have been used without effect; written documentation of less restrictive measures used shall be required;

c. emergency use of time-out shall be approved by the treatment plan manager or administrator for a period not to exceed one hour;

d. time-out used as an individual behavior management plan shall be part of the overall plan of treatment;

e. the plan shall state the reasons for using time-out and the terms and conditions under which time-out will be terminated or extended, specifying a maximum duration of the use of the procedure that shall under no circumstances exceed eight hours;

f. when a child is in time-out, a staff member shall exercise direct physical supervision of the child at all times;

g. a child in time-out shall not be denied access to bathroom facilities, water or meals.

2. Copies of the behavior management policy, the prohibited response policy and the punishment policy, including restraint prohibitions and time out procedures, shall be provided in triplicate upon admission. The child and parent(s) or legal guardian(s) shall sign all three copies. The child and parent(s) or legal guardian(s) shall retain one copy each and the provider shall retain the other copy in the child's record.

3. Copies of the behavior management policy, the prohibited response policy and the punishment policy, including restraint prohibitions and time out procedures, shall be provided in duplicate to each new employee upon hiring. The employee shall sign both copies. The employee shall retain one copy and the provider shall retain the other copy in the employee's personnel record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7919. Physical Environment

A. Exterior Space

1. A provider shall maintain all areas of the facility accessible to children in good repair and free from any reasonably foreseeable hazard to health or safety. All structures on the grounds of the facility shall be maintained in good repair.

2. A provider shall maintain the grounds of the facility in good condition.

a. Garbage and rubbish stored outside shall be secured in noncombustible, covered containers and shall be removed on a regular basis.

b. Trash collection receptacles and incinerators shall be separate from play area.

c. Fences shall be in good repair.

d. Areas determined to be unsafe, including steep grades, cliffs, open pits, swimming pools, high voltage boosters or high speed roads shall be fenced or have natural barriers to protect children.

e. Playground equipment shall be so located, installed and maintained as to ensure the safety of children.

3. Children shall have access to safe, suitable outdoor recreational space and age appropriate equipment.

4. A provider shall have at least 75 square feet of accessible exterior space for each child. The exterior space shall be adequate to accommodate one-half the licensed capacity of the facility.

B. Interior Space

1. The arrangement, appearance and furnishing of all interior areas of the facility shall be similar to those of a normal family home in the community.

2. A provider shall ensure that there is evidence of routine maintenance and cleaning programs in all areas of the facility.

3. Each living unit of a facility shall contain a space for the free and informal use of children. This space shall be constructed and equipped in a manner in keeping with the programmatic goals of the provider.

4. A facility shall have a minimum of 60 square feet of floor area per child in living areas accessible to children and excluding halls, closets, bathrooms, bedrooms, staff or staff's family quarters, laundry areas, storage areas and office areas.

5. A facility shall have an appropriate variety of interior recreational spaces.

C. Dining Areas

1. A facility shall have dining areas that permit children, staff and guests to eat together in small groups.

2. A facility shall have dining areas that are clean, well lit, ventilated and attractively furnished.

D. Sleeping Accommodations

1. A provider shall ensure that each single occupancy bedroom space has a floor area of at least 80 square feet and that each multiple occupancy bedroom space has a floor area of at least 60 square feet for each occupant.

2. A provider shall not use a room with a ceiling height of less than seven feet six inches as a bedroom space. In a room with varying ceiling height, only portions of the room with a ceiling height of at least seven feet six inches are allowed in determining usable space.

3. A provider shall not permit more than four children to occupy a designated bedroom space.

4. No child over the age of 5 years shall occupy a bedroom with a member of the opposite sex.

5. A provider shall not use any room that does not have a window as a bedroom space.

6. Each child shall have his/her own bed. A child's bed shall be no shorter than the child's height and no less than 30 inches wide and shall have a clean, comfortable, nontoxic fire retardant mattress.

7. A provider shall ensure that sheets, pillow, bedspread and blankets are provided for each child.

a. Enuretic children shall have mattresses with moisture resistant covers.

b. Sheets and pillow cases shall be changed at least weekly, but shall be changed more frequently if necessary.

8. Each child shall have a solidly constructed bed. Cots or other portable beds are not to be used on a routine basis.

9. A provider shall ensure that the uppermost mattress of any bunk bed in use shall be far enough from the ceiling to allow the occupant to sit up in bed.

10. Each child shall have his/her own dresser or other adequate storage space for private use and designated space

for hanging clothing in proximity to the bedroom occupied by the child.

11. Each child shall have his/her own designated area for rest and sleep.

12. The decoration of sleeping areas for children shall allow some scope for the personal tastes and expressions of the children.

E. Bathrooms

1. A facility shall have wash basins with hot and cold water, flush toilets, and bath or shower facilities with hot and cold water according to child care needs.

a. Bathrooms shall be so placed as to allow access without disturbing other children during sleeping hours.

b. Each bathroom shall be properly equipped with toilet paper, towels, soap and other items required for personal hygiene unless children are individually given such items. Children shall be provided individual items such as hair brushes, toothbrushes, razors, etc.

c. Tubs and showers shall have slip proof surfaces.

2. A facility shall have toilets and baths or showers that allow for individual privacy unless children in care require assistance.

3. A provider shall ensure that bathrooms have a safe and adequate supply of hot and cold running water.

4. A provider shall ensure that bathrooms contain mirrors secured to the walls at convenient heights and other furnishings necessary to meet the children's basic hygienic needs.

5. A provider shall ensure that bathrooms are equipped to facilitate maximum self help by children. Bathrooms shall be large enough to permit staff assistance of children if necessary.

6. Toilets, wash basins and other plumbing or sanitary facilities in a facility shall, at all times, be maintained in good operating condition and shall be kept free of any materials that might clog or otherwise impair their operation.

F. Kitchens

1. Kitchens used for meal preparations shall be provided with the necessary equipment for the preparation, storage, serving and clean up of all meals for all of the children and staff regularly served. All equipment shall be maintained in proper working order.

2. A provider shall not use disposable dinnerware at meals on a regular basis unless the facility documents that such dinnerware is necessary to protect the health or safety of children in care.

3. A provider shall ensure that all dishes, cups and glasses used by children in care are free from chips, cracks or other defects and are in sufficient number to accommodate all the children.

4. Animals shall not be permitted in food storage, preparation and dining areas.

G. Laundry Space. A provider shall have a laundry space complete with washer and dryer.

H. Staff Quarters. A provider utilizing live-in staff shall provide adequate, separate living space with a private bathroom for these staff.

I. Administrative and Counseling Space

1. A provider shall provide a space that is distinct from

children's living areas to serve as an administrative office for records, secretarial work and bookkeeping.

2. A provider shall have a designated space to allow private discussions and counseling sessions between individual children and staff.

J. Furnishings

1. A provider shall have comfortable customary furniture as appropriate for all living areas. Furniture for the use of children shall be appropriately designed to suit the size and capabilities of these children.

2. A provider shall replace or repair broken, run-down or defective furnishings and equipment promptly.

K. Doors and Windows

1. A provider shall provide insect screening for all windows that can be opened. This screening shall be readily removable in emergencies and shall be in good repair.

2. A provider shall ensure that all closets, bedrooms and bathrooms with doors can be readily opened from both sides.

L. Storage

1. A provider shall ensure that there are sufficient and appropriate storage facilities.

2. A provider shall have securely locked storage space for all potentially harmful materials. Keys to such storage spaces shall only be available to authorized staff members.

M. Electrical Systems

1. A provider shall ensure that all electrical equipment, wiring, switches, sockets and outlets are maintained in good order and safe condition.

2. A provider shall ensure that any room, corridor or stairway within a facility shall be well lit.

3. A provider shall ensure that exterior areas are well lit at night.

N. Heat

1. A provider shall take all reasonable precautions to ensure that heating elements, including exposed hot water pipes, are insulated and installed in a manner that ensures the safety of children.

2. A provider shall not use open flame heating equipment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7921. Emergency and Safety

A. Emergency and Safety Plan. A provider shall have a written overall plan of emergency and safety procedures that shall provide for the following:

1. the evacuation of children to safe or sheltered areas;

2. training of staff and, as appropriate, children in preventing, reporting and responding to fires and other emergencies;

3. an on-going safety program including continuous inspection of the facility for possible hazards, continuous monitoring of safety equipment and investigation of all accidents or emergencies;

4. training of personnel in their emergency duties and the use of any fire fighting or other emergency equipment in their

immediate work areas.

B. Drills

1. A provider shall conduct fire drills once per month, one drill per shift every 90 days, at varying times of the day.

2. A provider shall make every effort to ensure that staff and children recognize the nature and importance of fire drills.

C. Notification of Emergencies. A provider shall immediately notify the Bureau of Licensing and other appropriate agencies of any fire, disaster or other emergency that may present a danger to children or require their evacuation from the facility.

D. Access to Emergency Services

1. A provider shall have access to 24-hour telephone service.

2. The provider shall either post telephone numbers of emergency services, including the fire department, police department, medical services, poison control and ambulance services or show evidence of an alternate means of immediate access to these services.

E. General Safety Practices

1. A provider shall not maintain any firearm or chemical weapon in the living units of the facility.

2. A provider shall ensure that all poisonous, toxic and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be maintained only as necessary and shall be used in a manner that ensures the safety of children, staff and visitors.

3. A provider shall ensure that an appropriately equipped first aid kit is available in the living units and in all vehicles used to transport children.

4. A provider shall prohibit the use of candles in sleeping areas of the children.

5. Power-driven equipment used by a provider shall be safe, and properly maintained. Such equipment shall be used by children only under the direct supervision of a staff member and according to state law.

6. A provider shall have procedures to prevent insect and rodent infestation.

7. A provider shall allow children to swim only in areas determined to be safe and under the supervision of a person certified/trained in American Red Cross Community Water Safety or equivalent.

F. Transportation

1. The provider shall ensure that each child is provided with the transportation necessary for implementation of the child's treatment plan.

2. The provider shall have means of transporting children in cases of emergency.

3. The provider shall ensure and document that any vehicle used in transporting children, whether such vehicle is operated by a staff member or any other person acting on behalf of the provider, is inspected and licensed in accordance with state law and carries current liability insurance.

4. Any staff member of the provider, or other person acting on behalf of the provider, operating a vehicle for the purpose of transporting children shall be currently licensed.

5. The provider shall not allow the number of persons in any vehicle used to transport children to exceed the number of available seats in the vehicle. The provider shall not transport

children in the back or the bed of a truck.

6. The provider shall ensure that children being transported in the vehicle are properly supervised while in the vehicle and during the trip.

7. All vehicles used for the transportation of children shall be maintained in a safe condition and in conformity with all applicable motor vehicle laws.

8. Vehicles used to transport children shall not be identified in a manner that may embarrass or in any way produce notoriety for children.

9. The provider shall ascertain the nature of any need or problem of a child that might cause difficulties during transportation, such as seizures, a tendency toward motion sickness or a disability. The provider shall communicate such information to the operator of any vehicle transporting children.

10. The following additional arrangements are required for a provider serving handicapped, nonambulatory children:

a. a ramp device to permit entry and exit of a child from the vehicle shall be provided for all vehicles except automobiles normally used to transport physically handicapped children. A mechanical lift may be utilized if a ramp is also available in case of emergency;

b. in all vehicles except automobiles, wheelchairs used in transit shall be securely fastened to the vehicle;

c. in all vehicles except automobiles, the arrangement of the wheelchairs shall provide an adequate aisle space and shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

§7923. Therapeutic Wilderness Program

A. The Therapeutic Wilderness Program shall meet all of the following standards in addition to the core requirements except §§7919 and 7921 (Physical Environment and Emergency and Safety) and any specific exceptions as noted in the module.

B. Staff Qualifications

1. Administrator

a. The administrator shall be selected by the board of directors and shall be accountable to the board of directors for satisfactory performance of duties.

b. The administrator shall be a graduate of a four-year college or university and shall hold at least a bachelor's degree in a human service field.

c. The administrator shall have at least 10 years' verifiable experience in the field of human services.

d. The administrator shall have responsibility for oversight and accountability for the overall program.

2. Director

a. The director shall answer to the administrator for satisfactory performance of duties.

b. The director shall hold at least a bachelor's degree in a human service field.

c. The director shall have at least five years' verifiable experience in a human services field or at least three years' progressively responsible experience in a program for at-risk or troubled youth and in the area of therapeutic wilderness programs.

3. Treatment Plan Manager

a. The treatment plan manager shall be licensed/certified in one of the following fields:

i. medicine;

ii. psychology;

iii. psychiatry;

iv. social work;

v. professional counseling.

b. The treatment plan manager shall have at least three years' experience in the field of therapeutic programming.

C. Administrative Area

1. There shall be permanent buildings including, but not limited to the following:

a. an administrative area with adequate space for administrative staff, counseling staff, clerical staff, supplies, equipment and records;

b. infirmary space that is separate, private, accessible to a bathroom, equipped with adequate beds, medication storage and supplies. This space shall be used for medical purposes only;

c. laundry space supplied with hot and cold running water under pressure, washers, dryers and supplies. The use of commercial equipment is recommended. If household equipment is used, there shall be a ratio of one washer and dryer for every 15 children. Laundry service may be contracted from a commercial service;

d. an indoor food service and dining area, that meets the requirements of the Office of Public Health, Sanitarian Services. This shall include appropriate food storage areas;

e. a shower or bathing area designed to provide adequate hot water and showers. Separate shower facilities shall be provided for co-ed facilities. All showers or bathing facilities shall meet Office of Public Health, Sanitarian Services requirements;

f. adequate toilet and handwashing facilities. All toilets and hand washing facilities shall meet Office of Public Health, Sanitarian Services requirements;

g. adequate indoor space and supplies for the educational program to meet the needs of the children when the wilderness program is conducted during regular school months/hours. Rooms shall provide at least 25 square feet of floor space per child and be equipped with chairs, tables/desks to accommodate the educational component of the program;

h. adequate storage space for equipment, recreational supplies, off-season clothing and bedding, tools and other supplies;

i. if hazardous materials are stored, the area of storage shall be locked to prevent access by children;

ii. children's personal belongings that require storage shall be inventoried and placed under lock until discharge;

i. adequate space for children to seek shelter during hazardous weather conditions or emergencies. Buildings used for sleeping during adverse weather shall contain at least 35 square feet per child and be maintained at a comfortable temperature.

2. All permanent buildings shall be adequately maintained to provide for the safety and well-being of the children.

3. All areas shall be free of debris, noxious plants and uncontrolled weeds and brush.

4. All walkways and heavily traveled common areas shall be safe and adequately maintained.

5. Adequate lighting for walkways shall be provided after dark.

6. Areas shall be selected that prevent offensive conditions, safety hazards and provide adequate drainage.

D. Campsites. Campsites may consist of tents, tepees, cabins, wagon trains, or other nonpermanent structures.

1. Campsites shall be separated from the central administrative areas by a maximum of 1.25 miles if the children walk back and forth to the administrative areas. Vehicle transportation shall be provided if the campsite is located over 1.25 miles from the administrative areas.

2. Sleeping areas shall be:

a. structurally sound, sanitary, in good repair and provide protection against insects and the elements;

b. constructed of durable, flame-resistant, waterproof material, whether it is tents, tepees, wagons, etc.;

c. all tents or tepees used in residential campsites shall be on a raised platform and constructed to prevent the entrance of ground and surface water;

d. the sleeping area shall be protected by screening or netting against admittance of flies and mosquitoes;

e. the area shall provide for cross-ventilation;

f. males and females shall not sleep in the same sleeping unit;

g. same sex counselors are permitted to sleep in housing with children;

h. each temporary sleeping unit shall be limited to no more than 12 persons;

i. all heating equipment shall be maintained and operated in a safe manner to eliminate the possibility of fire and meet requirements of the State Fire Marshal, Code Enforcement and Building Safety;

j. there shall be adequate storage space for each child's personal belongings.

3. Bedding

a. Separate suitable beds shall be provided for each child.

b. All bedding shall be clean and sanitary.

c. Waterproof coverings, in good repair, shall be on all mattresses/pads.

d. All mattresses shall be covered by a protective mattress cover or pad.

e. Linens shall be changed as often as necessary for cleanliness and sanitation, but not less than weekly.

f. There shall be at least six feet between heads of sleepers.

g. There shall be at least 36 inches between sides of beds.

h. Triple bunk beds shall not be used.

i. If bunk beds are used, the top bunk shall have sufficient clearance between the bunk and the ceiling to allow the child to sit up in bed.

j. If sleeping bags are used, they shall:

i. be placed on a mattress or a plastic-covered foam rubber pad;

ii. be flame resistant;

iii. be cleaned monthly or as often as necessary to maintain sanitary conditions;

iv. be of sufficient weight and construction to maintain children's comfort in the climate and conditions in which the sleeping bag is used, according to manufacturer's label.

k. Sleeping bags shall be aired every five days.

l. If sleeping bags are used, each child shall be provided with his/her own bag that shall be given to the child upon discharge.

4. Cooking and Eating Areas in Campsite

a. All meals at campsite shall be coordinated with all meals for the day so as to meet the daily nutritional needs of the children as outlined by the Food Nutrition Board of the National Research Council.

b. The eating area shall have flooring that is constructed to prevent the entrance of ground/surface water.

c. The eating and cooking area shall have a covering sufficient to protect against rain and the elements.

d. A table and benches are required for the eating area.

e. The cooking area shall be located so that ground and surface water cannot accumulate or enter.

f. The working area shall have adequate sanitary storage area for cooking utensils, food and cleaning supplies. Cleaning supplies shall be stored separately from food.

g. There shall be appropriate materials for handling hot cookware and for cleaning all cooking and eating utensils.

h. Appropriate cookware and dining utensils for the preparation and consumption of food shall be provided to meet the needs of the children.

i. There shall be a sanitary surface area for food preparation.

j. Proper food sanitation practices shall be written and posted in the cooking area.

5. Toilet facilities shall be provided and shall:

a. include privies, water closets, latrines, chemical toilets, etc.;

b. be in compliance with Office of Public Health, Sanitarian Services requirements and constructed, located and maintained so as to prevent any nuisance or public health hazard;

c. have toilet tissue at each toilet seat at all times;

d. have soap, towels and clean water for purposes of handwashing;

e. allow for individual privacy unless children in care require assistance;

f. be separate in co-ed facilities;

g. be well lit and ventilated;

h. be kept clean and sanitary.

6. A sheltered area, with adequate lighting, shall be provided for personal and recreational activities for the residents. The eating area may serve in this capacity.

7. A personal hygiene area shall be provided with an adequate supply of clean water, soap and towels. Wash basins may be used.

8. An appropriate storage area for tools shall be provided. Tools posing a threat to safety shall be kept in a locked area.

9. A bulletin board shall be erected at each campsite.

10. A fire safety station with adequate fire extinguishers, sand, water, shovels, signaling devices and posted procedures shall be maintained at each campsite within easy access of each tent, tepee or other sleeping area and food preparation area.

11. There shall be potable water at each campsite. The supply shall be adequate for hand washing, cooking and drinking.

12. An emergency access road shall be constructed to each campsite.

13. Durable trash and garbage containers of adequate size with tight fitting lids shall be provided at each campsite.

14. Counselors' sleeping areas shall be located so that no child's sleeping area will be out of calling range.

15. A well equipped Red Cross standard or equivalent first aid kit shall be maintained with each group.

E. Activity and Equipment Requirements

1. The provider shall assure that all equipment used in the program is appropriate for its purposes and is properly maintained.

a. All sports and outdoor equipment used in the program shall be selected on the basis of safety factors and shall be regularly checked or tested to ensure that it is up to the provider's standards that comply at a minimum with applicable national standards for the equipment in use. Materials or equipment that do not meet the standards shall be repaired or discarded promptly, as appropriate.

b. When participants or personnel wish to or are asked to provide their own equipment, the provider shall require that such equipment meet the required standards or provide appropriate equipment as a substitute.

c. The use of chainsaws by clients is prohibited.

d. All firearms are prohibited.

2. A provider engaging in any of the following activities shall do so with appropriate regard for associated safety and technical requirements:

- a. initiative and problem solving activities;
- b. orienting;
- c. hiking or backpacking;
- d. camping;
- e. group expeditions;
- f. community service;
- g. environmental projects;
- h. running;
- i. bicycle touring;
- j. remote travel;
- k. flat water canoeing or flat water rafting;
- l. sailing;

m. ropes courses, climbing towers and artificial wall climbing;

n. other activities with a limited degree of perceived or actual risk for which its staff are appropriately prepared and trained.

3. Prior to initiation of an activity:

a. staff are familiarized with the terrain site or waterways that are to be utilized and have direct experience and up-to-date information about the conditions that are likely to be encountered;

b. participants are provided with complete information about boundaries of the activity, rendezvous times and places and emergency procedures.

4. Terrain, water temperature and other environmental conditions involved in an activity are determined to be appropriate to the skill levels in the group and to contain no unusual hazards or threats.

5. When the activity involves travel or movement such as hiking, running, climbing, canoeing, bicycle touring or similar pursuits, participants are instructed in proper techniques, pacing, need for fluids and sunscreen, appropriate footwear and equipment and potential hazards that should be anticipated.

6. The pace set in a group shall be related to the capacities of the least able or fit member of the group, take into account previous illness or injury and be designed to prevent the occurrence of accidents or illness.

7. Repair kits for equipment used, location devices and reflectors for any dusk or nighttime activity and other protective gear or equipment are provided as appropriate to the activity involved. Personal flotation devices (Type III) shall be worn at all times when on the water.

8. There shall be clear guidelines for the use of fire and governing the uses and storage of any potentially hazardous material or equipment such as propane, axes, knives, etc. in which personnel and participants are trained.

9. Techniques and skills needed for an activity shall be taught progressively. Less skilled participants shall be appropriately supported and supervised. No groups shall travel or engage in an activity without supervision with the exception of planned, unaccompanied activities that are part of the program design.

10. Ropes courses, alpine or climbing towers and artificial wall climbing program components shall meet the following requirements:

a. the facilities and equipment used in the program shall be constructed by or under the supervision of recognized experts in the field;

b. staff shall have been trained by recognized experts in the field and have working knowledge of ropes course and climbing equipment elements, technology and construction and accepted standard usage and inspection of same;

c. there shall be appropriate inspection and safety procedures in place and implemented.

F. Health and Safety

1. General Health Practices

a. The provider shall ensure that each child has a health examination, performed prior to participation in program activities, by a licensed physician that documents:

i. the child can perform each type of adventure activity that he/she will be asked to do;

ii. receipt of a tetanus shot;

iii. notation of asthma, allergies/dietary needs; and

iv. notation of whether the child is on medication that would require the child to avoid the sun/to take other special precautions.

b. The provider shall develop and give to each staff member a written policy for emergency procedures.

2. Emergency and Safety Procedures

a. The provider shall develop and maintain on file a written list of all activities in which children will participate.

b. The provider shall have a written plan for each activity. This plan shall include the following:

- i. a description of the activity;
- ii. staff requirements;
- iii. children's requirements for participation;
- iv. equipment necessary for the activity;
- v. safety equipment;
- vi. emergency and evacuation procedures;
- vii. location for activity;
- viii. a written plan for search and rescue procedures.

c. The provider shall have a written plan for fire safety and other emergencies that includes the following:

i. provisions for training all staff in fire safety procedures and in the use of equipment and techniques for fighting small fires. Such training shall be documented;

ii. name(s), address(es) and telephone number(s) of local rescue squads, law enforcement agencies and hospitals and guidelines for when and how to contact them.

d. The provider shall develop a method of recording all fires, accidents and other emergencies.

e. The provider shall maintain operable fire extinguishers in each building and at each camp site.

f. Staff safety training requirements:

i. the provider shall ensure that all staff involved in wilderness activities are certified in first aid and cardiopulmonary resuscitation (CPR);

ii. no employee or other individual may be left alone with a child or group of children unless that employee or individual has been certified in CPR and first aid;

iii. for each activity, at least one staff member who is present shall be certified or has had at least one year's experience in the adventure activity for which he or she will be supervising children;

iv. for all water activities, at least one staff is present who is certified in emergency water safety and life saving techniques.

g. The provider shall have a safety review committee or another similar mechanism to include in-house technical and supervisory personnel, that meets monthly, who will conduct ongoing safety reviews, evaluations of all accidents, incidents or patterns of incidents and identify health and safety issues. Documentation of corrective action implemented by the committee addressing health and safety issues identified shall be maintained by the facility. The

committee shall establish specific rules and procedures governing the safety of each activity including, but not limited to, outdoor hiking, horseback riding, ropes courses, canoeing and any other adventure/sports/recreation activity in which children participate. The rules and procedures for each type of activity shall be reviewed and approved by a professional in that area to ensure that appropriate safety measures are adopted and followed.

G. Service Program. The agency's overall program shall be designed to help the child develop behaviors, skills and knowledge required to function effectively in life situations through therapeutic adventure-based activities. The program will provide children with outdoor physical, environmental, educational, athletic or other challenging activities within a supportive and therapeutic environment. This will involve physical and psychological challenges that are designed to stimulate competence and personal growth, to expand individual capabilities, to develop self-confidence and insight, and to improve interpersonal skills and relationships.

H. Staff to Child Ratio. Section 7911.H.4. regarding child/staff ratio shall not apply to Wilderness Programs. The following standards shall apply:

1. The provider shall ensure that:

a. there are at least two staff persons present at all times (24 hours per day) with a group of two to 12 children;

b. if more than 12 children are involved, the provider shall maintain a one to six/staff to child ratio.

2. Only those staff members who are providing direct care and supervision of the children shall be counted in determining whether required child/staff ratio is met. These staff persons may be regular staff persons or adventure staff persons. Administrative staff are not counted in determining compliance with child/staff ratio unless a portion of their time is dedicated to direct care and there is documentation to support this.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1401-1425.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:

Interested persons may request copies as well as submit written comments on this proposed rule to Thalia Millican, Office of the Secretary, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078. All interested persons will be afforded an opportunity to submit data, views or arguments in writing within 30 days after publication. The deadline date for receipt of all comments is 4:30 p.m.

Public hearings on this proposed rule will be held on Tuesday, May 26, 1998, at Peacelake Towers, 9025 Chef Menteur Highway, New Orleans, LA at 10:30-11:30 a.m.; Thursday, May 28, 1998 at Louisiana Methodist Children's Home, Ruston, LA at 8:30-9:30 a.m.; and Friday, May 29, 1998, at Department of Transportation, First Floor Auditorium, Baton Rouge, LA at 8:30-9:30 a.m. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing at the public hearing.

Madlyn B. Bagneris
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Child Residential Care**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The estimated implementation costs to state government associated with this rule will be the cost of printing the changes to the licensing standards, announcing the change, and the cost of printing approximately 64 copies of the Child Residential Care Licensing manual to incorporate the changes into existing policy. The projected estimated cost of the printing is \$261 including postage to mail copies to Licensed Child Residential Care Providers.
- 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 anticipated costs or economic benefit to any persons or nongovernmental unit.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
This rule will have no impact on competition or employment.

William M. Hightower
Deputy Secretary
9804#051

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Transportation and Development
Board of Registration for Professional Engineers and
Land Surveyors**

Registration Certificate; Individual/Corporation
Certification (LAC 46:LXI.1903); and Continuing
Professional Development (LAC 46:LXI.2001-2021)

In accordance with R.S. 49:950 et seq., notice is hereby given that the Board of Registration for Professional Engineers and Land Surveyors intends to adopt LAC 46:LXI.1903 and 46:LXI.2001-2021.

The board proposes to make continuing professional development mandatory for all professional engineers and professional land surveyors practicing engineering and/or land surveying. Beginning January 1, 1999, all professional engineers and professional land surveyors must begin complying with the continuing professional development requirements of these rules.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part LXI. Professional Engineers and Land Surveyors
Chapter 19. Certificates of Registration; Certification
of Individuals or Corporations**

§1903. Registration Status

Active Status—the registration status which exists for a registrant of the board who has complied with all the

registration and registration renewal requirements of the board.

Expired Status—the registration status which exists for a board registrant who has failed to properly renew registration as required in L.R.S. 37:697 and 37:697.1. A registrant in an *expired status* can no longer offer or provide engineering or land surveying services in Louisiana.

Inactive Status—the registration status which exists for a registrant of the board who has chosen not to offer or provide engineering services and/or land surveying services in Louisiana and who has indicated that fact on the board biennial registration renewal form. This registrant can represent himself to the public as a *P.E. Inactive*, or a *P.L.S. Inactive*, but cannot otherwise offer to provide any engineering services and/or land surveying services in Louisiana.

Retired Status—the registration status which exists for a registrant of the board who has chosen not to offer or provide engineering and/or land surveying services in Louisiana or in any other jurisdiction in which he holds professional licensure, and who has indicated that fact on the board biennial registration renewal form. This registrant can represent himself to the public as a *P.E. Retired*, or a *P.L.S. Retired*, but cannot otherwise offer or provide engineering and/or land surveying services in Louisiana or other jurisdictions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

**Chapter 20. Continuing Professional Development (CPD)
§2001. Introduction**

A. Chapter 20 provides for a continuing education program to insure that all professional engineers practicing engineering, and professional land surveyors practicing land surveying, remain informed of those technical and professional subjects necessary to safeguard life, health, property and promote the public welfare. Every registrant shall meet the continuing professional development requirements of LAC 46:LXI.Chapter 20 as a condition for registration renewal.

B. The primary purpose of licensing for professional engineers and professional land surveyors is to protect the public from unqualified or unethical practitioners. The requirement for continuing professional development is also intended to protect the public by reinforcing the need for lifelong learning in order to stay more current with changing technology, equipment, procedures, processes, tools, and established standards. Chapter 20 provides flexibility in selecting among a broad range of subjects that are intended to strengthen or maintain competency in technical, managerial (business) or ethical fields. Registrants are encouraged to select meaningful CPD activities which will be of benefit in the pursuit of their chosen fields.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2003. Definitions

Terms used in Chapter 20 are defined as follows:

Acceptable Activity—subject matter which is technical in nature or addresses business management practices, ethics, quality assurance, codes or other similar topics which facilitate the registrant's professional development as a professional engineer or land surveyor, and/or serves to safeguard life, health, property and promote the public welfare. Any course/activity offered by a *Board-Approved Sponsor/Provider* will qualify as an *Acceptable Activity* (see definition of *Board-Approved Sponsor/Provider*). It will be the responsibility of the registrant attendee to determine if a course or activity offered by an unapproved *Sponsor/Provider* is an acceptable activity.

Board—Louisiana State Board of Registration for Professional Engineers and Land Surveyors.

Board-Approved Sponsor/Provider—the Louisiana Engineering Society; The Louisiana Society of Professional Surveyors; Professional and Technical Engineering or Land Surveying Societies; Federal, State or Local Government Agencies; and Colleges or Universities. Also, any individual, firm, corporation or educational institution approved by the board on a case-by-case basis. All sponsors must conduct courses which will enhance and improve a registrant's skills according to the standards of the board. Failure to do so will be grounds for the board to revoke its sponsorship approval.

Continuing Education Unit (CEU)—a unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in approved continuing education courses.

Continuing Professional Development (CPD)—the educational process whereby a professional engineer or professional land surveyor registrant of the board engages in a continuing program to maintain, improve or expand skills and knowledge.

Course/Activity—any qualifying program with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the registrant's field of practice.

Dual Registrant—a person who is registered in both land surveying and one or more branches of engineering.

Professional Development Hour (PDH)—a nominal contact hour of instruction or presentation.

Registration Status:

a. *Active Status*—a registrant of the board as defined in §1903.

b. *Expired Status*—a registrant of the board as defined in §1903.

c. *Inactive Status*—a registrant of the board as defined in §1903.

d. *Retired Status*—a registrant of the board as defined in §1903.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2005. Requirements

A. During each biennial registration renewal period, every engineering registrant, including those registered in two or more branches, is required to obtain 30 PDHs in engineering related activities:

1. at least one PDH shall be in ethics;
2. a minimum of eight PDHs shall be earned in Life Safety Code, building codes and/or Americans with Disabilities Act Accessibility Guidelines by every engineering registrant who designs buildings, including buildings for human occupancy.

B. During each biennial registration renewal period, every land surveyor registrant is required to obtain 15 PDHs in land surveying related activities:

1. at least one PDH shall be in ethics;
2. a minimum of four PDHs must be earned in the Minimum Standards for Property Boundary Surveys in Louisiana during any two consecutive biennial periods.

C. During each biennial registration renewal period, each dual registrant shall obtain 30 PDHs; however, at least one-third of the units shall be obtained separately for each profession:

1. at least one PDH shall be in ethics;
2. a minimum of four PDHs shall be earned in the Minimum Standards for Property Boundary Surveys in Louisiana during any two consecutive biennial periods;
3. a minimum of eight PDHs shall be earned in Life Safety Code, building codes and/or Americans with Disabilities Act Accessibility Guidelines by every engineering registrant who designs buildings, including buildings for human occupancy.

D. Excess PDHs

1. If a registrant exceeds the biennial registration renewal period requirement, a maximum of 15 PDHs may be carried forward into the subsequent biennial registration renewal period.

2. Excess PDHs may include, without limitation, those obtained in ethics, Minimum Standards for Property Boundary Surveys, Life Safety Code, building codes and/or Americans with Disabilities Act Accessibility Guidelines.

E. The minimum period for meeting CPD requirements is one year:

1. the requirements for one year are the equivalent of one-half of a biennial period;
2. none of the specified mandatory subject matter is required for less than a biennial renewal period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2007. Reciprocity/Out-of-Jurisdiction Resident

The requirements for Louisiana will be deemed as satisfied when a nonresident provides evidence of having met the requirements of the registrant's resident jurisdiction. If the registrant resides in a jurisdiction that has no continuing professional development requirements for professional

engineers or land surveyors, the registrant must meet the requirements of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S.37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2009. Exemptions

A registrant may be exempt from the professional development requirements for any one or more of the following reasons.

1. New registrants shall be exempt at their first renewal. Compliance with CPD requirements must be certified upon the registrant's second renewal and thereafter.

2. A registrant serving on active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

3. Registrants experiencing physical disability, illness, or other extenuating circumstances as reviewed and approved by the board may be exempt. Supporting documentation must be furnished to the board.

4. Registrants who certify their status as *Inactive* on the board-approved renewal form and who further certify that they are no longer offering or practicing professional engineering and/or professional land surveying in Louisiana shall be exempt from the CPD requirements. In the event such a person elects to return to the active practice of professional engineering and/or professional land surveying, the registrant must meet the requirements set forth in §2021.

5. Retired registrants who certify their status as *Retired* on the board-approved renewal form and who further certify that they are no longer offering or practicing professional engineering and/or professional land surveying in Louisiana or any other state shall be exempt from the CPD requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2011. Determination of Credit

A. PDHs may be earned as indicated in §2013 for the following acceptable activities:

1. successful completion of college courses, correspondence courses, continuing education courses, seminars, tutorials, short courses and/or by teaching/instructing these items;

2. attending or presenting qualifying seminars; in-house courses sponsored by corporations, agencies or other organizations; workshops; or professional/technical presentations made at meetings, conventions, or conferences;

3. obtaining teaching credit for teaching/instructing or presenting; to obtain teaching credit for teaching/instructing or presenting, registrants must be able to document that research and preparation were necessary, such as in the case of a first-time teaching;

4. membership in engineering and land surveying professional associations or technical organizations;

5. authoring and publishing articles in engineering or land surveying journals;

6. obtaining patents.

B. PDHs may not be earned through informal, nonstructured activities such as reading technical journals, etc.

C. The board has final authority with respect to the acceptability of courses, PDH credit, PDH value for courses, and other methods of earning credit. PDH credit for acceptable college or correspondence courses may be based upon course credit established by the college or school.

D. Selection of activities is the responsibility of the registrant; however, guidance is available from the board (see §2003, *Acceptable Activities*, and §2011).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2013. Units

A. The conversion of other units of credit to PDHs is as follows:

1. one College or unit semester hour = 45PDHs;
2. one College or unit quarter hour = 30PDHs;
3. one Continuing Education Unit = 10 PDHs.

B. PDH credit will be awarded as follows:

1. fifty contact minutes of instruction or attendance at an activity = one PDH;

2. membership in engineering and land surveying professional associations or technical societies = one PDH per biennial registration renewal period for each professional or technical association or organization. A maximum of three PDHs will be allowed per biennial registration renewal period.

3. in accordance with §2011.A.1, 2, and 3, credit for teaching or making presentations may be earned at twice the PDHs allowed for attending a course, but shall not exceed 30 PDHs in any biennial period.

4. authoring and publishing nonpeer reviewed (nonreferred) articles/papers in engineering or land surveying journals = 10 PDHs.

5. authoring and publishing nonpeer reviewed (nonreferred) articles/papers in engineering or land surveying journals = five PDHs.

6. each patent = 10 PDHs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2015. Record Keeping

A. All renewal applications will require the completion of a board-approved renewal form. This form will contain an affirmation of eligibility certifying that the registrant has met all requirements for registration renewal, including CPD requirements.

B. In addition, the registrant will be required to maintain and document a worksheet form specified by the board outlining PDHs claimed. The registrant must:

1. supply sufficient detail on the form to permit audit verification;
2. certify and sign the form; and
3. submit to the board upon request.

C. Maintaining records to be used to support PDHs

claimed is the responsibility of the registrant. These records must be maintained for two biennial registration renewal periods (four years) and copies may be requested by the board at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2017. Audit and Review of Records

A. The board may request, at any time, that a registrant provide proof of compliance with all CPD requirements.

B. Additionally, the board will conduct random audits of biennial renewals of up to 30 percent of all board registrants.

C. Additionally, the board will require that all registrants against whom formal disciplinary charges are pending in Louisiana provide proof of compliance with all CPD requirements.

D. Should the registrant fail to provide proof of compliance, or if discrepancies or deficiencies are discovered as the result of any of the reviews provided for in §2017.A-C, the registrant will be deemed not in compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2019. Failure to Comply

When a registrant is deemed not in compliance with CPD requirements of the board, the registrant will be so notified and given 120 days to satisfy the board requirements. The registrant must provide documented evidence of compliance accompanied by the registrant's affidavit attesting to such compliance and payment of an administrative fee of \$200. Failure to comply will subject the registrant to disciplinary action as provided in L.R.S. 37:698.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

§2021. CPD Reinstatement

To become reinstated, an *Expired* or *Inactive* registrant must show proof of having obtained all delinquent PDHs. However, the maximum number required will be the number of PDHs required for one biennial registration renewal period as provided in §2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:697.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Board of Registration for Professional Engineers and Land Surveyors, LR 24:

Two public hearings will be held, with the first being on May 26, 1998, at 10 a.m., Louisiana Tech University, Wylly Tower, Room 244, Ruston, LA, and the second being on May 27, 1998, at 8 a.m., Department of Environmental Quality, Maynard Ketcham Building, Room 326, 7290 Bluebonnet, Baton Rouge, LA.

Interested persons may submit written or faxed (504-295-8525) comments through May 27, 1998, to Glen Kent, Jr., P.L.S., Executive Secretary, Board of

Registration for Professional Engineers and Land Surveyors, 10500 Coursey Boulevard, Suite 107, Baton Rouge, LA 70816-4045.

H. Glen Kent, Jr., P.L.S.
Executive Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Registration Certificate; Individual/Corporation Certification; and Continuing Professional Development

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule amendment will impose additional costs on the board, consisting primarily of audit and enforcement costs. Additional costs for forms, supplies, postage, and other miscellaneous charges will also be incurred. The board estimates that during the first two years of implementation the total additional costs will approximate \$20,000 per year, and that during subsequent years the total additional costs will approximate \$30,000 per year.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
The proposed rule amendment will cause a decrease of the number of licensees to this Board and will probably result in a loss of approximately \$40,000 per year.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no estimated costs or economic benefits to directly affected persons or nongovernmental groups, except some program sponsors may charge professional engineers and land surveyors fees for educational programs. Any such fee will certainly vary, but it is anticipated that the fees for the programs may approximate \$150-\$250 per year. It is further anticipated that approximately 13,000 professional engineers and land surveyors will participate in the mandatory program.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There is no estimated effect on competition or employment associated with this proposed rule, since it is anticipated that all professional engineers and land surveyors will comply with the mandatory requirements for continuing education set forth in the proposed rule amendment.

H. Glen Kent, Jr., P.L.S.
Executive Secretary
9804#001

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

Department of Transportation and Development Division of Aviation

Aviation Project Needs and Project
Priority Process (LAC 70:IX.Chapter 9)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., notice is hereby given that the Department of Transportation and Development intends to amend LAC 70:IX.Chapter 9 in

accordance with R.S. 2:6 and Senate Concurrent Resolution No. 67 of the 1997 Session of the Legislature.

Title 70

TRANSPORTATION

Part IX. Aviation and Public Transportation

Chapter 9. Aviation Program Needs and Project Priority Process

§901. Introduction

The Louisiana Department of Transportation, Aviation Division is responsible for the development of public aviation facilities in the state. Assistance with the planning, design, and construction of facilities is provided to local governments which own the public airports. In addition, state funding is used in many cases to provide all or a portion of the local match requirement if the improvement is federally funded or if most or all of the total funding is previously approved by the Legislature. The aviation portion of the Louisiana Transportation Trust Fund is the only source of state funds for airport capital improvements or matching funds for federal airport improvement grants.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§903. Federal Aviation Administration (FAA) Airport Improvement Program (AIP) Grants

Federal funding for projects is received through grants from the Federal Aviation Administration directly to the recipient airport. Under the current program, 90 percent of project funds are federal and 10 percent are provided by the local sponsor. Occasionally, the FAA or other federal agencies may offer a grant requiring a local match of more than 10 percent. For example, terminal building projects are offered as 75 percent federal, 25 percent local match. When the local sponsor requests state funding assistance for the local share, the project is evaluated through the priority system because of the use of state dollars. The local sponsor must coordinate the development of the required documents with the Aviation Division for submittal to the FAA in order to receive the 10 percent matching funds through the priority system. When the local match is greater than 10 percent, the state will participate in no more than 10 percent of the project cost and the local sponsor must provide the additional matching funds. The FAA provides the AIP grants directly to the airport sponsor who is responsible for administering the grant.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§905. Project Identification and Development

A. The primary objective of the priority system is to prioritize facility improvement projects. Planning projects, navigational aid projects, and engineering design are not included in the priority system. Differences in the criteria for assessing these types of projects and the relatively small amount of state funding available make them impractical to include in the same process with facility improvement projects. Specific funds are provided for planning and navigation aid

projects, but engineering design is included as a necessary part of a construction project.

B. Potential projects for inclusion in the priority system are initiated by the local community that the airport serves (through the airport owner) or by the State Aviation Division. The need for the project may be identified in a master plan, action plan, system planning document, or as a result of a change in conditions or facilities at the airport. Generally, projects initiated by the local community address a specific need from the local perspective. Projects initiated by the Aviation Division address a need from a statewide or system perspective.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§907. Project Prioritization Process

A. The prioritization of a project is a two-step process. The first step is to determine whether the project should be included in the priority process. The second step is to determine whether the information necessary for prioritization is available. Support documentation includes a project resolution from the local airport owner (received prior to November 1) requesting state assistance for that project, a request for FAA/AIP funding (if eligible), planning data including scope and estimated cost, justification of the immediate need, any environmental clearance documentation (if necessary), and information from the local sponsor necessary for prioritization of the project. Height limitation and land use zoning ordinances, operations manual, documentation that Part 139 and 5010 inspection discrepancies have been corrected, pavement maintenance plan, and a certified copy of the legal document creating the airport district or authority must also be received before the process can continue. If any pertinent documentation is missing, the review process will cease and not continue until all information is made available to the Aviation Division. If all of the necessary documents are not received by the Aviation Division by November 1, the proposed project cannot compete for funding for that fiscal year being prioritized but will be considered for the following fiscal year.

B. Those projects which qualify for prioritization are then assigned point values to determine their relative priority. Those determined to be ineligible and those with insufficient information are returned to the airport owner with an explanation as to why their proposed project did not qualify for inclusion in the airport needs and priority program or with a request for additional information.

C. The project components are also reviewed to determine if the project can be prioritized as one project or requires restructuring into more than one project. The project will be restructured into usable units if necessary. An example is a request to lengthen a runway and to extend the corresponding taxiway. The runway can be lengthened and is usable without the extension of the taxiway so these would be considered as two projects in the priority system. On the other hand, the extension of the runway's lighting system would be included with the runway extension as one project because the

additional runway length cannot be used at night without the extended lighting.

D. The structure of the priority rating system is based on an evaluation of the type of project, the aviation activity at the airport where the project is located, the management of the airport by the owner, and consideration for special types of projects.

E. There are four categories of evaluation, each addressing one of the general areas outlined above. The categories are as follows:

1. Category I—Project Type:
 - a. Safety;
 - b. Preservation of Existing System;
 - c. Upgrade to Standards;
 - d. Capacity Increases;
2. Category II—Facility Usage;
3. Category III—Sponsor Compliance;
4. Category IV—Special Considerations.

F. Points are awarded to a project based on evaluation criteria in each category and the total evaluation score for the project is the sum of points in each category. Based on priority ratings of projects, a program of projects is developed by the Aviation Division and submitted to the Joint Legislative Committee for Transportation, Highways and Public Works. This committee approves a program of projects which become the capital improvement projects that will be implemented by the Aviation Division in the next fiscal year. A project submitted after this approval with a ranking high enough to place the project on the program of projects cannot be added until a new program of projects is submitted to the committee the following year.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§909. Nonprioritized Programs

A. The nonprioritized programs projects developed by the Aviation Division vary by type and origin of development. There are three nonprioritized programs:

1. Planning;
2. Navigational Aids; and
3. Discretionary Projects.

B. Planning, navigational aids, and discretionary projects are an integral element of the state's aviation program. Projects cannot reach the facility improvement stage without going through the planning phase. Navigational aid projects enhance use of the overall state system. Discretionary projects provide the Aviation Division with the latitude to fund emergency or safety related projects on a real-time basis and to undertake projects which are too small to be eligible for funding through the priority program. The state's airport system would be stagnated without these types of projects.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§911. Planning Projects

A. Although the priority system addresses facility improvements, the development of the state's aviation program requires planning projects. The majority of facility projects originate with the development of a master plan or an action plan for an airport. The master plan or action plan identifies the local need for the project and identifies and describes facilities required to meet the need. System-wide planning studies such as the Louisiana Airport System Plan also play a role in identification of needs and development of projects for the entire state. One of the most important aspects of the planning program is that it directly supports the prioritization process. To ensure timely development of airport facility improvement projects which meet objectives of the state's aviation program, it is essential that the Aviation Division allocate a set-aside amount of funding to support various types of planning efforts.

B. Because of the 90 percent federal, 10 percent local match requirement for the current FAA airports grant program, a relatively large amount of planning can be done by the state with a modest expenditure. Utilized judiciously, the annual set-aside for aviation planning efforts supports a planning program that maintains the state's priority and planning processes on a continuing basis. A funding set-aside is established each budget year to support projected planning projects and these funds are used exclusively for planning efforts. One hundred thousand dollars are allocated for planning projects each year.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§913. Navigational Aid Projects

Navigational aids are essential to the state's airport system. An airport system without navigational aids would be analogous to a four-lane highway without traffic signals at major intersections. The development of navigational aids makes the system more usable by providing visual or electronic clues for visual and instrument flights and by increasing use of the system during instrument flight conditions. This is accomplished by providing basic instrument approaches to smaller airports and by lowering the minimum approach standards at larger airports having multiple approaches so that the airport is usable more days of the year. Navigational aids needs in the state are not documented to the extent that facility requirements are documented by master plans, action plans, and the state system plan. This is an area in which the state develops a system-wide plan to identify and evaluate needs for navigational aids in the state. Without a system-wide assessment, it is difficult to develop and prioritize navigational aids projects on a consistent basis. If an objective assessment of navigational needs were available, it would still be difficult to prioritize these projects in the same process as facility improvement projects because of differences in criteria for assessing the need for the projects. Also, costs of

a navigational aid development program are usually smaller than facility development because the construction required for a navigational aid is significantly less than that required for a runway or apron project. For these reasons, the navigational aid development program does not compete with the facility development type projects in the prioritization process. To meet navigational aid requirements, a yearly fund of \$500,000 is set aside.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§915. Discretionary Projects

The aviation director has the discretion to fund nonfederal aid projects requiring \$25,000 or less in state funds without these projects being prioritized. This amount may be increased to \$50,000 when safety may be compromised or an emergency is deemed to exist. This enables the Aviation Division to assist airports with minor projects, emergencies, and safety needs in an expeditious manner. For a project to be eligible to receive discretionary funds, it must meet the same eligibility requirements as any other project. To meet these needs, an annual fund of \$250,000 is set aside as a discretionary fund.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§917. Project Prioritization Process

A. The Transportation Trust Fund legislation requires a priority system to prioritize projects in some logical order for addressing documented needs in the state's public airport system. The priority system is a process that has been developed to allocate state aviation funding to address these needs. The system reflects the state's development policy for the airport system, assigning higher values to projects which are consistent with the policy.

B. As discussed in §915, only facility development projects are subject to prioritization. Airport administration, operations, upkeep, and maintenance are not included since they are the responsibility of the airport owner and are not within the purview of this program. Potential projects for prioritization undergo a two-step evaluation:

1. are they eligible to be included in the process?
2. has the required supporting documentation been provided?

C. Once it has been determined that the project is eligible and all documentation has been provided, the next step is the assignment of point values. When point values are finalized, the project is placed in the automated priority system where it is ranked in relation to all other projects in the system.

D. The only projects that should appear on the prioritization list are those that have a chance of being implemented in the foreseeable future. Ideally, this would be within a three-year period from the time the project appears on the priority list. Prioritized projects which have been approved for state funding but which, for lack of federal matching funds or other reasons, do not have a signed construction contract within three fiscal years may be deleted from the program.

Funds which had been approved for a deleted project will be reallocated to any other prioritized project. Normally such funds will be used to cover project overruns, "up front" engineering costs (FAA reimbursable engineering costs incurred by the airport owner prior to the issuance of a federal grant in aid), or "up front" land purchase costs (FAA reimbursable costs associated with survey, real estate and title fees, and purchase of land by the airport owner prior to the issuance of a federal grant-in-aid).

E. These funds may also be used to fund the next-in-line project on the four-year unfunded portion of the priority list. As a general rule, funds originally allocated to commercial service airports will, whenever practical, be used to fund projects on the commercial service airport four-year unfunded list. Funds allocated to general aviation airports will likewise be used to fund projects on the general aviation airport four-year unfunded list. In the event there are insufficient projects on either four-year unfunded list, funds originally allocated to one class of airport may be reallocated to the other class of airport.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§919. Commercial Service Versus General Aviation Airports

A. One of the basic objectives of a priority process is to identify projects that benefit the highest number of aviation system users. When airports are compared on the basis of persons served, airports offering scheduled or unscheduled commercial air service to the public serve more persons than airports that support general aviation activity. Differences in the size, revenue generation capability, and usage of commercial service airports (those airports which enplane 2,500 or more passengers annually) as compared to general aviation airports make it difficult to compare the need for projects between the commercial service and general aviation airports.

B. Because of aircraft size, weight, speed, operational characteristics, and FAA design standards, facilities at commercial service airports have more demanding standards and thus more costly engineering and construction. Because of the significant differences between commercial service and general aviation airports project standards, each group's projects are prioritized separately.

C. The commercial service airports priority projects must have an established funding level, just as the general aviation priority projects must have an established funding level. To accomplish this, the total funds available for facility improvement projects in a given year are allocated between air carrier and general aviation airport projects in a ratio of 65 percent for commercial service airports and 35 percent for general aviation airports. This balance is adjusted, however, if there are insufficient projects in either category to fully utilize available funding. This 65 percent/35 percent allocation is based on past experience in the state's aviation program and the levels of state funding allocated to each type of airport. It also reflects the fact that commercial service airports have a far greater capability of generating revenue through means

unavailable to general aviation airports such as: vendor leases, landing fees, airline contracts, passenger facility charges, and rental car lease agreements.

D. The division of projects by commercial service or general aviation airport categories results in two project priority lists, one for each of the two types of airports. Each step of the prioritization process is identical for both commercial service and general aviation airport projects.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§921. Preliminary Evaluation

A. The preliminary evaluation is used to screen potential projects and determine those which can realistically be implemented, assuming available funding.

1. The first step is to determine whether the project should be included in the priority process.

2. The second step is to determine whether the information necessary for prioritization is available.

B. In determining whether a project should have a priority evaluation, there are three basic criteria:

1. project type;
2. project size;
3. eligibility for federal matching funds.

C. A review committee consisting of, at a minimum, the aviation director, grants manager, and aviation program manager for the airport concerned will make an initial determination of whether there is sufficient information to prioritize a project when a project request is received. Some of the information considered by the committee is required by either Title 2 of the Louisiana Revised Statutes, the Louisiana Aviation Needs and Project Priority System, or DOTD and Aviation Division policy.

D. The DOTD Aviation Division is responsible for assigning priority values to projects and determining if they are consistent with development plans in the master plan or action plan for the airport. If insufficient data is sent to the Aviation Division, correct prioritization of the project will not be possible. When insufficient data is provided, the entire document package will be returned to the initiator of the project with a request for the additional information needed. Therefore, resolutions and project requests should be sent to the Aviation Division well in advance of the mandatory November 1 cut off date to allow time for processing and possible return for additional information. Any document package not meeting all requirements or not in Aviation Division hands by November 1 will not be prioritized or included in the upcoming fiscal year's program.

E. Project Type. Generally, only facility improvement or preservation projects are included in the priority program. Some exceptions are:

1. land acquisition for obstruction removal or airport expansion;
2. Aircraft Rescue and Firefighting (ARFF) vehicles and equipment;
3. airport noise studies; and
4. FAA AID eligible projects when FAA is providing funding.

F. Some projects may be of a type in which the Aviation Division might not participate. For example, construction of roads and utilities for an air industrial park development and revenue-generating projects such as fuel systems, hangars, buildings for lease, and portions of terminal buildings are not undertaken by the priority system and will not be funded by the Aviation Trust Fund.

G. Project Size. To be included in the priority system, a project must require the use of \$25,000 or more in state funding. The \$25,000 requirement only applies to projects which receive no federal funding. Some projects may be too costly to be funded from a single year's budget without denying funding to other needed projects at other airports. Therefore, no more than \$1,000,000 in state funding may be programmed to a single commercial service airport and no more than \$250,000 in state funding may be programmed to a single general aviation airport through the aviation priority program per fiscal year. Projects in excess of these amounts may be funded more than two or more funding years. For example, a project for a commercial service airport may have a total cost of \$2,500,000. The project may be prioritized in the upcoming budget cycle for no more than \$1,000,000 but the remaining \$1,500,000 will receive top priority in the following two yearly budgets to insure project completion. The same is true for a general aviation airport project except that the project maximum cost is \$250,000 per budget year. This does not include projects that are prioritized as 90 percent FAA-funded and 10 percent state-funded unless it is known that the FAA will use a multi year funding approach. Regardless of project size, if the FAA uses multi year funding, the state will also use a multi year approach.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§923. Project Support Documentation

A. Once it has been determined that a project is of the type and size to be considered in the priority system, an evaluation of required supporting documentation will be made. The project support documentation is a combination of a documents and information necessary for the Aviation Division to determine if the project is developed sufficiently for inclusion in the priority listing. Documentation includes the following items:

1. Project Resolution. The initials document the Aviation Division needs for consideration of any project is a resolution from the public body operating the airport requesting assistance in the development of the project. Generally, the assistance requested would be for both funding and technical assistance. Any commitment from the local owner to participate in the cost of the project is also documented in the resolution. The resolution from the owner of the airport initiates an agreement between the two parties for joint sponsorship of the project and authorizes state participation in a local project pursuant to applicable provisions of state law. It is also a written commitment of support for the project by the owner. The Aviation Division requires a resolution (except from state-owned airports) from the airport owner before a project can receive further consideration in the evaluation process. This eliminates the

needless evaluation of a project which cannot be implemented because of local opposition or nonsupport.

2. Since available state funding historically falls far short of the requested airport needs, it is especially important to use every opportunity to take advantage of the FAA/AIP program which provides funding grants of up to 90 percent for eligible projects at eligible airports. Therefore, if the project is eligible to compete for federal AIP funds through the FAA, the document requesting federal AIP funds must accompany the resolution requesting state funding assistance if state funding through the priority program is anticipated. The aviation director will, if the state will participate in the project, endorse the airport owner's request for federal assistance and forward the document package to the appropriate FAA office. A request for 100 percent state funding will not be processed for a project that is eligible for AIP funding until it has been approved and prioritized in the state system as an FAA/state matching funds project and competed unsuccessfully in the federal system for at least three fiscal years. The three years in the federal priority system may be waived if the FAA verifies in writing that the proposed project will not receive AIP funding. On the other hand, if the FAA indicates that the project will be funded at some reasonable time beyond the initial three years, the project will remain in the system awaiting FAA matching funds rather than receiving 100 percent state funding which could deprive other airports of receiving funding assistance.

B. Project Components. In the priority system, projects are prioritized on a generic basis. For example, projects that affect the primary runway are all considered under the heading "primary runway." This could include lengthening, widening, lighting, grooving, etc., of the primary runway. Projects are defined on a usable basis or unit. This means that, if a runway is widened, the relocation of runway lighting and striping are all included in the project. Another example is a request to lengthen a runway and to extend the corresponding taxiway. The runway can be lengthened and is usable without the extension of the taxiway, so these are considered as two projects in the priority system.

C. Development of projects as a usable unit prevents projects of a lower priority being tagged onto a high priority project so they will be ranked higher. This focuses the priority system on those projects with the highest priority ranking, maximizing the effectiveness of aviation program funds. However, it is sometimes advantageous in terms of safety, operational effectiveness, and fiscal responsibility to include lower ranking projects along with otherwise unrelated higher projects. For instance, if there is a high priority project to overlay a runway, it may be appropriate to include a stub taxiway leading from the runway to a parking apron, or the apron itself if it is in especially poor condition. This can prevent damage to aircraft, provide a safe operational area for the necessary movement of aircraft, and take advantage of significant cost reductions for the lesser priority projects. This blending of otherwise nonrelated projects is an exception which will be authorized only in exceptional cases. The aviation director is responsible for the organization of projects

into usable units when projects are developed and for determining if special circumstances exist which would warrant combining unrelated projects.

D. Planning Data. The priority process depends heavily on planning data to evaluate the relative merits of a project. Usually the justification for a project is found in the master plan or action plan for the airport, but there are exceptions. Engineering inspections may identify the need for reconstruction of a runway, or a 5010 inspection may reveal a safety problem. Regardless of the means by which a project is identified, written documentation describing the need for the project and the justification for the action to be taken must be provided. The justification for the project should be brief and to the point.

E. Submitting a master plan or action plan document as sole justification is unacceptable. The pertinent section of the master plan or action plan should be submitted with narrative to explain the project and demonstrate that it is consistent with the master plan or action plan recommendations.

F. The planning data for a project, at a minimum, must:

1. document the need for the project;
2. explain how the project meets the need;
3. give the estimated cost; and
4. include a sketch of the project on the airport's approved layout plan.

G. The documentation need not be lengthy but should focus on what is generating the need. For example, if an aircraft parking apron is to be expanded, the number of existing parking spaces versus the number of aircraft that need to be parked on the apron would be adequate documentation. A description of how large an apron expansion is proposed and how many additional parking spaces the expansion would create should be submitted. The expansion should also be shown on the airport's approved layout plan to illustrate how it fits in the overall master plan or action plan development recommended for the airport. If the expansion of the apron is not consistent with that shown in the master plan or action plan, an explanation for the proposed deviation is necessary.

H. Environmental Requirements. Some proposed projects, because of their potential environmental impact, may require environmental clearance before they can be constructed. During the preliminary evaluation of a project, a determination should be made whether or not environmental clearance is required. If the FAA Airports District Office or DOTD Aviation Division indicates environmental clearance is required, any documents that are available to show that environmental requirements have been met should be provided. If some type of environmental document needs to be developed for the project, this should be done before the project is placed in the priority system. Environmental clearance of projects can be a lengthy process and allowing a project to be dormant in the priority system while waiting for clearance could preclude another project or projects from being implemented.

I. Local Sponsor Requirements. The priority system recognizes the responsibility of the local government owners of the airport to operate the airport in a safe, professional manner. A category is included in the rating system that

assigns a value for sponsor responsibility. To be able to assign this value, certain information is required from the owner of the airport.

J. Two of the evaluation criteria in the "sponsor responsibility" category are whether the airport has height limitation zoning and land use zoning in effect at the airport. If the Aviation Division does not have a copy of the airport's zoning ordinances on file, the local owner is required to provide this. The lack of zoning at the airport will cause a lower ranking of the proposed project. A third area of local sponsor responsibility is utilization of the airport's operations manual. All publicly-owned airports in the state should have an operations manual to guide in the management of the airport. Documentation of compliance with key provisions in the manual will be requested if it is unknown whether airport management is complying with provisions of the manual described later in this Section. Items which are particularly critical and especially looked for are:

1. published traffic patterns;
2. lease agreements with tenants;
3. uniform fuel flowage fees;
4. Notice to Airmen (NOTAM) filing procedures; and
5. maintenance inspections.

K. The most important and costly physical asset of any airport is the paved aircraft movement surfaces (runways, taxiways, and aprons). Regular inspection and maintenance of these surfaces are critical to insuring aviation and public safety and reducing the frequency and cost of pavement rehabilitation. To this end, FAA regulations and Aviation Division policy require that all airports have a written Pavement Maintenance Plan which, at a minimum, includes regularly scheduled inspections, written procedures for carrying out maintenance, appropriate equipment and material, and documentation verifying that appropriate maintenance has been conducted.

L. Compliance with FAA and Aviation Division safety, maintenance, and operational requirements is required. For the purposes of the priority program, an error free 5010 Safety and Compliance inspection or Part 139 inspection, or the satisfactory correction of all deficiencies from the most recent 5010 or 139 inspection will insure that full points are awarded.

M. No airport may receive state funding from the DOTD, Aviation Division if officially declared in noncompliance with federal or state laws, regulations, rules, or policies by the FAA or DOTD, Aviation Division.

N. The presence of zoning ordinances, an implemented pavement maintenance plan, compliance with the airport operations manual, and adequate airport maintenance are evaluated in the preliminary evaluation of a project because if they are not being done at an airport, the local sponsor should be given an opportunity to rectify the situation before his project is prioritized. The airport owner will be advised of the corrective actions that can be taken to improve his project score. If the owner does not initiate and document corrective action that clearly shows that action is being taken to address these items and correct deficiencies in these areas, the project will not receive points in this category.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§925. Project Priority Rating System

A. The structure of the priority rating system is based on:

1. an evaluation of the type of project;
2. the aviation activity at the airport where the project is located;
3. the management of the airport by the owner; and
4. consideration for special types of projects.

B. The point values are designed to award points in a weighted manner. Each area of evaluation receives points in proportion to the relative importance as determined by Aviation Division policy.

C. There are four categories of evaluation, each addressing one of the general areas in §925.A.1-4. The categories are as follows:

1. Category I—Project Type:
 - a. Safety;
 - b. Preservation of Existing System;
 - c. Upgrade to Standards;
 - d. Capacity Increases;
2. Category II—Facility Usage;
3. Category III—Sponsor Compliance;
4. Category IV—Special Considerations.

D. Points are awarded to a project based on evaluation criteria in each category, and the total evaluation score for the project is the sum of the points in each category. The relative percentage of each category in determining the total evaluation score is 50 percent for Category I, Type of Project; 20 percent for Category II, Facility Usage; and 30 percent for Category III, Sponsor Compliance. Category IV, Bonus Points, awards additional points above those in the other categories for special types of projects.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§927. Category I—Project Type

A. This category is designed to segregate projects by type defined by the primary purpose of the project. To accomplish this, four subcategories have been designated for project type. These subcategories are:

1. Safety;
2. Preservation of Existing System;
3. Upgrade to Standards;
4. Capacity Increases.

B. The subcategories are listed in order of descending importance and point values have been assigned accordingly. Development of projects directly related to safety of aircraft operations is considered the highest priority because of the potential for loss of life and property should safety needs not be addressed. Preserving the existing airport system is next in importance because the existing facilities represent an investment of public dollars and there is a commitment to maintain those facilities that are in use. The upgrade to

standards type of project is the next project priority and reflects a policy by the Aviation Division to develop facilities to the design standards established by DOTD and FAA to accommodate existing aviation activity at an airport. Projects for capacity increases at an airport are last in the project type priority because they represent a need in the future and not one presently existing.

C. Except for the "safety" subcategory, the general approach to assigning points to projects within these subcategories is to give highest priority to addressing needs of the primary runway first and then decreasing priorities the farther the project is removed from the primary airside facilities. As an example, a project on a primary runway has a higher priority than an apron project, but the apron project has a higher priority than a vehicle parking lot project. Safety projects, because of their importance, are addressed equally regardless of what area of the airport they impact.

D. It should be noted that project types listed are generic. For example, any project dealing with the primary runway that is designed to preserve its integrity falls under the "preservation of existing system" subcategory. This means that overlaying of the primary runway receives the same number of points as reconstructing the primary runway because both are designed to preserve the integrity of the runway. The subcategories in the "project type" category are shown in Exhibit 1. The type of project within each subcategory and its corresponding point value are displayed.

E. The Aviation Division does not participate in revenue-generating projects such as fueling systems and hangars. As a general rule, the program does not support terminal or other landside buildings except in a limited way (e.g., maximum \$25,000 for a terminal) and then usually to support or protect state-installed electronic equipment such as electronic weather or flight planning equipment. If, however, the FAA declares a terminal building or other landside project eligible for AIP funding, the Aviation Division will participate up to a maximum of 10 percent of project cost after legislative approval.

F. Safety. Projects in this subcategory are limited to those that only affect aircraft operational safety. These are projects such as obstruction removal, runway grooving, Aircraft Rescue and Firefighting (ARFF) equipment, and lighting. It can be argued that most aviation improvement projects increase safety at an airport, but caution is used to place only those projects in this subcategory that specifically affect the safety of aircraft using the airport. For example, lengthening of a runway improves safety, but its primary purpose is to allow utilization by larger or faster aircraft. Projects in the "safety" category are those developed specifically to address an unsafe condition and thus receive the highest evaluation points possible.

G. Preservation of Existing System. Projects that are required to maintain the functional integrity of existing facilities are evaluated in this subcategory. Projects such as reconstruction of a runway or taxiway or rehabilitation of an existing lighting system are the types of projects included under this subcategory. The point values are assigned with the highest value to projects that maintain the integrity of the primary runway and decrease in value as the facility being maintained moves from the primary airside facilities toward the landside support facilities. The program does not fund

preservation projects which are covered by routine maintenance. Preservation of most landside items and routine maintenance are the responsibility of the airport owner.

H. Upgrade to Standards. Projects evaluated in this category are those the purpose of which is to upgrade a facility to a design standard based on current needs. The required design standards for facilities are determined by the role the airport plays in the state airport system and the Aviation Division facility development standards. The airport role and standards are found in the Louisiana Airport System Plan and in appropriate FAA and state airport design manuals and advisories. In the prioritization of projects, it is important to note that projects receiving points in the "upgrade to standards" subcategory are based on a current need. Projects designed to accommodate future (forecast) needs do not receive points in this subcategory.

I. Capacity Increases. Projects in this subcategory are those that are designed to facilitate the handling of more operations or aircraft, improve operations, and/or handle new critical aircraft using the airport regularly. Most of these will be projects to address a future need versus an immediate need. An example of this type of project is the lengthening of a runway that currently meets existing design standards but needs to be lengthened based on forecast of operations or aircraft types. An apron expansion, when adequate apron space is available for current based aircraft, is another example of this type of project. If a project does not qualify for evaluation in the first three subcategories, it is evaluated using the point values in the "capacity increase" subcategory. It is important to note, however, that forecast needs are not simply a wish list. Forecasts must be professionally studied and prepared, founded on supportable factual data, and well documented.

J. The construction of new airports ranks low in this category for three reasons.

1. First, it is difficult to justify the high cost of a new airport. To construct a new general aviation airport using 100 percent state aviation program money would require the entire general aviation budget for five to eight years.

2. Second, almost without exception, Louisiana's existing airports are underutilized.

3. Third, many existing airports are in need of extensive rehabilitation to be brought up to federal and state safety and operational standards. It is hard to justify prioritizing the construction of a new airport when we do not have sufficient funds to adequately care for the ones we already have.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§929. Facility Usage

A. This category weighs the use of an airport relative to the use of other airports in the system. The basic objective is to support projects that serve the most aviation users. This objective has to be balanced, however, with the Aviation Division's goal of maintaining a viable statewide system of public use airports and maintaining aviation and public safety.

B. In terms of total number of persons served by an airport, it is generally the case that commercial service airports serve more individuals than general aviation airports with no commercial service. If points in this category were assigned

relative to the number of passengers flying into and out of an airport, the commercial service airports would far outdistance the smaller general aviation airports in points and project priority ranking. As previously discussed, for this reason commercial service and general aviation airports are prioritized separately.

C. Points are awarded based on the number of aircraft based at the airport and/or the number of commercial enplanements. The point values have been developed to attempt to recognize higher use of an airport while not eliminating a low use airport from consideration for projects. Exhibit 2 shows the point rating structure for this category.

D. The number of based aircraft at an airport, as indicated in the latest 5010 inspection report, is used to determine the relative level of use at an airport by general aviation interests. There are some drawbacks to this approach. The number of operations for each based aircraft is not accounted for by using only the based aircraft numbers. Itinerant operations, which are very important to an airport, are not recognized by counting based aircraft. Other operations by aircraft not based on the field, such as agricultural and military aircraft, are also missed. All of these factors affect the overall number of operations at an airport which is a much more accurate measure of airport use than based aircraft, but reliable operations counts at all nontowered airports are not available for general aviation airports. Should the Aviation Division develop a systematic program for counting operations at nontowered airports, the relative number of operations at an airport may replace based aircraft as the indicator of facility use. Until such a system is developed, counts of based aircraft are the only consistent way to measure general aviation use at the airports.

E. For commercial service airports, points are also awarded in this category for the number of commercial service enplanements. The number of enplanements is taken from the FAA's annual enplanement data.

F. Airports that do not have enplanements, but are designated as reliever airports, receive points in this category also. Reliever airports are important in the system for diverting general aviation operations from commercial service airports with operational capacity problems and thus receive points in the category. The sum of points awarded for general aviation-based aircraft, air carrier passenger enplanements (commercial service airports), and reliever airports status constitutes an airport's score for the "facility usage" category of the priority rating system.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§931. Category III—Sponsor Compliance

A. The "sponsor compliance" category evaluates how effectively the airport owners are operating the airport with respect to established standards and good management practices. Several areas are evaluated in this category that are

critical to providing safe and efficient public services. Exhibit 3 shows the evaluation criteria and point values for this category.

B. Airports are affected by the use of the land surrounding them. Certain land uses in the vicinity of an airport can result in restrictions on use of the airport and, in extreme cases, in the total closure of the airport. Restrictions to prevent the penetration of tall objects into the approach surfaces for aircraft at an airport are very important. Generally referred to as "height hazard zoning," this type of zoning prevents tall objects that affect the safety of aircraft operations from being built around the airport. Tall objects can cause the displacement of thresholds and the raising of "minimums" for instrument approaches at an airport, thus decreasing the utilization of the airport. The airport represents a substantial public investment and implementation of height hazard zoning by the appropriate local governing body protects the investment by allowing the airport to be used to its full capacity. Points are awarded in this category for having height hazard zoning ordinances in effect at an airport.

C. A related area evaluated in this category is compatible land use zoning. Height hazard zoning controls the height of objects but has no impact on the actual use of the land. Certain land uses around an airport are incompatible with airport operations because of safety considerations or impacts on landside activities. Noncompatible uses can create conflicts between the community and the airport which may create pressures to restrict use of the airport. Compatible land use zoning is necessary to protect the airport from restrictions placed on it when aviation uses conflict with surrounding land uses. For this reason, the presence of land use zoning is evaluated in this category.

D. Another evaluation area in the "sponsor responsibility" category is the use of the airport's operations manual by the local management. Each airport should have an operations manual which establishes the objectives, policies, standards, rules, regulations, and procedures necessary for the proper management and operation of the airport. Adherence to the manual insures compliance with the legal and regulatory requirements of the State of Louisiana and the Federal Aviation Administration. The manual covers a number of areas of management and operations, but for purposes of the priority evaluation there are five items of focus.

1. Establishment and Publication of a Traffic Pattern for Each Runway. A set traffic pattern adhered to by all pilots using an airport is absolutely essential for the safe operation of an airport. Publication of traffic patterns notifies users of the airport of the proper procedures for approaching and departing the airport.

2. Written Lease Agreements with All Tenants. A written lease agreement with tenants is necessary to document the fees and charges; the rights, privileges and obligations; and other relevant covenants for the respective parties. The airport is a resource to the community and the owner must insure that tenant operations are conducted in a manner that enhances the airport and that the airport is fairly compensated for the use of its facilities. Revenues from tenant leases are an important source of development, maintenance, and operating funds for

the airport. Lease agreements must conform to FAA and state requirements and be approved by the Aviation Division.

3. Establishment of Uniform Fuel Flowage Fees. Generally, the funds required to support the maintenance and operation of a publicly-owned airport have to be generated by the airport. One source of funding is the rental fee charged to airport tenants, and another is the use of a fuel flowage fee.

4. Establishment of NOTAM Filing Procedure. Issuance of a Notice to Airmen (NOTAM) is essential when there is any change in the facilities, services, or operations at an airport or when hazardous conditions exist. Nonissuance of a NOTAM can exacerbate a safety hazard at the airport for which the owners could be held liable. The establishment of a procedure and the identification of the individual responsible for filing a NOTAM with the FAA is an essential safety procedure at all airports.

5. Evidence of Pavement, Drainage, and Lighting Equipment Regular Inspections. Regular inspections to identify potential or existing problem areas at the airport are essential to an effective maintenance program. The facilities at the airport represent a public investment; and regular inspection and maintenance are necessary to maintain the facilities in good condition. Poor maintenance is expensive to correct and may cause a safety problem if not addressed in a timely manner.

E. It is the local airport owner's responsibility to provide the Aviation Division with documentation of compliance with these provisions of the manual. Lack of documentation is reason for the airport to lose points in this area of evaluation.

F. The final evaluation area in the "sponsor responsibility" category is maintenance. The local owners of the airport are responsible for routine maintenance such as cutting the grass, changing light bulbs, maintaining proper drainage, sealing or filling pavement cracks, and refurbishing marking and painting stripes. If regular maintenance is not done, the airport will not receive full points in this category. If maintenance is cited as a problem, the airport will be notified by letter of the problem and the corrective action to be taken. Until the airport corrects the problem, all projects evaluated in the priority system for the airport will lose points.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§933. Category IV—Special Considerations

A. The first three evaluation categories cover those evaluation areas (project type, facility use, and sponsor compliance) for which all projects prioritized will receive an evaluation score. The "special considerations" category allows projects of special significance to receive additional evaluation points when being prioritized. The items evaluated in this category bear no relationship to one another and thus each project is evaluated with respect to each item to determine if it should receive bonus points in its prioritization score. Exhibit 4 shows the criteria and point values for bonus point evaluation.

B. The first area of evaluation is "special programs". At times, certain improvements at an airport may be mandated by federal or state law and thus require a higher prioritization.

Also, as a matter of policy, the Aviation Division may determine that special emphasis should be placed on a certain type of project. All projects of the designated type will receive additional bonus points under these evaluation criteria.

C. Economic development potential is another evaluation area under the "special considerations" category. While it is acknowledged that any construction project generates economic development, there are some projects that are designed to address a specific economic need at the airport or in the community. To receive points in this area, the economic development aspects of the project must be well documented and clearly demonstrate the potential economic impact of the project. Facilities developed to accommodate the aviation needs of a business moving to the community is an example of an economic development type of project. The facilities would have to constitute a major factor in the business' decision to locate in the community. To receive bonus points in this area may require an economic impact study, the cost of which is the responsibility of the airport owner.

D. Commercial air service to a community is an important element in the community's overall economic development. Under the "special considerations" category, projects are evaluated to determine if their primary justification is to maintain or attract commercial air service to the airport. For a project to receive points under this category, it must be directly responsible for affecting commercial air service at the airport. Documentation of the project justification is essential for prioritization rating points to be awarded under this evaluation criteria.

E. The last evaluation criterion under the "special considerations" category is the provision of local matching funds in excess of Aviation Division match requirements. Any project for which local funds are provided will receive two bonus points in this category for every 5 percent contribution of the airport owner up to a total of 20 bonus points for 50 percent matching funds. This is designed to give higher preference to projects that are financially supported by the local owner in excess of that which is required; therefore, no matching funds from other state sources will qualify for bonus points. Commitment for local funding support should be included in the resolution submitted by the local owner requesting assistance from the Aviation Division for the project.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§935. New Airports

A. An airport that is constructed on a new site presents some different prioritization issues than improvements to existing airports. Generally, a new airport will fall into either of two categories.

1. The first is an airport that is proposed for an area of the state not served by a public airport.

2. The second is a new airport proposed to replace an existing public airport which, for any number of reasons, is not considered a suitable public airport.

B. Prioritization of projects for the development of a new

airport requires a process slightly different than that for an existing airport. There are some special considerations that must be made in each of the four prioritization categories.

C. Initially, it must be determined if the project under consideration is for a "new" airport. At some point during its development, a new airport becomes an existing airport. For purposes of the priority process, an airport is considered "new" until land is purchased for the airport, a primary runway is constructed, and an apron for aircraft parking is constructed. This includes clearing of runway approaches. The completion of these elements allows aircraft to operate at the airport and thus, at this point, the airport is no longer considered "new" and future projects are prioritized using the standard prioritization process. Before this point is reached, however, the land acquisition, runway, and apron construction will be prioritized using the following special considerations in each category.

D. Under the "project type" category, new airport projects will be categorized in either of two project type categories. Those new airports that are replacing an existing airport are categorized as upgrade to standards type projects. This type of new airport allows construction of an airport that meets all DOTD design standards and allows for future expansion to meet these standards. It should be noted that land purchased for a new airport is often funded with state funds, but when the FAA begins funding other improvements such as the primary runway, the state is reimbursed for land acquisition costs. If this is the case, land acquisition should be treated as a federally-funded project and prioritized accordingly.

E. New airports constructed in areas of the state not being served by a public airport should be prioritized under the project type "capacity increases" subcategory. These airports are primarily to increase the capacity of the Louisiana public airports system and thus are prioritized in the "capacity increases" subcategory. As previously discussed, land acquisition costs are usually reimbursed by the FAA and these projects should be prioritized accordingly.

F. For the "facility usage" category, the based aircraft and enplanements numbers that determine the points awarded for the new airport project will be those cited in the supporting planning document for the first planning phase. This will usually be the numbers cited for the first year of operation.

G. Under the "sponsor responsibility" category, there are two areas that can be included in the prioritization process. The presence of height limitation zoning and land use zoning should be determined and points assigned accordingly. Most new airports will not have developed an operations manual for the airport. In cases where the airport has not developed an operations manual, the airport will be awarded five points based on the assumption that the elements of an operations manual will be in place when the airport is opened for operations.

H. In the "special considerations" category, a new airport can be assigned points in the same manner as an existing airport. If an airport is the first public airport in an area, a strong case can be made that the airport should receive bonus points for its economic development potential. The airport represents a totally new mode to the local transportation

system and thus should have a significant long-term economic impact on the area served. The remaining bonus point areas can be assigned in the same manner they are assigned for existing airports.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§937. Prioritization of Projects

A. Once a determination has been made by the Aviation Division that a project is eligible to be included in the prioritization system, the project will be prioritized using the rating system. The preliminary evaluation of the project should provide the information necessary to complete the process. If adequate information is not available, it will be requested before the project is prioritized. Prioritizing a project without sufficient information may cause a project to receive a higher or lower ranking than it deserves. Subsequent questions about why the project received the evaluation score may be difficult to answer without the documentation to support the points assigned in each category.

B. Point values are assigned in each category using the worksheet that is included as Exhibit 5. The worksheet follows the priority rating system and provides the documentation of how the total score for a project was derived. The worksheet is maintained with the project file so that documentation of the value assigned in each category is available.

C. Occasionally, a change in a project or at the airport might occur requiring the point values for a project to be modified. The new values are put on the same worksheet with a note explaining the reasons for the change.

D. As part of the evaluation of the project, the eligibility of the project for federal funding is noted on the worksheet. If federal funds are already committed, this is also included on the worksheet. When the project is entered in the automated priority system, the eligibility or commitment of federal funding for the project is noted.

E. Some projects will have equal scores after they are evaluated. If these projects fall at a point in the ranking list where a break is necessary (funded program versus four-year unfunded program), projects with the same score will be ranked based on the highest score in Category I. The project with the higher score in Category I will be ranked higher. If the projects are tied in Category I, Category III is used to break the tie and, if still tied, Category II is used, etc. Should the projects still be tied after examining all four categories, the project at the airport with the largest number of based aircraft will be ranked higher.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§939. Automated Priority Ranking System

After the total evaluation score for a project is determined, it is entered into the automated priority ranking system and its relative ranking is determined. This system automatically

ranks projects by descending score in the commercial service airport or general aviation airport priority program as appropriate.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§941. Program of Projects

A. The lists of projects for commercial service and general aviation airports prioritized by evaluation score represent the program of projects that the Aviation Division will seek to implement through its development program. The actual number of projects from each list that will ultimately be constructed is primarily dependent upon the level of funding that the Aviation Division receives each year.

B. The automated priority system has been designed to allow inclusion of a cost estimate for each project. The estimate is broken down by federal share, state share, and local sponsor share. Since the system is designed to prioritize the use of state monies, the state funds required for a project are the key to developing a program of projects. The automated priority ranking system includes a column that maintains a cumulative total of state funds required for projects as they are listed by priority ranking. The figures in this column are used to determine a program of projects based on the state funds available. For example, if five million dollars are available for commercial service airport projects, a person would look down the cumulative state fund column until \$5,000,000 of project cost has accumulated. All projects above this point will be funded during the time this amount was available.

C. Most projects will require more than one year to design, acquire land (if necessary), and construct. When a project that is programmed to be funded over two or more fiscal years is included in the program, the phase of work (design, construction phase I, construction phase II, etc.) will be noted along with the cost of that phase. Subsequent phases may be shown at the top of the four-year unfunded list. As projects are constructed and more funding becomes available, remaining projects with the highest scores will be placed in the construction program to the extent that funding is available. This group of projects for which funding is available will not be changed until more funds become available. However, projects on the four-year unfunded list do not automatically move up to the funded list in the succeeding fiscal year. Rather, unfunded projects recompute for funding each fiscal year until they are either funded or dropped from the list after three years. Because needs, cost estimates, airport situation, and other data change regularly, after three years all projects which have not been started are dropped from the program and must be resubmitted with updated information. They will then be reviewed and re-entered into the priority system.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§943. Projects Eligible for FAA Funding

A. Special consideration for projects that will receive FAA funding is not included in the priority system. The priority system is a listing of the projects in the order that the state considers implementation desirable based on the state's overall aviation development policies. Utilization of the FAA's priorities to set state priorities is inconsistent with a state prioritization process. This does not mean that the state should ignore potential FAA funding in its development program.

B. There are two decisions that the Aviation Division makes when seeking FAA funding for its program. Projects that are planned at National Plan of Integrated Airport Systems (NPIAS) airports and that are types in which FAA will participate are noted. This enables the Aviation Division to present a proposed program of projects to the FAA that are eligible for FAA funding and that reflect state priorities. The Aviation Division then negotiates with the FAA to secure federal funding for top ranked projects. The second consideration for FAA funding is that there will be projects the FAA will fund that do not appear in the implementation program based on priority rankings. Realistically, the Aviation Division cannot reject a project that will receive 90 percent of its funding from the FAA. In these cases, a project that has received a commitment for federal funds is to be automatically included in the list of projects for implementation in the current year. If the current year program is already developed, the project is given top priority in the next year program. Therefore, it is important that airports seeking federal funding for projects that are eligible for matching funds from the aviation program apply for federal funds through the Aviation Division and apply for state matching funds by resolution at the same time.

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

§945. Exhibits

A. Exhibit 1

Exhibit 1	
Category I—Project Type (50% of total score)	
A. Safety—Projects directly affecting operational safety.	
Points	
50	Correction of runway failures severe enough to be an obvious safety problem. Runway friction surface or grooving or other action directly related to safety.
49	Repair of primary runway lighting system or approach lighting system which is not functional and is deemed to be a safety hazard.
48	Obstruction removal which is requiring the displacement of the runway threshold and relocation of runway lighting.
47	Obstruction removal to meet FAA Part 152 clear zone and FAR Part 77 imaginary surface requirements.
46	ARFF vehicles and equipment required at commercial service airports or minimum safety equipment at GA airports. Security fencing to correct a specific safety problem (does not include general perimeter fencing).

45	Safety condition identified by professional evaluation or accident statistics.
B. Preservation of Existing System—Work required to maintain the functional integrity of the existing system. Examples are overlaying of runway, taxiway, or apron; drainage to prevent pavement failure; joint sealing; or pavement rejuvenation.	
40	Completion or continuation of previously approved and funded multi year project
39	Primary runway
38	Taxiway serving primary runway
37	Apron
36	Secondary runway
35	Taxiway serving secondary runway
34	Stub taxiways and taxilanes
33	Primary vehicle access road
32	Nonrevenue-generating vehicle parking
C. Upgrade to Standards—Upgrading of facilities to DOTD or FAA design standards based on current use. (Any project which requires the acquisition of additional land must include the cost of the land and the cost of all services and fees associated with acquiring the land).	
30	Primary runway
29	Primary taxiway
28	Apron
27	Perimeter fencing
26	Secondary runway
25	Secondary taxiway
24	Agricultural loading area
23	Primary vehicle access road
22	Primary vehicle non-revenue generating parking
21	Terminal (not more than 50% of the cost and not to exceed \$25,000 unless matching an FAA grant in which case the state will provide a 10% matching share without a cost ceiling)
20	Other landside items (may not include fuel facilities, hangars, or revenue-generating items and not more than 50% of the cost and not to exceed \$25,000 unless matching an FAA grant in which case the state will provide a 10% matching share without a cost ceiling).
19	Land for noise control or noise control required project and land acquisition in clear zones other than for obstruction removal.
D. Capacity Increases—Improvements to facilitate handling more aircraft or improving operations and improvements designed for the handling of new, larger, or heavier critical aircraft. (Any project which requires the acquisition of additional land must include the cost of the land and the cost of all services and fees associated with acquiring the land).	
17	Landing area improvements to handle operations capacity problems such as additional taxiways or a parallel runway.
16	Landing area improvements for larger critical aircraft such as runway lengthening and strengthening.

15	Taxiway construction or strengthening.
14	Apron expansion for number of aircraft capacity reasons.
13	Apron expansion or strengthening because of critical aircraft considerations.
12	Taxiway to new apron or apron construction to open new area of airport.
11	Primary vehicle access road capacity increase (additional lanes or to new area of airport).
10	Primary vehicle nonrevenue-generating parking.
9	New airport construction including runway, taxiway, and apron.
8	Land acquisition for future expansion unrelated to any immediate project needs.

B. Exhibit 2

Exhibit 2	
Category II—Facility Usage (20% of total score)	
Based Aircraft*	Points
100 or more	12
50 to 99	9
20 to 49	6
0 to 19	3
Additional points for Air Carrier and Commercial Service Enplanements**	Points
500,000 or more	8
250,000 to 499,999	6
50,000 to 249,999	4
2,500 to 49,999 ***	2
If noncommercial reliever airport	2
* Taken from latest 5010 Inspection	
** Taken from Annual FAA Enplanement Data	
*** Less than 2,500 enplanement do not receive points	

C. Exhibit 3

Exhibit 3	
Category III—Sponsor Compliance (39% of total score)	Points
Height Limitation Zoning	4
Land Use Zoning	4
Operations Manual*	2
Pavement Maintenance Plan**	5
Annual Part 139 or 5010 Inspection***	10
Airport Maintenance other than pavement	5

* Operations manual points awarded one half point each for:
 Publishing of Traffic Pattern
 Approved Lease Agreements with Tenants
 Uniform Fuel Flowage Fee
 NOTAM Filing Procedure

** Documentation of implementation is required. Points may be awarded on a sliding scale relative to quality of the plan and degree of implementation.

*** Points are not awarded based solely on the number of deficiencies. Also taken into consideration are the timeliness and appropriateness of corrective actions. Points may be awarded on a sliding scale relative to the progress toward correcting deficiencies.

D. Exhibit 4

Exhibit 4	
Category IV—Special Considerations	Points
Designated as Special Program*	15
Economic Development Potential**	10
Maintain or Attract Commercial Service	10
Local Funding in Excess of Requirements***	2 - 20
<p>* Special Program—Certain types of projects mandated by Federal or State law or identified in a policy decision by DOTD. For example, if the EPA requires a certain kind of wash down facility, it could be given added priority with bonus points. If DOTD wishes to place emphasis on a particular type of project, e.g., hazard removal around the state, these types of projects could receive Special Program points.</p> <p>** Economic Development—Clearly demonstrated impact on economic development in an industrial airpark or around the airport locale. For example, a taxiway to open industrial airpark access would get bonus points, but a taxiway to a T-Hangar area would not. A runway project to accommodate corporate aircraft would need to be thoroughly documented that it was a major factor in the location of the business. To receive bonus points in this category an economic impact study may be required, the cost of which is the responsibility of the airport owner.</p> <p>*** Two points will be awarded for each 5% of matching funds provided by the airport owner up to a maximum of 20 points (50% matching funds). Funds may not come from other state sources.</p>	

E. Exhibit 5

Project Priority Evaluation Worksheet

Project Number _____ Date Evaluated _____
 Airport Name _____
 Airport Code _____
 Description of Work _____

Category I: Project Type	Score
Safety	_____
Preservation of Existing System	_____
Upgrade to Standards	_____
Capacity Increases	_____
Total	_____

Category II: Facility Usage	
Based Aircraft	_____
Enplanements	_____
Reliever Airport	_____
Total	_____

Category III: Sponsor Responsibility	
Height Limitation Zoning	_____
Land Use Zoning	_____
Operations Manual Use	_____
Pavement Maintenance	_____
Part 139/5010 Inspection	_____
Total	_____

Category IV: Special Considerations	
Special Program	_____
Economic Development	_____
Commercial Service	_____
Local Funding	_____
Total	_____
PROJECT TOTAL EVALUATION SCORE	TOTAL _____

AUTHORITY NOTE: Promulgated in accordance with SCR 67, 1997 and R.S. 2:6.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Division of Aviation, LR 16:583 (June 1990), amended LR 24:

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 to Anthony M. Culp, Aviation Director, Department of Transportation and Development, Box 94245, Baton Rouge, LA 70804, telephone (504) 379-1242.

Frank M. Denton
 Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
 FOR ADMINISTRATIVE RULES
 RULE TITLE: Aviation Project Needs and
 Project Priority Process**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This action updates and makes administrative changes to an existing program. There are no costs or savings to state government associated with the implementation of this proposed action or the administration of the program in Fiscal Years 1997-98 through 1998-99; however, this rule change will require additional expenditures of \$120,000 (\$20,000 for Planning and \$100,000 for Discretionary) for airport projects in FY 99-2000.

This action does not directly cause costs or savings to local government units; however, it will decrease funds available to commercial service airports by approximately \$400,000 and increase funds available to general aviation airports by approximately \$400,000.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed action will have no effect on the revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed action will have no cost or economic benefit for directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed action will not directly affect competition and/or employment.

Frank M. Denton
 Secretary
 9804#077

Richard W. England
 Assistant to the
 Legislative Fiscal Officer

NOTICE OF INTENT

**Department of Transportation and Development
Weights and Standards Section**

Shifting of Vehicle Loads
(LAC 73:I.103 and 1103)

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, Weights and Standards Section intends to amend LAC 73:I.103 and 1103 in accordance with R.S. 32:2 and 32:386.

Title 73

WEIGHTS, MEASURES AND STANDARDS

Part I. Weights and Standards

**Chapter 1. Policy and Procedures for Weight
Enforcement Field Personnel**

**§103. Field Procedures for Enforcing Weight and Size
Limitations**

* * *

B. Procedures for Enforcing the Weight Law and Impounding Vehicles

1. Shifting the Load. In order to conform with the policy of Louisiana State Police (Mobile Weight Enforcement Police), drivers will not be allowed to shift the loads carried by their vehicles after being weighed in order to qualify for a second weighing and a lesser fine amount. The loads may be required to be shifted by weight enforcement police after weighting and before proceeding.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:2 and 32:386.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 5:28 (February 1979), amended by the Weights and Standards Section, LR 24:

**Chapter 11. Enforcement Procedures and Penalties
§1103. Legal Limitation Violations**

A. In order to conform with the policy of Louisiana State Police (Mobile Weight Enforcement Police), drivers will not be allowed to shift the loads carried by their vehicles after being weighed in order to qualify for a second weighing and a lesser fine amount. The loads may be required to be shifted by weight enforcement police after weighing and before proceeding.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:2 and 32:386.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 5:26 (February 1979), amended by the Weights and Standards Section, LR 22:120 (February 1996), LR 24:

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 to

James B. Norman, Vehicle and Truck Permits Administrator,
Box 94042, Baton Rouge, LA 70804, telephone
(504)377-7100.

Frank M. Denton
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Shifting of Vehicle Loads

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no implementation costs to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be a minimum monthly increase in revenue collections for the state of approximately \$33,800, that amount representing the difference between the violation ticket amounts before and after load shifts.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The trucking industry will be affected insofar as violators will be required to pay higher fines than those paid prior to the rule change.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There should be no effect on competition and employment.

Frank M. Denton
Secretary
9804#076

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

Commercial Fisherman's Sales
Card (LAC 76:VII.201 and 203)

The Wildlife and Fisheries Commission does hereby give notice of intent to amend a rule (LAC 76:VII.201) implementing dealer receipt forms, and repeal a rule (LAC 76:VII.203) implementing the commercial fisherman's sales report form. Authority for adoption of the rule is included in R.S. 56:303.7(B), 56:306.4(E) and 56:345.

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statements, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 2. General Provisions

§201. Commercial Fisherman's Sales Card; Dealer Receipt Form—Design and Use

A. The "Commercial Fisherman's Sales Card" shall be provided by the department in lieu of the commercial fisherman's license. The card will be embossed with the following information:

1. commercial fisherman's name;
2. commercial license number;
3. commercial fisherman's social security number;
4. expiration date;
5. residency status.

B. The card shall be presented by the commercial fisherman to the dealer at the time of sale or transfer of possession of the catch.

C. The dealer receipt form shall be a three-part numbered form provided by the department. The dealer receipt form shall be completed when fish are purchased or received from commercial fishermen. The receipt form shall represent the actual transaction between the commercial fisherman and the dealer. The dealer shall fill out the receipt form in its entirety containing all of the information required in §201.D and E with the exception of the commercial fisherman's signature that shall be recorded by the fisherman. The "Dealer's Copy" of the receipt shall be maintained on file at the dealer's place of business or where the fish are received. The dealer shall maintain the receipts for a period of three years. The "Department Copy" portion of the dealer receipt form shall be returned to the department by the dealer by the tenth of each month to include purchases made during the previous month. Along with the receipts for each month, the dealer shall submit a "Monthly Submission Sheet" provided by the department that certifies that the transactions submitted represent all of the transactions by that dealer from commercial fishermen for that particular month. The "Monthly Submission Sheet" shall fulfill the reporting requirements in R.S. 56:345. The dealer shall mail completed receipt forms to a predetermined address designated by the department. Dealers are responsible for obtaining dealer receipt forms from the department by calling a predetermined phone number.

D. The commercial fisherman is responsible for providing the following information to the dealer at the time of sale or transfer of possession of the catch:

1. commercial fisherman's name;
2. commercial fisherman's license number;
3. information on commercial gear used;
4. information on vessel used;
5. information on location fished;
6. permit numbers for species requiring a permit to harvest;
7. commercial fisherman's signature.

E. The dealer is responsible for recording on the dealer receipt form that information provided by the commercial fisherman in §201.D and is responsible for the following information at the time of sale or transfer of possession of the

catch:

1. dealer's name;
2. dealer's license number;
3. commercial fisherman's name;
4. commercial fisherman's license number;
5. species purchased;
6. quantity and units of each species purchased;
7. size and condition of each species purchased;
8. transaction date;
9. unit price of each species purchased;
10. dealer's signature;
11. permit numbers for species requiring a permit to harvest;
12. commercial fisherman's signature.

F. Dealers may designate an agent to sign the dealer receipt form for them however, in all cases the dealer shall remain responsible for the actions of their agent.

G. All records and receipt forms shall be available and produced upon demand to any duly authorized agent of the Department of Wildlife and Fisheries Law Enforcement Division or department auditor.

H. Effective date of §201.A and B is upon publication in the *Louisiana Register*. Effective date for §201.C-G will be January 1, 1999.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:303.7(B), 56:306.4(E) and 56:345.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:81 (January 1992), repromulgated LR 18:198 (February 1992), amended LR 20:323 (March 1994), amended by the Office of Fisheries, LR 21:477 (May 1995), LR 22:373 (May 1996), amended by the Wildlife and Fisheries Commission, LR 24:

§203. Commercial Fisherman's Sales Report Form

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:345(B).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 18:82 (January 1992), repromulgated LR 18:198 (February 1992), amended LR 20:323 (March 1994), amended by the Office of Fisheries, LR 21:477 (May 1995), LR 22:373 (May 1996), repealed by the Wildlife and Fisheries Commission, LR 24:

Interested persons may submit comments relative to the proposed rule to Joseph Shepard, Marine Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000, prior to June 1, 1998.

Thomas M. Gattle, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Commercial Fisherman's Sales Card**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The dealer receipt form program is estimated to increase expenditures by \$433,333 annually. Partial year expenditure for Fiscal Year 1997-1998 is estimated to be \$299,473. Implementation costs of the proposed rule for Fiscal Year 1997-1998 through 1999-2000 will be funded by a National Marine Fisheries Service Grant received in 1997. Subsequent

years will be paid from the sale of commercial licenses under Revised Statutes, Title 56, Part VI, Subpart F, dedicated for the purpose of development and administration of the dealer receipt form program. Local government units will not be impacted by the proposed rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Due to a 1997 National Marine Fisheries Service Grant received to implement the dealer receipt form program, federal revenues will increase by \$299,473, \$433,333 and \$433,333 in Fiscal Year 1997-1998, 1998-1999 and 1999-2000, respectively. State revenues from the sale of commercial licenses under Revised Statutes, Title 56, Part VI, Subpart F, dedicated for the purpose of development and administration of the dealer receipt form program, will be used to continue this program after Fiscal Year 1999-2000. No local governmental unit revenue collections will be impacted by the proposed rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Dealers and commercial fish and wildlife harvesters will be directly impacted by the proposed rule. Dealers will experience an increase in workload and additional paperwork due to the amount of additional requested information to be recorded on sale receipt forms. Sale receipt forms will be provided by the Louisiana Department of Wildlife and Fisheries, possibly providing cost saving benefits to dealers from sale receipt form purchases. Commercial fish and wildlife harvesters will have to provide additional information not normally collected thus increasing time spent at the dealer's place of business. The additional workload and paper work required will increase operating costs and impact dealer income.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Competition and employment may increase slightly within the private sector.

Ronald G. Couvillion
Undersecretary
9804#032

Richard W. England
Assistant to the
Legislative Fiscal Officer

NOTICE OF INTENT

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

**Netting Prohibition—John K. Kelly-Grand
Bayou Reservoir (LAC 76:VII.185)**

The Wildlife and Fisheries Commission hereby advertises its intent to adopt a rule prohibiting commercial netting in the John K. Kelly-Grand Bayou Reservoir.

The Secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this notice of intent and the final rule, including but not limited to, the filing of the fiscal and economic impact statement, the filing of the notice of intent and final rule and the preparation of reports and correspondence to other agencies of government.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 1. Freshwater Sports and Commercial Fishing

§185. Netting Prohibition—John K. Kelly-Grand Bayou Reservoir

The Louisiana Wildlife and Fisheries Commission hereby prohibits the possession and/or use of commercial nets, including, but not limited to, gill nets, trammel nets, flagg nets, hoop nets, wire nets and fish seines in John K. Kelly-Grand Bayou Reservoir located in Red River Parish.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:22(B).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission, LR 24:

Interested persons may comment on the proposed rule in writing to Bennie Fontenot, Administrator, Inland Fisheries Division, Department of Wildlife and Fisheries, Box 98000, Baton Rouge, LA 70898-9000 until 4:30 p.m., June 4, 1998.

Thomas M. Gattle, Jr.
Chairman

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Netting Prohibition—John K. Kelly-Grand
Bayou Reservoir Netting Prohibition**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will have no implementation costs. Enforcement of the proposed rule will be carried out using existing staff.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule 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 goal of the proposed rule is to ban the use of commercial nets in John K. Kelly-Grand Bayou Reservoir. Commercial nets can be counterproductive to producing quality and trophy largemouth bass, a fishery management goal for the reservoir. It should provide, over time, additional economic benefits to area businesses and persons who benefit directly and indirectly from increased recreational fishing and related activities. No cost increases, workload adjustment or additional paperwork is anticipated to occur as a result of the proposed action.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule may result in a slight increase in competition and employment in the private sectors due to the anticipated increased fishing effort in the reservoir over time.

Ronald G. Couvillion
Undersecretary
9804#033

Richard W. England
Assistant to the
Legislative Fiscal Officer

Administrative Code Update

CUMULATIVE: JANUARY - MARCH, 1998

LAC Title	Part.Section	Effect	Location LR 24		LAC Title	Part.Section	Effect	Location LR 24	
			Month	Page				Month	Page
4	VII.Chapter 1	Amended	Feb	329	46	I.1115	Amended	Jan	18
						I.1335	Amended	Jan	18
7	XXI.1501-1523	Adopted	Feb	282		LX.503	Amended	Mar	437
	XXIII.Chapter 1	Amended	Feb	280		LX.901	Amended	Mar	448
						LX.Chapter 21	Amended	Mar	438
13	I.Chapter 70	Adopted	Mar	428		LXVII.3401-3405	Amended	Jan	19
						LXVII 3407-3411	Repealed	Jan	19
19	II.Chapter 1	Amended	Mar	430		LXXXV.704	Amended	Feb	334
	II.901	Amended	Mar	430		LXXXV.711	Amended	Jan	41
	II.903-915	Adopted	Mar	430		LXXXV.1063	Amended	Feb	335
					48	I.Chapter 25	Adopted	Mar	449
22	I.103	Amended	Feb	342		I.Chapter 43	Amended	Jan	109
	I.335	Adopted	Jan	103		I.4561	Amended	Feb	336
	XIII.103	Amended	Feb	327		I.Chapters 97,98,99	Adopted	Jan	44
	XIII.501	Repromulgated	Feb	328		IX.511	Adopted	Feb	335
	XIII.503	Amended	Feb	328					
					50	II.10155	Amended	Mar	457
28	I.107	Amended	Feb	283					
	I.906	Amended	Feb	295	55	I.1511-1543	Amended	Jan	105
	I.909	Repromulgated	Feb	283		III.351,355,365	Amended	Mar	475
	I.919	Amended	Mar	434		III.808	Amended	Mar	477
	I.930	Adopted	Feb	296		III.Chapter 15	Adopted	Feb	345
	I.1523	Amended	Feb	297		III.Chapter 17	Adopted	Mar	472
	I.1709	Amended	Feb	296		IX.Chapters 1-2	Amended	Mar	459
	VI.301	Amended	Mar	436		IX.Chapter 12	Repealed	Mar	472
					58	I.101	Amended	Jan	120
33	III.Chapter 21	Amended	Jan	20		III.Chapters 1-13	Amended	Mar	499
	III.2117	Amended	Feb	298		III.101,103,105	Repealed	Mar	499
	III.5151	Amended	Jan	27					
	V.105,501	Amended	Feb	298	61	V.Chapters 1-35	Amended	Mar	477
	V.2201,2227	Amended	Feb	300					
	V.3105	Amended	Feb	318	67	I.101-107	Repealed	Feb	355
	V.3881,3883	Adopted	Feb	320		I.1181	Repealed	Feb	355
	V.4901	Amended	Feb	321		I.2913	Amended	Feb	356
	V.4905	Amended	Feb	325		I.Chapter 51	Adopted	Feb	356
	VII.10407	Amended	Jan	27		III.403,405	Adopted	Jan	106
	IX.Chapter 13	Amended	Feb	326		III.1115	Amended	Jan	107
	IX.2201-2213	Amended	Jan	28		III.Chapter 11	Amended	Feb	349
						III.1141,1143	Amended	Feb	348
34	III.901	Adopted	Feb	333		III.1503	Amended	Feb	353
	IX.Chapters 1-31	Amended	Jan	30		III.1701,Chapter 19	Amended	Jan	108
	IX.103	Repealed	Jan	30		III.1994,1995	Amended	Feb	354
	IX.503	Repromulgated	Jan	32		III.2909	Amended	Feb	353
	IX.1703-1707	Repromulgated	Jan	36		III.3701,3704	Adopted	Feb	353
	IX.2303	Adopted	Jan	38		III.3705	Repealed	Feb	353
						III.3707-3710	Adopted	Feb	354
37	III.505	Amended	Feb	333		VII.305,307,329,331	Amended	Feb	494
42	XIII.1701,2133	Amended	Feb	344					
	XIII.2141,2169	Amended	Feb	344	76	I.149	Amended	Mar	505
						I.327	Adopted	Mar	505
43	XI.Chapter 3	Amended	Feb	340		VII.341	Amended	Feb	360
	XIX.Chapter 7	Amended	Mar	458		VII.343	Amended	Feb	359
	XIX.Chapter 43	Adopted	Jan	102		VII.405	Amended	Feb	359

Potpourri

POTPOURRI

**Department of Agriculture and Forestry
Office of Agricultural and Environmental Sciences
Horticulture Commission**

Annual Quarantine Listing—1998
(LAC 7:XV.9507 and 9509)

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 95. Crop Pests and Diseases

In accordance with LAC 7:XV.9507 and 9509, the Horticulture Commission hereby publishes the annual quarantine.

1.0 Sweet Potato Weevil (*Cylas formicarius elegantulus* Sum)

(a) In the United States: the states of Alabama, California, Florida, Georgia, Mississippi, North Carolina, South Carolina, Texas and any other state found to have the Sweet potato weevil.

(b) In the State of Louisiana:

1) The entire parishes of: Acadia, Allen, Ascension, Assumption, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Calcasieu, Cameron, DeSoto, East Baton Rouge, East Feliciana, Evangeline, Grant, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Natchitoches, Orleans, Plaquemines, Pointe Coupee, Rapides, Red River, Sabine, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Vernon, Washington, Webster, West Baton Rouge, West Feliciana.

2.0 Pink Bollworm (*Pectinophora gossypiella* Saunders)

Pink bollworm quarantined areas are divided into generally infested and/or suppressive areas as described by USDA-PPQ.

ARKANSAS		
(1)	Generally infested area:	none
(2)	Suppressive area:	the entire county of Poinsette
ARIZONA		
(1)	Generally infested area:	the entire state
CALIFORNIA		
(1)	Generally infested area:	the entire counties of: Imperial, Inyo, Los Angeles, Orange, Riverside, San Bernardino, and San Diego
(2)	Suppressive area:	the entire counties of: Fresno, Kern, Kings, Madera, Merced, San Benito, and Tulare

NEVADA		
(1)	Generally infested area:	the entire counties of Clark and Nyle
(2)	Suppressive area:	none
NEW MEXICO		
(1)	Generally infested area:	the entire state
OKLAHOMA		
(1)	Generally infested area:	the entire state
TEXAS		
(1)	Generally infested area:	the entire state

3.0 Phytophagous Snails

The states of Arizona and California.

4.0 Sugarcane Pests and Diseases

All states outside of Louisiana.

5.0 Lethal Yellowing

The states of Florida and Texas.

6.0 Tristeza, Xyloporosis, Psorosis, Exocortis

All citrus growing areas of the United States.

7.0 Burrowing Nematode (*Radopholus similis*)

The states of Florida and Hawaii and the Commonwealth of Puerto Rico.

8.0 Oak Wilt (*Ceratocystis fagacearum*)

STATE	INFECTED COUNTIES
Arkansas	Baxter, Benton, Boone, Carroll, Clay, Craighead, Crawford, Franklin, Fulton, Independence, Iard, Johnson, Lawrence, Logan, Madison, Marion, Mississippi, Nevada, Newton, Poinsett, Pope, Randolph, Scott, Searcy, Sharp, Stone, Washington, and Yell
Illinois	Entire state
Indiana	Entire state
Iowa	Entire state
Kansas	Anderson, Atchison, Cherokee, Doniphan, Douglas, Franklin, Jackson, Jefferson, Johnson, Leavenworth, Linn, Miami, Neosho, Pottawatomie, Shawnee, and Wyandotte
Kentucky	Adair, Allen, Ballard, Bath, Bell, Boyd, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Carter, Casey, Christian, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fleming, Floyd, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Hart, Henderson, Hopkins, Jefferson, Johnson, Knott, Knox, Lawrence, Lee, Leslie, Letcher, Lewis, Logan, McCracken, McLean, Magoffin, Marshall, Martin, Menifee, Metcalf, Montgomery, Morgan, Muhlenberg, Nelson, Ohio, Oldham, Owsley, Perry, Pike, Powell, Pulaski, Rowan, Russell, Taylor, Todd, Trigg, Union, Warren, Wayne, and Webster

Maryland	Alleghany, Frederick, Garrett, and Washington
Michigan	Barry, Barrien, Calhoun, Cass, Clare, Clinton, Grand Traverse, Kalamazoo, Kent, Lake, Livingston, Manistee, Missaukee, Muskegon, Oakland, Roscommon, St. Joseph, Van Buren, Washtenaw, Wyne, and Menominee
Minnesota	Anoka, Aitkin, Blue Earth, Carver, Cass, Chicago, Crow Wing, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Le Sueur, McLeod, Mille Lacs, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Steele, Wabasha, Waseca, Washington, Winona, and Wright
Missouri	Entire state
Nebraska	Cass, Douglas, Nemaha, Otoe, Richardson, and Sarpy
North Carolina	Buncombe, Burke, Haywood, Jackson, Lenoir, Macon, Madison, and Swain
Ohio	Entire state
Oklahoma	Adair, Cherokee, Craig, Delaware, Haskell, Latimer, LeFlore, Mayes, McCurtain, McIntosh, Ottawa, Pittsburg, Rogers, Sequoyah, and Wagoner
Pennsylvania	Adams, Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Centre, Clarion, Clinton, Cumberland, Erie, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Mifflin, Perry, Somerset, Venango, Washington, and Westmoreland
South Carolina	Chesterfield, Kershaw, Lancaster, Lee, and Richland
Tennessee	Blount, Carter, Cocke, Cumberland, Grainger, Greene, Hamblen, Hancock, Hardeman, Hawkins, Jefferson, Knox, Lincoln, Loudon, Montgomery, Rhea, Roane, Robertson, Sevier, Sullivan, Union, Washington, and White
Texas	Bandera, Bastrop, Bexar, Blanco, Basque, Burnett, Dallas, Erath, Fayette, Gillespie, Hamilton, Kendall, Kerr, Lampasas, Lavaca, McLennan, Midland, Tarrant, Travis, Williamson
Virginia	Alleghany, Augusta, Bath, Botetoust, Clarke, Frederick, Giles, Highland, Lee, Loudoun, Montgomery, Page, Rockbridge, Rockingham, Scott, Shenandoah, Smyth, Warren, Washington, Wise, and Wythe
West Virginia	All counties except Tucker and Webster
Wisconsin	Adams, Brown, Buffalo, Chippewa, Clark, Columbia, Crawford, Dane, Dodge, Dunn, Eau Claire, Fond du Lac, Grant, Green, Green Lake, Iowa, Jackson, Jefferson, Juneau, Kenosha, La Crosse, Lafayette, Lincoln, Marquette, Milwaukee, Monroe, Oconto, Outagamie, Ozaukee, Pepin, Pierce, Polk, Portage, Racine, Richland, Rock, St. Croix, Sauk, Shawano, Trempealeau, Vernon, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood

9.0 Phony Peach

Alabama	Entire state
Arkansas	Counties of Arkansas, Ashley, Bradley, Chicot, Columbia, Crittendon, Cross, Desha, Drew, Hempstead, Howard, Jefferson, Lafayette, Lee, Lincoln, Little River, Miller, Monroe, Nevada, Phillips, Pike, Poinsett, St. Francis, Sevier, Union, and Woodruff
Florida	Entire state
Georgia	Entire state
Kentucky	County of McCracken
Louisiana	Parishes of Bienville, Bossier, Caddo, Claiborne, DeSoto, Jackson, Lincoln, Morehouse, Natchitoches, Ouachita, Red River and Union
Mississippi	Entire state
Missouri	County of Dunklin
North Carolina	Counties of Anson, Cumberland, Gaston, Hoke, Polk and Rutherford
South Carolina	Counties of Aiken, Allendale, Bamberg, Barnwell, Cherokee, Chesterfield, Edgefield, Greenville, Lancaster, Laurens, Lexington, Marlboro, Orangeburg, Richland, Saluda, Spartanburg, Sumter, and York
Tennessee	Counties of Chester, Crockett, Dyer, Fayette, Hardman, Hardin, Lake, Lauderdale, McNairy, Madison, and Weakley
Texas	Counties of Anderson, Bexar, Brazos, Cherokee, Freestone, Limestone, McLennan, Milan, Rusk, San Augustine, Smith, and Upshur

10.0 Citrus Canker (*Xanthomonas axonopodis* pv. *citri*)

Any areas designated as quarantined under the Federal Citrus Canker quarantine 7 CFR 301.75 *et seq.*

11.0 Pine Shoot Beetle [*Tomicus piniperda* (L.)]

Illinois	Counties of Boone, Bureau, Cook, Champaign, De Kalb, DuBage, Grundy, Iroquois, Kane, Kankakee, Kendall, La Salle, Lake, Lee, Livingston, McHenry, McLean, Ogle, Piatt, Platt, Putnam, Stephenson, Will, Winnebago and Vermillion
Indiana	Counties of Adams, Allen, Benton, Blackford, Carroll, Cass, Dekalb, Delaware, Elkhart, Fountain, Fulton, Grant, Huntington, Jasper, Jay, Kosciusko, Lagrange, Lake, LaPorte, Madison, Marshall, Miami, Newton, Noble, Porter, Pulaski, Randolph, St. Joseph, Starke, Steuben, Tippecanoe, Wabash, Warren, Wayne, Wells, White and Whitley
Maryland	Counties of Alleghany, Garrett and Washington

Michigan	Counties of Alcona, Allegan, Alpena, Antrim, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Isabella, Jackson, Kalamazoo, Kalkasa, Kent, Lake, Lenawee, Lapeer, Livingston, Luce, Mackinac, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Saginaw, Sanilac, St. Clare, St. Joseph, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne and Wexford
New York	Counties of Allegany, Cayuga, Cattaraugus, Chautauqua, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Oswego, Schuyler, Seneca, Steuben, Tompkins, Wayne, Wyoming and Yates
Ohio	Counties of Allen, Ashland, Ashtabula, Auglaize, Cameron, Carroll, Columbiana, Crawford, Cuyahoga, Defiance, Delaware, Erie, Fulton, Geauga, Hancock, Hardin, Harrison, Henry, Hocking, Holmes, Huron, Jefferson, Knox, Lake, Licking, Logan, Lorain, Lucas, Mahoning, Marion, Medina, Mercer, Morrow, Ottawa, Perry, Portage, Putnam, Richland, Sandusky, Seneca, Stark, Summit, Trumbull, Tuscarawas, Union, Van Wert, Wayne, Williams, Wood and Wyndot
Pennsylvania	Counties of Allegheny, Armstrong, Beaver, Butler, Cambria, Cameron, Clarion, Clearfield, Crawford, Elk, Erie, Forest, Indiana, Jefferson, Lawrence, McKean, Mercer, Potter, Somerset, Venango, Warren, Washington and Westmoreland
West Virginia	Counties of Brooke, Hancock and Ohio
Wisconsin	County of Grant

Any other areas designated as quarantined under the Federal Pine Shoot Beetle quarantine 7 CFR 301.50 et seq.

Bob Odom
Commissioner

9804#039

POTPOURRI

**Department of Environmental Quality
Office of Legal Affairs and Enforcement
Investigations and Regulation Development Division**

Semiannual Regulatory Agenda

The Department of Environmental Quality (DEQ) announces the availability of the spring 1998 edition of the *Semiannual Regulatory Agenda* prepared by the Investigations and Regulation Development Division. The current agenda contains information on rules which have been proposed but have not been published as final and rules which are scheduled to be proposed in 1998. Check or money order in the amount of \$2.02 is required in advance for each copy of the agenda. Interested persons may obtain a copy by contacting Lula Alexander, Department of Environmental Quality, Office of Legal Affairs and Enforcement, Investigations and Regulation

Development Division, Box 82282, Baton Rouge, LA 70884-2282 or by calling (504) 765-0399.

The agenda is also available on the Internet at <http://www.deq.state.la.us/olae/irdd/olaereg.htm>.

Tim B. Knight
Administrator

9804#080

POTPOURRI

**Department of Health and Hospitals
Board of Embalmers and Funeral Directors**

Embalmer/Funeral Director Examinations

The Board of Embalmers and Funeral Directors will give the National Board Funeral Director and Embalmer/Funeral Director exams on Saturday, June 13, 1998, at Delgado Community College, 615 City Park Ave., New Orleans, LA.

Interested persons may obtain further information from the Board of Embalmers and Funeral Directors, Box 8757, Metairie, LA 70011, (504) 838-5109.

Dawn Scardino
Executive Director

9804#081

POTPOURRI

**Department of Health and Hospitals
Board of Medical Examiners**

**Licensing of Physicians and Surgeons—Public
Hearing (LAC 46:XLV.301-431)**

Notice is hereby given, in accordance with R.S. 49:953(A)(2), that the State Board of Medical Examiners will convene and hold a public hearing at 10 a.m., Friday, April 24, 1998, at the offices of the board, 630 Camp Street, New Orleans, LA, for the purpose of receiving public comments on substantive amendments which the board proposes to make to its existing rules governing the licensure of physicians and surgeons. At such hearing all interested persons may appear and present data, views, arguments, information, or comments on the proposed rule amendments, which were previously noticed for adoption by notice of intent published in the March 20, 1998 edition of the *Louisiana Register*, Volume 24, pages 526-539.

Interested persons may obtain a copy of the proposed rule amendments from and/or submit written comments to Delmar Rorison, Executive Director, State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, telephone (504) 524-6763. Written comments will be accepted through May 19, 1998.

Delmar Rorison
Executive Director

9804#038

POTPOURRI

**Department of Health and Hospitals
Board of Medical Examiners**

Physician Assistants—Public Hearing
(LAC 46:XLV.1501-1519; 4501-4515)

Notice is hereby given, in accordance with R.S. 49:953(A)(2), that the State Board of Medical Examiners will convene and hold a public hearing at 9 a.m., Friday, April 24, 1998, at the offices of the board, 630 Camp Street, New Orleans, LA, for the purpose of receiving public comment on amendments which the board proposed to make to its existing rules to conform such rules to the statutory law providing for the licensing and regulation of the practice of physician assistants, as amended by Acts 1997, Number 316, R.S. 37:1360.21-1360.38. At such hearing all interested persons may appear and present data, views, arguments, information, or comments on the proposed rule amendments, which were previously noticed for adoption by notice of intent published in the March 20, 1998 edition of the *Louisiana Register*, Volume 24:539-546.

Interested persons may obtain a copy of the proposed rule amendments from and/or submit written comments to Delmar Rorison, executive director, State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, telephone (504) 524-6763. Written comments will be accepted through May 19, 1998.

Delmar Rorison
Executive Director

9804#078

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, LA R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	Well Name	Well No.	Serial No.
David Alton Angle	Caddo Pine Island	Angle Fee	001	034779
David Alton Angle	Caddo Pine Island	Angle Fee	002	035127
David Alton Angle	Caddo Pine Island	Angle Fee	003	059238
Greg Anthony	Zwolle	Sonat Minerals A	001	209731
Greg Anthony	Zwolle	Sonat Minerals A	002	210436

Bandera Oil and Gas Inc.	Eugene Island Block 8	9300 RA SUA;SL 8032	003	179180
Bandera Oil and Gas Inc.	Eugene Island Block 8	CRIS 1 RA SUA;SL 8032	1-Alt	174854
Bandera Oil and Gas Inc.	Eugene Island Block 8	CRIS 1 RA SUA;SL 8032	002	176807
Billy E. Bayles	Richland	Noble	001	180821
Billy E. Bayles	Richland	Noble	002	181294
Billy E. Bayles	Richland	Noble	003	185062
Billy E. Bayles	Richland	Noble	005	195767
Billy E. Bayles	Richland	Hatch Estate	005	185877
Billy E. Bayles	Richland	Hatch Estate	002	167658
Billy E. Bayles	Richland	Hatch Est	001	141917
Billy E. Bayles	Richland	Hatch	001	116803
Billy E. Bayles	Richland	Hatch	1-34	118776
Billy E. Bayles	Richland	Hatch	1-2	119443
Billy E. Bayles	Richland	Morris	002	175762
Billy E. Bayles	Richland	Deloney Farms	002	209504
Billy E. Bayles	Richland	Deloney Farms	001	209098
Billy E. Bayles	Monroe	Perry et al	001	164252
Billy E. Bayles	Richland	Hatch	1-3	190157
Canada Crown Inv. Corporation	Rousseau	13270 RA SUA;M Richard	001	162215
Canada Crown Inv. Corporation	Rousseau	Marcellin Richard SWD	002	970876
Cardinal Oil and Gas, Inc.	Northwest Oakley	A B Blumenthal	001	174707
Centex Oil and Gas	Wildcat	M Munchrath	001	168636
Davis Oil Company	South Lake Maurepas	Lutcher and Moore	002	139389
GandK Operating Company	Nebo-Hemphill	WX A RD SUP;Kennon et al	001	210468
GandK Operating Company	Nebo-Hemphill	WX D RD SUP;Kennon et al	002	211439
James C. Galbraith	Caddo Pine Island	Hubkabay	008	041903
Peter W. Herbst	Monroe	Leveque Heirs	001	143937
Peter W. Herbst	Monroe	Fee 80	002	170649
Peter W. Herbst	Monroe	Fee 80	003	170650

Peter W. Herbst	Monroe	Fee 80	005	170652
Peter W. Herbst	Monroe	Fee 80	006	170653
Peter W. Herbst	Monroe	Fee 80	008	170942
Maritzky and Bibby	Roseland	Whorton 23	001	201232
Mescalero Energy, Inc.	West Rayne	Reginald Zaunbrecher	001	218729
Mescalero Energy, Inc.	Abbeville	J N Sellers et al	001	219938
Mescalero Energy, Inc.	Duson	Stutes et al	001	220121
Mescalero Energy, Inc.	Abbeville	SD 2 RA SUA; Brookshire et al	001	219198
Mineral Equipment Co., Inc.	Caddo Pine Island	J R Barlow	001	202872
Needham Resources, Inc.	Bully Camp	CYCLA RA VUA; Plaisance et al	001	140817
Ned Oliver	Richland	Pat Earle	001	129063
Petrocan, Inc.	Johnsons Bayou	I 2 RA SUJ;CPSB	2D	076211
Petrocan, Inc.	Johnsons Bayou	I 1 RA SUT;CPSB	2T	076212
Petrocan, Inc.	Johnsons Bayou	I 1 RA SUU;CPSB	004	077129
Royalty Management and Dev. Corp.	Chacahoula	ROB 1 RE SUC; Degravelles	001	077652
Sante Fe Minerals	Eola	S L 414 Bayou Boeuf	002	022508
Stratco Operating Co., Inc.	Cut Off	TEX W 7 RB SUA;E P Braud et al	001	159006
Stratco Operating Co., Inc.	Cut Off	M P Badaeux SWD	001	163315
Stratco Operating Co., Inc.	Kings Bayou	SL 10938	001	194527
Thunderstone Exploration, Inc.	Port Hudson	VUA;SLE Inc et al	001	210713
Thunderstone Exploration, Inc.	Port Hudson	SLE Inc	001	217613

Westen Oil and Gas, Inc.	Church Point	CIB H RA SUA;S B Levergne et al	001	215652
Westen Oil and Gas, Inc.	Section 28	J J Martin A	001	214958
Westen Oil and Gas, Inc.	Section 28	Burke and Sabatier	003	071350
Westen Oil and Gas, Inc.	Section 28	Burke and Sabatier	001	153529
Westen Oil and Gas, Inc.	Section 28	Burke and Sabatier	002	153530
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Westen Oil and Gas, Inc.	Section 28	Burke and Sabatier	005	157695
Westen Oil and Gas, Inc.	Section 28	Burke and Sabatier	006	157696
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Westen Oil and Gas, Inc.	Section 28	St Martin Land Co B	005	170530
Win Oil Company, Inc	Pleasant Hill	James L Patrick	001	174009

Warren A. Fleet
Commissioner

9804#079

POTPOURRI

**Department of Revenue
Severance Tax Division**

Natural Gas Base Rate Adjustment

Pursuant to the authority granted by R.S. 47:633(9)(d)(ii), the Department of Natural Resources has determined the "gas base rate adjustment" for the 12-month period ending March 31, 1998 to be 1.3340. Accordingly, the Department of Revenue has determined the severance tax rate on natural gas and related products described in R.S. 47:63(9)(a) to be 9.3 cents per 1,000 cubic feet measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of 60EF, effective July 1, 1998.

The reduced rates provided for in R.S. 47:633(9)(b) and (c) remain the same.

The determination of this "gas base rate adjustment" and corresponding tax rate and their publication in the *Louisiana Register* shall not be considered rulemaking within the intention of the Administrative Procedure Act, R.S. 49:950 et seq.

Questions should be directed to Carl Reilly, Director of the Severance Tax Division at (504) 925-7497.

John Neely Kennedy
Secretary

9804#023

POTPOURRI

Department of Social Services Office of Community Services

Social Services Block Grant (SSBG) Program

The Department of Social Services (DSS) announces opportunities for public review of the state's pre-expenditure report on intended uses of Social Services Block Grant (SSBG) funds for the state fiscal year (FY) beginning July 1, 1998 and ending June 30, 1999. The proposed FY 98-99 SSBG Intended Use Report has been developed in compliance with the requirements of Section 2004 of the Social Security Act, as amended, and includes information on the types of activities to be supported and the categories or characteristics of individuals to be served through use of the state's allocation of SSBG funds. Section 2004 of the Social Security Act further requires that the SSBG pre-expenditure report shall be "made public within the state in such manner as to facilitate comment by any person." The Department of Social Services (DSS) as the designated State Services Agency will continue to administer programs funded under the Social Services Block Grant in accordance with applicable statutory requirements and federal regulations. The DSS/Office of Community Services (OCS) will be responsible for provision of social services, by direct delivery and vendor purchase, through use of federal SSBG funds. Estimated SSBG expenditures for FY 1998-99 total \$32,795,910.

Louisiana, through the DSS Office of Community Services, will utilize its allotted funds to provide comprehensive social services on behalf of children and families in fulfillment of legislative mandates for child protection and child welfare programs. These mandated services, and certain other essential social services, are proposed for provision without regard to income (WRI) to individuals in need. Individuals to be served also include low-income persons as defined in the Intended Use Report who meet eligibility criteria for services provided through SSBG funding.

Services designated for provision through SSBG funding for state Fiscal Year 1998-99 are:

Adoption (pre-placement to termination of parental rights);

Child Protection (investigation of child abuse/neglect reports, assessment, evaluation, social work intervention, shelter care, counseling, referrals, and follow-up);

Day Care for Children (direct care for portion of the 24-hour day);

Family Services (social work intervention subsequent to validation of a report of child abuse/neglect, counseling to high risk groups);

Foster Care/Residential Habilitation Services (foster, residential care and treatment on a 24-hour basis).

Definitions for the proposed services are set forth in the Intended Use Report.

Persons eligible for SSBG funded services include:

persons without regard to income, who are in need of Adoption Services, Child Protection, Family Services, and Foster Care/Residential Habilitation services;

individuals without regard to income who are recipients of Title IV-E Adoption Assistance;

recipients of Supplemental Security Income (SSI) and recipients of Temporary Assistance for Needy Families (TANF) and those persons whose needs were taken into account in determining the needs of TANF recipients;

low-income persons (income eligibles) whose gross monthly income is not more than 125 percent of the poverty level. A family of four with gross monthly income of not more than \$1,714 would qualify as income eligible for services;

persons receiving Title XIX (Medicaid) benefits and certain Medicaid applicants identified in the proposed plan as group eligibles.

The proposed SSBG Intended Use Report for FY 1998-99 is available for public review at OCS parish and regional offices Monday through Friday from 8:30 a.m. to 4 p.m. Copies are available without charge by telephone request to (504) 342-6640 or by writing the Assistant Secretary, Office of Community Services, Box 3318, Baton Rouge, LA 70821.

Inquiries and comments on the proposed plan may be submitted until May 31, 1998, to the assistant secretary, OCS, at the above address.

A public hearing on the proposed SSBG Intended Use Report for FY 1998-99 is scheduled for 10 a.m. on Wednesday, May 6, 1998 at the Office of Community Services, Conference Room 602, Commerce Building, 333 Laurel Street, Baton Rouge.

At the public hearing all interested persons will have the opportunity to provide recommendations on the proposed SSBG plan, orally or in writing. Written comments will be accepted through May 31, 1998.

Post expenditure reports for the SSBG program for state fiscal years 1995-96 and 1996-97 are included in the SSBG Intended Use Report for FY 98-99 and are available for public review at the Office of Community Services, 333 Laurel Street, Room 802, Baton Rouge.

Madlyn B. Bagneris
Secretary

9804#073

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