

I. EXECUTIVE ORDERS

MJF 04-01 2003 Carry-Forward Bond Allocation? Louisiana Housing Finance Agency? Single Family Mortgage Revenue Bond Program171

MJF 04-02 2003 Carry-Forward Bond Allocation? Louisiana Housing Finance Agency? Multi-Family Housing Development Program171

MJF 04-03 Bond Allocation? Cost Limitation Waiver172

II. EMERGENCY RULES

Agriculture and Forestry

Office of the Commissioner? Chloramphenicol in Honey? Testing and Sale (LAC 7:XXXV.141)174

Chloramphenicol in Shrimp and Crawfish? Testing and Sale (LAC 7:XXXV.137 and 139).....176

Office of the Commissioner, Livestock Sanitary Board? Testing for Mycoplasma Bovis (LAC 7:XXI.333-337)180

Health and Hospitals

Office of the Secretary, Bureau of Health Services Financing? Disproportionate Share Hospital Payment Methodologies (LAC 50:V.Chapter 3).....181

Durable Medical Equipment? HIPPA Implementation186

Early and Periodic Screening, Diagnosis and Treatment Program? Early Intervention Services for Infants and Toddlers with Disabilities (LAC 50:XV.Chapter 81)186

Early and Periodic Screening, Diagnosis and Treatment Program? Eyeglasses (LAC 50:XV.8501)187

Facility Need Review? Additional Beds for Certain ICF-MRs (LAC 48:I.12503).....188

Pregnant Women Extended Services? Dental Services (LAC 50:XV.16101-16107)189

Rehabilitation Services? Reimbursement Fee Increase.....190

Social Services

Office of Family Support? Reporting Requirements and Child Immunization (LAC 67:III.1257, 1998, 5103, 5104, 5107, and 5347)191

TANF Initiatives (LAC 67:III.Chapters 54 and 55).....192

III. RULES

Agriculture and Forestry

Office of Forestry? Indian Creek Recreation Area User Fees (LAC 7:XXXIX.501)195

Office of Agricultural and Environmental Sciences, Fertilizer Commission? Fertilizer Commission? Fees (LAC 7:XI.115).....195

Office of Agricultural and Environmental Sciences, Structural Pest Control Commission? Structural Pest Control (LAC 7:XXV.117 and 119)196

Office of the Commissioner? Meat and Poultry Inspections (LAC 7:XXXIII.101)196

Office of the Commissioner, Advisory Commission on Pesticides? Pesticide Testing Fees (LAC 7:XXIII.131)...197

Office of the Commissioner, Agricultural Commodities Commission? Agricultural Commodities (LAC 7:XXVII.128)197

Office of the Commissioner, Feed Commission? Feed Commission Inspection Fees (LAC 7:XVII.121)198

Office of the Commissioner, Seed Commission? Tropical Soda Apple and Noxious Weed Seeds (LAC 7:XIII.109 and 145).....198

Office of Forestry? Tree Seedling Prices (LAC 7:XXXIX.301)200

Education

Board of Elementary and Secondary Education? Bulletin 746? Louisiana Standards for State Certification of School Personnel? Definition of Highly Qualified Teachers and Paraprofessionals (LAC 28:I.903).....200

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Practitioner Teacher Program (LAC 28:I.903).....206

Bulletin 1963? Louisiana Arts Content Standards? State Standards for Curriculum Development (LAC 28:LI.Chapters 1-9)209

Environmental Quality

Office of Environmental Assessment, Environmental Planning Division? LPDES Water Quality Regulations Restructure (LAC 33:IX)(WQ055)229

This public document was published at a total cost of \$1,950.00. Five hundred copies of this public document were published in this monthly printing at a cost of \$1,950.00. The total cost of all printings of this document including reprints is \$1,950.00. This document was published by Moran Printing, Inc. 5425 Florida Boulevard, Baton Rouge, LA 70806, as a 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. 43:30. Printing of this material was purchased in accordance with the provisions of Title 43 of the Louisiana Revised Statutes.

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Health and Hospitals

Board of Medical Examiners? Acupuncturists' and Acupuncturists' Assistants' Fees
(LAC 46:XLV.185 and 187)234
Athletic Trainers' Fees (LAC 46:XLV.159, 161, 163, 165, 3107, 3129, and 3157)234
Clinical Exercise Physiologists Fees (LAC 46:XLV.221, 223, 225, 3713, and 3743)235
Midwives' Fees (LAC 46:XLV.203, 205, 2313, and 2345)236
Occupational Therapists and Occupational Therapy Assistants Fees
(LAC 46:XLV.173, 175, 1913, and 1947).....237
Physician Assistants' Fees (LAC 46:XLV.149, 153, 1509, and 1517)237
Physicians' and Surgeons' Fees (LAC 46:XLV.125, 127, and 131).....238
Podiatrists' Fees (LAC 46:XLV.139, 141, and 143).....239
Registered Respiratory Therapists' and Certified Respiratory Therapists' Fees
(LAC 46:XLV.193, 195, and 197)239
Office of the Secretary? Admissions Criteria for Inpatient Facilities (LAC 48:I.1607)240
Office of the Secretary, Bureau of Health Service Financing? Adult Day Health Care? Prospective
Payment System (LAC 50:II.10939)242
All Inclusive Care for the Elderly (LAC 50:XXIII.Chapters 1-13).....244
Durable Medical Equipment Program? Motorized Wheelchairs250
Early and Periodic Screening, Diagnosis and Treatment Program? Dental Services? Reimbursement
(LAC 50:XV.6903)252
Early and Periodic Screening, Diagnosis and Treatment Program? Personal Care and Extended
and/or Multiple Daily Skilled Nursing Services (LAC 50:XV.7305, 7307, 7311, and 7501)252
Public Hospitals? Reimbursement Methodology? Upper Payment Limit254

Natural Resources

Office of Conservation? Statewide Order No. 29-B? General Requirements (LAC 43:XIX.303)254
Statewide Order No.29-L-3? Termination of Units (LAC 43:XIX.3101, 3103, and 3105)255
Office of Conservation, Pipeline Division? Hazardous Liquids Pipeline Safety
(LAC 33:V.30112, 30161, 30204, and 30905)257

Public Safety and Corrections

Corrections Services? Access to and Release of Active and Inactive Records? Adult (LAC 22:I.101)264
Gaming Control Board? Video Draw Poker (LAC 42:XI.Chapter 24).....266
Office of State Police? Collection, Submission, Receipt, Identification, Storage and Disposal of DNA
Samples (LAC 55:I.2703, 2705, 2725, and 2740-2747)270

Transportation and Development

Office of Highways/Engineering? Wireless Telecommunications Permit (LAC 70:II.1509 and 1513).....272

Treasury

Teachers' Retirement Systems? Earnable Compensation (LAC 58:III.201)273

IV. NOTICES OF INTENT

Agriculture and Forestry

Office of Agricultural and Environmental Sciences? Boll Weevil Eradication Commission? Program
Participation, Fee Payment and Penalties (LAC 7:XV.321)274
Office of the Commissioner? Testing Procedures and Quarantines of Pet Turtles (LAC 7:XXI.Chapter 23)275
Office of the Commissioner, Office of the Louisiana Seed Commission? Sugarcane (Tissue Culture)
Certification Standards (LAC 7:XIII.207)276

Civil Service

Civil Service Commission? Retesting Standards277

Education

Board of Elementary and Secondary Education? Bulletin 741? Louisiana Handbook for School
Administrators? High School Diploma and Endorsements (LAC 28:I.901).....278
Bulletin 741? Louisiana Handbook for School Administrators? Membership in Teachers' Retirement
System of Louisiana? Part-Time, Seasonal, or Temporary Classroom Teacher (LAC 28:I.901)280
Bulletin 741? Louisiana Handbook for School Administrators? Record of Suspensions or
Expulsions (LAC 28:I.901)281
Bulletin 741? Louisiana Handbook for School Administrators? Social Studies (LAC 28:I.901)282
Bulletin 746? Louisiana Standards for State Certification of School Personnel? Mild/Moderate
Special Education certification Structure for Undergraduate Programs (LAC 18:I.903).....283
Bulletin 746? Louisiana Standards for State Certification of School Personnel? Reading
Competencies Policy for Alternate Certification Programs (LAC 28:I903).....289

Environmental Quality

Office of Environmental Assessment, Environmental Planning Division? Contingency Plan for
NO_x Emissions (LAC 33:III.2201 and 2202)(AQ239)293
Fugitive Emission Control (LAC 33:III.2121 and 2122)(AQ237)296
Incorporation by Reference? 2003 (LAC 33:I.3931; V.3099; IX.2301, 4901, and
4903; and XI.1517)(OS053*)299

Notification Requirements for Unauthorized Discharges (LAC 33:I.3903, 3915, 3917, 3919, 3923, 3925, 3931, 6919, and 6923; III.1105, 1513, 2103, 2115, 2303, 2307, 2719, and 5107; V.1109, 1913, 2271, 2805, 2909, 4101, 4107, 4211, 4241, and 5309; VI.201; VII.315, 711, 713, and 715; IX.503 and 2701; XI.707, 713, and 715; and XV.341, 485, 486, 487, 492, 712, and 2051)(OS052)	301
Severe Ozone Nonattainment Area Major Source Fee (LAC 33:III.209)(AQ238)	313

Governor

Board of Architectural Examiners? Per Diem Compensation (LAC 46:I.317)	315
Used Motor Vehicle and Parts Commission? Off-Site Displays and Complaints (LAC 46:V.3606, 3607, and 4501).....	316

Health and Hospitals

Office of Public Health? Birth Defects Surveillance System (LAC 48:V.Chapters 161 and 163).....	317
Office of the Secretary, Bureau of Health Services Financing? Hospice (LAC 50:XV.3101 and 3301)	320
Mental Health Rehabilitation Services? Reimbursement Reduction	321
Portable X-Ray Services? Portage Fees (LAC 50:XIX.4319 and 4335)	322
Professional Services Program? Anesthesia Services? Reimbursement Reduction.....	323
Rehabilitation Reimbursement (LAC 50:V.30527; XI.303; XV.7101, 7103, and XIX.703)	324

Public Safety and Corrections

Corrections Services? Telephone Use and Policy on Monitoring of Calls? Juvenile (LAC 22:I.314).....	327
---	-----

Revenue

Policy Service Division? Exemption for Ships and Ships' Supplies (LAC 61:I.4403).....	327
Issuance and Cancellation of a Lien; Fees (LAC 61:I.5302)	329
Manufactured and Mobile Home Settlement Fund Administration (LAC 61:I.4313)	330
Suspension, Revocation, or Denial of Hunting and Fishing Licenses (LAC 61:I.1351).....	331

V. LEGISLATION

State Legislature, 2003 Regular Session? Administrative Procedure Act (R.S. 49:950 et seq.).....	333
--	-----

VI. POTPOURRI

Agriculture and Forestry

Horticulture Commission? Landscape Architect Registration Exam	356
Retail Floristry Examination.....	356
Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission? Adjudicatory Hearing? Establishment of 2004 Assessment.....	356
Office of Forestry? Timber Stumpage Values.....	356

Environmental Quality

Office of Environmental Assessment, Environmental Planning Division? Advance Notice of Proposed Rulemaking? Underground Storage Tanks Regulations (LAC 33:XI.Chapters 1-13)(UT011)	357
2003 State Implementation Plan (SIP)? General Revisions	368

Governor

Division of Administration, Office of Risk Management? New Mailing Address.....	369
---	-----

Natural Resources

Office of Conservation? Orphaned Oilfield Sites	369
---	-----

Revenue

Tax Commission? Timber Stumpage Values	356
--	-----

Social Services

Office of Community Services? 2004 Louisiana Emergency Shelter Grants Program? Anticipated Funds Availability.....	369
Public Hearing? Louisiana's Child and Family Services Plan and Annual Progress and Services Report.....	370
Office of Family Support? Temporary Assistance to Needy Families (TANF) Caseload Reduction Report	371

VII. INDEX

.....	372
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Executive Orders

EXECUTIVE ORDER MJF 04-01

2003 Carry-Forward Bond Allocation
Louisiana Housing Finance Agency
Single Family Mortgage Revenue Bond Program

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

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2003 (hereafter "the 2003 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2003 Ceiling; and

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

WHEREAS, subsection 4.8 of MJF 96-25 provides that if the ceiling for a calendar year exceeds the aggregate amount of bonds subject to the private activity bond volume limit issued during the year by all issuers, by executive order, the governor may allocate the excess amount to issuers or an issuer for use as a carry-forward for one or more carry-forward projects permitted under the Act; and

WHEREAS, the governor desires to allocate twenty-five million dollars (\$25,000,000) of the excess 2003 Ceiling as a carry-forward for a project which is permitted and eligible under the Act;

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: Pursuant to and in accordance with the provisions of Section 146(f) of the Internal Revenue Code of 1986, as amended, and in accordance with the request for a carry-forward filed by the designated issuer, excess private activity bond volume limit under the 2003 Ceiling is hereby allocated to the following issuer, for the following carry-forward project, and in the following amount:

Issuer	Carry-Forward	Project Amount
Louisiana Housing Finance Agency	Single Family Mortgage Revenue Bond Program	\$25,000,000

SECTION 2: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 3: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets

the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 4: 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 9th day of January, 2004.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0402#004

EXECUTIVE ORDER MJF 04-02

2003 Carry-Forward Bond Allocation
Louisiana Housing Finance Agency
Multi-Family Housing Development Program

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

(1) a method for allocating bonds subject to private activity bond volume limits, including the method of allocating bonds subject to the private activity bond volume limits for the calendar year of 2003 (hereafter "the 2003 Ceiling");

(2) the procedure for obtaining an allocation of bonds under the 2003 Ceiling; and

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

WHEREAS, Executive Order No. MJF 2003-21, issued on October 29, 2003, allocated twenty-four million dollars (\$24,000,000) from the 2003 Ceiling to the Industrial Development Board of the City of New Orleans, Louisiana, Inc., in connection with LGD Rental I, L.L.C., a mixed-income housing/commercial development facility project, but five hundred thousand dollars (\$500,000) of the allocation was returned unused to the 2003 Ceiling;

WHEREAS, Executive Order No. MJF 2003-27, issued on December 8, 2003, as amended by Executive Order No. MJF 2003-33, issued on December 18, 2003, allocated fifteen million eight hundred fifty thousand dollars (\$15,850,000) from the 2003 Ceiling to the Industrial Development Board of the City of New Orleans, Louisiana, Inc., in connection with Guste I, LLC, a mixed income residential housing development project, but two million six hundred sixty thousand six hundred twenty-eight dollars

(\$2,660,628) of the allocation was returned unused to the 2003 Ceiling;

WHEREAS, Executive Order No. MJF 2003-28, issued on December 8, 2003, as amended by Executive Order No. MJF 2003-34, issued on December 18, 2003, allocated eighteen million six hundred thousand dollars (\$18,600,000) from the 2003 Ceiling to the Industrial Development Board of the City of New Orleans, Louisiana, Inc., in connection with Fisher III, LLC, a mixed income residential housing development project, but four million two hundred thirty-nine thousand three hundred seventy-two dollars (\$4,239,372) of the allocation was returned unused to the 2003 Ceiling;

WHEREAS, Executive Order No. MJF 2003-30, issued on December 8, 2003, as amended by Executive Order No. MJF 2003-36, issued on December 18, 2003, allocated six million dollars (\$6,000,000) from the 2003 Ceiling to the Louisiana Public Facilities Authority in connection with an Ascension Water Company project, but one million three hundred thousand dollars (\$1,300,000) of the allocation was returned unused to the 2003 Ceiling;

WHEREAS, subsection 4.8 of MJF 96-25 provides that if the ceiling for a calendar year exceeds the aggregate amount of bonds subject to the private activity bond volume limit issued during the year by all issuers, by executive order, the governor may allocate the excess amount to issuers or an issuer for use as a carry-forward for one or more carry-forward projects permitted under the Act; and

WHEREAS, the governor desires to allocate thirty million six hundred forty-eight thousand four hundred fifty dollars (\$30,648,450) of the excess and unused 2003 Ceiling as a carry-forward for a project which is permitted and eligible under the Act;

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: Pursuant to and in accordance with the provisions of Section 146(f) of the Internal Revenue Code of 1986, as amended, and in accordance with the request for a carry-forward filed by the designated issuer, excess and unissued private activity bond volume limit under the 2003 Ceiling is hereby allocated to the following issuer, for the following carry-forward project, and in the following amount:

Issuer	Carry-Forward Project	Carry-Forward Amount
Louisiana Housing Finance Agency	Multi-Family Housing Development Program	\$30,648,450

SECTION 2: The 2003 carry-forward bond allocation granted in this Order shall be used by issuer only on multi-family housing development program bond issues that finance multi-family housing developments located in the state of Louisiana that constitute a qualified residential rental project under Section 142(a)(7) of the Internal Revenue Code of 1986, as amended, and comply with the following three criteria:

1. The qualified residential rental project provides for the acquisition and rehabilitation and/or the acquisition and construction of scattered site single family units in buildings that contain no more than one unit, and are located

proximate to a central business district or within a Targeted Area within the meaning of the Internal Revenue Code of 1986, as amended, (hereafter "Buildings");

2. The qualified residential rental project promotes neighborhood revitalization and/or in-fill development, including new development on vacant or adjudicated properties with Buildings that are complimentary to the existing architecture in the neighborhood; and

3. The qualified residential rental project leverages other governmental or private equity funds and/or governmental incentives.

SECTION 3: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 4: The undersigned certifies, under penalty of perjury, that the granted allocation was not made in consideration of any bribe, gift, or gratuity, or any direct or indirect contribution to any political campaign. The undersigned also certifies that the granted allocation meets the requirements of Section 146 of the Internal Revenue Code of 1986, as amended.

SECTION 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 9th day of January, 2004.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0402#005

EXECUTIVE ORDER MJF 04-03

Bond Allocation? Cost Limitation Waiver

WHEREAS, Executive Order No. MJF 2003-21, issued on October 29, 2003, allocated twenty-four million dollars (\$24,000,000) of the 2003 private activity volume cap to the Industrial Development Board of the City of New Orleans, Louisiana, Inc., in connection with LGD Rental I, L.L.C., a mix-income housing/commercial development facility project; and

WHEREAS, the taxpayer and/or owner of the bond financed project LGD Rental I, L.L.C., has requested a waiver of cost limits for the project in accordance with the provisions of the qualified allocation plan for low-income housing tax credit for calendar years 2003;

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: For LGD Rental I, L.L.C., financed by the Industrial Development Board of the City of New Orleans, Louisiana, Inc., the development cost limits may exceed the cost limits set by the calendar year 2003 qualified allocation plan for low-income housing tax credit under

Section 42 of the Internal Revenue Code of 1986, as amended, provided that such additional costs are approved by the Department of Housing and Urban Development.

SECTION 2: All references in this Order to the singular shall include the plural, and all plural references shall include the singular.

SECTION 3: 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 9th day of January, 2004.

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

ATTEST BY
THE GOVERNOR
Fox McKeithen
Secretary of State
0402#006

Emergency Rules

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

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

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

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

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

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

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

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

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to immediately implement testing of honey for Chloramphenicol, to provide for the sale of honey and products containing honey that are not contaminated with Chloramphenicol. This Rule becomes effective upon signature, January 16, 2004, and will remain in effect 120 days, unless renewed by the commissioner or until permanent Rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§141. Chloramphenicol in Honey Prohibited? Testing and Sale

A. Definitions

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

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

Honey? any honey, whether raw or processed.

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

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

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

Chloramphenicol is being used on or found in food producing animals, or in products from such animals, in that geographic area.

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

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

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

1. Sampling

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

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

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

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

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

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

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

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

2. Each sample shall be identified as follows:

a. any package label;

b. any lot or batch numbers;

c. the country, province and city of origin;

d. the name and address of the importing company;

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

3. Sample Preparation. For small packages of honey up to and including 8 ounces, use the entire sample. If honey sample includes more than one container, they shall be blended together. Divide the sample in half. Use half of the sample for the original analysis portion and retain the other half of the sample as a reserve.

4. Sample Analysis

a. Immunoassay test kits may be used if the manufacturer's published detection limit is one part per

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

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

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

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

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

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

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

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

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

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

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

and complete compliance with all the provisions of this Section.

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

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

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

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

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

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

1. The geographic area or areas are:
 - a. the country of the People's Republic of China;
 - b. the country of Thailand.

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 30:

Bob Odom
Commissioner

0402#002

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner

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

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

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

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

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

Recently, European Union inspectors found chloramphenicol residues in shrimp and crawfish harvested from and produced in China. The inspectors also found "serious deficiencies of the Chinese residue control system and problems related to the use of banned substances in the veterinary field," which may contribute to Chloramphenicol residues in Chinese shrimp and crawfish. The Chinese are

known to use antibiotics, such as Chloramphenicol, in farm-raised shrimp. They are also known to process crawfish and shrimp harvested in the wild in the same plants used to process farm-raised shrimp.

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

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

This peril can cause consumers to quit buying shrimp and crawfish from any source, including Louisiana shrimp and crawfish. If consumers cease to buy, or substantially reduce, their purchases of Louisiana shrimp and seafood, Louisiana aquaculture and fisheries will be faced with substantial economic losses. Any economic losses suffered by Louisiana's aquaculture and fisheries will be especially severe in light of the current economic situation, thereby causing an imminent threat to the public welfare.

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

The Commissioner of Agriculture and Forestry has, therefore, determined that this Emergency Rule is necessary to immediately implement testing of shrimp and crawfish for Chloramphenicol, to provide for the sale of shrimp and crawfish that are not contaminated with Chloramphenicol and to provide for the labeling of shrimp and crawfish harvested from or produced, processed or packed in countries other than the United States. This Rule becomes effective upon signature, January 16, 2004, and will remain in effect 120 days, unless renewed by the commissioner or until permanent Rules are promulgated.

Title 7

AGRICULTURE AND ANIMALS

Part XXXV. Agro-Consumer Services

Chapter 1. Weights and Measures

§137. Chloramphenicol in Shrimp and Crawfish Prohibited? Testing and Sale

A. Definitions

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

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

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

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

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

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

1. The records and information required are:

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

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

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

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

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

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

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

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

1. Sampling

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

i. Two samples are to be taken of shrimp or crawfish that are in lots of 50 pounds or less.

ii. Four samples are to be taken of shrimp or crawfish that are in lots of 51 to 100 pounds.

iii. Twelve samples are to be taken of shrimp or crawfish that are in lots of 101 pounds up to 50 tons.

iv. Twelve samples for each 50 tons are to be taken of shrimp or crawfish that are in lots of over 50 tons.

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

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

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

2. Each sample shall be identified as follows:

a. any package label;

b. any lot or batch numbers;

c. the country, province and city of origin;

d. the name and address of the importing company;

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

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

4. Sample Analysis

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

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

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

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

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

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

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

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

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

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

G Any person who is seeking to bring shrimp or crawfish that is required to be sampled and tested under this

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

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

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

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

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

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

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

1. The geographic area or areas are:

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

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 30:

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

A. Definitions

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

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

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

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

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

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

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

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

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

F. Foreign shrimp or crawfish shall not have to be marked or labeled with the country of origin if such shrimp

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

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

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

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, LR 30:

Bob Odom
Commissioner

0401#001

DECLARATION OF EMERGENCY

Department of Agriculture and Forestry Office of the Commissioner Livestock Sanitary Board

Testing for Mycoplasma Bovis (LAC 7:XXI.333-337)

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, proposes to adopt rules and regulations regarding Mycoplasma mastitis in dairy cattle through the emergency process of the Louisiana Administrative Procedure Act.

Mycoplasma bovis is an untreatable form of mastitis, which in dairy cattle is a debilitating, and occasionally fatal disease that causes greatly decreased milk production of 50 percent or more in dairy cattle and may cause damage to mammary tissue. Production loss caused by mastitis is the largest single economic loss to dairy farmers. The dairy industry provides \$207,000,000 per year to Louisiana's economy.

Therefore it is necessary that the Louisiana Department of Agriculture and Forestry and the dairy industry begin programs immediately to identify and manage this disease by removing any dairy cow which may be infected in order to protect the health, welfare and safety of Louisiana citizens.

This Rule becomes effective upon signature, January 16, 2004, and will remain in effect 120 days or until the promulgation of permanent Rules.

This Rule complies with and is enabled by R.S. 3:2093, R.S. 3:2094, and R.S. 3:2095.

Title 7 AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 3. Cattle

§333. Routine Testing of Dairy Herds

A. All dairy herds in Louisiana shall be tested for *Mycoplasma bovis*, ("Mycoplasma"), which causes an incurable form of mastitis in dairy cattle, in accordance with the following provisions.

1. The Louisiana Department of Agriculture and Forestry, ("department"), shall collect milk samples from a bulk tank sample collected by the milk hauler.

2. The department shall forward the samples to the Mastitis Lab at the Hill Farm Research Station ("HFRS") in Homer, Louisiana for testing.

3. HFRS shall forward the test report for each dairy herd to the department and to the owner of the dairy herd.

B. If a sample from a dairy herd tests positive for Mycoplasma mastitis the department shall collect a second sample directly from the bulk tank holding the dairy herd's milk and send the sample to HFRS for testing. HFRS will send the test result directly to the department, who will then notify the dairy herd's owner of the test results.

C. All dairy herds shall be tested monthly for 12 months. Any dairy herd that tests negative each month for 12 months will then be tested quarterly so long as each test is negative for Mycoplasma mastitis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and R.S. 3:2224.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, Livestock Sanitary Board, LR 30:

§335. Restrictions on Dairy Herds Testing Positive for Mycoplasma mastitis

A. If the second sample from a dairy herd tests positive for Mycoplasma mastitis then that dairy herd shall be placed on a "Mycoplasma Restricted List."

1. Individual members, male and female, of any dairy herd placed on the Mycoplasma Restricted List shall be tested to identify infected animals.

2. Any animal found to be infected with Mycoplasma shall be either immediately sold for slaughter or branded with a mark acceptable to the department to show that the animal can only be sold for slaughter. If any such animal is sold at a livestock auction market it shall be kept in quarantine separate from any other cattle.

3. No animal from a dairy herd that is on the Mycoplasma Restricted List shall be sold or moved for any purpose other than slaughter unless accompanied by a health certificate showing that the animal has had a negative test for Mycoplasma within the 30 days prior to the date of sale or movement.

B. Any dairy herd found to be infected with Mycoplasma shall remain on the Mycoplasma Restricted List until all infected animals are removed and bulk tank samples test negative for six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and R.S. 3:2224.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, Livestock Sanitary Board, LR 30:

§337. Fees

A. The department shall collect from each owner of a dairy herd a fee of no more than \$15 per milk sample to defray the cost of the testing and quarantine programs necessary to prevent, control or eradicate Mycoplasma in dairy cattle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2093 and R.S. 3:2224.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of the Commissioner, Livestock Sanitary Board, LR 30:

Bob Odom
Commissioner

0402#003

DECLARATION OF EMERGENCY

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

**Disproportionate Share Hospital Payment Methodologies
(LAC 50:V.Chapter 3)**

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgated a Rule to adopt the provisions governing the disproportionate share payment methodologies for hospitals in May of 1999 (*Louisiana Register*, Volume 25, Number 5). The May 20, 1999 Rule was later amended to change the criteria used to define rural hospitals and to clarify the policy governing final payments and adjustments (*Louisiana Register*, Volume 29, Number 1).

The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 made provisions for public hospitals to receive disproportionate share hospital adjustment payments up to 175 percent of their allowable uncompensated care cost. Act 1024 of the 2001 Regular Session directed the Department of Health and Hospitals, as the federally designated Medicaid state agency, to specify in the Medicaid State Plan how uncompensated care is defined and calculated and to determine what facilities qualify for uncompensated care payments and the amount of the payments. In determining payments, the department shall prioritize local access to primary health care for the medically indigent and uninsured, and shall not include unreimbursed costs resulting from excess inpatient hospital capacity. For the period July 1, 2003 through June 30, 2005, the state's Medicaid uncompensated care payments shall be distributed in proportion to the amount and type of

uncompensated care reported by all qualified facilities as required by Senate Bill No. 883 of the 2001 Regular Session. Nothing shall be construed to impede or preclude the Department of Health and Hospitals from implementing the provisions in the Rural Hospital Preservation Act. Further, Senate Concurrent Resolution 94 of the 2001 Regular Session and Senate Concurrent Resolution 27 of the 2002 Regular Session of the Louisiana Legislature requested the Department of Health and Hospitals, the Louisiana State University Health Sciences Center-Health Services Division, and the Louisiana State University Health Sciences Center? Shreveport to study and recommend common acute hospital payment methodologies for state and non-state hospitals participating in the Medicaid Program and the Medicaid Disproportionate Share Program. In accordance with the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 and the findings and recommendations contained in the final reports of the study committees, the department repealed and replaced all provisions governing disproportionate share hospital payments (*Louisiana Register*, Volume 29, Number 6). Acts 14, 526 and 1148 of the 2003 Regular Session of the Louisiana Legislature directed the department to amend the qualifying criteria and the payment methodology for disproportionate share payments to small rural hospitals. In compliance with Acts 14, 526 and 1148, the bureau amended the July 1, 2003 Emergency Rule (*Louisiana Register*, Volume 29, Number 9). This Emergency Rule is being promulgated to continue provisions contained in the July 1, 2003 Rule. This action is being taken to enhance federal revenue.

Effective February 28, 2004 the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby repeals and replaces all Rules governing disproportionate share hospital payment methodologies.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part V. Medical Assistance Program? Hospital Services

Subpart 1. Inpatient Hospitals

Chapter 3. Disproportionate Share Hospital Payment Methodologies

§301. General Provisions

A. The reimbursement methodology for inpatient hospital services incorporates a provision for an additional payment adjustment for hospitals serving a disproportionate share of low income patients.

B. The following provisions govern the disproportionate share hospital (DSH) payment methodologies for qualifying hospitals.

1. Total cumulative disproportionate share payments under any and all disproportionate share hospital payment methodologies shall not exceed the federal disproportionate share state allotment for Louisiana for each federal fiscal year or the state appropriation for disproportionate share payments for each state fiscal year. The department shall make necessary downward adjustments to hospital's disproportionate share payments to remain within the federal disproportionate share allotment and the state disproportionate share appropriated amount.

2. Appropriate action including, but not limited to, deductions from DSH, Medicaid payments and cost report settlements shall be taken to recover any overpayments

resulting from the use of erroneous data, or if it is determined upon audit that a hospital did not qualify.

3. DSH payments to a hospital determined under any of the methodologies described in this Chapter 3 shall not exceed the hospital's net uncompensated cost as defined in §305-313 or the disproportionate share limits as defined in Section 1923(g)(1)(A) of the Social Security Act for the state fiscal year to which the payment is applicable. Public hospitals included in §305, §307 and §313 shall receive DSH payments up to 175 percent of the hospital's net uncompensated costs.

4. Qualification is based on the hospital's latest filed cost report as of March 31 of the current state fiscal year and related uncompensated cost data as required by the department. Qualification for small rural hospitals is based on the latest filed cost report. Hospitals must file cost reports in accordance with Medicare deadlines, including extensions. Hospitals that fail to timely file Medicare cost reports and related uncompensated cost data will be assumed to be ineligible for disproportionate share payments. Only hospitals that return timely disproportionate share qualification documentation will be considered for disproportionate share payments. After the final payment during the state fiscal year has been issued, no adjustment will be given on DSH payments, even if subsequently submitted documentation demonstrates an increase in uncompensated care costs for the qualifying hospital. For hospitals with distinct part psychiatric units, qualification is based on the entire hospital's utilization.

5. Hospitals and/or units which close or withdraw from the Medicaid Program shall become ineligible for further DSH pool payments for the remainder of the current DSH pool payment cycle and thereafter.

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

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

§303. Disproportionate Share Hospital Qualifications

A. In order to qualify as a disproportionate share hospital, a hospital must:

1. have at least two obstetricians who have staff privileges and who have agreed to provide obstetric services to individuals who are Medicaid eligible. In the case of a hospital located in a rural area (i.e., an area outside of a metropolitan statistical area), the term *obstetrician* includes any physician who has staff privileges at the hospital to perform nonemergency obstetric procedures; or

2. treat inpatients who are predominantly individuals under 18 years of age; or

3. be a hospital which did not offer nonemergency obstetric services to the general population as of December 22, 1987; and

4. have a utilization rate in excess of one or more of the following specified minimum utilization rates:

a. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost reporting period. Inpatient days include newborn and psychiatric days and exclude swing bed and skilled nursing days. Hospitals shall be deemed disproportionate share providers if their Medicaid utilization rates are in excess of

the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments; or

b. hospitals shall be deemed disproportionate share providers if their low-income utilization rates are in excess of 25 percent. Low-income utilization rate is the sum of:

i. the fraction (expressed as a percentage). The numerator is the sum (for the period) of the total Medicaid patient revenues plus the amount of the cash subsidies for patient services received directly from state and local governments. The denominator is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the cost reporting period from the financial statements; and

ii. the fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services which are attributable to charity (free) care in a period, less the portion of any cash subsidies as described in §303.A.4.b.i in the period which are reasonably attributable to inpatient hospital services. The denominator is the total amount of the hospital's charges for inpatient hospital services in the period. For public providers furnishing inpatient services free of charge or at a nominal charge, this percentage shall not be less than zero. This numerator shall not include contractual allowances and discounts (other than for indigent patients ineligible for Medicaid), i.e., reductions in charges given to other third-party payers, such as HMOs, Medicare, or Blue Cross; nor charges attributable to Hill-Burton obligations. A hospital providing "free care" must submit its criteria and procedures for identifying patients who qualify for free care to the Bureau of Health Services Financing for approval. The policy for free care must be posted prominently and all patients must be advised of the availability of free care and the procedures for applying. Hospitals not in compliance with free care criteria will be subject to recoupment of DSH and Medicaid payments; or

c. hospitals shall be deemed disproportionate share providers eligible for reimbursement for inpatient services if their inpatient uninsured utilization rates are in excess of 3 percent;

i. inpatient uninsured utilization rate is a fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for inpatient services furnished to uninsured persons for the period. The denominator is the total amount of the hospital's charges for inpatient services furnished to all persons for the period; or

d. hospitals shall be deemed disproportionate share providers eligible for reimbursement for outpatient services if their outpatient uninsured utilization rates are in excess of 3 percent;

i. outpatient uninsured utilization rate is a fraction (expressed as a percentage). The numerator is the total amount of the hospital's charges for outpatient services furnished to uninsured persons for the period. The denominator is the total amount of the hospital's charges for outpatient services furnished to all persons for the period; or

5. effective November 3, 1997, be a small rural hospital as defined in §311.A.1.a-h; and

6. in addition to the qualification criteria outlined in §303.A.1-5, effective July 1, 1994, must also have a Medicaid inpatient utilization rate of at least 1 percent.

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

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

§305. High Uninsured Hospitals

A. Definitions

High Uninsured Utilization Rate Hospital? a hospital that has an uninsured utilization rate in excess of the mean, plus one standard deviation of the uninsured utilization rates for all hospitals.

Net Uncompensated Cost? the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

B. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from *net uncompensated cost* are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an annual attestation that patients whose care is included in the hospitals' *net uncompensated cost* are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

C. DSH payments to individual high uninsured hospitals shall be equal to 100 percent of the hospital's *net uncompensated costs* and subject to the adjustment provision in §301.B. DSH payments to individual public high uninsured hospitals shall be up to 175 percent of the hospital's *net uncompensated costs* and subject to the adjustment provision in §301.B.

D. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each high uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying high uninsured hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

E. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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

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

§307. Other Uninsured Hospitals

A. Definitions

Net Uncompensated Cost? the cost of furnishing inpatient and outpatient hospital services to uninsured persons, supported by patient-specific data, net of any payments received from such patients.

Other Uninsured Utilization Rate Hospital? a qualifying hospital that is not included in §305, §311, §313 or §315.

B. It is mandatory that hospitals seek all third party payments including Medicare, Medicaid and other third party carriers and payments from patients. Hospitals must certify that excluded from *net uncompensated cost* are any costs for the care of persons eligible for Medicaid at the time of registration. Hospitals must maintain a log documenting the provision of uninsured care as directed by the department. Hospitals must adjust uninsured charges to reflect retroactive Medicaid eligibility determination. Patient specific data is required after July 1, 2003. Hospitals shall annually submit:

1. an attestation that patients whose care is included in the hospitals' *net uncompensated cost* are not Medicaid eligible at the time of registration; and

2. supporting patient-specific demographic data that does not identify individuals, but is sufficient for audit of the hospitals' compliance with the Medicaid ineligibility requirement as required by the department, including:

- a. patient age;
- b. family size;
- c. number of dependent children; and
- d. household income.

C. DSH payments to an individual other uninsured hospital shall be based on the hospital's uninsured utilization rate and the distribution of all other uninsured hospitals uninsured utilization rates. DSH payments to hospitals in the first quintile of the distribution shall be equal to 25 percent of the hospital's *net uncompensated costs* and subject to the adjustment provision in §301.B. DSH payments to hospitals in the second through the fifth quintiles of the distribution shall be equal to 40, 55, 70 and 85 percent of the hospital's *net uncompensated cost*, respectively. DSH payments to individual public other uninsured hospitals shall be up to 175 percent of the hospital's *net uncompensated costs* and subject to the adjustment provision in §301.B.

D. In the event it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each other uninsured hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying other uninsured hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

E. A hospital receiving DSH payments shall furnish emergency and nonemergency services to uninsured persons with family incomes less than or equal to 100 percent of the federal poverty level on an equal basis to insured patients.

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

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

§309. High Medicaid Hospitals

A. Definition. *High Medicaid Utilization Rate Hospital?* a hospital that has a Medicaid utilization rate in excess of the mean, plus one standard deviation of the Medicaid utilization rates for all hospitals in the state receiving payments and that is not included in §305.

1. Medicaid utilization rate is a fraction (expressed as a percentage). The numerator is the hospital's number of Medicaid (Title XIX) inpatient days. The denominator is the total number of the hospital's inpatient days for a cost-reporting period.

B. DSH payments to individual high Medicaid hospitals shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual high Medicaid hospitals shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying high Medicaid hospital's actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified high Medicaid hospitals. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; and

2. multiplying by an amount of funds for high Medicaid hospitals to be determined by the director of the Bureau of Health Services Financing.

D. A pro rata decrease necessitated by conditions specified in §301.B. for high Medicaid hospitals will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying high Medicaid hospitals; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

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

§311. Small Rural Hospitals

A. Definitions

Net Uncompensated Cost? the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Small Rural Hospital? a hospital (excluding a long-term care hospital, rehabilitation hospital, or freestanding psychiatric hospital but including distinct part psychiatric units) that meets the following criteria:

a. had no more than 60 hospital beds as of July 1, 1994, and is located in a parish with a population of less than 50,000 or in a municipality with a population of less than 20,000; or

b. meets the qualifications of a sole community hospital under 42 CFR §412.92(a); or

c. had no more than 60 hospital beds as of July 1, 1999 and is located in a parish with a population of less than 17,000 as measured by the 1990 census; or

d. had no more than 60 hospital beds as of July 1, 1997 and is a publicly-owned and operated hospital that is located in either a parish with a population of less than 50,000 or a municipality with a population of less than 20,000; or

e. had no more than 60 hospital beds as of June 30, 2000 and is located in a municipality with a population, as measured by the 1990 census, of less than 20,000; or

f. had no more than 60 beds as of July 1, 1997 and is located in a parish with a population, as measured by the 1990 and 2000 census, of less than 50,000; or

g. was a hospital facility licensed by the department that had no more than 60 hospital beds as of July 1, 1994, which hospital facility:

i. has been in continuous operation since July 1, 1994;

ii. is currently operating under a license issued by the department; and

iii. is located in a parish with a population, as measured by the 1990 census, of less than 50,000; or

h. has no more than 60 hospital beds or has notified the department as of March 7, 2002 of its intent to reduce its number of hospital beds to no more than 60, and is located in a municipality with a population of less than 13,000 and in a parish with a population of less than 32,000 as measured by the 2000 census; or

i. has no more than 60 hospital beds or has notified DHH as of December 31, 2003, of its intent to reduce its number of hospital beds to no more than 60; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 7,000;

ii. is located, as measured by the 2000 census, in a parish with a population of less than 53,000; and

iii. is located within 10 miles of a United States military base; or

j. has no more than 60 hospital beds as of September 26, 2002; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 10,000; and

ii. is located, as measured by the 2000 census, in a parish with a population of less than 33,000; or

k. has no more than 60 hospital beds as of January 1, 2003; and

i. is located, as measured by the 2000 census, in a municipality with a population of less than 11,000; and

ii. is located, as measured by the 2000 census, in a parish with a population of less than 90,000.

B. Payment based on uncompensated cost for qualifying *small rural hospitals* shall be in accordance with the following three pools:

1. *Public (Nonstate) Small Rural Hospitals?* *small rural hospitals* as defined in §311.A.1, which are owned by a local government.

2. *Private Small Rural Hospitals?* *small rural hospitals* as defined in §311.A.1, that are privately owned.

3. *Small Rural Hospitals?* *small rural hospitals* as defined in §311.A.1.i- §311.A.1.k.

C. Payment to hospitals included in §311.B.1 and §311.B.2 is equal to each qualifying rural hospital's pro rata share of uncompensated cost for all hospitals meeting these criteria for the latest filed cost report multiplied by the amount set for each pool. Payments to all hospitals included in §311.B.3 shall not exceed \$1,200,000 in aggregate and shall be reimbursed the lower of \$300,000 per hospital or each hospital's actual uncompensated cost per their latest filed cost report. 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.

D. Pro Rata Decrease

1. A pro rata decrease necessitated by conditions specified in §301.B. for rural hospitals described in this §311 will be calculated using the ratio determined by:

a. dividing the qualifying rural hospital's uncompensated costs by the uncompensated costs for all rural hospitals in §311; then

b. multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment or the state DSH appropriated amount.

2. No additional payments shall be made after the final payment for the state fiscal year is disbursed by the department. Recoupment shall be initiated upon completion of an audit if it is determined that the actual uncompensated care costs for the state fiscal year for which the payment is applicable is less than the actual amount paid.

E. Qualifying hospitals must meet the definition for a *small rural hospital* contained in §311.A.1. Qualifying hospitals must maintain a log documenting the provision of uninsured care as directed by the department.

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

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

§313. Public State-Operated Hospitals

A. Definitions

Net Uncompensated Cost? the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Public State-Operated Hospital? a hospital that is owned or operated by the State of Louisiana, Department of Health and Hospitals.

B. DSH payments to individual public state-owned or operated hospitals shall be up to 175 percent of the hospital's *net uncompensated costs*. Final payment will be based on the

uncompensated cost data per the audited cost report for the period(s) covering the state fiscal year.

C. In the event that it is necessary to reduce the amount of disproportionate share payments to remain within the federal disproportionate share allotment or the state DSH-appropriated amount, the department shall calculate a pro rata decrease for each public state-owned or operated hospital based on the ratio determined by:

1. dividing that hospital's uncompensated cost by the total uncompensated cost for all qualifying public state-owned or operated hospitals during the state fiscal year; and then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate allotment or state DSH-appropriated amount.

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

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

§315. Psychiatric Hospitals

A. Definitions

Net Uncompensated Cost? the cost of furnishing inpatient and outpatient hospital services, net of Medicare costs, Medicaid payments (excluding disproportionate share payments), costs associated with patients who have insurance for services provided, private payer payments, and all other inpatient and outpatient payments received from patients.

Psychiatric Hospital? a free standing *psychiatric hospital* that is not included in §313.

B. DSH payments to individual free standing *psychiatric hospitals* shall be based on actual paid Medicaid days for a six-month period ending on the last day of the last month of that period, but reported at least 30 days preceding the date of payment. Annualization of days for the purposes of the Medicaid days pool is not permitted. The amount will be obtained by DHH from a report of paid Medicaid days by service date.

C. Disproportionate share payments for individual free standing *psychiatric hospitals* shall be calculated based on the product of the ratio determined by:

1. dividing each qualifying free standing *psychiatric hospital's* actual paid Medicaid inpatient days for a six-month period ending on the last day of the month preceding the date of payment (which will be obtained by DHH from a report of paid Medicaid days by service date) by the total Medicaid inpatient days obtained from the same report of all qualified free standing *psychiatric hospitals*. Total Medicaid inpatient days include Medicaid nursery days but do not include skilled nursing facility or swing-bed days; and

2. multiplying by an amount of funds for free standing psychiatric to be determined by the director of the Bureau of Health Services Financing

D. A pro rata decrease necessitated by conditions specified in §301.B. for hospitals in §315 will be calculated based on the ratio determined by:

1. dividing the hospitals' Medicaid days by the Medicaid days for all qualifying hospitals in §315; then

2. multiplying by the amount of disproportionate share payments calculated in excess of the federal disproportionate share allotment or the state disproportionate share appropriated amount.

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

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

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

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

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

0402#070

DECLARATION OF EMERGENCY

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

**Durable Medical Equipment Program
HIPAA Implementation**

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

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement for medical equipment, prosthetics, orthotics and supplies under the Durable Medical Equipment Program. The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). This includes standardized procedure codes and definitions. The department is required to implement these codes and definitions or face monetary sanctions.

In compliance with HIPAA requirements, the bureau proposes to amend the Rules governing the billing procedures for durable medical equipment. This action is being taken to avoid federal sanctions by complying with the mandates of the Health Insurance Portability and Accountability Act. It is estimated that implementation of

this Emergency Rule is revenue neutral for state fiscal year 2003-2004.

Emergency Rule

Effective March 1, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the Rules governing the billing and reimbursement of all durable medical equipment. Current Standard Healthcare Common Procedure Coding System (HCPCS) codes and modifiers shall be used to bill for all durable medical equipment, prosthetics, orthotics and supplies.

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

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

0402#068

DECLARATION OF EMERGENCY

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

**Early and Periodic Screening, Diagnosis and
Treatment Program? Early Intervention Services
for Infants and Toddlers with Disabilities
(LAC 50:XV.Chapter 81)**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has adopted LAC 50:XV. Chapter 81 in the Medical Assistance Program as authorized by R.S. 36:254 pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq. and shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

Congress enacted the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 to ensure the availability of appropriate public education and related services and supports to children with disabilities and their families. Part C of IDEA addresses the special needs of young children through the provision of financial assistance to States to implement and maintain a statewide, comprehensive, coordinated, multi-disciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families [34 CFR 303.1(a)].

Louisiana's early intervention system under Part C of IDEA, is a comprehensive, coordinated, family centered system of educational and health services for infants and toddlers age birth to age three who have a physical or mental condition, but have been determined to be delayed in cognitive, physical, communication, social/emotional or adaptive development. Previously, the Department of Education served as the lead agency responsible for administering Part C of Idea. However, the Governor mandated the transfer of Part C from the Department of

Education, Division of Special Populations to the Department of Health and Hospitals, Office of Public Health.

In conjunction with the transfer of Part C, the Bureau of Health Services Financing established early intervention services for infants and toddlers with disabilities under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program (*Louisiana Register*, Volume 29, Number 7) This Rule is being promulgated to continue the provisions of the July 7, 2003 Emergency Rule. Medicaid covered early intervention services include physical therapy, occupational therapy, speech therapy, audiology services, psychological services and targeted case management. These individual services are currently furnished to Medicaid recipients through the outpatient hospital, home health, EPSDT health services, rehabilitation center, and targeted case management service programs. The individual services will continue to be covered through these service programs.

This action is necessary to promote the health and welfare of Medicaid eligible infants and toddlers with disabilities by enhancing the availability of early intervention services and to avoid possible federal sanctions.

Effective March 5, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes early intervention services for infants and toddlers with disabilities under the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program in conjunction with the transfer of Part C of the Individuals with Disabilities Education Act.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening,

Diagnosis, and Treatment

Chapter 81. Early Intervention Services

§8101. Reserved.

§8103. Recipient Qualifications

A. In order to qualify for Medicaid covered early intervention services, an individual must meet the following qualifications:

1. be a Medicaid eligible infant or toddler age birth to age three; and

2. be enrolled to participate in the Part C program.

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

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

§8105. Covered Services

A. Medicaid covered early intervention services shall be limited to the following services:

1. physical therapy;
2. occupational therapy;
3. speech therapy;
4. audiology services;
5. psychological services; and
6. targeted case management (family service coordination).

B. Psychological services includes diagnosis and psychological counseling/therapy for the child and his/her family.

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

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

§8107. Provider Participation

A. Provider participation shall be the Title V agency, the lead agency responsible for the administration of the provisions of Part C of the Individuals with Disabilities Education Act in Louisiana.

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

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

§8109. Reimbursement

A. The reimbursement methodology for Medicaid covered early intervention services shall be a negotiated rate based on the cost for the provision of services in accordance with the terms of the intra-agency agreement between the Medicaid Program and the Title V agency.

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

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

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

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

0402#069

DECLARATION OF EMERGENCY

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

Early and Periodic Screening, Diagnosis and Treatment Program? Eyeglasses (LAC 50:XV.8501)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:XV.8501 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). This includes standardized procedure codes and definitions. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is required to implement these codes and definitions or face monetary sanctions. In compliance with HIPAA requirements, the bureau has determined that it is

necessary to revise procedure codes and definitions for Medicaid covered eye wear to comply with HIPAA compliant procedure code descriptions. This action is being taken to avoid federal sanctions by complying with the mandates of the Health Insurance Portability and Accountability Act. It is estimated that the implementation of this Emergency Rule will be revenue neutral for state fiscal year 2003-2004.

Effective for dates of services on or after March 1, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends current Rules for Early and Periodic Screening, Diagnosis and Treatment eyeglasses to conform to HIPAA compliant standardized procedure codes.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 85. Durable Medical Equipment? Eyeglasses

§8501. Eye Care

A. ...

B. Billing and Reimbursement. Effective March 1, 2004, the Health Care Common Procedure Coding System (HCPCS) shall be used to bill for EPSDT eyewear. Claims for EPSDT eye wear shall be reimbursed in accordance with the Louisiana Medicaid Eye Wear Fee Schedule.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:180 (February 2003), amended LR 30:

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

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

0402#066

DECLARATION OF EMERGENCY

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

Facility Need Review
Additional Beds for Certain ICF-MRs
(LAC 48:I.12503)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amends LAC 48:I.12503, Determination of Bed Need, as authorized by R.S. 40:2116. This Emergency Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:953(B) and shall be in effect for the maximum period allowed under the Act or until adoption of the Rule, whichever occurs first.

The Department of Health and Hospitals adopted a Rule governing Facility Need Review in August 1995 (*Louisiana Register*, Volume 21, Number 8). The August 1995 Rule was amended in July 1999 to adopt new provisions governing the relocation of nursing facility beds (*Louisiana Register*, Volume 25, Number 7). It was further amended in October 2002 to adopt new provisions creating the Emergency Community Home Bed Pool for nonstate-operated community homes (*Louisiana Register*, Volume 28, Number 10).

Act 900 of the 2003 Regular Session of the Louisiana Legislature enacted R.S. 40:2116(G) which grants an exemption from the usual requirements of the Facility Need Review process as set forth in R.S. 40:2116 and in the Department's rules and regulations. Any intermediate care facility for the mentally retarded which serves children or adults suffering from mental retardation, autism, or behavioral problems, with no less than 150 and no more than 180 beds, is eligible for the exemption which is granted for a maximum of 50 additional beds. The Legislature did not appropriate any funds to the department to cover the increased expenses it will incur for Medicaid payments for the residents who will occupy the additional beds. The Department promulgated an Emergency Rule amending the August 1995 Rule governing the Facility Need Review Process in order to implement the provisions of Act 900 (*Louisiana Register*, Volume 29, Number 11). The department has now determined that it is necessary to amend the December 1, 2003 Emergency Rule to waive the deadline for enrolling the additional beds after approval. This action is being taken to promote the health and welfare of Louisiana citizens by assuring that adequate community home beds are available for Medicaid recipients. It is estimated that implementation of this Emergency Rule will continue the fiscal impact of \$2,380,219 for state fiscal year 2003-2004 as stated in the December 1, 2003 Emergency Rule.

Effective February 20, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, amends the December 1, 2003 Emergency Rule on Facility Need Review.

Title 48

PUBLIC HEALTH? GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

§12503. Determination of Bed Need

A. - A.7.h. ...

8. Exception for Additional Beds for Certain ICF-MRs. Any ICF-MR which serves children or adults suffering from mental retardation, autism, or behavioral problems, and which had no less than 150 and no more than 180 approved beds as of August 15, 2003, shall, upon application to the Department, be granted approval for up to 50 additional beds without being required to meet the standards set forth in Paragraphs A.1 - 6 above, §12501.F.2 or §12505.

B. - B.11 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:

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

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

0402#067

DECLARATION OF EMERGENCY

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

Pregnant Women Extended Services? Dental Services (LAC 50:XV.16101-16107)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XV.16101-16103 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing currently provides coverage for dental services under the Early and Periodic Screening, Diagnosis and Treatment Program for Medicaid recipients up to age 21. Under the authority of Section 440.210(a)(2) and 442.220(a)(5) of the Code of Federal Regulations, the bureau expanded coverage of certain designated dental services to include Medicaid eligible pregnant women ages 21 through 59 in order to address their periodontal needs that occur during pregnancy. Medicaid coverage of these dental services ends at the conclusion of the pregnancy. This Emergency Rule is being promulgated to continue the provisions contained in the November 1, 2003 Rule.

This action is being taken to promote the health and welfare of Medicaid eligible pregnant women and their unborn children by addressing those periodontal needs that may affect the pregnancy.

Effective for dates of service on and after March 1, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts the following provisions governing the coverage of the dental services for pregnant women.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 13. Pregnant Women Extended Services

Chapter 161. Dental Services

§16101. Recipient Qualifications

A. In order to qualify for dental services, a Medicaid eligible pregnant woman must be age 21 through 59 and certified for Medicaid as categorically eligible.

B. Pregnant women who are certified for Medicaid as Qualified Medicare Beneficiaries do not qualify for coverage

of dental services unless these services are covered by Medicare.

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

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

§16103. Provider Responsibilities

A. The attending physician for obstetrical care must complete the Referral for Pregnancy-Related Dental Services Form (BHSF Form 9M), including the expected date of delivery. The dental provider must obtain the completed BHSF 9-M prior to the delivery of dental services. This form shall be kept on file at the treating dentist's office.

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

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

§16105. Covered Services

A. The following dental services are covered for Medicaid eligible pregnant women:

Description
Comprehensive Periodontal Evaluation – New or Established Patient
Intraoral - Periapical First Film
Intraoral - Periapical Each Additional Film
*Intraoral - Occlusal Film
Bitewings, Two Films
*Panoramic Film
Prophylaxis – Adult
* Amalgam, One Surface, Primary or Permanent
*Amalgam, Two Surfaces, Primary or Permanent
*Amalgam, Three Surfaces, Primary or Permanent
*Amalgam, Four or More Surfaces, Permanent
*Resin-based Composite, One Surface, Anterior
*Resin-based Composite, Two Surfaces, Anterior
*Resin-based Composite, Three Surfaces, Anterior
*Resin-based Composite, Four or More Surfaces or Involving Incisal Angle, Anterior
*Resin-based Composite Crown, Anterior
*Prefabricated Stainless Steel Crown, Permanent Tooth
*Prefabricated Resin Crown
*Pin Retention, Per Tooth, In Addition to Restoration
*Periodontal Scaling and Root Planing - Four or More Contiguous Teeth or Bounded Teeth Spaces Per Quadrant
*Full Mouth Debridement to Enable Comprehensive Evaluation and Diagnosis
Extraction, Erupted Tooth or Exposed Root (Elevation and/or Forceps Removal)
*Surgical Removal of Erupted Tooth Requiring Elevation of Mucoperiosteal Flap and Removal of Bone and/or Section of Tooth
*Removal of Impacted Tooth, Soft Tissue
*Removal of Impacted Tooth, Partially Bony
*Prior Authorization Required

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

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

§16107. Reimbursement

A. Reimbursement for these services is a flat fee based on the fee schedule established by the Bureau for the Early and Periodic Screening, Diagnosis and Treatment Program

minus the amount which any third party coverage would pay.

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

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

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

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

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

0402#071

DECLARATION OF EMERGENCY

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

Rehabilitation Services? Reimbursement Fee Increase

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

The Department of Health and Hospitals, Bureau of Health Services Financing provides coverage and reimbursement for rehabilitation services under the Medicaid Program. Rehabilitation services include physical, occupational and speech therapies. Reimbursement is available for these services through outpatient hospital, home health, rehabilitation center and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) health services. The bureau adopted a Rule establishing the reimbursement methodology for EPSDT rehabilitation services in April of 1997 (*Louisiana Register*, Volume 23, Number 4). The bureau also adopted a Rule establishing the reimbursement methodology for rehabilitation services rendered in rehabilitation centers and outpatient hospital settings in June of 1997 (*Louisiana Register*, Volume 23, Number 6). The bureau adopted a subsequent Rule in May of 2001 to establish the reimbursement methodology for rehabilitation services rendered by home health agencies (*Louisiana Register*, Volume 27, Number 5). Reimbursement for these services is a flat fee established by the bureau minus the amount that any third party coverage would pay.

Act 13 of the 2002 Regular Session of the Louisiana Legislature directed the department to increase the reimbursement for physical therapy, occupational therapy, and speech/language and hearing therapy services provided

to children under three years of age. In compliance with the Appropriation Bill and as a result of the allocation of additional funds by the Legislature, the bureau increased the reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of three, regardless of the type of provider performing the services (*Louisiana Register*, Volume 28, Number 7).

This Emergency Rule is being promulgated to continue the provisions contained in the July 6, 2002 Rule. This action is being taken to protect the health and welfare of Medicaid recipients under the age of three and to ensure access to rehabilitation services by encouraging the participation of rehabilitation providers in the Medicaid Program.

Emergency Rule

Effective for dates of services on or after March 2, 2004, the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the April 20, 1997, June 20, 1997 and May 20, 2001 Rules governing the reimbursement methodology for rehabilitation services provided by outpatient hospitals, rehabilitation centers, home health agencies and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) health services providers to increase the reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of three, regardless of the type of provider performing the services. The new reimbursement rates for rehabilitation services rendered to Medicaid recipients up to the use of three are as follows.

Home Health Agencies and Outpatient Hospitals

Procedure Name	New Rate
Initial Sp/Lang Evaluation	\$ 70.00
Initial Hearing Evaluation	\$ 70.00
Sp/Lan/Hear Therapy 60 Minutes	\$ 56.00
Visit w/Procedure(s) 45 Minutes	\$ 56.00
Visit w/Procedure(s) 60 Minutes	\$ 74.00
Visit w/Procedures 90 Minutes	\$112.00
Procedures and Modalities 60 Minutes	\$ 74.00
Pt and Rehab Evaluation	\$ 75.00
Initial Ot Evaluation	\$ 70.00
Ot 45 Minutes	\$ 45.00
Ot 60 Minutes	\$ 60.00

Rehabilitation Centers

Procedure Name	New Rate
Group Sp Lang Hear Therapy 1/2 Hour	\$ 26.00
Speech Group Therapy add 15 Minutes	\$ 13.00
Group Sp Lang Hear Therapy 1 Hour	\$ 51.00
Initial Sp/Lang Evaluation	\$ 70.00
Initial Hearing Evaluation	\$ 70.00
Sp/Lang/Hear Therapy 30 Minutes	\$ 26.00
Sp/Lang/Hear Therapy 45 Minutes	\$ 39.00
Sp/Lang/Hear Therapy 60 Minutes	\$ 52.00
Visit w/Procedure(s) 30 Minutes	\$ 34.00
Visit w/Procedure(s) 45 Minutes	\$ 51.00
Visit w/Procedure(s) 60 Minutes	\$ 68.00
Visit w/Procedure(s) 75 Minutes	\$ 85.00
Visit w/Procedure(s) 90 Minutes	\$102.00
Ctr Visit One/More Modal/Proc 15 Min utes	\$ 17.00
Procedures and Modalities 60 Minutes	\$ 68.00
Pt and Rehab Evaluation	\$ 75.00
Initial Ot Evaluation	\$ 70.00
Ot 30 Minutes	\$ 26.00
Ot 45 Minutes	\$ 39.00
Ot 60 Minutes	\$ 52.00

EPSDT Health Services

Procedure Name	New Rate
Electrical Stimulation	\$ 17.00
Pt-One Area-Therapeutic-30 Minutes	\$ 17.00
Pt-Neuromuscular Reed-30 Minutes	\$ 17.00
Pt-Gait Training-30 Minutes	\$ 34.00
Orthotic Training	\$ 14.00
Kinetic Act One Area-30 Minutes	\$ 14.00
Physical Performance Test	\$ 14.00
Physical Therapy Evaluation/Re-Evaluation	\$ 92.00
Occ Therapy Evaluation/Re-Evaluation	\$ 70.00
Speech/Language Evaluation/Re-Evaluation	\$ 70.00
Speech/Language Therapy 30 Minutes	\$ 26.00
Speech/Language Therapy add 15 Minutes	\$ 13.00
Group Sp Lang Hear Therapy 1/2 Hour	\$ 26.00
Speech Group Therapy 20 Minutes	\$ 13.00
Speech Group Therapy Add 15 Minutes	\$ 13.00
Group Sp Lang Hear Therapy 1 Hour	\$ 52.00
Speech Lang Hearing Therapy 20 Minutes	\$ 17.00
Sp/Lan/Hear Therapy 60 Minutes	\$ 52.00
Procedures And Modalities 30 Minutes	\$ 34.00
Procedures And Modalities 45 Minutes	\$ 52.00

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

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

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

0402#072

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

Reporting Requirements and Child Immunization
(LAC 67:III.1257, 1998, 5103, 5104, 5107 and 5347)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend LAC 67:III §1257 in the Family Independence Temporary Assistance Program (FITAP), §§5103 and 5107 in the Child Care Assistance Program (CCAP) and §5347 in the Kinship Care Subsidy Program (KCSP) and to adopt §§1998 and 5104 in the Food Stamp and Child Care Assistance Programs effective February 1, 2004. This Rule shall remain in effect for a period of 120 days.

Pursuant to 7CFR Part 273, amendments are necessary to the FITAP, CCAP, KCSP and Food Stamp Programs, in order to comply with the federal mandates regarding reporting requirements and to avoid federal penalties and sanctions that could occur when benefits or services are received inappropriately as a result of inaccurate or unreported information. The agency intends to repeal §5103.D. of the Child Care Assistance Program and the information contained in this section will be adopted as

§5104, Reporting Requirements. Section 1998, Reporting Requirements, will be adopted to specify reporting requirements in the Food Stamp Program. In addition, §§1257 and 5347 are being amended to clarify reporting requirements for FITAP and KCSP. The reorganized sections will contain information mandated by the federal regulations as well as information that aligns the reporting requirements of the FITAP, CCAP, KCSP and Food Stamp Program.

Additionally, federal regulations mandate that all children receiving child care services be immunized and that verification of such be provided. In order to comply with federal regulations and to avoid severe penalties or sanctions, the agency intends to amend §5107, Child Care Providers, to require that Family Day Care Home providers retain an immunization record signed/stamped by a physician or physician's designee on each child in care verifying the child has had or is in the process of receiving all age-appropriate immunizations as required by the Office of Public Health. §5107B.1.d. is being amended for technical reasons only.

Title 67

SOCIAL SERVICES

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter B. Conditions of Eligibility

§1257. Reporting Requirements

A. Effective February 1, 2004, a FITAP household that is not included in a Food Stamp semi-annual reporting household shall report any change that affects eligibility or the amount of monthly benefits. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. Effective February 1, 2004, a FITAP household that is included in a Food Stamp semi-annual reporting household is subject to the semi-annual household reporting requirements in accordance with §2013.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231 et seq. 7 CFR Part 273

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:522 (March 2002), amended LR 30:

Subpart 3. Food Stamps

Chapter 19. Certification of Eligible Households

Subchapter L. Reporting Changes

§1998. Reporting Requirements

(Effective February 1, 2004)

A. A Food Stamp household that is not included in semi-annual reporting shall report any change that affects eligibility or the amount of monthly benefits. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. A Food Stamp household that is included in semi-annual reporting is subject to the semi-annual household reporting requirements in accordance with §2013.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

Subpart 12. Child Care Assistance

Chapter 51. Child Care Assistance

Subchapter B. Child Care Assistance Program

§5103. Conditions of Eligibility

A. - C. ...

D. Repealed. (Effective February 1, 2004)

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:356 (February 1998), amended LR 25:2444 (December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:1490 (June 2002), LR 29:43 (January 2003), LR 29:1833 (September 2003), LR 30:

§5104. Reporting Requirements

(Effective February 1, 2004)

A. Low Income Child Care household that is not included in a Food Stamp semi-annual reporting household shall report any change that affects eligibility or the amount of monthly benefits. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. A Low Income Child Care household that is included in a Food Stamp semi-annual reporting household is subject to the semi-annual reporting requirements in accordance with §2013. In addition, these households must report the following changes within 10 days of the knowledge of the change:

1. a change in child care provider,
2. termination of any TEMP's employment or training,

or

3. a child receiving CCAP services leaves the home.

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, 7 CFR Part 273

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR:30

§5107. Child Care Providers

A. - B. ...

1. To be eligible for participation, a Family Child Day Care Home provider must sign a provider agreement, complete a request for registration and Form W-9, pay appropriate fees, furnish verification of Social Security number and residential address, provide proof that he/she is at least 18 years of age, and meet all registration requirements, including:

a. - c. ...

d. retain a statement of good health signed by a physician or his designee which must have been obtained within the past three years and be obtained every three years thereafter; and

e. - f. ...

g. effective February 1, 2004, retain an immunization record signed/stamped by a physician or a physician's designee on each child receiving care verifying the child has had, or is in the process of receiving all age-appropriate immunizations as required by the Office of Public Health. No Family Day Home Provider is required to comply with this provision if a child's parent or guardian submits a written statement from a physician stating that the immunization procedure is contraindicated for medical

reasons, or if the parent or guardian objects to the procedure on religious grounds.

B.2 - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with 45 CFR Parts 98 and 99, P.L. 104-193, Act 152, 2002 First Extraordinary Session, Act 13, 2002 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:357(February 1998), amended LR 25:2444(December 1999), LR 26:2827 (December 2000), LR 27:1932 (November 2001), LR 28:349 (February 2002), LR 28:1491 (June 2002), LR 29:43 (January 2003), LR 29:189 (February 2003), LR 30:

Subchapter B. Conditions of Eligibility

§5347. Reporting Changes

A. Effective February 1, 2004, a KCSP household that is not included in a Food Stamp semi-annual reporting household shall report any change that affects eligibility. Changes in income must be reported if the household's gross monthly income changes by more than \$100 in earned income or \$50 in unearned income. Changes shall be reported within 10 days of the knowledge of the change.

B. Effective February 1, 2004, a KCSP household that is included in a Food Stamp semi-annual reporting household is subject to the semi-annual household reporting requirements in accordance with §2013.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231 et seq., 7 CFR Part 273

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:2565 (December 2002), amended LR 30:

Ann Silverberg Williamson
Secretary

0402#007

DECLARATION OF EMERGENCY

**Department of Social Services
Office of Family Support**

TANF Initiatives (LAC 67:III.Chapters 54 and 55)

The Department of Social Services, Office of Family Support, has exercised the emergency provision of R.S. 49:953(B), the Administrative Procedure Act, to amend LAC 67:III, Subpart 15, Chapter 55, §§5505, 5507, 5509, 5525, and 5539, to repeal §5529 and Subpart 14, Chapter 54, the Teen Pregnancy Prevention Program, and to adopt §§5575 and 5577 effective February 18, 2004. This Emergency Rule will remain in effect for a period of 120 days. This declaration is necessary to extend the original Emergency Rule of October 21, 2003, since it is effective for a maximum of 120 days and will expire before the final Rule takes effect. (The final Rule will be published in March 2004).

Pursuant to Act 14 of the 2003 Legislative Session, the agency is amending the following TANF Initiatives: Section 5505 is being amended to revise the TANF goals being met by the services provided and to clarify the eligibility requirements for 5505; Section 5507 is being amended to include additional services that will be provided by the Workforce Commission and the Louisiana Community and Technical College System; Sections 5509 and 5539 are being

amended to remove references to the Office of Women's Services and the Supreme Court of Louisiana respectively. By using non-specific language regarding the TANF partners, future amendments to the Louisiana Administrative Code will be avoided. Section 5525 is being amended to specify targeted population that will be eligible for services.

The agency is repealing Section 5529, Youth in Transition, as funds are no longer being allocated for this program. Additionally, the agency is repealing Subpart 14, Chapter 54, Teen Pregnancy Prevention Program. The program will now be administered by the Department of Education through a Memorandum of Understanding with the agency. Program information will be incorporated into Chapter 55, TANF Initiatives and adopted as Section 5575, Teen Pregnancy Prevention Program. Section 5577, Skills Training for Incarcerated Fathers, is being adopted as a new TANF Initiative.

The authorization for emergency action is contained in Act 14 of the 2003 Regular Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 14. Teen Pregnancy Prevention

Chapter 54. Teen Pregnancy Prevention Program

§5401. Authority

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1018 (July 2001), repealed LR 30:

§5403. Strategy

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S.36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1996 (September 2002), repealed LR 30:

§5405. Goals and Objectives

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S.36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1996 (September 2002), repealed LR 30:

§5407. Program Activities

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 27:1019 (July 2001), amended LR 28:1599 (July 2002), repealed LR 30:

Subpart 15. Temporary Assistance to Needy Families (TANF) Initiatives

Chapter 55. TANF Initiatives

§5505. Nonpublic School Early Childhood Development Program

A. ...

B. These services meet the TANF goal to reduce the incidence of out-of-wedlock births by placing children in learning environments at the pre-school level to foster an interest in learning, increase literacy levels, and increase the likelihood of developing responsible behavior.

C. Eligibility for services is limited to families in which the child is one year younger than the eligible age for public school kindergarten and who have earned income at or below 200 percent of poverty level.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:350 (February 2002), amended LR 29:715 (May 2003), LR 30:

§5507. Adult Education, Basic Skills Training, Job Skills Training, and Retention Services Program

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to create programs to provide adult education and literacy, basic skills training, jobs skills training, court-ordered training and job retention services to low-income families. Employed participants will be provided child care and transportation services. Unemployed participants will be provided short-term child care and transportation services.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:870 (April 2002), amended LR 30:

§5509. Domestic Violence Services

A. The Office of Family Support shall enter into Memoranda of Understanding or contracts to provide for services pertaining to domestic violence including rural outreach, services to children in shelters, and training of law enforcement and DSS personnel.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:351 (February 2002), amended LR 30:

§5525. Pre-GED/Skills Option Program

A. - B. ...

C. Eligibility for services is not limited to needy families; however certain populations are targeted for services provided by the Options Program and the JAG LA Program. They include:

1. Eligible participants in the Options Program shall be students 16 years of age or older and meet one or more of the following:

- a. failed the eighth grade LEAP 21 English language arts or math test for one or more years;
- b. failed English language arts, math, science, or social studies portion of the Graduation Exit Exam;
- c. participated in alternate assessment; or
- d. earned not more than 5 Carnegie units by age 17, not more than 10 Carnegie units by age 18, and not more than 15 Carnegie units by age 19.

2. Eligible participants in the JAG LA Program shall be 16-21 years of age (or at least 15 years of age in the middle school pilot program) and must face at least two designated barriers to success that include economic, academic, personal, environmental, or work related.

D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), amended LR 30:

§5529. Youth in Transition

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session of the Louisiana Legislature; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:352 (February 2002), repealed LR 30:

§5539. Truancy Assessment and Service Centers

A. OFS shall enter into Memoranda of Understanding or contracts for Truancy Assessment and Service Centers designed to identify, assess, and intervene to ensure that children in kindergarten through sixth grade attend school regularly.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 12, 2001 Reg. Session; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 28:353 (February 2002), amended LR 30:

§5575. Teen Pregnancy Prevention Program

Effective July 1, 2003

A. The Department of Social Services, Office of Family Support, shall enter into Memoranda of Understanding or contracts to prevent or reduce out-of-wedlock and teen pregnancies by enrolling youth ages 8 through 20 in supervised, safe environments, with adults leading activities according to a research-based model aimed at reducing teen pregnancy.

B. Services offered by providers meet the TANF goals to prevent and reduce the incidence of out-of-wedlock births by providing research-based prevention and intervention

programming for students who live in poor communities and/or show evidence of academic underperformance, dropping out, or engaging in negative behaviors that can lead to dependency, out-of-wedlock births, or imprisonment.

C. Eligibility for services is not limited to needy families. Custodial and non-custodial parents, legal guardians, or caretaker relatives of youth who are participants in the program may also receive parenting training and educational services.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

§5577. Skills Training for Incarcerated Fathers

Effective September 1, 2003

A. The Office of Family Support shall enter into Memoranda of Understanding to provide educational rehabilitation services to incarcerated male inmates to assist them in becoming self-sustaining individuals upon release.

B. These services meet the TANF goal to encourage the formation and maintenance of two-parent families.

C. Eligibility for services is limited to male inmates housed in a local or state Louisiana correctional facility, who have served a majority of their sentence and are nearing release and who are the parents of minor children.

D. Services are considered non-assistance by the agency.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq.; R.S. 46:231 and R.S. 36:474; Act 14, 2003 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 30:

Gwendolyn Hamilton
Secretary

0402#047

Rules

RULE

Department of Agriculture and Forestry Office of Forestry

Indian Creek Recreation Area User Fees (LAC 7:XXXIX.501)

In accordance with R.S.49:950 et seq., the Administrative Procedure Act, the Department of Agriculture and Forestry, Office of Forestry, has amended LAC 7:XXXIX.501, Indian Creek Recreation Area, Usage Fees. The Rule provides for an increase in some of the fees charged to users of the Indian Creek Recreation Area, which is located on the Alexander State Forest near Woodworth, Louisiana. These fee increases are necessary to cover the increased cost of operation of the park.

This Rule complies with and is enabled by Act 591 of 1970.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 5. Indian Creek Recreation Area

§501. Usage Fees

A. The Department of Agriculture and Forestry, Office of Forestry, hereby announces the following usage fee revisions.

1. Entrance Fee (Day Use)	\$3 per Vehicle with up to Six Occupants. Additional \$0.50 per Person for Additional Occupants
2. Regular Campsite	\$ 14/day
3. Pull-Through Campsite	\$ 18/day
4. Primitive Campsite	\$ 8/day
5. Pavilion Rental	\$ 50/day
6. Boat Launch	\$ 3/boat
7. 30-day Off-Season Rate for Regular Campsite (Oct.-Feb. only)	\$210/month
8. 30-day Off-Season Rate for Pull-through Campsite (Oct.-Feb. only)	\$270/month

AUTHORITY NOTE: Promulgated in accordance with Act 591 of 1970.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry, and the Louisiana Forestry Commission, LR 6:734 (December 1980), amended LR 11:1178 (December 1985), amended by the Department of Agriculture and Forestry, Office of Forestry, LR 17:476 (May 1991), LR 23:553 (May 1997), LR 30:195 (February 2004).

Bob Odom
Commissioner

0402#060

RULE

Department of Agriculture and Forestry Office of the Agriculture and Environmental Sciences Fertilizer Commission

Fertilizer Commission? Fees (LAC 7:XI.115)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Fertilizer Commission, amended regulations governing fee costs associated with registration, inspection, testing, regulating, and administering the Fertilizer Law.

Louisiana is experiencing an unprecedented shortfall in state finances. The legislature has cut the department's budget; therefore, using other department funds is not a continuing option. The fiscal year begins on the first of July. These Rules will take place in accordance with the Administrative Procedure Act.

Title 7

AGRICULTURE AND ANIMALS

Part XI. Fertilizers

Chapter 1. Sale of Fertilizers

§115. Tonnage Reports; Inspection Fees

A. All registrants must file a report of the tonnage and grade of product sold, on forms to be provided by the Fertilizer Commission of the Louisiana Department of Agriculture and Forestry, on the first day of July, the first day of October, the first day of January, and the first day of April of each year.

B. All registrants must grant the Fertilizer Commission of the Department of Agriculture and Forestry the right to examine their records for verification of the tonnage reports filed as required by §115.A.

C. Every guarantor blending or selling fertilizer in small package lots totaling less than 100 tons per year shall pay to the Fertilizer Commission of the Department of Agriculture and Forestry an annual inspection fee of \$100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1312.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Fertilizer Commission, LR 7:164 (April 1981), amended LR 12:495 (August 1986), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Fertilizer Commission, LR 30:195 (February 2004).

Bob Odom
Commissioner

0402#063

RULE

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Structural Pest Control Commission

Structural Pest Control (LAC 7:XXV.117 and 119)

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 an increase in fees for each termite contract and wood-destroying insect reports.

The Department of Agriculture and Forestry deems the implementation of these rules and regulations necessary to fund the operations of the Structural Pest Control Commission. The Commission has recorded deficit spending for the last five years. The yearly shortfalls in revenues were made up from other funds within the Louisiana Department of Agriculture and Forestry. This Rule also allows the department to regulate the structural pest control industry consistently and insure that the state's citizens are getting the services for which they are paying.

Title 7

AGRICULTURE AND ANIMALS

Part XXV. Structural Pest Control

Chapter 1. Structural Pest Control Commission

§117. Obligations of the Licensee

A. - L. ...

M. The fee per termite contract and wood-destroying insect report is \$6 per contract and/or inspection report issued and \$8 for each combination liquid spot and bait and baiting system contract and is due on or before the tenth day of each month.

N. - P. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:327 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:956 (November 1989), LR 21:930 (September 1995), LR 23:855 (July 1997), LR 26:2437 (November 2000), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004).

§119. Contracts for Termite Control Work

A. - E. ...

F. The licensee shall pay a \$6 fee for each standard contract and shall pay an \$8 fee for each combination contract for liquid spot and bait and baiting system treatments reported under §119.E above when the required monthly report is filed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3302 and R.S. 3:3306.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Structural Pest Control Commission, LR 11:328 (April 1985), amended by the Department of Agriculture and Forestry, Structural Pest Control Commission, LR 15:957 (November 1989), LR 26:2437 (November 2000), LR 27:1179 (August 2001), LR 27:2084 (December 2001), LR 28:1171 (June 2002), amended by

the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Structural Pest Control Commission, LR 30:196 (February 2004).

Bob Odom
Commissioner

0402#058

RULE

Department of Agriculture and Forestry Office of the Commissioner

Meat and Poultry Inspections
(LAC 7:XXXIII.101)

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, has amended regulations regarding the Meat and Poultry Inspection Program.

The changes will adopt Title 9, Chapter III A, of the *Code of Federal Regulations* and Subchapter E, of the *Code of Federal Regulations*: 416 Sanitation, 417 Hazard Analysis and Critical Control Point (HACCP) Systems, 500 Rules of Practice. The regulations will also remove all references to the word "Permit" and replaces it with the word "License" and removes references to "Handbook 191" and all references to Blueprints submissions and replaces those with the statement "latest addition of the Code of Federal Regulations."

These Rules are enabled by R.S. 3:4222 and R.S. 3:4232.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIII. Meat and Poultry Inspections

Chapter 1. Meat and Poultry Inspection Program

§101. Adoption of Federal Meat and Poultry Inspection Regulations

A. The Louisiana Cooperative Federal/State Meat and Poultry Inspection Program will be governed by the rules and regulations contained in the Meat and Poultry Inspection Regulations of the Meat and Poultry Inspection Program of the U.S. Department of Agriculture, in effect as of the effective date of these regulations and all subsequent changes.

1. Meat and Poultry Inspection Regulations: Title 9, Chapter III, Subchapter A, *Code of Federal Regulations*.

2. Regulatory requirements under Federal Meat Inspection Act and Poultry Products Inspection Act: Title 9, Chapter III, Subchapter E, *Code of Federal Regulations*: 416 Sanitation, 417 Hazard Analysis and Critical Control Point (HACCP) Systems, 500 Rules of Practice

B. The Louisiana Cooperative Federal/State Meat and Poultry Inspection Program will be governed by the requirements in the latest addition of the Code of Federal Regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:4222 and R.S. 3:4232.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Management and Finance, LR 6:708 (December 1980), amended by the Department of Agriculture and

Bob Odom
Commissioner

0402#064

RULE

**Department of Agriculture and Forestry
Office of the Commissioner
Advisory Commission on Pesticides**

**Pesticide Testing Fees
(LAC 7:XXIII.131)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Advisory Commission on Pesticides, amends regulations regarding pesticide testing fees.

These Rules and regulations are necessary to conform to state statute and fund the operations of the Division of Pesticides and Environmental Programs. The fiscal year begins on the first of July. Adoption of permanent Rules will be in accordance with the Administrative Procedure Act. However, this process takes several months to complete.

These Rules are enabled by R.S. 3:3202, R.S. 3:3221, R.S. 3:3222 and R.S. 3:3251.

**Title 7
AGRICULTURE AND ANIMALS
Part XXIII. Pesticide**

**Chapter 1. Advisory Commission on Pesticides
Subchapter G. Fees**

§131. Fees

A. Fees required under the Louisiana Pesticide Law to be adopted by regulation are established as:

Special Local Need Registration Application Fee	\$100
Examination Fees (for each exams' Private Applicator exempt)	
In Baton Rouge	\$ 25
At Meeting outside Baton Rouge	\$ 25
At District Offices	\$ 50
Duplicate Licenses and/or Certification Cards	Same as Original
Requested Lists and Copies	Postage + minimum of \$1 or Postage + \$0.25 /page

B. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:3203, R.S. 3:3221, R.S. 3:3222 and R.S. 3:3251.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Advisory Commission on Pesticides, LR 10:194 (March 1984), amended by the Department of Agriculture and Forestry, Advisory Commission on Pesticides, LR 15:76 (February 1989), LR 24:281 (February 1998), Department of Agriculture and Forestry, Office of Commissioner, Advisory Commission on Pesticides, LR 30:197 (February 2004).

Bob Odom
Commissioner

0402#059

RULE

**Department of Agriculture and Forestry
Office of the Commissioner
Agricultural Commodities Commission**

Agricultural Commodities (LAC 7:XXVII.128)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Louisiana Agricultural Commodities, has amended regulations regarding an increase in fees for re-grading grain sampling as well as fees to inspect and register moisture meters.

Louisiana is experiencing an unprecedented shortfall in state finances. The legislature has cut the department's budget; therefore, using other department funds is not a continuing option. The fiscal year begins on the first of July. Adoption of these Rules will take place in accordance with the Administrative Procedure Act.

**Title 7
AGRICULTURE AND ANIMALS
Part XXVII. Agricultural Commodity Dealer
and Warehouse Law**

**Chapter 1. Agricultural Commodities Commission
Subchapter E. Assessments and Fees**

§128. Fees: Amount, Time of Payment

A. - C.3. ...

4. Official Services (including sampling except as indicated)

Online D/T sampling inspection service (sampling, grading and certification), per regular hour	\$25.00
Overtime hourly rate, per hour	\$40.00
Unit Inspection Fees:	
Hopper Car, per car	\$20.00
Boxcar, per car	\$15.00
Truck/Trailer, per carrier	\$10.00
Barge, per 1,000 bushels	\$ 2.50
Submitted sample inspection	\$12.00
Re-grade grain sample	\$15.00

D. Moisture Meter Registration and Inspection Fee

1. A registration fee of \$20 per meter and an inspection fee of \$40 per meter to be paid by the owner or user of every moisture measuring device used or held for use at any commercial facility which receives, holds, dries, stores, mills, processes or otherwise deals in agricultural commodities in the state, when such use or intended use is for the purpose of determining discounts or other price variances in connection with the purchase or sale of such commodity, said device shall be registered with the Louisiana Department of Agriculture and Forestry.

2. Registration shall be required on or before May 15 of each year or within two business days of acquisition of a new or additional unregistered moisture measuring device for the purpose set forth in Paragraph 1 of this Section. Registration forms will be provided by the department and shall state the name and address of the commercial facility which owns or uses the device, the number of devices used and held for use, the brand name(s) of the device(s), and

such other information as may be deemed necessary to carry out the provisions of this Subchapter.

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agro-Consumer Services, Agricultural Commodities Commission, LR 12:287 (May 1986), amended LR 14:528 (August 1988), LR 19:889 (July 1993), LR 23:196 (February 1997), LR 27:815 (June 2001), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Agricultural Commodities Commission, LR 30:197 (February 2004).

Bob Odom
Commissioner

0402#057

RULE

Department of Agriculture and Forestry Office of the Commissioner Feed Commission

Feed Commission Inspection Fees (LAC 7:XVII.121)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Feed Commission, amends regulations pertaining to references to the inspection fee since this fee is prescribed in the law. The amounts of the fees for company and label registration are indicated in the attached copies of the Rules. These fees are based on the costs associated with registration, inspection, testing, regulating, and administering the Commercial Feed Law.

Louisiana is experiencing an unprecedented shortfall in state finances. The legislature has cut the department's budget; therefore, using other department funds is not a continuing option. The fiscal year begins on the first of July. These Rules will take place in accordance with the Administrative Procedure Act.

These Rules are enabled by R.S. 3:1901 and R.S. 3:1892.

Title 7

AGRICULTURE AND ANIMALS

Part XVII. Feed Commission

Chapter 1. Commercial Feeds

Subchapter A. Official Feed Rules and Regulations

§121. Fees

A. Each application for registration with the commission shall be accompanied by a registration fee of \$40.

B. Each registrant filing a label with the commission shall pay to the commission a labeling fee of \$10 per label for one to 50 products, \$8 per label for 51 to 200 products, \$6 per label for 201 or more products.

C. Registration shall expire on the last day of June of each year. An additional \$50 late fee will be charged for renewal registrations filed after the last day of June. A late fee will not be charged on initial registrations or registrations of new products filed after the last day of June.

D. If a registrant had no sales in a given quarter, he must still file a tonnage report and pay a minimum tonnage fee of \$10 for that quarter. A registrant shall keep all records necessary to accurately indicate the tonnage and kind of commercial feed sold and shall permit the commissioner or

his authorized representative to examine these records and to verify the statement of tonnage. Tonnage reports shall be made on forms supplied by the commissioner and suitable for providing the necessary tonnage and statistical information. The tonnage reports and inspection fees shall be due and payable on the first day of October, the first day of January, the first day of April and the first day of July. If the report is not filed and payment made within 30 days after the date due, a penalty of 25 percent of the amount due shall be assessed against the registrant. If payment is not made within 30 days after the due date, the amount of fees due, plus the penalty, shall constitute a debt and become the basis of a judgment against the registrant. All information as to the amount of feed sold and business practices of the registrant obtained from tonnage reports or from inspection of records and books shall remain confidential and shall not be revealed by the commissioner or his employees to the public or to any other person.

E. The inspection fee shall be collected only once on each lot of ingredients. To achieve this end, the following provisions shall apply.

1. No fee shall be paid on a commercial feed if a previous manufacturer has paid the fee.

2. No fee shall be paid on customer-formula feeds of the inspection fee has been paid on the commercial feeds, which are used as ingredients therein.

3. No fee shall be paid on commercial feeds, which are used as ingredients for the manufacture of registered commercial feeds. If the fee has already been paid, credit shall be given for that payment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1901 and 3:1892.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Feed Commission, LR 11:223 (March 1985), amended LR 11:944 (October 1985), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Louisiana Feed Commission, LR 30:198 (February 2004).

Bob Odom
Commissioner

0402#062

RULE

Department of Agriculture and Forestry Office of the Commissioner Seed Commission

Tropical Soda Apple and Noxious Weed Seeds (LAC 7:XIII.109 and 145)

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 Louisiana Seed Commission, amended regulations to include Tropical Soda Apple (*Solanum viarum* Dunal) as a prohibitive noxious weed into the List and Limitations of Noxious Weed Seed and Noxious Weeds.

The Department of Agriculture and Forestry, Louisiana Seed Commission amended these rules and regulations for the purpose of preventing the introduction and spread of Tropical Soda Apple, a prohibitive noxious weed in the Federal Seed Act. There are currently seed lots (bahia grass and jointvetch) coming out of Florida contaminated with

TSA. These amendments will allow us to take regulatory action if found in our regular sampling.

These rules are enabled by R.S. 3:1433.

Title 7

AGRICULTURE AND ANIMALS

Part XIII. Seeds

Chapter 1. Louisiana Seed Law

Subchapter A. Enforcement of the Louisiana Seed Law

§109. List and Limitations of Noxious Weed Seed

A. List and Limitations of Noxious Seed

List and Limitations of Noxious Seed	
Name	Limitations
1. Tropical Soda Apple (<i>Solanum viarum Dunal</i>)	Prohibited
2. Field Bindweed (<i>Convolvulus arvensis</i>)	Prohibited
3. Hedge Bindweed (<i>Convolvulus sepium</i>)	Prohibited
4. Nutgrass (<i>Cyperus esculentus, C. rotundus</i>)	Prohibited
5. Itchgrass (<i>Rottboellia exaltata, L., R. cochinchinensis</i>)	Prohibited
6. Balloon Vine (<i>Cardiospermum halicacabum</i>)	Prohibited
7. Cocklebur (<i>Xanthium spp.</i>)	5 per lb.
8. Spearhead (<i>Rhynchospora spp.</i>)	5 per lb.
9. Purple Moonflower (<i>Ipomoea turbinata</i>)	9 per lb.
10. Red Rice (<i>Oryza sativa var.</i>)	9 per lb.
11. Wild Onion and/or Wild Garlic (<i>Allium spp.</i>)	9 per lb.
12. Canada Thistle (<i>Cirsium arvense</i>)	100 per lb.
13. Dodder (<i>Cuscuta spp.</i>)	100 per lb.
14. Johnsongrass (<i>Sorghum halepense</i>)	100 per lb.
15. Quackgrass (<i>Agropyron repens</i>)	100 per lb.
16. Russian Knapweed (<i>Centaurea repens</i>)	100 per lb.
17. Blueweed, Texas (<i>Helianthus ciliaris</i>)	200 per lb.
18. Grass, Bermuda (<i>Cynodon dactylon</i>)	300 per lb.
19. Bracted Plantain (<i>Plantago aristata</i>)	300 per lb.
20. Buckhorn Plantain (<i>Plantago lanceolata</i>)	300 per lb.
21. Cheat (<i>Bromus secalinus</i>)	300 per lb.
22. Hairy Chess (<i>Bromus commutatus</i>)	300 per lb.
23. Corncockle (<i>Agrostemma githago</i>)	300 per lb.
24. Darnel (<i>Lolium temulentum</i>)	300 per lb.
25. Dock (<i>Rumex spp.</i>)	300 per lb.
26. Horsenettle (<i>Solanum carolinense</i>)	300 per lb.
27. Purple Nightshade (<i>Solanum elaeagnifolium</i>)	300 per lb.
28. Sheep Sorrel (<i>Rumex acetosella</i>)	300 per lb.
29. Morning Glory (<i>Ipomoea spp.</i>)	18 per lb.
30. Wild Poinsettia (<i>Euphorbia heterophylla, E. dentata</i>)	18 per lb.
31. Wild Mustard and Wild Turnips (<i>Brassica spp.</i>)	300 per lb.
32. Hemp Sesbania, Coffeebean, Tall Indigo (<i>Sesbania exaltata</i>)	300 per lb.
33. Curly Indigo (<i>Aeschynomene virginica</i>)	300 per lb.
34. Mexican Weed (<i>Caperonia castaneaefolia</i>)	300 per lb.
Sum of Total Noxious Weed (Subject to limitations above)	500 per lb.

B. Limitations on noxious and prohibited weeds are listed on individual certified crop seed regulations. Noxious weed seed tolerance of one for regulatory action on certified seed being offered for sale in Louisiana for those noxious weed seed which are prohibited by the Louisiana Certified Seed Regulations for the specific seed kind in question.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended LR 5:96 (May 1979), LR 7:285 (June 1981), LR 8:563 (November 1982), LR 9:197, 206 (April 1983), LR 12:825 (December 1986), LR 14:605 (September 1988), LR 23:1282 (October 1997), amended by the Department of Agriculture and Forestry, Office of

the Commissioner, Louisiana Seed Commission, LR 30:199 (February 2004).

§145. Noxious Weeds

A. The following weeds, together with the specific limitation shown for each weed, are designated as noxious weeds.

Limitations on Weed Seed in Certified Seed	(By Pounds)
1. Tropical Soda Apple (<i>Solanum viarum Dunal</i>)	Prohibited
2. Field Bindweed (<i>Convolvulus arvensis</i>)	Prohibited
3. Hedge Bindweed (<i>Convolvulus sepium</i>)	Prohibited
4. Nutgrass (<i>Cyperus esculentus, C. rotundus</i>)	Prohibited
5. Itchgrass (<i>Rottboellia exaltata L., R. cochinchinensis</i>)	Prohibited
6. Balloonvine (<i>Cardiospermum halicacabum</i>)	Prohibited
7. Cocklebur (<i>Xanthium spp.</i>)	5 per lb.
8. Spearhead (<i>Rhynchospora sp p.</i>)	5 per lb.
9. Purple Moonflower (<i>Ipomoea turbinata</i>)	9 per lb.
10. Red Rice (<i>Oryza sativa var. </i>)	9 per lb.
11. Wild Onion and/or Wild Garlic (<i>Allium spp.</i>)	9 per lb.
12. Canada Thistle (<i>Cirsium arvense</i>)	100 per lb.
13. Dodder (<i>Cuscuta sp p.</i>)	100 per lb.
14. Johnsongrass (<i>Sorghum halepense</i>)	100 per lb.
15. Quackgrass (<i>Agropyron repens</i>)	100 per lb.
16. Russian Knapweed (<i>Centaurea repens</i>)	100 per lb.
17. Blueweed, Texas (<i>Helianthus ciliaris</i>)	200 per lb.
18. Bermuda Grass (<i>Cynodon dactylon</i>)	300 per lb.
19. Bracted Plantain (<i>Plantago aristata</i>)	300 per lb.
20. Buckhorn Plantain (<i>Plantago lanceolata</i>)	300 per lb.
21. Cheat (<i>Bromus secalinus</i>)	300 per lb.
22. Hairy Chess (<i>Bromus commutatus</i>)	300 per lb.
23. Corncockle (<i>Agrostemma githago</i>)	300 per lb.
24. Darnel (<i>Lolium temulentum</i>)	300 per lb.
25. Dock (<i>Rumex spp.</i>)	300 per lb.
26. Horsenettle (<i>Solanum carolinense</i>)	300 per lb.
27. Purple Nightshade (<i>Solanum elaeagnifolium</i>)	300 per lb.
28. Sheep Sorrel (<i>Rumex acetosella</i>)	300 per lb.
29. Morning Glory (<i>Ipomoea spp.</i>)	18 per lb.
30. Wild Poinsettia (<i>Euphorbia heterophylla, E. dentate</i>)	18 per lb.
31. Wild Mustard and Wild Turnips (<i>Brassica spp.</i>)	300 per lb.
32. Hemp Sesbania, Coffee Bean, Tall Indigo (<i>Sesbania exaltata</i>)	300 per lb.
33. Curly Indigo (<i>Aeschynomene virginica</i>)	300 per lb.
34. Mexican Weed (<i>Caperonia castaneaefolia</i>)	300 per lb.
Sum of Total Noxious Weed Seed (Subject to limitation above)	500 per lb.

B. Noxious weed seeds are permitted in seed to be certified, within the limitations specified in §145.A, unless prohibited or otherwise limited under the specific rules for the crop or variety entered for certification. (See §§155-221 for limitations on each noxious weed for each crop or variety.)

C. Limitations on noxious weeds (in the field or in seed to be certified), may be more restrictive for a particular crop or variety to be certified than the limitations shown in §145.A above. The limitation on noxious weeds stated in §§155-221 shall supersede the limitations shown in §145.A whenever a more restrictive limitation is stated in the specific requirements for the crop or variety.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 8:566 (November 1982), amended LR 9:197 (April 1983), LR 12:825 (December 1986), LR 14:605 (September 1988), LR 23:1283 (October 1997), amended by the Department of Agriculture and Forestry, Office of the

Bob Odom
Commissioner

0402#061

RULE

**Department of Agriculture and Forestry
Office of Forestry**

**Tree Seedling Prices
(LAC 7:XXXIX.301)**

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry, Office of Forestry, has amended rules and regulations regarding tree seedling prices.

The Office of Forestry nursery operations are an ancillary budget operation and all production and operating costs must be covered entirely by revenue generated from seedling sales. Seedling prices are set to reflect, as closely as possible, a break-even pricing structure. The changes to the seedling prices are designed to bring sales revenue in line with production costs and to establish an efficient and organized pricing structure that is consistent with tree seedling marketing in the state and the region.

These Rules comply with and are enabled by R.S. 3:4303.

Title 7

AGRICULTURE AND ANIMALS

Part XXXIX. Forestry

Chapter 3. Tree Seedlings

§301. Seedling Prices

A. The Louisiana Forestry Commission adopts the following prices for forest tree seedlings.

Improved Pine Seedlings	\$ 35 per 1000 seedlings
Advanced Generation Seedlings	\$ 42 per 1000 seedlings
Special Pine Seedlings	\$ 75 per 1000 seedlings
Hardwood Seedlings	\$200 per 1000 seedlings
Baldcypress Seedlings	\$200 per 1000 seedlings

B.1. Volume discounts for bulk loblolly/slash pine seedling orders and contracts shall be as follows.

Order/Sales Volume (Number of Seedlings)	Proposed Discounted Sales (M = 1,000 Seedlings)
-1,000,000	\$35.00/M
1,000,001-2,000,000	\$34.00/M
2,000,001-3,000,000	\$33.00/M
3,000,001-4,000,000	\$32.00/M
4,000,001-5,000,000	\$31.00/M
5,000,001-6,000,000	\$30.00/M
6,000,001+	\$29.00/M

NOTE: The Office of Forestry seed costs shall be deducted from these prices when seedlings are produced from seed supplied by the customers.

2. When there is a surplus of seedlings above planned or expected sales, a more accelerated rate of price reductions will be considered, subject to the approval of the State Forester and/or the Commissioner of Agriculture and Forestry.

3. This accelerated rate of discount will be applied no earlier than 30 days prior to the anticipated end of the annual lifting season.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:1503, redesignated R.S. 3:4303.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Forestry, Forestry Commission, LR 8:285 (June 1982), amended LR 10:468 (June 1984), amended by the Department of Agriculture and Forestry, Office of Forestry, and the Louisiana Forestry Commission LR 13:432 (August 1987), LR 19:610 (May 1993), LR 21:671 (July 1995), LR 22:1210 ((December 1996), LR 26:2437 November 2000), amended by the Department of Agriculture and Forestry, Office of Forestry, LR 30:200 (February 2004).

Bob Odom
Commissioner

0402#056

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Definition of Highly Qualified Teachers and Paraprofessionals (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education amended *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy outlines a Louisiana definition for highly qualified teachers and highly qualified paraprofessionals, as required by the No Child Left Behind Act of 2001.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:183 (April 1975), LR 1:311 (July 1975), LR 1:399 (September 1975), LR 1:541 (December 1975), amended LR 28:760 (April 2002), LR 28:763 (April 2002), LR 28:765 (April 2002), LR 28:990 (May 2002), LR 30:200 (February 2004).

State of Louisiana

Highly Qualified Teacher Requirements

Background Information

The requirement that teachers be highly qualified applies to any public elementary, middle, or secondary school teacher. The Louisiana Department of Education (LDE) is the state agency/entity responsible for prescribing qualifications and providing for the certification of teachers under authority of (R.S. 17:7.1).

The Louisiana Department of Education is collaborating with the Board of Elementary and Secondary Education and

the Board of Regents on state activities under No Child Left Behind (NCLB) Act of 2001 related to "highly qualified teachers."

Timeline

All teachers hired on or after the first day of the 2002-2003 school year to work in programs supported by Title I funds and who teach core academic subjects must be highly qualified. All teachers of core academic subjects must meet highly qualified status by the end of the 2005-2006 school year.

Statutory Requirements for Certification

To obtain initial Louisiana certification, one must hold at least a baccalaureate degree, have earned a minimum grade point average of a cumulative 2.50, and have demonstrated subject knowledge and teaching skills in the certification area by passing rigorous exams required in Louisiana.

Academic Major

In the State of Louisiana, for the purpose of NCLB, teachers who completed an academic content major are highly qualified in that content area.

Advanced Certification

For the purpose of NCLB, advanced certification is defined as having a master's degree or higher degree in the content area. Teachers qualifying as highly qualified under this option must meet all applicable state laws.

Advanced Credentialing

Advanced credentialing has been defined as successful completion of a rigorous credentialing process that is based on a high objective uniform standard. The National Board of Professional Teaching Standards uses a process for certifying its candidates that meets this standard.

Applicability

The requirement that "all" teachers be highly qualified applies to "all public elementary and secondary school teachers" assigned to core academic subjects. Special education teachers, including teachers who teach students identified as "academically gifted," who are providing instruction in core academic subjects must meet the "highly qualified" requirements of the ESEA.

Core Academic Subjects

Core academic subjects have been defined in the mandate as English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. States may decide which arts courses will be considered as core academic subjects.

Standard Teaching Certificates

The State of Louisiana currently issues different standard teaching certificates to persons who have completed a state-approved teacher education program (through a traditional or alternate approach) and who earned a degree from a regionally accredited institution of higher education or an approved private provider. The type and a brief description of each standard license follow.

Out of State Certificate—Issued to a teacher certified in another state who meets all requirements for a Louisiana certificate, except for the PRAXIS examinations. Teacher must demonstrate subject matter competency by taking and passing the rigorous state academic subject test (PRAXIS) in each of the content areas in which he/she is seeking certification; *or*, the teacher must provide evidence of at least

four years of successful teaching experience in another state, complete one year of employment as a teacher in Louisiana public school systems, and secure the recommendation of the local superintendent of the employing school system for continued employment.

Level 1 Professional Certificate—After July 1, 2002, issued to teachers who complete a state approved teacher preparation program (traditional or alternative path), demonstrate subject matter competency by taking and passing the rigorous state academic subject test (PRAXIS) in each of the content areas in which he/she is seeking certification, and who are recommended by an accredited college/university to receive a Level 1 Professional Certificate; *or*

Teachers seeking alternate certification must complete an approved Practitioner Teacher or other alternate program, pass PRAXIS, and be recommended by the alternate program provider to receive a Level 1 Professional Certificate; *or*

Teacher must meet the requirements of an out-of-state certified teacher.

A teacher may hold a Level 1 certificate for three (3) years in his/her career, with the possibility of one three-year extension of the certificate under specified circumstances.

Level 2 Professional Certificate—Teachers with a Level 1 Professional Certificate must successfully complete the Louisiana Teacher Assistance and Assessment Program and teach for three years in an area of certification to receive a Level 2 Professional Certificate. Teachers must complete 150 continuing learning units (CLUs) of professional development over a five (5) year time period in order to renew a Level 2 Professional License.

Level 3 Professional Certificate—Teachers with a Level 1 or Level 2 Certificate are eligible for a Level 3 Certificate if they complete a master's degree, teach for five years in an area of certification, and successfully complete the Louisiana Teacher Assistance and Assessment Program. Teachers must complete 150 continuing learning units (CLUs) of professional development over a five (5) year time period in order to renew a Level 3 Professional License.

Type C Certificate—Type C certificates were issued prior to July 1, 2002. Persons who received the Type C certificate prior to July 1, 2002, are able to continue in the track leading to permanent licensure. Teachers were issued this license after successful completion of an approved undergraduate or alternate teacher education program, passing the required licensing exams for the area of certification, and receiving the recommendation of an accredited college/university to receive a Type C Certificate.

Type B Certificate—Candidates currently holding Type B certificates will continue to hold these certificates, which are valid for life provided the holder does not allow any period of five or more consecutive years of disuse to accrue and/or the certificate is not revoked by the State Board of Elementary and Secondary Education, acting in accordance with law. To receive a Type B certificate, teachers holding a Type C certificate must successfully complete the Louisiana Teacher Assistance and Assessment Program and teach for three years in an area of certification.

Type A Certificate—Candidates currently holding Type A certificates will continue to hold these certificates, which are valid for life provided the holder does not allow any period of five or more consecutive years of disuse to accrue and/or the certificate is not revoked by the State Board of Elementary and Secondary Education, acting in accordance with law. To receive a Type A certificate, teachers holding a Type C or Type B certificate must earn a master's degree, successfully complete the Louisiana Teacher Assistance and Assessment Program, and teach for five years in an area of certification.

Practitioner License

The State of Louisiana issues four different practitioner teacher licenses to persons who are enrolled in a state-approved teacher education alternate program. Because these alternate routes to certification meet the requirements established in the federal mandate, teachers who meet criteria for enrollment in the alternate program are identified as "highly qualified."

The type of practitioner license corresponds to the alternate program type, as follows:

Practitioner License 1—Practitioner Teacher Program

Practitioner License 2—Non-Master's/Certification Only Program

Practitioner License 3—Master's Degree Certification Program

Practitioner License 4—Candidates not in a new alternate program who have at least a 2.50 grade point average, passed the Praxis Pre-Professional Skills Tests (PPSTs) and the Praxis content-specialty exam (or accumulated 31 semester hours of coursework in the specific content area of certification), but still lack full requirements for certification.

Nonstandard Teaching Certificates

The State of Louisiana currently issues three non-standard, temporary certificates. Teachers holding a temporary certificate do not meet the NCLB definition of "highly qualified teacher" because they have not demonstrated subject matter competency under the No Child Left Behind legislation. The nonstandard certificate types and descriptions follow.

Temporary Authority to Teach—issued to an individual who graduates from a teacher preparation program but does not pass PRAXIS, or to an individual with a non-education

degree who does not pass PRAXIS and is enrolled or must enroll in an alternate program leading to certification.

Out-of-Field Authorization to Teach—issued to an individual who holds a Louisiana teaching certificate but is teaching outside of the certified area.

Temporary Employment Permit—issued to an individual who meets all certification requirements with the exception of passing one NTE examination but scores within ten percent of the composite score required for passage, or who has not passed all required Praxis exams but has an aggregate score equal to or above the total required on all tests.

Technical Assistance and Support

The Louisiana Department of Education will provide technical assistance and support to local education agencies to ensure that the state is faithful in the implementation of the NCLB mandate. Technical assistance and support will include, but will not be limited to, the following:

Providing each candidate on a temporary license with a "feedback sheet": The Certification Specialists and Certification Counselors who receive the requests evaluate the transcripts (if available) and prepare feedback sheets. NOTE: The feedback sheets are prepared based on the information submitted to the state by the district representative.

Monitoring of certification folders: A monitoring plan is currently being developed.

Collaborating with the Board of Regents (BOR) and college/university personnel to discuss ways that college/university programs might assist the state by addressing the areas of need (e.g., if special education severe profound programs are needed in certain areas of the state, SDE staff will collaborate with university personnel and BOR to facilitate provision of such a program).

Prescribing the shortest route to certification: This activity is handled at the state level by the certification specialists and at the local level by the certification counselors.

Recruiting candidates to pursue teaching as a career, using a two-pronged approach: (a) a human resources component, through the regional certification counselors; and (b) a technological component through the Teach Louisiana website at www.teachlouisiana.net.

Highly Qualified Teacher in Louisiana New to the Profession

Overall	Elementary	Middle School	Secondary
Holds a certificate to teach in Louisiana (at least a Type C or Level 1 certificate, an Out-of-State certificate, or a Practitioner License); and	Holds elementary school education certificate, a special education certificate that includes elementary school grades, or a special foreign language certificate to teach a specific foreign language in grades K-8; and	Holds middle school education certificate; middle school math, English/ language arts, science, or social studies; a special education area that includes middle school grades; a secondary academic content area; or special foreign language certificate to teach a specific foreign language in grades K-8; AND	Holds certificate for every core academic subject the individual teaches; and
Has the equivalent of an academic major; or		Has the equivalent of an academic major in a content area appropriate to the middle school level, for every core academic subject the individual teaches; OR	Has the equivalent of an academic major for every core academic subject the individual teaches; or
Has passed the Louisiana licensing content-specific Praxis exam; or	Has passed the Louisiana content-specific elementary education licensing exam; and	Has passed the Louisiana subject-specific licensing exam required for a middle school academic content area or for a secondary (grades 7-12) academic content area that is appropriate to the middle school level, for every core academic subject the individual teaches; or	Has passed the Louisiana subject-specific licensing exam for every core academic subject the individual teaches; or
Has earned a master's degree in the content area in which he or she teaches; and		Has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches; and	
Does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis.			

Highly Qualified Teacher in Louisiana

"Not New" Elementary Teacher	
1	Holds elementary school education certificate, a special education certificate that includes elementary school grades, or a special foreign language certificate to teach a specific foreign language in grades K-8; and
2	Does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
3	Has passed the Louisiana content-specific elementary education licensing exam; or
4	Holds a valid National Board for Professional Teaching Standards (NBPTS) certification in early childhood, middle childhood, or in a content area basic to the elementary school (e.g., Early Language Arts, Early Mathematics) and is teaching in the NBPTS area of certification; OR
5	Has at least 12 semester hours of credit in each of the four core disciplines (English/language arts, including reading and writing; math; science; and social studies); or
<p>QUALIFIES UNDER</p> <p>High Objective Uniform State Standard of Evaluation (HOUSSE)</p> <p>For NOT NEW ELEMENTARY TEACHERS</p> <p>(By School Year 2005-2006)</p> <p>A "not new" teacher who does not meet the requirements of paragraphs number 3, 4, or 5 above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes ninety (90) Continuing Learning Units (CLUs) by the end of 2005-2006.</p> <p>*A Continuing Learning Unit (CLU) is a professional development activity that builds capacity for effective, research-based, content focused teaching and learning that positively impacts student achievement. The Louisiana Professional Development Guidance will be used to define the 90 continuing learning units.</p>	

Highly Qualified Teacher in Louisiana

"Not New" Middle School Teachers		"Not New" Secondary School Teachers
1	Holds a valid teaching certificate appropriate for grades 6-8 (e.g., Elementary Education 1-8, Upper Elementary Education 5-8, Middle School Education); a special education area that includes middle school grades; a secondary academic content area; or special foreign language certificate to teach a specific foreign language in grades K-8; and	Holds certificates for every core academic subject the individual teaches; and
2	Does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis; and	Does not presently have certification or licensure requirements waived on an emergency, temporary, or provisional basis; and
3	<p>a) Has passed Louisiana subject-specific licensing exam required for a middle school academic content area or for a secondary (grades 7-12) academic content area that is appropriate to the middle school level, for every core academic subject the individual teaches; or</p> <p>b) Has the equivalent of an academic major in a content area appropriate to the middle school level, for every core academic subject the individual teaches; OR</p> <p>c) Has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches; or</p> <p>d) Holds a valid National Board for Professional Teaching Standards (NBPTS) certification in a core content area and is teaching in the NBPTS area of certification; or</p>	<p>a) Has passed the Louisiana subject-specific licensing exam required for a secondary (grades 7-12) academic content area, for every core academic subject the individual teaches; OR</p> <p>b) Has the equivalent of an academic major in a secondary content area, for every core academic subject the individual teaches; OR</p> <p>c) Has earned a master's degree in a pure content area (not in education) for every core academic subject the individual teaches; or</p> <p>d) Holds a valid National Board for Professional Teaching Standards (NBPTS) certification in a core content area and is teaching in the NBPTS area of certification; or</p>

QUALIFIES UNDER

High Objective Uniform State Standard of Evaluation (HOUSSE)
For "Not New" Middle School and Secondary Teachers
(By School Year 2005-2006)

A "not new" teacher who does not meet the requirements of the paragraphs 3(a), 3(b), 3(c), or 3(d) above is considered highly qualified if he/she is state certified and teaching in the area of certification and if he/she completes ninety (90) Continuing Learning Units (CLUs) by the end of 2005-2006.

*A Continuing Learning Unit (CLU) is a professional development activity that builds capacity for effective, research-based, content focused teaching and learning that positively impacts student achievement. The Louisiana Professional Development Guidance will be used to define the 90 continuing learning units.

State of Louisiana? Highly Qualified Paraprofessional Requirements and Institutions of Higher Education for Paraprofessional Education

The No Child Left Behind Act of 2001 was signed into law by President Bush on January 8, 2002. The Act was established to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging state academic achievement standards and state academic assessments. Title I, as amended by the No Child Left Behind Act, has new requirements for paraprofessionals.

Definition of Paraprofessional

For the purposes of Title I, Part A, a paraprofessional is an employee who provides instructional support in a program supported with Title I, Part A funds.

This includes paraprofessionals who (1) provide one-on-one tutoring if such tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher, (2) assist with classroom management, such as organizing instructional and other materials, (3) provide instructional assistance in a computer laboratory, (4) conduct parental involvement activities, (5) provide support in a library or media center, (6) act as a translator, or (7) provide instructional support services under the direct supervision of a teacher [Title I, section 1119(g)(2)].

Individuals who function as interpreters/translators and who are providing only communication assistance (not instructional support) and who possess one of the following Educational Interpreter certificates: Ancillary Provisional Certificate, Ancillary Grandfather Certificate, or Qualified Ancillary Certificate, are not considered paraprofessionals under Title I.

Individuals who work in food services, cafeteria or playground supervision, personal care services, non-instructional computer assistance, and similar positions are not considered paraprofessionals under Title I.

Requirements for Title I Paraprofessionals

All Title I paraprofessionals hired on or before January 8, 2002, and working in a program supported with Title I funds must meet the following requirements by January 8, 2006. All Title I paraprofessionals hired after January 8, 2002, must meet the following requirements to be hired:

Possess a secondary school diploma or its recognized equivalent (e.g., Graduate Equivalency Examination - GED). (NOTE: This includes paraprofessionals who serve as translators or who conduct parental involvement activities.); and

Pass a state approved assessment for paraprofessionals; or

Obtain an associate (or higher) degree at a higher education institution; or

Complete two years of full time study at an institution of higher education.

Louisiana's Pathways for Paraprofessionals to Meet State Requirements

The U.S. Department of Education specifies that paraprofessionals should be able to demonstrate knowledge of and the ability to assist in instruction in the areas of reading, writing, and math, or in "school readiness." Paraprofessionals are expected to have a working knowledge of these academic areas. Louisiana will offer all paraprofessionals three pathways to meet federal requirements.

Pathway 1: State Test

A paraprofessional who passes the ETS Para-Pro Assessment will meet state and federal requirements to be classified as a "highly qualified paraprofessional." A paraprofessional "not new to the profession" who passes the ACT Work Keys assessment and who has successful observations will meet the state and federal requirements to be classified as a "highly qualified paraprofessional."

Pathway 2: Two Years of Full Time Study (48 Semester Credit Hours)

State, district, and post-secondary education personnel collaborated in identifying course requirements for paraprofessionals (within a state approved institution of higher education) that will assist paraprofessionals when instructing students in the areas of reading, writing, math, and school readiness.

Pathway 3: Associate Degree

State, district, and post-secondary education personnel collaborated in identifying course requirements for paraprofessionals (within a state-approved institution of higher education) that will assist paraprofessionals when instructing students in the areas of reading, writing, math, and school readiness.

State Approved Institutions of Higher Education

State-approved higher education institutions may offer coursework to paraprofessionals. To be approved by the state, institutions must be accredited by a nationally recognized accrediting agency/association or granted pre-accreditation status. Newly developed public institutions that are formally seeking accreditation through the Southern Association for Colleges and Schools may obtain pre-accreditation status from the state. A list of approved institutions is available from the Department of Education upon request.

Highly Qualified Paraprofessional in Louisiana

New to the Profession
Pathway 1: Has passed the Educational Testing Service Para-Pro Assessment; OR
Has two years of full-time study (48 semester credit hours) from the recommended list of state-approved institutions of higher education or from a regionally accredited institution(s) of higher education. A total of 18 hours of general education course requirements include English Composition (3), English/Reading (6), and Mathematics (9). For the remaining 30 hours of coursework, acceptance of credit for a course shown on a transcript from an approved higher education institution is left to school district discretion in addressing the needs of the specific job; OR
Has Associate of Arts or Associate of Applied Science degree from a state-approved or regionally accredited institution of higher education.
"Not New" Paraprofessionals (By January 2006)
Pathway 1: Has passed the Educational Testing Service Para-Pro Assessment; OR
Pathway 2: Has two years of full-time study (48 semester credit hours) from the recommended list of state-approved institutions of higher education or from a regionally accredited institution(s) of higher education. A total of 18 hours of general education course requirements include English Composition (3), English/Reading (6), and Mathematics (9). For the remaining 30 hours of coursework, acceptance of credit for a course shown on a transcript from an approved higher education institution is left to school district discretion in addressing the needs of the specific job; or
Pathway 3: Has Associate of Arts or Associate of Applied Science degree from a state-approved or regionally accredited institution of higher education; OR
Pathway 4: Has successfully completed the ACT, Inc., Work Keys skills assessments and on-the-job observation.

Curriculum Pathways for Paraprofessionals Course

Types	Recommended Courses				
	Pathway 1: Para-Pro Assessment	Pathway 2:** 48 credit hours	Pathway 3		
			Associate of Science Degree	Associate of Applied Science Degree (60+ credit hours)	Associate of Arts Degree (60+ credit hours)
*General Education Courses		English Composition (3) English/Reading (6) Mathematics (9)		English Composition (3), Humanities (3), Math - Algebra (3), Natural Sciences (3), Social/Behavioral Science (3)	English Composition (6), Humanities (Eng. Lit.) (6), Math-Algebra, etc. (12), Natural Sciences (15), Social/ Behavioral Sciences (12), Fine Arts (3)
Teacher Preparation Courses				Child/Adolescent Develop. (3)	Select 3 of the following: Child/ Adolescent Develop. (3); Educational Psychology (3); Multi-cultural/Exceptional Education (3); Educational Technology (3); Children's Literature (3)
Paraprofessional Courses		For remaining 30 hours of coursework, acceptance of credit for a course shown on a transcript from an approved institution of higher education is left to school district discretion in addressing the needs of the specific job. Guidelines for prescriptive plan requiring additional course-work: School districts should consider at least 3 hours of reading and at least 12 hours from list of available paraprofessional courses, as follows: Strategies for Teaching and Learning; Assessment of Learning; Classroom and Behavior Management; and Addressing the Needs of Exceptional Children. Discipline-specific electives may include as many as 12 hours of developmental (remedial) courses.		Introduction to Paraprofessional Education (3); Applied Literacy Development (3); Strategies for Teaching and Learning (3); Applied Assessment of Learning (3); Applied Classroom/ Behavior Mgt. (3); Addressing the Needs of Exceptional Children (3); Application of Computer Techno-logy (3); Family, School, & Community Relations (3); Health & Safety in Schools (3); Paraprofessional Practicum- Teaching, Learning, & Record Keeping (3)	

*General Education and Teacher Preparation courses must address the K-12 state content standards, Louisiana Components of Effective Teaching, NCATE standards, and PRAXIS expectations.

**Pathway 2 was formally adopted by the State Board of Elementary and Secondary Education on June 19, 2003, as part of Louisiana's highly qualified paraprofessional definition, after being amended to reflect further collaboration by state department and district personnel, as shown above.

* * *

Weegie Peabody
Executive Director

0402#016

RULE

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Practitioner Teacher Program (LAC 28:I.903)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education has amended to *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy amends current policy to:

(1) provide that the assessment portion of the Louisiana Teacher Assistance and Assessment Program not remain a requirement for full completion of the Practitioner Teacher Program for alternate certification,

(2) retain the mentoring component as a continued support mechanism for the internship for all Practitioner Teacher Program candidates, and

(3) allow eligibility of candidates for Level 1 certificates at the completion of the internship year, provided all other program requirements have been met. This amended policy will allow those completing the Practitioner Teacher Program to become certified prior to completing the assessment portion of the Louisiana Teacher Assistance and Assessment Program, as is the case for all other candidates for initial Louisiana certification.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education, LR 1:183 (April 1975), LR 1:311 (July 1975), LR 1:399 (September 1975), LR 1:541 (December 1975), amended IR 28:2505 (December 2002), LR 29:117 (February 2003), LR 29:119 (February 2003), LR 29:121 (February 2003), LR 30:206 (February 2004).

Practitioner Teacher Program

A. Major Components of the Practitioner Teacher Program

1. Universities, school districts, or private providers (e.g., Teach for America) will be able to offer a Practitioner Teacher Program.

2. Individuals will be considered for admission to a Practitioner Teacher Program if they possess a baccalaureate degree from a regionally-accredited university with a 2.2 or higher GPA* and already possess the content knowledge to teach the subject area(s). To demonstrate knowledge of subject area(s), all individuals (with the exception of those who already possess a graduate degree) will be required to pass the Pre-Professional Skills Test (e.g., reading, writing, and mathematics) for the PRAXIS. Teachers of grades 1-6 (regular and special education) must pass the *Elementary Education Content Knowledge* specialty examination of the PRAXIS (#0014), and teachers of grades 4-8 (regular and special education) must pass the *Middle School Content Knowledge* specialty examination (#0146). Teachers of grades 7-12 (regular and special education) must pass the *specialty examination* on the PRAXIS in the content area(s) (e.g., English, mathematics, science, social studies, etc.) in which they intend to be certified. (*Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider.)

3. If admitted to the Practitioner Teacher Program, individuals who intend to be certified to teach grades 1-6, 4-8, or 7-12 must successfully complete nine credit hours (or 135 contact hours) of instruction during the summer prior to the first year of teaching. Practitioner teachers will be exposed to teaching experiences in field-based schools while involved in course work.

4. All practitioner teachers will teach during the regular school year in the area(s) in which they are pursuing certification and participate in 12 credit hours (or 180 contact hours) of seminars and supervised internship during the fall and spring to address their immediate needs. Practitioner teachers will be observed and provided feedback about their teaching from the program provider. In addition, practitioner teachers will be supported by school-based mentors from the Louisiana Assistance and Assessment Program and by principals.

5. Practitioner teachers who complete the required course requirements (or equivalent contact hours) with a 2.5 or higher GPA and demonstrate *proficiency* during their first year of teaching can obtain a Level 1 Professional License after successfully completing all requirements for the Practitioner Teacher Program (which includes passing scores on the PRAXIS).

6. Practitioner teachers who successfully complete the required courses (or equivalent contact hours) and demonstrate *weaknesses* during their first year of teaching will be required to complete from one to nine additional credit hours/equivalent contact hours. A team composed of the program provider, school principal, mentor teacher, and practitioner teacher will determine the types of courses and hours to be completed. The number of hours, which will be based upon the extent of the practitioner teachers' needs, must be successfully completed within the next two years. The team will also determine when the practitioner teachers should be assessed for the Louisiana Assistance and Assessment Program during the next two year time period. Additionally, for teachers who successfully completed the

Louisiana Assistance and Assessment Program prior to entering the Practitioner Teacher Program, the team will determine if the Louisiana Components of Effective Teaching are still being exhibited by the teacher at the "competent" level and, if so, allow by unanimous decision the teacher to be exempted from completing the Assessment part of the Louisiana Assistance and Assessment Program. The practitioner teachers must successfully complete all requirements for the Practitioner Teacher Program (which includes passing scores on the PRAXIS in the specialty areas) and must teach for a total of three years before receiving a Level 2 Professional License.

7. The State's new Teacher Preparation Accountability System will be used to evaluate the effectiveness of all Practitioner Teacher Programs.

B. Structure for a Practitioner Teacher Program Program Providers

Practitioner Teacher Programs may be developed and administered by:

1. universities;
2. school districts; and
3. other agencies (e.g., Teach for America, Troops for Teachers, Regional Service Centers, etc.).

The same State Teacher Preparation Accountability System will be utilized to assess the effectiveness of the Practitioner Teacher Programs provided by universities, school districts, and other agencies.

Program Process

Areas	Course/Contact Hours	Activities	Support
1. Admission To Program (Spring and Early Summer)		<p>Program providers will work with district personnel to identify Practitioner Teacher Program candidates who will be employed by districts during the fall and spring.</p> <p>To be admitted, individuals must:</p> <ol style="list-style-type: none"> a. possess a baccalaureate degree from a regionally accredited university. b. have a 2.2 GPA on undergraduate work. (*Appropriate, successful work experience can be substituted for the required GPA, at the discretion of the program provider.) c. pass the Pre-Professional Skills Test (e.g., reading, writing, and mathematics) on the PRAXIS. (Individuals who already possess a graduate degree will be exempted from this requirement.) d. pass the content specific examinations for the PRAXIS: <ol style="list-style-type: none"> (1) Practitioner candidates for Grades 1-6 (regular and special education): Pass the Elementary Education Content Knowledge (#0014) examination; (2) Practitioner candidates for Grades 4-8 (regular and special education): Pass the Middle School Content Knowledge (#0146) examination; (3) Practitioner candidates for Grades 7-12 (regular and special education): Pass the content specialty examination(s) (e.g., English, mathematics, etc.) on the PRAXIS in the content area(s) in which they intend to teach. e. meet other non-course requirements established by the program providers. 	
2. Teaching Preparation (Summer)	9 credit hours or 135 equivalent contact hours (5-8 weeks)	<p>All teachers will participate in field-based experiences in school settings while completing the summer courses (or equivalent contact hours).</p> <p>Grades 1-6, 4-8, and 7-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child/adolescent development/psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships.</p> <p>Mild/moderate special education teachers will successfully complete courses (or equivalent contact hours) that focus upon the special needs of the mild/moderate exceptional child, classroom management, behavioral management, assessment and evaluation, methods/materials for mild/moderate exceptional children, and vocational and transition services for students with disabilities.</p>	Program Providers
3. Teaching Internship And First Year Support (Fall and Spring)	12 credit hours or 180 equivalent contact hours throughout the year.	<p>Practitioner teachers will assume full-time teaching positions in districts. During the school year, these individuals will participate in two seminars (one seminar during the fall and one seminar during the spring) that address immediate needs of the Practitioner Teacher Program teachers and will receive one-on-one supervision through a year-long internship provided by the program providers. The practitioner teacher will also receive support from school-based mentor teachers (provided by the Louisiana Teacher Assistance and Assessment Program) and principals.</p>	Program Providers, Principals and Mentors

4. Teaching Performance Review (End of First Year)		Program providers, principals, mentors, and practitioner teachers will form teams to review the first year teaching performance of practitioner teachers and to determine the extent to which the practitioner teachers have demonstrated teaching proficiency. If practitioner teachers demonstrate proficiency, they will enter into the assessment portion of the Louisiana Teacher Assistance and Assessment Program during the next fall. (If a practitioner teacher who passed the assessment portion of the Louisiana Teacher Assistance and Assessment Program prior to entering the Practitioner Teacher Program continues to demonstrate the Louisiana Components of Effective Teaching at the "competent" level, the team may, by unanimous decision, exempt the teacher from completing the Assessment part of the Louisiana Assistance and Assessment Program.) If weaknesses are cited, the teams will identify additional types of instruction needed to address the areas of need. Prescriptive plans that require from one to nine credit hours (or 15-135 equivalent contact hours) of instruction will be developed for practitioner teachers. In addition, the teams will determine whether the practitioner teachers should participate in the new teacher assessment during the fall or whether the practitioner teachers should receive additional mentor support and be assessed after the fall.	
5. Prescriptive Plan Implementation (Second Year)	9 credit hours (or 15-135 equivalent hours)	Practitioner teachers who demonstrate areas of need will complete prescriptive plans.	Program Providers
6. Louisiana Assessment Program (Second Year)		Practitioner teachers will be assessed during the fall or later depending upon their teaching proficiencies.	Program Providers
7. Praxis Review (Second Year)		Program providers will offer review sessions to prepare practitioner teachers to pass remaining components of the PRAXIS.	Program Providers
8. Certification Requirements (Requirements must be met within a three-year time period. A practitioner teacher's license will not be renewed if all course requirements are not met within these three years.)		<p>Program providers will submit signed statements to the Louisiana Department of Education to indicate that the practitioner teachers completed Practitioner Teacher Programs and met the following requirements within a three-year time period:</p> <ol style="list-style-type: none"> 1. passed the PPST components of the PRAXIS. (Note: This test was required for admission.) 2. completed the Teaching Preparation and Teaching Internship segments of the program with a 2.5 or higher cumulative GPA. 3. completed prescriptive plans (if weaknesses were demonstrated). 4. passed the specialty examination (PRAXIS) for their area(s) of certification. <ol style="list-style-type: none"> a. Grades 1-6: Elementary Education Content Knowledge Examination #0014 (Note: This test was required for admission) b. Grades 4-8: Middle School Content Knowledge Exam (#0146); c. (Note: This test was required for admission.) d. Grades 7-12: Specialty content test in areas to be certified. (Note: This test was required for admission.) e. Mild/Moderate Special Education 1-12: Special Education (to be determined) 5. passed the Principals of Learning and Teaching examination (PRAXIS) <ol style="list-style-type: none"> a. Grades 1-6: Principles of Learning and Teaching; b. Grades 4-8: Principles of Learning and Teaching; c. Grades 7-12: Principles of Learning and Teaching. 	
9. Ongoing Support (Second and Third Year)		Program providers will provide support services to practitioner teachers during their second and third years of teaching. Types of support may include on-line support, Internet resources, special seminars, etc.	Program Providers
10. Professional License (Practitioner License to Type 2)		Practitioner teachers will be issued a Practitioner License when they enter the program. They will be issued a Level 1 Professional License once they have successfully completed all requirements of the program; after three years of teaching they will be eligible for a Level 2 license.	

Undergraduate/Graduate Courses and Graduate Programs

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

Weegie Peabody
Executive Director

0402#015

RULE

Board of Elementary and Secondary Education

Bulletin 1963? Louisiana Arts Content Standards
State Standards for Curriculum Development
(LAC 28:LI.Chapters 1-9)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Elementary and Secondary Education adopted revision of *Bulletin 1963? Louisiana Arts Content Standards*. This document replaces any previously advertised versions. Bulletin 1963, which was originally approved by BESE in 1997, has been revised to ensure it is up-to-date and appropriate to serve as the foundation for assessment development. The *Louisiana Arts Content Standards* will benefit district fine arts education programs throughout the state by serving as a guide for curriculum development and instruction in fine arts education. With a strong emphasis on developing knowledge, skills, and habits, these content standards are focused on student and society's needs. With their adoption, Louisiana fine arts education programs will be closely aligned with the *National Standards for Arts Education*.

Title 28

EDUCATION

Part LI. Bulletin 1963? Louisiana Arts Content Standards

Chapter 1. General Provisions

§101. Introduction

A. The arts? dance, music, theatre arts, and visual arts, are fundamental to the intellectual, social, emotional, and physical development of Louisiana students in the twenty-first century. The arts draw on a range of intelligence, aesthetics, and learning styles not addressed in most educational environments.

B. Students of the arts are encouraged to use their imaginations, to develop personal discipline, and to find multiple solutions to problems. They learn to respond to events and experiences with confidence and to communicate their feelings and viewpoints through appropriate creative outlets.

C. Business demands workers who possess an ability to communicate, to be flexible, and to diagnose problems and find creative solutions. The arts preceded speech as man's first language; they assisted in the development of the skills of communication and the integration of basic skills of reading, writing, science, and mathematics. These skills help students shape their lives, their communities, and their nation. The arts make all subjects come alive.

D. The Louisiana Arts Content Standards bring together the basic content of the four disciplines of dance, music, theatre arts, and visual arts, into one common set of standards essential for a comprehensive arts education. The twenty-first century, the age of information, requires more from the next generation of students. The relevance of education in a rapidly changing society will depend on converging the aims of education and the workforce for well-rounded, educated students who will be productive members of society. The arts will assist in the achievement of these aims with the implementation of these rigorous and challenging content standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:209 (February 2004).

§103. Standards of Arts Education

A. Creative Expression. Creative Expression is the ability to imagine, organize and interpret ideas for expression in the process of creating and producing art forms which involve inspiration, analysis, and problem solving.

1. Standard. Students develop creative expression through the application of knowledge, ideas, communication skills, organization abilities, and imagination.

B. Aesthetic Perception. Aesthetic Perception is the ability to perceive the unique characteristics of natural environments and human creations, to respond to aesthetic ideas and experiences, and to develop awareness of beauty and meaning in the arts.

1. Standard. Students develop aesthetic perception through the knowledge of art forms and respect for their commonalities and differences.

C. Historical and Cultural Perspective. Historical and Cultural Perspective is the ability to recognize the arts as a reflection of individual and cultural expression and to appreciate the aspects of history and human experience.

1. Standard. Students develop historical and cultural perspective by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

D. Critical Analysis. Critical Analysis is the ability to interpret, analyze and synthesize the performing and visual arts to form judgments based on sufficient and appropriate criteria.

1. Standard. Students make informed verbal and written observations about the arts by developing skills for critical analysis through the study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:209 (February 2004).

§105. Definitions

Assessment? a process through which evidence is gathered in a range of *content areas* to determine both a student's understanding and the ability to apply that understanding.

Benchmark? a broad statement of process and/or content that is used as a reference to develop curricula and to assess student progress.

Content Area? a field of study or branch of knowledge formally referred to as a subject area or discipline.

Content Standard? a description of what students should know and be able to do through subject matter, knowledge, proficiencies, etc., gained as a result of their education.

Focus? a statement describing the importance of a content strand.

Foundation Skills? processes that are common to all areas and levels of education and that are intended to suggest methods and objectives of instructional strategies.

Framework? a document for a *content area* that reflects national standards and provides a guiding vision of its content and purpose.

Integrated? the combining the elements across the strands within a particular *content area* or *framework*.

Interdisciplinary? the combining of the elements across the various *content areas* or *frameworks*.

Performance Standards? the level of knowledge or proficiency that students should manifest as a result of their education.

Strands? categories within particular *content areas*, which may vary from discipline to discipline. *Strands* are interrelated and should be *integrated*, rather than taught in isolation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:209 (February 2004).

§107. Foundation Skills

A. The following foundation skills shall apply to all students in all disciplines. These foundation skills are listed numerically in parentheses after each benchmark in this Part LI.

1. *Communication?* a process by which information is exchanged and a concept of "meaning" is created and shared between individuals through a common system of symbols, signs, or behavior. Students should be able to communicate clearly, fluently, strategically, technologically, critically, and creatively in society and in a variety of workplaces. This process can best be accomplished through use of the following skills:

- a. reading;
- b. writing;
- c. speaking;
- d. listening;
- e. viewing; and
- f. visually representing.

2. *Problem Solving?* the identification of an obstacle or challenge and the subsequent application of knowledge and thinking processes, which include reasoning, decision making, and inquiry in order to reach a solution using multiple pathways, even when no routine path is apparent.

3. *Resource Access and Utilization?* the process of identifying, locating, selecting, and using resource tools to help in analyzing, synthesizing, and communicating information. The identification and employment of appropriate tools, techniques, and technologies are essential to all learning processes. These resource tools include:

- a. pen;
- b. pencil and paper;
- c. audio/video materials;
- d. word processors;

- e. computers;
- f. interactive devices;
- g. telecommunication; and
- h. other emerging technologies.

4. *Linking and Generating Knowledge?* the effective use of cognitive processes to generate and link knowledge across the disciplines and in a variety of contexts. In order to engage in the principles of continual improvement, students must be able to transfer and elaborate on these processes. *Transfer* refers to the ability to apply a strategy or content knowledge effectively in a setting or context other than that in which it was originally learned. *Elaboration* refers to monitoring, adjusting, and expanding strategies into other contexts.

5. *Citizenship?* the application of the understanding of the ideals, rights, and responsibilities of active participation in a democratic republic that includes:

- a. working respectfully and productively together for the benefit of the individual and the community;
- b. being accountable for one's own choices and actions and understanding their impact on oneself and others;
- c. knowing one's civil, constitutional, and statutory rights; and
- d. mentoring others to become productive citizens and lifelong learners.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, LR 30:210 (February 2004).

Chapter 3. Dance

Subchapter A. Creative Expression

§301. Purpose

A. *Focus.* Creative expression opens an avenue for the application of individual ideas, feelings, and expressions. The use of a variety of media and techniques provides an opportunity for the individual to develop, organize, and interpret knowledge for communication. The skills of analysis, problem solving, cooperative involvement, and disciplined behavior contribute to a successful school environment and prepare the individual to become a productive member of society.

B. *Standard.* Students develop creative expression through the application of knowledge, ideas, communication skills, organizational abilities, and imagination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:210 (February 2004).

§303. Benchmarks K-4

A. In grades K-4, students should know and be able to:

D-CE-E1	Use kinesthetic awareness, proper use of space, and the ability to move safely	(1, 2, 5)
D-CE-E2	Explore and demonstrate basic movements and the elements of dance (space, time, and energy)	(1, 2)
D-CE-E3	Recognize and explore dance as a way to create and communicate ideas and feelings	(1, 4)
D-CE-E4	Explore the process of making a dance; improvise to create a dance phrase	(1, 2)

D-CE-E5	Execute improvised and set movement patterns with concentration and focus individually and in groups	(1, 4, 5)
D-CE-E6	Identify relationship among dance, other arts, and disciplines outside the arts	(1, 4)
D-CE-E7	Develop awareness of technical dimensions of dance, such as costumes, performance space, and set design	(2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:210 (February 2004).

§305. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

D-CE-M1	Demonstrate self-monitoring and effective use of space	(2, 5)
D-CE-M2	Use the elements of dance to execute basic movements with increased skill and develop a movement vocabulary	(1, 4)
D-CE-M3	Demonstrate the ability to use dance as a language and means of communication	(1, 4)
D-CE-M4	Use improvisation, choreography, and choreographic forms to sequence movements into dance phrases	(2, 3)
D-CE-M5	Perform informal and formal dance compositions individually and in groups	(1, 4, 5)
D-CE-M6	Understand and express relationships among dance, other arts, and disciplines outside the arts	(1, 4)

D-CE-M7	Engage in individual and collaborative use of technical dimensions of dance and explore how use of current technology can enhance dance ideas	(2, 3, 5)
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AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:211 (February 2004).

§307. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

D-CE-H1	Incorporate kinesthetic awareness, use of space, and self-evaluation to refine performance skills	(2, 4, 5)
D-CE-H2	Use the elements of dance to develop technical skills and expand or refine movement vocabulary	(1, 4)
D-CE-H3	Utilize dance as an expression of individual ideas and feelings	(1, 4, 5)
D-CE-H4	Incorporate improvisation, choreography, and choreographic forms into dance compositions	(2, 3)
D-CE-H5	Present and evaluate dance compositions designed to display skills and techniques	(1, 2, 4, 5)
D-CE-H6	Present a multi-disciplinary dance project	(1, 2, 4, 5)
D-CE-H7	Manipulate technical dimensions of dance individually and collaboratively	(2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:211 (February 2004).

§309. Creative Expression? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Use kinesthetic awareness, proper use of space and the ability to move safely (1, 2, 5)	Demonstrate self-monitoring and effective use of space (2, 5)	Incorporate kinesthetic awareness, use of space and self-evaluation to refine performance skills (2, 4, 5)
Benchmark 2	Explore and demonstrate basic movements and the elements of dance (space, time, and energy) (1, 2)	Use the elements of dance to execute basic movements with increased skill and develop a movement vocabulary (1, 4)	Use the elements of dance to develop technical skills and expand or refine movement vocabulary (1, 4)
Benchmark 3	Recognize and explore dance as a way to create and communicate ideas and feelings (1, 4)	Demonstrate the ability to use dance as a language and means of communication (1, 4)	Utilize dance as an expression of individual ideas and feelings (1, 4, 5)
Benchmark 4	Explore the process of making a dance; improvise to create a dance phrase (1, 2)	Use improvisation, choreography, and choreographic forms to sequence movements into dance phrases (2, 3)	Incorporate improvisation, choreography and choreographic forms into dance compositions (2, 3)
Benchmark 5	Execute improvised and set movement patterns with concentration and focus individually and in groups (1, 4, 5)	Perform informal and formal dance compositions individually and in groups (1, 4, 5)	Present and evaluate dance compositions designed to display skills and techniques (1, 2, 4, 5)
Benchmark 6	Identify relationships among dance, other arts, and disciplines outside the arts (1, 4)	Understand and express relationships among dance, other arts, and disciplines outside the arts (1, 4)	Present a multi-disciplinary dance project (1, 2, 4, 5)
Benchmark 7	Develop awareness of technical dimensions of dance, such as costumes, performance space, and set design (2, 4)	Engage in individual and collaborative use of technical dimensions of dance and explore how use of current technology can enhance dance ideas (2, 3, 5)	Manipulate technical dimensions of dance individually and collaboratively (2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:211 (February 2004).

Subchapter B. Aesthetic Perception

§311. Purpose

A. Focus. The study of aesthetics, or the philosophy of the arts, cultivates the direct experience of the senses and supplies the individual with a structure for perceiving and responding to the arts. A grasp of aesthetics empowers the individual to experience beauty in many forms, to appreciate artistic expression, and to develop insight into the creations and performances of others. By questioning concepts, weighing evidence, and examining intuitive reactions, the individual becomes increasingly discriminating in formulating preferences and conclusions about the values inherent in art. Aesthetic perception promotes creativity, flexible thinking, and the pursuit of excellence.

B. Standard. Students develop aesthetic perception through the knowledge of art forms and respect for their commonalities and differences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:212 (February 2004).

§313. Benchmarks K-4

A. In grades K-4, students should know and be able to:

D-AP-E1	Recognize the elements of dance and apply basic dance vocabulary	(1, 4)
D-AP-E2	Recognize and respond to concepts of beauty and taste in the ideas and creations of others through the study of dance	(1, 4, 5)
D-AP-E3	Identify and discuss how dance affects thoughts and feelings	(1, 2, 4)
D-AP-E4	Recognize that there are many possibilities and choices available in the process of creating a dance	(3, 4)
D-AP-E5	Develop a basic understanding of the processes of creating, performing, and observing dance	(2, 5)
D-AP-E6	Recognize how dance differs from other forms of human movement and share personal feelings or preferences about dance	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

§319. Aesthetic Perception? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize the elements of dance and apply basic dance vocabulary (1, 4)	Understand the elements of dance and apply expanded dance vocabulary (1, 4)	Understand the elements of dance and apply advanced dance vocabulary (1, 4)
Benchmark 2	Recognize and respond to concepts of beauty and taste in the ideas and creations of others through the study of dance (1, 4, 5)	Recognize that concepts of beauty differ from culture to culture and that taste varies from person to person (1, 4, 5)	Distinguish unique characteristics of dance as it reflects concepts of beauty and quality of life in various cultures (1, 4, 5)
Benchmark 3	Identify and discuss how dance affects thoughts and feelings (1, 2, 4)	Describe the sensory, emotional and intellectual impact of works of dance (1, 2, 4)	Analyze and express the impact of dance on intellect and emotions (1, 4, 5)
Benchmark 4	Recognize that there are many possibilities and choices available in the process of creating a dance (3, 4)	Demonstrate awareness of various new ideas, possibilities, options, and situations pertaining to creating dance (1, 4)	Compare and contrast multiple possibilities and options available for artistic expression through dance (1, 4)

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:212 (February 2004).

§315. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

D-AP-M1	Understand the elements of dance and apply expanded dance vocabulary	(1, 4)
D-AP-M2	Recognize that concepts of beauty differ from culture to culture and that taste varies from person to person	(1, 4, 5)
D-AP-M3	Describe the sensory, emotional, and intellectual impact of works of dance	(1, 2, 4)
D-AP-M4	Demonstrate awareness of various new ideas, possibilities, options, and situations pertaining to creating dance	(1, 4)
D-AP-M5	Identify and discuss appropriate behaviors for creators, performers, and observers of dance	(1, 4, 5)
D-AP-M6	Discuss the question, "What is dance?" and express intuitive reactions and personal responses to dance	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:212 (February 2004).

§317. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

D-AP-H1	Understand the elements of dance and apply advanced dance vocabulary	(1, 4)
D-AP-H2	Distinguish unique characteristics of dance as it reflects concepts of beauty and quality of life in various cultures	(1, 4, 5)
D-AP-H3	Analyze and express the impact of dance on intellect, and emotions	(1, 4, 5)
D-AP-H4	Compare and contrast multiple possibilities and options available for artistic expression through dance	(1, 4)
D-AP-H5	Discuss the significance of collaboration and other group dynamics in creating, performing and observing dance	(1, 4, 5)
D-AP-H6	Question/weigh evidence and information, examine intuitive reactions, and articulate personal attitudes toward dance	(1, 2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:212 (February 2004).

Grade Cluster	K-4	5-8	9-12
Benchmark 5	Develop a basic understanding of the processes of creating, performing, and observing dance (2, 5)	Identify and discuss appropriate behaviors for creators, performers, and observers of dance (1, 4, 5)	Discuss the significance of collaboration and other group dynamics in creating, performing, and observing dance (1, 4, 5)
Benchmark 6	Recognize how dance differs from other forms of human movement and share personal feelings or preferences about dance (1, 2, 4)	Discuss the question, "What is dance?" and express intuitive reactions and personal responses to dance (1, 4)	Question/weigh evidence and information, examine intuitive reactions, and articulate personal attitudes toward dance (1, 2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:212 (February 2004).

Subchapter C. Historical and Cultural Perspective

§321. Purpose

A. Focus. Historical and cultural perspective is the vehicle for understanding works of art in time and place. The arts survive through times of interruption and neglect; they outlive governments, creeds, societies, and even the civilizations that spawned them. The artist is a harbinger of change, a translator of social thought, an analyst of cultures, a poetic scientist, and a recorder of history. To understand creative output in the history of the arts is to understand history itself.

B. Standard. Students develop historical and cultural perspective by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:213 (February 2004).

§323. Benchmarks K-4

A. In grades K-4, students should know and be able to:

D-HP-E1	Recognize and discuss the role of dance in cultural/historical contexts, including celebrations, ceremonies, and special occasions	(1, 4)
D-HP-E2	Recognize basic differences between dance styles and identify styles of dance in various cultures	(1, 3, 4)
D-HP-E3	Recognize great dance works, innovators, and performers who have shaped the history of dance	(1, 4)
D-HP-E4	Recognize careers in dance and identify roles of dancers in various cultures and time periods	(4)
D-HP-E5	Recognize universal themes in dance and how dance communicates a universal language	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:213 (February 2004).

§325. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

D-HP-M1	Compare the role of dance in various cultures and discuss dance in cultural, historical, and contemporary contexts	(1, 4)
D-HP-M2	Identify differences in styles of dance and distinguish among dance styles from various cultures and time periods	(1, 4)
D-HP-M3	Identify and discuss the influences of great dance works, innovators, and performers who have shaped the history of dance	(1, 4)
D-HP-M4	Identify, describe, and compare contemporary careers and professions in dance	(1, 4, 5)
D-HP-M5	Identify and discuss universal themes exhibited in dance from various cultures	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:213 (February 2004).

§327. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

D-HP-H1	Explain the art of dance in relation to cultural values and prevailing social, political, and economic conditions	(1, 4, 5)
D-HP-H2	Compare, contrast, and categorize styles of dance representative of various cultures and time periods	(1, 4)
D-HP-H3	Compare and contrast current dance innovators and trends with past innovators and their contributions to dance	(3, 4)
D-HP-H4	Investigate and assess roles, careers, and career opportunities in dance production	(1, 4)
D-HP-H5	Analyze universal themes as exhibited in dance from various cultures	(3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:213 (February 2004).

§329. Historical and Cultural Perspective?

Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize and discuss the role of dance in cultural/historical contexts, including celebrations, ceremonies, and special occasions (1, 4)	Compare the role of dance in various cultures and discuss dance in cultural, historical, and contemporary contexts (1, 4)	Explain the art of dance in relation to cultural values and prevailing social, political, and economic conditions (1, 4, 5)
Benchmark 2	Recognize basic differences between dance styles and identify styles of dance in various cultures (1, 3, 4)	Identify differences in styles of dance and distinguish among dance styles from various cultures and time periods (1, 4)	Compare, contrast, and categorize styles of dance representative of various cultures and time periods (1, 4)
Benchmark 3	Recognize great dance works, innovators, and performers who have shaped the history of dance (1, 4)	Identify and discuss the influences of great dance works, innovators, and performers who have shaped the history of dance (1, 4)	Compare and contrast current dance innovators and trends with past innovators and their contributions to dance (3, 4)
Benchmark 4	Recognize careers in dance and identify roles of dancers in various cultures and time periods (4)	Identify, describe, and compare contemporary careers and professions in dance (1, 4, 5)	Investigate and assess roles, careers, and career opportunities in dance production (1, 4)
Benchmark 5	Recognize universal themes in dance and how dance communicates a universal language (1, 4)	Identify and discuss universal themes exhibited in dance from various cultures (1, 4)	Analyze universal themes as exhibited in dance from various cultures (3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:214 (February 2004).

Subchapter D. Critical Analysis

§331. Purpose

A. Focus. Critical analysis is the process of inquiry associated with an individual's knowledge of the arts. Communication about the arts in a structured way provides the individual with means to describe, analyze, interpret, and make critical, reasoned judgments about the form and content of the arts.

B. Standard. Students make informed verbal and written observations about the arts by developing skills for critical analysis through the study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:214 (February 2004).

§333. Benchmarks K-4

A. In grades K-4, students should know and be able to:

D-CA-E1	Observe and identify the basic movements in dance	(3, 4)
D-CA-E2	Identify basic examples of the dance elements in various works of dance	(4)
D-CA-E3	Recognize and discuss the sequencing of movements in dance	(1, 4)
D-CA-E4	Identify the main theme or story idea presented in a dance	(1, 4)
D-CA-E5	Identify and discuss basic ways of changing dance movements to improve a dance	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:214 (February 2004).

§335. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

D-CA-M1	Recognize and describe movement content and expression in dance	(1, 4)
D-CA-M2	Identify how elements of dance are used in a work to communicate the choreographic intent	(1, 2, 4)
D-CA-M3	Describe the use of choreographic principles such as unity, contrast, continuity, and climax in dance	(1, 4)
D-CA-M4	Describe the main theme, story idea, or political message conveyed in a dance	(1, 4)
D-CA-M5	Critique works of dance using expanded dance vocabulary	(1, 2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:214 (February 2004).

§337. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

D-CA-H1	Explain the manipulation of movement content and how it influences expression in a dance	(1, 4)
D-CA-H2	Explain how elements of dance communicate the choreographic intent in various works	(1, 2, 4)
D-CA-H3	Apply understanding of choreographic principles and choreographic forms to analyze and explain dance	(1, 4)
D-CA-H4	Describe the social theme conveyed in a dance and how personal experience influences interpretation of dance	(1, 4, 5)
D-CA-H5	Critique works of dance using advanced dance vocabulary	(1, 2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:214 (February 2004).

§339. Critical Analysis? Grade Cluster

Grade Cluster	K–4	5–8	9–12
Benchmark 1	Observe and identify the basic movements in dance (3, 4)	Recognize and describe movement content and expression in dance (1, 4)	Explain the manipulation of movement content and how it influences expression in a dance (1, 4)
Benchmark 2	Identify basic examples of the dance elements in various works of dance (4)	Identify how elements of dance are used in a work to communicate the choreographic intent (1, 2, 4)	Explain how elements of dance communicate the choreographic intent in various works (1, 2, 4)
Benchmark 3	Recognize and discuss the sequencing of movements in dance (1, 4)	Describe the use of choreographic principles such as unity, contrast, continuity, and climax in dance (1, 4)	Apply understanding of choreographic principles and choreographic forms to analyze and explain dance (1, 4)
Benchmark 4	Identify the main theme or story idea presented in a dance (1, 4)	Describe the main theme, story idea, or political message conveyed in a dance (1, 4)	Describe the social theme conveyed in a dance and how personal experience influences interpretation of dance (1, 4, 5)
Benchmark 5	Identify and discuss basic ways of changing dance movements to improve a dance (1, 2, 4)	Critique works of dance using expanded dance vocabulary (1, 2, 5)	Critique works of dance using advanced dance vocabulary (1, 2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:215 (February 2004).

Chapter 5. Music

Subchapter A. Creative Expression

§501. Purpose

A. Focus. Creative expression opens an avenue for the application of individual ideas, feelings, and expressions. The use of a variety of media and techniques provides an opportunity for the individual to develop, organize, and interpret knowledge for communication. The skills of analysis, problem solving, cooperative involvement, and disciplined behavior contribute to a successful school environment and prepare the individual to become a productive member of society.

B. Standard. Students develop creative expression through the application of knowledge, ideas, communication skills, organizational abilities, and imagination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:215 (February 2004).

§503. Benchmarks K-4

A. In grades K-4, students should know and be able to:

M-CE-E1	Recognize and imitate simple melodies and rhythmic patterns using voice, musical instruments, or other sound sources	(3)
M-CE-E2	Recognize basic notational symbols and express vocabulary that conveys precise musical meanings	(3, 4)
M-CE-E3	Improvise or compose and perform simple musical ideas, such as echoing melody or short rhythmic patterns	(1, 4)
M-CE-E4	Explore and express basic elements of music through voice, musical instruments, electronic technology, or available media	(3)
M-CE-E5	Participate in organized musical activities including singing, playing, and movement	(1, 2, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:215 (February 2004).

§505. Benchmarks 5–8

A. In grades 5–8, students should know and be able to:

M-CE-M1	Recognize and perform melodic and rhythmic patterns using voice, musical instruments, or other sound sources, both individually and in ensembles	(1, 3, 4)
M-CE-M2	Interpret notational symbols and vocabulary that convey precise musical meanings	(2, 3, 4)
M-CE-M3	Improvise, or compose and perform written music	(1, 4)
M-CE-M4	Recognize and demonstrate elements of music, using voice, musical instruments, electronic technology, or other available media	(3, 4)
M-CE-M5	Perform in organized activities including singing, playing, and movement	(1, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:215 (February 2004).

§507. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

M-CE-H1	Create and improvise advanced musical forms using voice, musical instruments, or other sound sources, both individually and in ensembles	(1, 2, 4)
M-CE-H2	Apply with technical accuracy notational symbols and vocabulary that convey precise musical meanings	(2, 3, 4)
M-CE-H3	Improvise, or compose and perform advanced compositions	(1, 4)
M-CE-H4	Interpret and apply elements of music using preferred medium of performance	(3, 4, 5)
M-CE-H5	Perform in musical ensembles using a preferred performance medium	(1, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:215 (February 2004).

§509. Creative Expression? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize and imitate simple melodies and rhythmic patterns using voice, musical instruments, or other sound sources (3)	Recognize and perform melodic and rhythmic patterns using voice, musical instruments, or other sound sources, both individually and in ensembles (1, 3, 4)	Create and improvise advanced musical forms using voice, musical instruments, or other sound sources, both individually and in ensembles (1, 2, 4)
Benchmark 2	Recognize basic notational symbols and express vocabulary that conveys precise musical meanings (3, 4)	Interpret notational symbols and vocabulary that convey precise musical meanings (2, 3, 4)	Apply with technical accuracy notational symbols and vocabulary that convey precise musical meanings (2, 3, 4)
Benchmark 3	Improvise or compose and perform simple musical ideas, such as echoing melody or short rhythmic patterns (1, 4)	Improvise or compose and perform written music (1, 4)	Improvise or compose and perform advanced compositions (1, 4)
Benchmark 4	Explore and express basic elements of music through voice, musical instruments, electronic technology, or available media (3)	Recognize and demonstrate elements of music, using voice, musical instruments, electronic technology, or other available media (3, 4)	Interpret and apply elements of music using preferred medium of performance (3, 4, 5)
Benchmark 5	Participate in organized musical activities including singing, playing, and movement (1, 2, 5)	Perform in organized musical activities including singing, playing, and movement (1, 5)	Perform in musical ensembles using preferred performance medium (1, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:216 (February 2004).

Subchapter B. Aesthetic Perception

§511. Purpose

A. Focus. The study of aesthetics, or the philosophy of the arts, cultivates the direct experience of the senses and supplies the individual with a structure for perceiving and responding to the arts. A grasp of aesthetics empowers the individual to experience beauty in many forms, to appreciate artistic expression, and to develop insight into the creations and performances of others. By questioning concepts, weighing evidence, and examining intuitive reactions, the individual becomes increasingly discriminating in formulating preferences and conclusions about the values inherent in art. Aesthetic perception promotes creativity, flexible thinking, and the pursuit of excellence.

B. Standard. Students develop aesthetic perception through the knowledge of art forms and respect for their commonalities and differences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:216 (February 2004).

§513. Benchmarks K-4

A. In grades K-4, students should know and be able to:

M-AP-E1	Understand and apply basic music vocabulary to describe aesthetic qualities of musical compositions	(1, 4)
M-AP-E2	Recognize and respond to concepts of beauty and taste in the ideas and creations of others through the study of music	(1, 4, 5)
M-AP-E3	Demonstrate awareness of where and how music is used in daily life and within the community	(1, 4, 5)
M-AP-E4	Recognize that there are many possibilities and choices available in the creative processes of music	(4)

M-AP-E5	Participate in guided inquiry into the basic question, "What is music?" and share personal feelings or preferences about music	(1, 5)
M-AP-E6	Recognize and demonstrate behavior appropriate for various musical environments	(4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:216 (February 2004).

§515. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

M-AP-M1	Understand and apply expanded music vocabulary to describe aesthetic qualities of musical compositions	(1, 4)
M-AP-M2	Recognize that concepts of beauty differ by culture and that taste varies from person to person	(1, 4, 5)
M-AP-M3	Describe the emotional and intellectual impact of music in various contexts	(1, 4, 5)
M-AP-M4	Demonstrate awareness of various traditional and technological options pertaining to creative processes in music	(1, 4)
M-AP-M5	Discuss the question, "What is music?" and express intuitive reactions and personal responses to various works	(1, 4)
M-AP-M6	Demonstrate and discuss behavior appropriate for various musical environments	(1, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:216 (February 2004).

§517. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

M-AP-H1	Understand and apply advanced music vocabulary to describe aesthetic qualities of musical compositions	(1, 4)
M-AP-H2	Distinguish unique characteristics of music as it reflects concepts of beauty and quality of life in various cultures	(1, 4, 5)
M-AP-H3	Analyze and express the impact of music on intellect and emotions	(1, 4, 5)
M-AP-H4	Compare and contrast traditional and technological options available for artistic expression in music	(1, 4)

M-AP-H5	Question/weigh evidence and information, examine intuitive reactions, and articulate personal attitudes toward musical works	(1, 2, 5)
M-AP-H6	Evaluate and discuss appropriateness of behavior for different types of musical environments	(2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:216 (February 2004).

§519. Aesthetic Perception? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Understand and apply basic music vocabulary to describe aesthetic qualities of musical compositions (1, 4)	Understand and apply expanded music vocabulary to describe aesthetic qualities of musical compositions (1, 4)	Understand and apply advanced music vocabulary to describe aesthetic qualities of musical compositions (1, 4)
Benchmark 2	Recognize and respond to concepts of beauty and taste in the ideas and creations of others through the study of music (1, 4, 5)	Recognize that concepts of beauty differ by culture and that taste varies from person to person (1, 4, 5)	Distinguish unique characteristics of music as it reflects concepts of beauty and quality of life in various cultures (1, 4, 5)
Benchmark 3	Demonstrate awareness of where and how music is used in daily life and within the community (1, 4, 5)	Describe the emotional and intellectual impact of music in various contexts (1, 4, 5)	Analyze and express the impact of music on intellect and emotions (1, 4, 5)
Benchmark 4	Recognize that there are many possibilities and choices available in the creative processes of music (4)	Demonstrate awareness of various traditional and technological options pertaining to creative processes in music (1, 4)	Compare and contrast traditional and technological options available for artistic expression in music (1, 4)
Benchmark 5	Participate in guided inquiry into the basic question "What is music?" and share personal feelings or preferences about music (1, 5)	Discuss the question "What is music?" and express intuitive reactions and personal responses to various works (1, 4)	Question/weigh evidence and information, examine intuitive reactions, and articulate personal attitudes toward musical works (1, 2, 5)
Benchmark 6	Recognize and demonstrate behavior appropriate for various musical environments (4, 5)	Demonstrate and discuss behavior appropriate for various musical environments (1, 4, 5)	Evaluate and discuss appropriateness of behavior for different types of musical environments (2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:217 (February 2004).

Subchapter C. Historical and Cultural Perspective

§521. Purpose

A. Focus. Historical and cultural perspective is the vehicle for understanding works of art in time and place. The arts survive through times of interruption and neglect; they outlive governments, creeds, societies, and even the civilizations that spawned them. The artist is a harbinger of change, a translator of social thought, an analyst of cultures, a poetic scientist, and a recorder of history. To understand creative output in the history of the arts is to understand history itself.

B. Standard. Students develop historical and cultural perspective by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:217 (February 2004).

§523. Benchmarks K-4

A. In grades K-4, students should know and be able to:

M-HP-E1	Recognize musical styles representative of various cultures	(4)
M-HP-E2	Recognize and discuss the function of music within historical and cultural contexts, including celebrations, ceremonies, and special occasions	(1, 4)
M-HP-E3	Recognize families of musical instruments and instruments of various cultures	(4)
M-HP-E4	Recognize professions in music and identify the roles of musicians in various cultures	(4)
M-HP-E5	Recognize great composers and their most significant musical works	(4)
M-HP-E6	Recognize universal themes in music and how music communicates a universal language	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:217 (February 2004).

§525. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

M-HP-M1	Identify distinguishing characteristics of musical styles representative of various historical periods and cultures	(1, 2, 4)
M-HP-M2	Compare and contrast the function of music within historical and cultural contexts, such as celebrations, ceremonies, and events	(1, 4, 5)
M-HP-M3	Identify specific types and uses of musical instruments in various cultures	(4)
M-HP-M4	Describe careers for musicians and compare the roles of musicians in various cultures	(1, 4, 5)
M-HP-M5	Identify major works of great composers and recognize achievements of prominent musicians	(4, 5)
M-HP-M6	Identify and discuss ways in which universal themes are revealed and developed in the music of diverse cultures and time periods	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:217 (February 2004).

§527. Benchmarks 9–12

A. In grades 9–12, students should know and be able to:

M-HP-H1	Compare and contrast musical styles representative of various historical periods and cultures	(1, 2, 4)
M-HP-H2	Analyze the function of music as it fulfills societal needs within historical and cultural contexts	(1, 4, 5)
M-HP-H3	Compare and contrast types and uses of musical instruments in various cultures	(4)
M-HP-H4	Investigate and assess roles, careers, and career opportunities for musicians	(3, 4)
M-HP-H5	Identify prominent musicians of various cultures and compare their lives, careers, works, and influence	(1, 4)
M-HP-H6	Analyze the universality of musical themes across cultures and time periods	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:218 (February 2004).

§529. Historical and Cultural Perspective? Grade Cluster

Grade Cluster	K–4	5–8	9–12
Benchmark 1	Recognize musical styles representative of various cultures (4)	Identify distinguishing characteristics of musical styles representative of various historical periods and cultures (1, 2, 4)	Compare and contrast musical styles representative of various historical periods and cultures (1, 2, 4)
Benchmark 2	Recognize and discuss the function of music within historical and cultural contexts, including celebrations, ceremonies, and special occasions (1, 4)	Compare and contrast the function of music within historical and cultural contexts, such as celebrations, ceremonies, and events (1, 4, 5)	Analyze the function of music as it fulfills societal needs within historical and cultural contexts (1, 4, 5)
Benchmark 3	Recognize families of musical instruments and instruments of various cultures (4)	Identify specific types and uses of musical instruments in various cultures (4)	Compare and contrast types and uses of musical instruments in various cultures (4)
Benchmark 4	Recognize professions in music and identify the roles of musicians in various cultures (4)	Describe careers for musicians and compare the roles of musicians in various cultures (1, 4, 5)	Investigate and assess roles, careers, and career opportunities for musicians (3, 4)
Benchmark 5	Recognize great composers and their most significant musical works (4)	Identify major works of great composers and recognize achievements of prominent musicians (4, 5)	Identify prominent musicians of various cultures and compare their lives, careers, works, and influence (1, 4)
Benchmark 6	Recognize universal themes in music and how music communicates a universal language (1, 4)	Identify and discuss ways in which universal themes are revealed and developed in the music of diverse cultures and time periods (1, 4)	Analyze the universality of musical themes across cultures and time periods (1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:218 (February 2004).

Subchapter D. Critical Analysis

§531. Purpose

A. Focus. Critical analysis is the process of inquiry associated with an individual's knowledge of the arts. Communication about the arts in a structured way provides the individual with means to describe, analyze, interpret, and make critical, reasoned judgments about the form and content of the arts.

B. Standard. Students make informed verbal and written observations about the arts by developing skills for critical analysis through the study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:218 (February 2004).

§533. Benchmarks K-4

A. In grades K-4, students should know and be able to:

M-CA-E1	Identify the music form (e.g., AB, ABA) and describe in simple terms how the elements of music are used in various works	(1, 4)
M-CA-E2	Identify simple music events (e.g., dynamic change, meter change, same/different sections) while listening to a work	(2, 4)
M-CA-E3	Recognize characteristics of music that make a musical selection appropriate for a particular purpose	(4)
M-CA-E4	Identify relationships among music, other arts, and disciplines outside the arts	(1, 4)
M-CA-E5	Devise criteria for evaluating music and music performances, and express opinions using basic music vocabulary	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:218 (February 2004).

§535. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

M-CA-M1	Identify the music form (e.g., round, canon) and explain how the elements of music are used in works representing various genres/styles	(4)
M-CA-M2	Identify and describe music events (e.g., entry of an instrument, meter change, return of refrain) while listening to a work	(2, 4)
M-CA-M3	Describe or explain characteristics of music in regard to suitability of musical selections for specific purposes	(1, 4)
M-CA-M4	Describe relationships among music, other arts, and disciplines outside the arts	(1, 4)
M-CA-M5	Use appropriate criteria and expanded music vocabulary to evaluate the quality of music and performances	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

§539. Critical Analysis? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Identify the music form (e.g., AB, ABA) and describe in simple terms how the elements of music are used in various works (1, 4)	Identify the music form (e.g., round, canon) and explain how the elements of music are used in works representing various genres/styles (4)	Distinguish and analyze elements of music and expressive devices as used in musical works representing diverse genres/styles (1, 2, 4)
Benchmark 2	Identify simple music events (e.g., dynamic change, meter change, same/different sections) while listening to a work (2, 4)	Identify and describe music events (e.g., entry of an instrument, meter change, return of refrain) while listening to a work (2, 4)	Identify and explain compositional devices and techniques used to provide unity and variety and tension and release in a musical work (1, 2, 4)
Benchmark 3	Recognize characteristics of music that make a musical selection appropriate for a particular purpose (4)	Describe or explain characteristics of music in regard to suitability of musical selections for specific purposes (1, 4)	Analyze the appropriateness of music choices as they relate to purpose (2, 4, 5)
Benchmark 4	Identify relationships among music, other arts, and disciplines outside the arts (1, 4)	Describe relationships among music, other arts, and disciplines outside the arts (1, 4)	Explain commonalities and differences among music, other arts, and disciplines outside the arts (1, 2, 4)
Benchmark 5	Devise criteria for evaluating music and music performances, and express opinions using basic music vocabulary (1, 2, 4)	Use appropriate criteria and expanded music vocabulary to evaluate the quality of music and performances (1, 2, 4)	Use appropriate criteria and advanced music vocabulary to critique the quality of music and performances (1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:219 (February 2004).

Chapter 7. Theatre Arts

Subchapter A. Creative Expression

§701. Purpose

A. Focus. Creative Expression opens an avenue for the application of individual ideas, feelings, and expressions. The use of a variety of media and techniques provides an opportunity for the individual to develop, organize, and interpret knowledge for communication. The skills of analysis, problem solving, cooperative involvement, and disciplined behavior contribute to a successful school environment and prepare the individual to become a productive member of society.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:219 (February 2004).

§537. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

M-CA-H1	Distinguish and analyze elements of music and expressive devices as used in musical works representing diverse genres/styles	(1, 2, 4)
M-CA-H2	Identify and explain compositional devices and techniques used to provide unity and variety and tension and release in a musical work	(1, 2, 4)
M-CA-H3	Analyze the appropriateness of music choices as they relate to purpose	(2, 4, 5)
M-CA-H4	Explain commonalities and differences among music, other arts, and disciplines outside the arts	(1, 2, 4)
M-CA-H5	Use appropriate criteria and advanced music vocabulary to critique the quality of music and performances	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:219 (February 2004).

B. Standard. Students develop creative expression through the application of knowledge, ideas, communication skills, organizational abilities, and imagination.

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:219 (February 2004).

§703. Benchmarks K-4

A. In grades K-4, students should know and be able to:

TH-CE-E1	Explore and express various emotions in interpersonal settings	(1, 5)
TH-CE-E2	Interact in group situations and show differentiation of roles through experimentation and role playing	(1, 2, 5)

TH-CE-E3	Exhibit physical and emotional dimensions of characterization through experimentation and role playing	(2, 5)
TH-CE-E4	Create story lines for improvisation	(2, 3, 4)
TH-CE-E5	Identify and express differences among reality, fantasy, role playing, and media representation	(2, 3, 4)
TH-CE-E6	Develop awareness of technical dimensions of the dramatic form, such as theatrical space, scenery, costuming, and make-up	(3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:219 (February 2004).

§705. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

TH-CE-M1	Demonstrate self-expression and various emotions individually and in groups	(1, 5)
TH-CE-M2	Demonstrate role playing individually and in interpersonal situations	(1, 5)
TH-CE-M3	Demonstrate physical and emotional traits appropriate to a variety of roles and characters	(2, 4)
TH-CE-M4	Create improvisations and scripted scenes based on personal experience, imagination, literature, and history	(1, 2, 3)
TH-CE-M5	Compare/contrast and demonstrate various performance methods and styles	(1, 2, 4)

TH-CE-M6	Engage in individual and collaborative use of technical dimensions of the dramatic form such as theatrical space, scenery, set design, costuming, and make-up	(1, 4, 5)
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AUTHORITY NOTE: Promulgated in accordance with R.S.17.24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:220 (February 2004).

§707. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

TH-CE-H1	Develop intrapersonal skills as an individual and as a performer	(1, 5)
TH-CE-H2	Assume and sustain various roles in group interactions	(1, 4, 5)
TH-CE-H3	Develop characterization in group performances through interpretation of psychological motivation	(2, 3, 5)
TH-CE-H4	Write scripts for classroom, stage, and media performances, using various forms of technology	(1, 3, 4)
TH-CE-H5	Perform using specific methods, styles, and acting techniques from various cultures and time periods	(1, 2, 3, 4)
TH-CE-H6	Manipulate technical dimensions of the dramatic form, such as set design/construction, costuming, make-up, properties, lights, sound, and multimedia	(1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:220 (February 2004).

§709. Creative Expression? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Explore and express various emotions in interpersonal settings (1, 5)	Demonstrate self-expression and various emotions individually and in groups (1, 5)	Develop intrapersonal skills as an individual and as a performer (1, 5)
Benchmark 2	Interact in group situations and show differentiation of roles through experimentation and role playing (1, 2, 5)	Demonstrate role playing individually and in interpersonal situations (1, 5)	Assume and sustain various roles in group interactions (1, 4, 5)
Benchmark 3	Exhibit physical and emotional dimensions of characterization through experimentation and role playing (2, 5)	Demonstrate physical and emotional traits appropriate to a variety of roles and characters (2, 4)	Develop characterization in group performances through interpretation of psychological motivation (2, 3, 5)
Benchmark 4	Create story lines for improvisation (2, 3, 4)	Create improvisations and scripted scenes based on personal experience, imagination, literature, and history (1, 2, 3)	Write scripts for classroom, stage, and media performances, using various forms of technology (1, 3, 4)
Benchmark 5	Identify and express differences among reality, fantasy, role playing, and media productions (2, 3, 4)	Compare/contrast and demonstrate various performance methods and styles (1, 2, 4)	Perform using specific methods, styles, and acting techniques from various cultures and time periods (1, 2, 3, 4)
Benchmark 6	Develop awareness of technical dimensions of the dramatic form, such as theatrical space, scenery, costuming, and make-up (3, 4)	Engage in individual and collaborative use of technical dimensions of the dramatic form such as theatrical space, scenery, set design, costuming, and make-up (1, 4, 5)	Manipulate technical dimensions of the dramatic form, such as set design/construction, costuming, make-up, properties, lights, sound, and multimedia (1, 3, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S.17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:220 (February 2004).

Subchapter B. Aesthetic Perception

§711. Purpose

A. Focus. The study of aesthetics, or the philosophy of the arts, cultivates the direct experience of the senses and supplies the individual with a structure for perceiving and responding to the arts. A grasp of aesthetics empowers the individual to experience beauty in many forms, to appreciate artistic expression, and to develop insight into the creations and performances of others. By questioning concepts, weighing evidence, and examining intuitive reactions, the individual becomes increasingly discriminating in formulating preferences and conclusions about the values inherent in art. Aesthetic perception promotes creativity, flexible thinking, and the pursuit of excellence.

B. Standard. Students develop aesthetic perception through the knowledge of art forms and respect for their commonalities and differences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:221 (February 2004).

§713. Benchmarks K-4

A. In grades K-4, students should know and be able to:

TH-AP-E1	Understand and use basic theatre arts vocabulary, including language for describing theatre in various cultures/time periods	(1)
TH-AP-E2	Recognize and respond to concepts of beauty and taste in the ideas and creations of others through the study of theatre arts	(1, 4, 5)
TH-AP-E3	Develop a basic understanding of the processes of creating, performing, and observing theatre	(2, 5)
TH-AP-E4	Recognize that there are many possibilities and choices in the creative processes for theatre arts	(2, 4)
TH-AP-E5	Identify and discuss how works of theatre and dramatic media affect thoughts and feelings	(1, 2)
TH-AP-E6	Share personal feelings or preferences about theatre and other dramatic works	(1)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:221 (February 2004).

§719. Aesthetic Perception? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Understand and use basic theatre arts vocabulary, including language for describing theatre in various cultures/time periods (1)	Understand and use expanded theatre arts vocabulary, including terms related to theatrical periods, environments, situations, and roles (1, 4)	Use advanced theatre arts vocabulary and apply cultural/historical information in discussing scripted scenes, sets, and period costumes (1, 2, 4)
Benchmark 2	Recognize and respond to concepts of beauty and taste in the ideas and creations of others through the study of theatre arts (1, 4, 5)	Recognize that concepts of beauty differ from culture to culture and that taste varies from person to person (1, 4, 5)	Distinguish unique characteristics of theatre as it reflects concepts of beauty and quality of life in various cultures (1, 4, 5)
Benchmark 3	Develop a basic understanding of the processes of creating, performing, and observing theatre (2, 5)	Identify and discuss appropriate behaviors for creators, performers, and observers of theatre (1, 2, 5)	Explain the significance of collaboration and evaluate group dynamics in creating, performing, and observing theatre (1, 2, 5)

§715. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

TH-AP-M1	Understand and use expanded theatre arts vocabulary, including terms related to theatrical periods, environments, situations, and roles	(1, 4)
TH-AP-M2	Recognize that concepts of beauty differ from culture to culture and that taste varies from person to person	(1, 4, 5)
TH-AP-M3	Identify and discuss appropriate behaviors for creators, performers, and observers of theatre	(1, 2, 5)
TH-AP-M4	Demonstrate awareness of various new ideas, possibilities, options, and situations pertaining to theatre arts	(1, 2, 4)
TH-AP-M5	Describe the emotional and intellectual impact of theatrical works and dramatic performances	(1, 2)
TH-AP-M6	Express intuitive reactions and personal responses to theatre and other dramatic works	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:221 (February 2004).

§717. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

TH-AP-H1	Use advanced theatre arts vocabulary and apply cultural/historical information in discussing scripted scenes, sets, and period costumes	(1, 2, 4)
TH-AP-H2	Distinguish unique characteristics of theatre as it reflects concepts of beauty and quality of life in various cultures	(1, 4, 5)
TH-AP-H3	Explain the significance of collaboration and evaluate group dynamics in creating, performing, and observing theatre	(1, 2, 5)
TH-AP-H4	Compare and contrast multiple possibilities and options available for artistic expression in theatre arts	(1, 4)
TH-AP-H5	Analyze and explain the impact of theatrical works and dramatic performances on intellect and emotions	(1, 2, 4)
TH-AP-H6	Examine intuitive reactions and articulate personal attitudes toward theatre and other dramatic works	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:221 (February 2004).

Grade Cluster	K-4	5-8	9-12
Benchmark 4	Recognize that there are many possibilities and choices in the creative processes for theatre arts (2, 4)	Demonstrate awareness of various new ideas, possibilities, options, and situations pertaining to theatre arts (1, 2, 4)	Compare and contrast multiple possibilities and options available for artistic expression in theatre arts (1, 4)
Benchmark 5	Identify and discuss how works of theatre and dramatic media affect thoughts and feelings (1, 2)	Describe the emotional and intellectual impact of theatrical works and dramatic performances (1, 2)	Analyze and explain the impact of theatrical works and dramatic performances on intellect and emotions (1, 2)
Benchmark 6	Share personal feelings or preferences about theatre and other dramatic works (1)	Discuss intuitive reactions and personal responses to theatre and other dramatic works (1, 2, 4)	Examine intuitive reactions and articulate personal attitudes toward theatre and other dramatic works (1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:221 (February 2004).

Subchapter C. Historical and Cultural Perspective

§721. Purpose

A. Focus. Historical and cultural perspective is the vehicle for understanding works of art in time and place. The arts survive through times of interruption and neglect; they outlive governments, creeds, societies, and even the civilizations that spawned them. The artist is a harbinger of change, a translator of social thought, an analyst of cultures, a poetic scientist, and a recorder of history. To understand creative output in the history of the arts is to understand history itself.

B. Standard. Students develop historical and cultural perspective by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:222 (February 2004).

§725. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

TH-HP-M1	Describe types, forms, and patterns in theatre and dramatic media (film, television, and electronic media)	(1, 3)
TH-HP-M2	Identify differences in theatre across cultures and how artistic choices and artistic expression reflect cultural values	(1, 2, 4)
TH-HP-M3	Identify and describe characters and situations in literature and dramatic media from the past and present	(1, 4)
TH-HP-M4	Identify and discuss ways in which themes are revealed and developed in dramas of various cultures and time periods	(1, 4)
TH-HP-M5	Describe and compare careers in theatre arts and roles of theatre artists in various cultures and time periods	(1, 4, 5)
TH-HP-M6	Identify major works of great playwrights and recognize contributions of prominent theatre artists	(3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:222 (February 2004).

§723. Benchmarks K-4

A. In grades K-4, students should know and be able to:

TH-HP-E1	Recognize basic types and forms of theatre and dramatic media (film, television, and electronic media)	(2, 3)
TH-HP-E2	Recognize cultural differences in theatre productions and performances	(2)
TH-HP-E3	Recall and recognize characters and situations in literature and dramatic media from the past and present	(4)
TH-HP-E4	Recognize universal characters and situations in stories and dramas of various cultures and how theatre reflects life	(2, 4)
TH-HP-E5	Recognize careers in theatre arts and identify roles of theatre artists in various cultures and time periods	(4)
TH-HP-E6	Recognize great theatrical works and great playwrights who have shaped the history of theatre	(4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:222 (February 2004).

§727. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

TH-HP-H1	Compare and contrast types, forms, methods, patterns, and trends in theatre, film, television, and electronic media	(2, 3)
TH-HP-H2	Analyze the form, content, and style of theatrical works from cultural and historical perspectives	(1, 2, 4)
TH-HP-H3	Demonstrate knowledge of dramatic literature, describing characters and situations in historical and cultural contexts	(1, 4)
TH-HP-H4	Analyze the universality of dramatic themes across cultures and historical periods and how theatre can reveal universal concepts	(4)
TH-HP-H5	Investigate and assess roles, careers, and career opportunities in theatre arts	(2, 3)
TH-HP-H6	Identify representative theatre artists of various cultures and compare their lives, works, and influence	(3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:222 (February 2004).

§729. Historical and Cultural Perspective ?
Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Recognize basic types and forms of theatre and dramatic media (film, television, and electronic media) (2, 3)	Describe types, forms, and patterns in theatre and dramatic media (film, television, and electronic media) (1, 3)	Compare and contrast types, forms, methods, patterns, and trends in theatre, film, television, and electronic media (2, 3)
Benchmark 2	Recognize cultural differences in theatre productions and performances (2)	Identify differences in theatre across cultures and how artistic choices and artistic expression reflect cultural values (1, 2, 4)	Analyze the form, content, and style of theatrical works from cultural and historical perspectives (1, 2, 4)
Benchmark 3	Recall and recognize characters and situations in literature and dramatic media from the past and present (4)	Identify and describe characters and situations in literature and dramatic media from the past and present (1, 4)	Demonstrate knowledge of dramatic literature, describing characters and situations in historical and cultural contexts (1, 4)
Benchmark 4	Recognize universal characters and situations in stories and dramas of various cultures and how theatre reflects life (2, 4)	Identify and discuss ways in which universal themes are revealed and developed in dramas of various cultures and time periods (1, 4)	Analyze the universality of dramatic themes across cultures and historical periods and how theatre can reveal universal concepts (4)
Benchmark 5	Recognize careers in theatre arts and identify roles of theatre artists in various cultures and time periods (4)	Describe and compare careers in theatre arts and roles of theatre artists in various cultures and time periods (1, 4, 5)	Investigate and assess roles, careers, and career opportunities in theatre arts (2, 3)
Benchmark 6	Recognize great theatrical works and great playwrights who have shaped the history of theatre (4)	Identify major works of great playwrights and recognize contributions of prominent theatre artists (3, 4)	Identify representative theatre artists of various cultures and compare their lives, works, and influence (3, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:223 (February 2004).

Subchapter D. Critical Analysis

§731. Purpose

A. Focus. Critical analysis is the process of inquiry associated with an individual's knowledge of the arts. Communication about the arts in a structured way provides the individual with means to describe, analyze, interpret, and make critical, reasoned judgments about the form and content of the arts.

B. Standard. Students make informed verbal and written observations about the arts by developing the skills for critical analysis through study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:223 (February 2004).

§733. Benchmarks K-4

A. In grades K-4, students should know and be able to:

TH-CA-E1	Describe in simple terms how voice, language, and technical elements are used in works of theatre and other dramatic media	(1, 2)
TH-CA-E2	Identify motivations, personality traits, and responses to emotional experiences in characters portrayed in dramatic literature and media	(2)
TH-CA-E3	Identify and discuss the theme, message, or story idea conveyed in a dramatic work	(1, 2)

TH-CA-E4	Use basic theatre arts vocabulary to express and explain opinions about scripts and performances	(1)
TH-CA-E5	Identify relationships among theatre arts, other arts, and disciplines outside the arts	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:223 (February 2004).

§735. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

TH-CA-M1	Explain how elements of theatre and principles of communication are used in works created for the stage and other dramatic media	(1, 2)
TH-CA-M2	Analyze descriptions, dialogues, and actions to explain character traits, personality, motivations, emotional perceptions, and ethical choices	(2, 5)
TH-CA-M3	Interpret and discuss the theme or social/political message conveyed in a dramatic work	(1, 5)
TH-CA-M4	Use appropriate criteria and expanded theatre arts vocabulary to critique scripts, performances and productions	(1, 2)
TH-CA-M5	Describe relationships among theatre arts, other arts, and disciplines outside the arts	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:223 (February 2004).

§737. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

TH-CA-H1	Analyze how elements of theatre and principles of communication are used to achieve specific effects in theatre and other media productions	(1, 2)
TH-CA-H2	Analyze emotional and social dimensions of characterization and explain character transformations and relationships	(2, 5)

TH-CA-H3	Construct social meaning from dramatic works with reference to theme, purpose, point of view, and current issues	(2, 4, 5)
TH-CA-H4	Use appropriate criteria and advanced theatre arts vocabulary to critique scripts, performances, and productions	(1, 2)
TH-CA-H5	Explain relationships among theatre arts, other arts, and disciplines outside the arts	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:224 (February 2004).

§739. Critical Analysis? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Describe in simple terms how voice, language, and technical elements are used in works of theatre and other dramatic media (1, 2)	Explain how elements of theatre and principles of communication are used in works created for the stage and other dramatic media (1, 2)	Analyze how elements of theatre and principles of communication are used to achieve specific effects in theatre and other media productions (1, 2)
Benchmark 2	Identify motivations, personality traits, and responses to emotional experiences in characters portrayed in dramatic literature and media (2)	Analyze descriptions, dialogues, and actions to explain character traits, personality, motivations, emotional perceptions, and ethical choices (2, 5)	Analyze emotional and social dimensions of characterization and explain character transformations and relationships (2, 5)
Benchmark 3	Identify and discuss the theme, message, or story idea conveyed in a dramatic work (1, 2)	Interpret and discuss the theme or social/political message conveyed in a dramatic work (1, 5)	Construct social meaning from dramatic works with reference to theme, purpose, point of view, and current issues (2, 4, 5)
Benchmark 4	Use basic theatre arts vocabulary to express and explain opinions about scripts and performances (1)	Use appropriate criteria and expanded theatre arts vocabulary to critique scripts, performances and productions (1, 2)	Use appropriate criteria and advanced theatre arts vocabulary to critique scripts, performances, and productions (1, 2)
Benchmark 5	Identify relationships among theatre arts, other arts, and disciplines outside the arts (1, 4)	Describe relationships among theatre arts, other arts, and disciplines outside the arts (1, 4)	Explain relationships among theatre arts, other arts, and disciplines outside the arts (1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:224 (February 2004).

Chapter 9. Visual Arts

Subchapter A. Creative Expression

§901. Purpose

A. Focus. Creative expression opens an avenue for the application of individual ideas, feelings, and expressions. The use of a variety of media and techniques provides an opportunity for the individual to develop, organize, and interpret knowledge for communication. The skills of analysis, problem solving, cooperative involvement, and disciplined behavior contribute to a successful school environment and prepare the individual to become a productive member of society.

B. Standard. Students develop creative expression through the application of knowledge, ideas, communication skills, organizational abilities, and imagination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:224 (February 2004).

§903. Benchmarks K-4

A. In grades K-4, students should know and be able to:

VA-CE-E1	Explore and identify imagery from a variety of sources and create visual representations	(2, 3)
VA-CE-E2	Explore and discuss techniques and technologies for visual expression and communication	(1, 2, 3)
VA-CE-E3	Use art vocabulary and the elements and principles of design to convey the language of art (create and discuss own artwork)	(1, 2, 3)
VA-CE-E4	Experiment to create various art forms, including art forms from other cultures	(2, 3, 4)
VA-CE-E5	Draw on imagination, individual experience, and group activities to generate ideas for visual expression	(1, 4, 5)
VA-CE-E6	Identify relationships among visual arts, other arts, and disciplines outside the arts	(1, 4)
VA-CE-E7	Maintain a sketchbook or journal, or develop a portfolio	(1, 2, 3)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:224 (February 2004).

§905. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

VA-CE-M1	Demonstrate art methods and techniques in visual representations based on research of imagery	(2, 3)
VA-CE-M2	Select and apply media techniques, and technology to visually express and communicate	(1, 2, 3)
VA-CE-M3	Use the elements and principles of design and art vocabulary to visually express and describe individual ideas	(1, 2)
VA-CE-M4	Develop skills in creating various art forms, including art forms from other cultures	(2, 3, 4)
VA-CE-M5	Produce ideas for art productions while engaging in individual and group activities	(1, 2, 5)
VA-CE-M6	Understand and visually express relationships among visual arts, other arts, and disciplines outside the arts	(1, 2, 4)
VA-CE-M7	Maintain a sketchbook or journal and develop a portfolio	(1, 2, 3)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:225 (February 2004).

§907. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

VA-CE-H1	Produce works of art that successfully convey a central theme based on imagery, ideas, feelings, and memories	(1, 2, 3)
VA-CE-H2	Apply a variety of media techniques, technologies, and processes for visual expression and communication	(1, 2, 3)
VA-CE-H3	Use the elements and principles of design for individual expression while exploring compositional problems	(1, 2)
VA-CE-H4	Produce a visual representation of ideas derived from the study of various cultures and art forms	(2, 3, 4)
VA-CE-H5	Produce imaginative works of art generated from individual and group ideas	(1, 2, 5)
VA-CE-H6	Produce works of art that describe and connect art with other disciplines	(1, 2, 4)
VA-CE-H7	Maintain a sketchbook or journal and develop a portfolio	(1, 2, 3)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:225 (February 2004).

§909. Creative Expression? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Explore and identify imagery from a variety of sources and create visual representations (2, 3)	Demonstrate art methods and techniques in visual representations based on research of imagery (2, 3)	Produce works of art that successfully convey a central theme based on imagery, ideas, feelings, and memories (1, 2, 3)
Benchmark 2	Explore and discuss techniques and technologies for visual expression and communication (1, 2, 3)	Select and apply media, techniques, and technology to visually express and communicate (1, 2, 3)	Apply a variety of media techniques, technologies, and processes for visual expression and communication (1, 2, 3)
Benchmark 3	Use art vocabulary and the elements and principles of design to convey the language of art (create and discuss own artwork) (1, 2, 3)	Use the elements and principles of design and art vocabulary to visually express and describe individual ideas (1, 2)	Use the elements and principles of design for individual expression while exploring compositional problems (1, 2)
Benchmark 4	Experiment to create various art forms, including art forms from other cultures (2, 3, 4)	Develop skills in creating various art forms, including art forms from other cultures (2, 3, 4)	Produce a visual representation of ideas derived through the study of various cultures and art forms (2, 3, 4)
Benchmark 5	Draw on imagination, individual experience, and group activities to generate ideas for visual expression (1, 4, 5)	Produce ideas for art productions while engaging in individual and group activities (1, 2, 5)	Produce imaginative works of art generated from individual and group ideas (1, 2, 5)
Benchmark 6	Identify relationships among visual arts, other arts, and disciplines outside the arts (1, 4)	Understand and visually express relationships among visual arts, other arts, and disciplines outside the arts (1, 2, 4)	Produce works of art that describe and connect art with other disciplines (1, 2, 4)
Benchmark 7	Maintain a sketchbook or journal, or develop a portfolio (1, 2, 3)	Maintain a sketchbook or journal and develop a portfolio (1, 2, 3)	Maintain a sketchbook or journal and develop a portfolio (1, 2, 3)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:225 (February 2004).

Subchapter B. Aesthetic Perception

§911. Purpose

A. Focus. The study of aesthetics, or the philosophy of the arts, cultivates the direct experience of the senses and supplies the individual with a structure for perceiving and

responding to the arts. A grasp of aesthetics empowers the individual to experience beauty in many forms, to appreciate artistic expression, and to develop insight into the creations and performances of others. By questioning concepts, weighing evidence, and examining intuitive reactions, the individual becomes increasingly discriminating in formulating preferences and conclusions about the values inherent in art. Aesthetic perception promotes creativity, flexible thinking, and the pursuit of excellence.

B. Standard. Students develop aesthetic perception through the knowledge of art forms and respect for their commonalities and differences.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:225 (February 2004).

§913. Benchmarks K-4

A. In grades K-4, students should know and be able to:

VA-AP-E1	Use elements and principles of design and basic art vocabulary for expressing responses to the work of others	(1, 4, 5)
VA-AP-E2	Recognize and respond to concepts of beauty and taste in the ideas and creations of others through the study of visual arts	(1, 4, 5)
VA-AP-E3	Explore the beauty in nature and discern images and sensory qualities found in nature and art	(1, 2)
VA-AP-E4	Recognize that there are many possibilities and choices in the processes for designing and producing visual arts	(2, 3, 4)
VA-AP-E5	Participate in guided inquiry into the basic question, "What is art?" and share personal feelings or preferences about various works	(1, 2, 4)
VA-AP-E6	Identify where and how the visual arts are used in daily life and in the community	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:226 (February 2004).

§915. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

VA-AP-M1	Use elements and principles of design and expanded art vocabulary for responding to the aesthetic qualities of various works	(1, 4)
VA-AP-M2	Recognize that concepts of beauty differ by culture and that taste varies from person to person	(1, 4, 5)

VA-AP-M3	Perceive the aesthetic value and influence of organic forms and the natural environment as reflected in works of art	(1, 2, 4)
VA-AP-M4	Demonstrate awareness of various new ideas, possibilities, options, and situations pertaining to the art world	(1, 4)
VA-AP-M5	Discuss the question "What is art?" and express intuitive reactions and personal responses to various works	(1, 4)
VA-AP-M6	Describe the use and value of the visual arts in daily life, the workplace, and the community	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:226 (February 2004).

§917. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

VA-AP-H1	Use advanced art/design vocabulary for responding to the aesthetic qualities of various works	(1, 4)
VA-AP-H2	Distinguish unique characteristics of art as it reflects concepts of beauty and quality of life in various cultures	(1, 4, 5)
VA-AP-H3	Use analogies, metaphors, and other descriptors to describe interrelationships in works of art and nature	(1, 2, 4)
VA-AP-H4	Compare and contrast multiple possibilities and options available for artistic expression	(1, 4)
VA-AP-H5	Question/weigh evidence and information, examine intuitive reactions, and articulate personal attitudes toward visual works	(1, 2, 5)
VA-AP-H6	Integrate knowledge of the visual arts in the total environment to understand the arts within a community	(2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:226 (February 2004).

§919. Aesthetic Perception? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Use elements and principles of design and basic art vocabulary for expressing responses to the work of others (1, 4, 5)	Use elements and principles of design and expanded art vocabulary for responding to the aesthetic qualities of various works (1, 4)	Use advanced art/design vocabulary for responding to the aesthetic qualities of various works (1, 4)
Benchmark 2	Recognize and respond to concepts of beauty and taste in the ideas and creations of others through the study of visual arts (1, 4, 5)	Recognize that concepts of beauty differ by culture and that taste varies from person to person (1, 4, 5)	Distinguish unique characteristics of art as it reflects concepts of beauty and quality of life in various cultures (1, 4, 5)
Benchmark 3	Explore the beauty in nature and discern images and sensory qualities found in nature and art (1, 2)	Perceive the aesthetic value and influence of organic forms and the natural environment as reflected in works of art (1, 2, 4)	Use analogies, metaphors, and other descriptors to describe interrelationships in works of art and nature (1, 2, 4)
Benchmark 4	Recognize that there are many possibilities and choices in the processes for designing and producing visual arts (2, 3, 4)	Demonstrate awareness of various new ideas, possibilities, options, and situations pertaining to the art world (1, 4)	Compare and contrast multiple possibilities and options available for artistic expression (1, 4)

Grade Cluster	K-4	5-8	9-12
Benchmark 5	Participate in guided inquiry into the basic question "What is art?" and share personal feelings or preferences about various works (1, 2, 4)	Discuss the question "What is art?" and express intuitive reactions and personal responses to various works (1, 4)	Question/weigh evidence and information, examine intuitive reactions, and articulate personal attitudes toward visual work (1, 2, 5)
Benchmark 6	Identify where and how the visual arts are used in daily life and in the community (1, 2, 4)	Describe the use and value of the visual arts in daily life, the workplace, and the community (1, 2, 4)	Integrate knowledge of the visual arts in the total environment to understand the arts within a community (2, 4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:226 (February 2004).

Subchapter C. Historical and Cultural Perspective

§921. Purpose

A. Focus. Historical and cultural perspective is the vehicle for understanding works of art in time and place. The arts survive through times of interruption and neglect; they outlive governments, creeds, societies, and even the civilizations that spawned them. The artist is a harbinger of change, a translator of social thought, an analyst of cultures, a poetic scientist, and a recorder of history. To understand creative output in the history of the arts is to understand history itself.

B. Standard. Students develop historical and cultural perspective by recognizing and understanding that the arts throughout history are a record of human experience with a past, present, and future.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:227 (February 2004).

§923. Benchmarks K-4

A. In grades K-4, students should know and be able to:

VA-HP-E1	Identify the subject, basic style, and culture represented by various works of art	(2, 4)
VA-HP-E2	Recognize universal symbols and how works of art communicate a universal language	(1, 4, 5)
VA-HP-E3	Identify art images and themes from the past and present and discuss historical differences	(1, 2, 4)
VA-HP-E4	Identify media used in works of art throughout history and recognize the importance of available resources	(2, 3, 4)
VA-HP-E5	Recognize professions in the visual arts and the role and status of the artist in various cultures and time periods	(2, 4)
VA-HP-E6	Recognize great artists and works of art that have shaped the history of art	(2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:227 (February 2004).

§925. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

VA-HP-M1	Identify and classify works of art by their subject, style, culture, and time period	(2, 4)
VA-HP-M2	Understand how works of art cross geographical, political, and historical boundaries	(2, 4)
VA-HP-M3	Understand the meaning and significance of ideas, themes, and messages in works of art from the past and present	(2, 4)
VA-HP-M4	Distinguish media and techniques used to create works of art throughout history	(2, 3, 4)
VA-HP-M5	Describe and compare careers in visual arts and the role and status of the artist in various cultures and time periods	(1, 2, 4)
VA-HP-M6	Identify major works of great and influential artists and recognize their achievements	(4, 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:227 (February 2004).

§927. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

VA-HP-H1	Analyze specific styles and periods of art in relation to prevailing cultural, social, political, and economic conditions	(2, 4, 5)
VA-HP-H2	Analyze how works of art cross geographical, political, and historical boundaries	(2, 4)
VA-HP-H3	Compare and contrast ways art has been used to communicate ideas, themes, and messages throughout history	(1, 2, 4)
VA-HP-H4	Analyze materials, technologies, media, and processes of the visual arts throughout history	(2, 3, 4)
VA-HP-H5	Investigate and assess roles, careers, and career opportunities in the visual arts	(2, 4)
VA-HP-H6	Identify representative visual artists of various cultures and compare their lives, careers, works, and influence	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:227 (February 2004).

§929. Historical and Cultural Perspective ?
Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	Identify the subject, basic style, and culture represented by various works of art (2, 4)	Identify and classify works of art by their subject, style, culture, and time period (2, 4)	Analyze specific styles and periods of art in relation to prevailing cultural, social, political, and economic conditions (2, 4, 5)
Benchmark 2	Recognize universal symbols and how works of art communicate a universal language (1, 4, 5)	Understand how works of art cross geographical, political, and historical boundaries (2, 4)	Analyze how works of art cross geographical, political, and historical boundaries (2, 4)
Benchmark 3	Identify art images and themes from the past and present and discuss historical differences (1, 2, 4)	Understand the meaning and significance of ideas, themes, and messages in works of art from the past and present (2, 4)	Compare and contrast ways art has been used to communicate ideas, themes, and messages throughout history (1, 2, 4)
Benchmark 4	Identify media used in works of art throughout history and recognize the importance of available resources (2, 3, 4)	Distinguish media and techniques used to create works of art throughout history (2, 3, 4)	Analyze materials, technologies, media, and processes of the visual arts throughout history (2, 3, 4)
Benchmark 5	Recognize professions in the visual arts and the role and status of the artist in various cultures and time periods (2, 4)	Describe and compare careers in visual arts and the role and status of the artist in various cultures and time periods (1, 2, 4)	Investigate and assess roles, careers, and career opportunities in the visual arts (2, 4)
Benchmark 6	Recognize great artists and works of art that have shaped the history of art (2, 4)	Identify major works of great and influential artists and recognize their achievements (4, 5)	Identify representative visual artists of various cultures and compare their lives, careers, works, and influence (1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:228 (February 2004).

Subchapter D. Critical Analysis

§931. Purpose

A. Focus. Critical analysis is the process of inquiry associated with an individual's knowledge of the arts. Communication about the arts in a structured way provides the individual with means to describe, analyze, interpret, and make critical, reasoned judgments about the form and content of the arts.

B. Standard. Students make informed verbal and written observations about the arts by developing skills for critical analysis through the study of and exposure to the arts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:228 (February 2004).

§933. Benchmarks K-4

A. In grades K-4, students should know and be able to:

VA-CA-E1	View works of art and express observations about how the elements and principles of design are used in the works	(1, 4)
VA-CA-E2	Identify images, colors, and other art elements that have specific meanings in cultural contexts	(1, 4)
VA-CA-E3	Express and explain aesthetic judgments about the created (built) environment	(1, 2, 4)
VA-CA-E4	Express and explain opinions about visual works of others using basic art vocabulary	(1, 4)
VA-CA-E5	Express interpretations about works of art and give supporting reasons	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:228 (February 2004).

§935. Benchmarks 5-8

A. In grades 5-8, students should know and be able to:

VA-CA-M1	View works of art and analyze how artists use design elements and principles to achieve an aesthetic effect	(2, 3, 4)
VA-CA-M2	Analyze and interpret art images for their symbolic meaning, purpose, and value in place and time	(2, 4)
VA-CA-M3	Express and justify aesthetic judgments about the created (built) environment	(1, 2, 4)
VA-CA-M4	Critique works of art using expanded art vocabulary	(1, 4)
VA-CA-M5	Develop interpretations about works of art and give supporting reasons	(1, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:228 (February 2004).

§937. Benchmarks 9-12

A. In grades 9-12, students should know and be able to:

VA-CA-H1	Apply knowledge of design elements and principles to analyze, compare, or contrast the composition of various works of art	(2, 4)
VA-CA-H2	Compare and contrast symbolism as used in works of visual art from different cultures and time periods	(1, 4)
VA-CA-H3	Critique the design of structures or areas in the created (built) environment based on aesthetic criteria	(1, 2, 4)
VA-CA-H4	Critique works of art using advanced art vocabulary	(1, 4)
VA-CA-H5	Develop and justify personal interpretations of works of art based on information from inside and outside the work	(1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:228 (February 2004).

§939. Critical Analysis? Grade Cluster

Grade Cluster	K-4	5-8	9-12
Benchmark 1	View works of art and express observations about how the elements and principles of design are used in the works (1, 4)	View works of art and analyze how artists use design elements and principles to achieve an aesthetic effect (2, 3, 4)	Apply knowledge of design elements and principles to analyze, compare, or contrast the composition of various works of art (2, 4)
Benchmark 2	Identify images, colors, and other art elements that have specific meanings in cultural contexts (1, 4)	Analyze and interpret art images for their symbolic meaning, purpose, and value in place and time (2, 4)	Compare and contrast symbolism as used in works of visual art from different cultures and time periods (1, 4)
Benchmark 3	Express and explain aesthetic judgments about the created (built) environment (1, 2, 4)	Express and justify aesthetic judgments about the created (built) environment (1, 2, 4)	Critique the design of structures or areas in the created (built) environment based on aesthetic criteria (1, 2, 4)
Benchmark 4	Express and explain opinions about visual works of others using basic art vocabulary (1, 4)	Critique works of art using expanded art vocabulary (1, 4)	Critique works of art using advanced art vocabulary (1, 4)
Benchmark 5	Express interpretations about works of art and give supporting reasons (1, 4)	Develop interpretations about works of art and give supporting reasons (1, 4)	Develop and justify personal interpretations of works of art based on information from inside and outside the work (1, 2, 4)

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:24.4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Education, Board of Elementary and Secondary Education, LR 30:229 (February 2004).

Weegie Peabody
Executive Director

0402#017

RULE

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

**LPDES Water Quality Regulations Restructure
(LAC 33:IX)(WQ055)**

The LPDES regulations in LAC 33:IX.Chapter 23 have been renumbered by the Office of the State Register and are being repromulgated by the Department of Environmental

Quality to correct a conflict of rules. The original Chapter 23 is now Subpart 2 of the Part IX.Water Quality regulations, and the original Subchapters A - X and Appendices are now Chapters 23 - 71. Individual sections have been renumbered accordingly. Appendices in LAC 33:IX.Chapter 3 have also been assigned section numbers. These regulations are being repromulgated with the new numbering system. See the following Renumbering Equivalency Chart. For further information contact Judith A. Schuerman, Ph.D., Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section at (225) 219-3550.

The 2004 edition of the ERC has the standard text with the new numbering and is available on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>. Copies of the ERC can be purchased by contacting Brenda Hayden or Karen Veillon, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section at (225) 219-3550. Check or money order is required in advance for each purchase.

**Title 33
ENVIRONMENTAL QUALITY
Part IX. Water Quality**

Renumbering Equivalency Chart

Previous Number	Current or New Number
Subpart 1. Water Pollution Control	
Chapter 1. General Provisions	Subpart 1. Water Pollution Control
Chapter 3. Permits	Chapter 1. General Provisions
Chapter 3. Permits	Chapter 3. Permits
§301. Scope	§301. Scope
§303. Permit Application Information	§303. Permit Application Information
§305. Permit Limitations and Other Requirements	§305. Permit Limitations and Other Requirements
§307. Modification, Revocation and Reissuance	§307. Modification, Revocation and Reissuance
§309. Renewal and Termination	§309. Renewal and Termination
§311. Standard Permit Conditions	§311. Standard Permit Conditions
§313. Fact Sheets	§313. Fact Sheets

Previous Number	Current or New Number
§315. Public Information	§315. Public Information
§317. Special Permits/Programs	§317. Special Permits/Programs
Appendix A. Primary Industry Categories	§319. Appendix A–Primary Industry Categories
Appendix B. Criteria for Determining a Concentrated Animal Feeding Operation	§321. Appendix B–Criteria for Determining a Concentrated Animal Feeding Operation
Appendix C. Criteria for Determining a Concentrated Aquatic Animal Production Facility	§323. Appendix C–Criteria for Determining a Concentrated Aquatic Animal Production Facility
Appendix D. Permit Application Testing Requirements	§325. Appendix D–Permit Application Testing Requirements
Chapter 5. Enforcement	Chapter 5. Enforcement
Chapter 7. Effluent Standards	Chapter 7. Effluent Standards
Chapter 9. Spill Prevention and Control	Chapter 9. Spill Prevention and Control
Chapter 11. Surface Water Quality Standards	Chapter 11. Surface Water Quality Standards
Chapter 13. Louisiana Water Pollution Control Fee System Regulation	Chapter 13. Louisiana Water Pollution Control Fee System Regulation
Chapter 15. Water Quality Certification Procedures	Chapter 15. Water Quality Certification Procedures
Chapter 17. Disposal of Waste Oil, Oil Field Brine, and All Other Materials Resulting from the Drilling for, Production of, or Transportation of Oil, Gas or Sulfur (As amended January 27, 1953)	Chapter 17. Disposal of Waste Oil, Oil Field Brine, and All Other Materials Resulting from the Drilling for, Production of, or Transportation of Oil, Gas or Sulfur (As amended January 27, 1953)
Chapter 19. State of Louisiana Stream Control Commission	Chapter 19. State of Louisiana Stream Control Commission
Chapter 21. Municipal Facilities Revolving Loan Fund	Chapter 21. Municipal Facilities Revolving Loan Fund
Chapter 22. Drinking Water Revolving Loan Fund	Chapter 22. Drinking Water Revolving Loan Fund
Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program	
Chapter 23. The LPDES Program	Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES) Program
Subchapter A. Definitions and General Program Requirements	Chapter 23. Definitions and General LPDES Program Requirements
§2301. General Conditions	§2301. General Conditions
§2311. Purpose and Scope	§2311. Purpose and Scope
§2313. Definitions	§2313. Definitions
§2315. Exclusions	§2315. Exclusions
§2317. Prohibitions	§2317. Prohibitions
§2319. Effect of a Permit	§2319. Effect of a Permit
§2321. Continuation of Expiring Permits	§2321. Continuation of Expiring Permits
§2323. Confidentiality of Information	§2323. Confidentiality of Information
Subchapter B. Permit Application and Special LPDES Program Requirements	Chapter 25. Permit Application and Special LPDES Program Requirements
§2331. Application for a Permit	§2501. Application for a Permit
§2333. Signatories to Permit Applications and Reports	§2503. Signatories to Permit Applications and Reports
§2335. Concentrated Animal Feeding Operations	§2505. Concentrated Animal Feeding Operations
§2337. Concentrated Aquatic Animal Production Facilities	§2507. Concentrated Aquatic Animal Production Facilities
§2339. Aquaculture Projects	§2509. Aquaculture Projects
§2341. Storm Water Discharges	§2511. Storm Water Discharges
§2343. Silvicultural Activities	§2513. Silvicultural Activities
§2345. General Permits	§2515. General Permits
§2346. What Are the Objectives of the Storm Water Regulations for Small MS4s?	§2517. What Are the Objectives of the Storm Water Regulations for Small MS4s?
§2347. As an Operator of a Small MS4, Am I Regulated under the LPDES Storm Water Project?	§2519. As an Operator of a Small MS4, Am I Regulated under the LPDES Storm Water Project?
§2348. If I Am an Operator of a Regulated Small MS4, How Do I Apply for an LPDES Permit and When Do I Have to Apply?	§2521. If I Am an Operator of a Regulated Small MS4, How Do I Apply for an LPDES Permit and When Do I Have to Apply?
§2349. As an Operator of a Regulated Small MS4, What Will My LPDES MS4 Storm Water Permit Require?	§2523. As an Operator of a Regulated Small MS4, What Will My LPDES MS4 Storm Water Permit Require?
§2350. As an Operator of a Regulated Small MS4, May I Share the Responsibility to Implement the Minimum Control Measures with Other Entities?	§2525. As an Operator of a Regulated Small MS4, May I Share the Responsibility to Implement the Minimum Control Measures with Other Entities?
§2351. As an Operator of a Regulated Small MS4, What Happens if I Don't Comply with the Application or Permit Requirements in LAC 33:IX.2348-50?	§2527. As an Operator of a Regulated Small MS4, What Happens if I Don't Comply with the Application or Permit Requirements in LAC 33:IX.2521-2525?
§2352. Will the Small MS4 Storm Water Program Regulations at LAC 33:IX.2347-2351 Change in the Future?	§2529. Will the Small MS4 Storm Water Program Regulations at LAC 33:IX.2519-2527 Change in the Future?
Subchapter C. Permit Conditions	Chapter 27. LPDES Permit Conditions
§2355. Conditions Applicable to All Permits	§2701. Conditions Applicable to All Permits
§2357. Additional Conditions Applicable to Specified Categories of LPDES Permits	§2703. Additional Conditions Applicable to Specified Categories of LPDES Permits
§2359. Establishing Permit Conditions	§2705. Establishing Permit Conditions
§2361. Establishing Limitations, Standards, and Other Permit Conditions	§2707. Establishing Limitations, Standards, and Other Permit Conditions
§2363. Calculating LPDES Permit Conditions	§2709. Calculating LPDES Permit Conditions
§2365. Duration of Permits	§2711. Duration of Permits
§2367. Schedules of Compliance	§2713. Schedules of Compliance

Previous Number	Current or New Number
§2369. Requirements for Recording and Reporting of Monitoring Results	§2715. Requirements for Recording and Reporting of Monitoring Results
§2371. Disposal of Pollutants into Wells, Publicly Owned Treatment Works or by Land Application	§2717. Disposal of Pollutants into Wells, Publicly Owned Treatment Works or by Land Application
Subchapter D. Transfer, Modification, Revocation and Reissuance, and Termination of Permits	Chapter 29. Transfer, Modification, Revocation and Reissuance, and Termination of LPDES Permits
§2381. Transfer of Permits	§2901. Transfer of Permits
§2383. Modification or Revocation and Reissuance of Permits	§2903. Modification or Revocation and Reissuance of Permits
§2385. Minor Modifications of Permits	§2905. Minor Modifications of Permits
§2387. Termination of Permits	§2907. Termination of Permits
Subchapter E. General Program Requirements	Chapter 31. General LPDES Program Requirements
§2403. Definitions	§3101. Definitions
§2405. Application for a Permit	§3103. Application for a Permit
§2407. Modification, Revocation and Reissuance, or Termination of Permits	§3105. Modification, Revocation and Reissuance, or Termination of Permits
§2409. Draft Permits	§3107. Draft Permits
§2411. Statement of Basis	§3109. Statement of Basis
§2413. Fact Sheet	§3111. Fact Sheet
§2415. Public Notice of Permit Actions and Public Comment Period	§3113. Public Notice of Permit Actions and Public Comment Period
§2417. Public Comments and Requests for Public Hearings	§3115. Public Comments and Requests for Public Hearings
§2419. Public Hearings	§3117. Public Hearings
§2421. Obligation to Raise Issues and Provide Information During the Public Comment Period	§3119. Obligation to Raise Issues and Provide Information During the Public Comment Period
§2423. Reopening of the Public Comment Period	§3121. Reopening of the Public Comment Period
§2425. Issuance and Effective Date of Permit	§3123. Issuance and Effective Date of Permit
§2427. Response to Comments	§3125. Response to Comments
Subchapter F. Specific Decisionmaking Procedures Applicable to LPDES Permits	Chapter 33. Specific Decisionmaking Procedures Applicable to LPDES Permits
§2441. Purpose and Scope	§3301. Purpose and Scope
§2443. Permits Required on a Case-by-Case Basis	§3303. Permits Required on a Case-by-Case Basis
§2445. Fact Sheets	§3305. Fact Sheets
§2447. Public Notice	§3307. Public Notice
§2449. Conditions Requested by the Corps of Engineers and Other Government Agencies	§3309. Conditions Requested by the Corps of Engineers and Other Government Agencies
§2451. Decision on Variances	§3311. Decision on Variances
§2453. Special Procedures for Decisions on Thermal Variances under Section 316(a) of the CWA	§3313. Special Procedures for Decisions on Thermal Variances under Section 316(a) of the CWA
Subchapter G. Evidentiary Hearings for LPDES Permits—Reserved	Chapter 35. Evidentiary Hearings for LPDES Permits—Reserved
Subchapter H. Criteria and Standards for Technology-Based Treatment Requirements under Sections 301(b) and 402 of the Act	Chapter 37. Criteria and Standards for Technology-Based Treatment Requirements under Sections 301(b) and 402 of the Act
§2465. Purpose and Scope	§3701. Purpose and Scope
§2467. Definitions	§3703. Definitions
§2469. Technology -Based Treatment Requirements in Permits	§3705. Technology -Based Treatment Requirements in Permits
Subchapter I. Criteria for Issuance of Permits to Aquaculture Projects	Chapter 39. Criteria for Issuance of LPDES Permits to Aquaculture Projects
§2475. Purpose and Scope	§3901. Purpose and Scope
§2477. Criteria	§3903. Criteria
Subchapter J. Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology under Section 301(k) of the Act—Reserved	Chapter 41. Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology under Section 301(k) of the Act—Reserved
Subchapter K. Criteria and Standards for Determining Fundamentally Different Factors under Sections 301(b)(1)(A), 301(b)(2)(A) and (E) of the Act	Chapter 43. Criteria and Standards for Determining Fundamentally Different Factors under Sections 301(b)(1)(A), 301(b)(2)(A) and (E) of the Act
§2501. Purpose and Scope	§4301. Purpose and Scope
§2503. Criteria	§4303. Criteria
§2505. Method of Application	§4305. Method of Application
Subchapter L. Criteria for Determining Alternative Effluent Limitations under Section 316(a) of the Act	Chapter 45. Criteria for Determining Alternative Effluent Limitations under Section 316(a) of the Act
§2511. Purpose and Scope	§4501. Purpose and Scope
§2513. Definitions	§4503. Definitions
§2515. Early Screening of Applications for Section 316(a) of the Act Variances	§4505. Early Screening of Applications for Section 316(a) of the Act Variances
§2517. Criteria and Standards for the Determination of Alternative Effluent Limitations under Section 316(a) of the Act	§4507. Criteria and Standards for the Determination of Alternative Effluent Limitations under Section 316(a) of the Act
Subchapter M. Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act	Chapter 47. Criteria Applicable to Cooling Water Intake Structures Under Section 316(b) of the Act
§2519. What Are the Purpose and Scope of This Subchapter?	§4701. What Are the Purpose and Scope of This Chapter?
§2520. Who Is Subject to This Subchapter?	§4703. Who Is Subject to This Chapter?
§2521. When Must I Comply with This Subchapter?	§4705. When Must I Comply with This Chapter?
§2522. What Special Definitions Apply to This Subchapter?	§4707. What Special Definitions Apply to This Chapter?
§2523. As an Owner or Operator of a New Facility, What Must I Do	§4709. As an Owner or Operator of a New Facility, What Must I Do to

Previous Number	Current or New Number
to Comply with This Subchapter?	Comply with This Chapter?
§2524. May Alternative Requirements Be Authorized?	§4711. May Alternative Requirements Be Authorized?
§2525. As an Owner or Operator of a New Facility, What Must I Collect and Submit When I Apply for My New or Reissued LPDES Permit?	§4713. As an Owner or Operator of a New Facility, What Must I Collect and Submit When I Apply for My New or Reissued LPDES Permit?
§2526. As an Owner or Operator of a New Facility, Must I Perform Monitoring?	§4715. As an Owner or Operator of a New Facility, Must I Perform Monitoring?
§2527. As an Owner or Operator of a New Facility, Must I Keep Records and Report?	§4717. As an Owner or Operator of a New Facility, Must I Keep Records and Report Information and Data?
§2528. What Must the State Administrative Authority Do to Comply with the Requirements of This Subchapter?	§4719. What Must the State Administrative Authority Do to Comply with the Requirements of This Chapter?
Subchapter N. Incorporation by Reference	Chapter 49. Incorporation by Reference
§2531. 40 CFR Part 136	§4901. 40 CFR Part 136
§2533. 40 CFR Chapter I, Subchapter N	§4903. 40 CFR Chapter I, Subchapter N
§2535. Availability	§4905. Availability
Subchapter O. Criteria for Extending Compliance Dates under Section 301(i) of the Act—Reserved	Chapter 51. Criteria for Extending Compliance Dates under Section 301(i) of the Act—Reserved
Subchapter P. Criteria and Standards for Best Management Practices Authorized under Section 304(e) of the Act—Reserved	Chapter 53. Criteria and Standards for Best Management Practices Authorized under Section 304(e) of the Act—Reserved
Subchapter Q. Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge under Section 405 of the Act—Reserved	Chapter 55. Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge under Section 405 of the Act—Reserved
Subchapter R. Toxic Pollutant Effluent Standards and Prohibitions	Chapter 57. Toxic Pollutant Effluent Standards and Prohibitions
§2601. Scope and Purpose	§5701. Scope and Purpose
§2603. Definitions	§5703. Definitions
§2605. Abbreviations	§5705. Abbreviations
§2607. Toxic Pollutants	§5707. Toxic Pollutants
§2609. Compliance	§5709. Compliance
§2611. Adjustment of Effluent Standard for Presence of Toxic Pollutant in the Intake Water	§5711. Adjustment of Effluent Standard for Presence of Toxic Pollutant in the Intake Water
§2613. Requirement and Procedure for Establishing a More Stringent Effluent Limitation	§5713. Requirement and Procedure for Establishing a More Stringent Effluent Limitation
§2615. Compliance Date	§5715. Compliance Date
§2617. Aldrin/Dieldrin	§5717. Aldrin/Dieldrin
§2619. DDT, DDD, and DDE	§5719. DDT, DDD, and DDE
§2621. Endrin	§5721. Endrin
§2623. Toxaphene	§5723. Toxaphene
§2625. Benzidine	§5725. Benzidine
§2627. Polychlorinated Biphenyls (PCBs)	§5727. Polychlorinated Biphenyls (PCBs)
Subchapter S. Secondary Treatment under the LPDES Program	Chapter 59. Secondary Treatment under the LPDES Program
§2641. Purpose	§5901. Purpose
§2643. Definitions	§5903. Definitions
§2645. Secondary Treatment	§5905. Secondary Treatment
§2647. Special Considerations	§5907. Special Considerations
§2649. Sampling and Test Procedures	§5909. Sampling and Test Procedures
§2651. Treatment Equivalent to Secondary Treatment	§5911. Treatment Equivalent to Secondary Treatment
Subchapter T. General Pretreatment Regulations for Existing and New Sources of Pollution	Chapter 61. General Pretreatment Regulations for Existing and New Sources of Pollution
§2701. Purpose and Applicability	§6101. Purpose and Applicability
§2703. Objectives of General Pretreatment Regulations	§6103. Objectives of General Pretreatment Regulations
§2705. Definitions	§6105. Definitions
§2707. State or Local Law	§6107. State or Local Law
§2709. National Pretreatment Standards: Prohibited Discharges	§6109. National Pretreatment Standards: Prohibited Discharges
§2711. National Pretreatment Standards: Categorical Standards	§6111. National Pretreatment Standards: Categorical Standards
§2713. Removal Credits	§6113. Removal Credits
§2715. Pretreatment Program Requirements: Development and Implementation by POTW	§6115. Pretreatment Program Requirements: Development and Implementation by POTW
§2717. POTW Pretreatment Programs and/or Authorization to Revise Pretreatment Standards: Submission for Approval	§6117. POTW Pretreatment Programs and/or Authorization to Revise Pretreatment Standards: Submission for Approval
§2719. Development and Submission of NPDES State Pretreatment Programs	§6119. Development and Submission of NPDES State Pretreatment Programs
§2721. Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits	§6121. Approval Procedures for POTW Pretreatment Programs and POTW Granting of Removal Credits
§2723. Reporting Requirements for POTWs and Industrial Users	§6123. Reporting Requirements for POTWs and Industrial Users
§2725. Variances from Categorical Pretreatment Standards for Fundamentally Different Factors	§6125. Variances from Categorical Pretreatment Standards for Fundamentally Different Factors
§2727. Confidentiality	§6127. Confidentiality
§2729. Net/Gross Calculation	§6129. Net/Gross Calculation
§2731. Upset Provision	§6131. Upset Provision
§2733. Bypass	§6133. Bypass
§2735. Modification of POTW Pretreatment Programs	§6135. Modification of POTW Pretreatment Programs

Previous Number	Current or New Number
Subchapter U. Ocean Discharge Criteria	Chapter 63. Ocean Discharge Criteria
§2745. Scope and Purpose	§6301. Scope and Purpose
§2747. Definitions	§6303. Definitions
§2749. Determination of Unreasonable Degradation of the Marine Environment	§6305. Determination of Unreasonable Degradation of the Marine Environment
§2751. Permit Requirements	§6307. Permit Requirements
§2753. Information Required to be Submitted by Applicant	§6309. Information Required to be Submitted by Applicant
Subchapter V. Additional Requirements Applicable to the LPDES Program	Chapter 65. Additional Requirements Applicable to the LPDES Program
§2761. Applicability	§6501. Applicability
§2763. Request for Nondisclosure of Confidential Information	§6503. Request for Nondisclosure of Confidential Information
§2765. Additional LPDES Permit Application Requirements	§6505. Additional LPDES Permit Application Requirements
§2767. Enforcement Actions	§6507. Enforcement Actions
§2769. Additional Requirements for Permit Renewal and Termination	§6509. Additional Requirements for Permit Renewal and Termination
§2771. Duty to Mitigate	§6511. Duty to Mitigate
§2773. Inspection and Entry	§6513. Inspection and Entry
§2775. Monitoring and Recordkeeping	§6515. Monitoring and Recordkeeping
§2777. Additional Requirements for Bypass and Upset Conditions	§6517. Additional Requirements for Bypass and Upset Conditions
§2779. Fact Sheets	§6519. Fact Sheets
§2781. Public Notice and Availability of Information	§6521. Public Notice and Availability of Information
Subchapter W. Financial Security	Chapter 67. Financial Security
§2801. Applicability	§6701. Applicability
§2803. Acceptable Form of Financial Security	§6703. Acceptable Form of Financial Security
§2805. Amount of Required Financial Security	§6705. Amount of Required Financial Security
§2807. Conditions for Forfeiture	§6707. Conditions for Forfeiture
§2809. Use of Proceeds	§6709. Use of Proceeds
Subchapter X. Standards for the Use or Disposal of Sewage Sludge	Chapter 69. Standards for the Use or Disposal of Sewage Sludge
§3101. General Provisions	§6901. General Provisions
§3103. Land Application	§6903. Land Application
§3105. Reserved	
§3107. Siting and Operation Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge	§6905. Siting and Operation Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge
§3109. Financial Assurance Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge	§6907. Financial Assurance Requirements for Commercial Blenders, Composters, Mixers, or Preparers of Sewage Sludge
§3111. Pathogens and Vector Attraction Reduction	§6909. Pathogens and Vector Attraction Reduction
§3113. Incineration	§6911. Incineration
	Chapter 71. Appendices
Appendix A—Primary Industry Categories	§7101. Appendix A—Primary Industry Categories
Appendix B—Criteria for Determining a Concentrated Animal Feeding Operation	§7103. Appendix B—Criteria for Determining a Concentrated Animal Feeding Operation
Appendix C—Criteria for Determining a Concentrated Aquatic Animal Production Facility	§7105. Appendix C—Criteria for Determining a Concentrated Aquatic Animal Production Facility
Appendix D—Permit Application Testing Requirements (LAC 33:IX.2331)	§7107. Appendix D—Permit Application Testing Requirements (LAC 33:IX.2501)
Appendix E—Rainfall Zones of Louisiana (Reserved)	§7109. Appendix E—Rainfall Zones of Louisiana—Reserved
Appendix F—Incorporated Places with Populations Greater Than 250,000	§7111. Appendix F—Incorporated Places with Populations Greater Than 250,000
Appendix G—Incorporated Places with Populations Greater Than 100,000 and Less Than 250,000	§7113. Appendix G—Incorporated Places with Populations Greater Than 100,000 and Less Than 250,000
Appendix H—Parishes with Unincorporated Urbanized Areas with a Population of 250,000 or More	§7115. Appendix H—Parishes with Unincorporated Urbanized Areas with a Population of 250,000 or More
Appendix I—Parishes with Unincorporated Urbanized Areas Greater Than 100,000, But Less Than 250,000	§7117. Appendix I—Parishes with Unincorporated Urbanized Areas Greater Than 100,000, But Less Than 250,000
Appendix J—65 Toxic Pollutants (Reserved)	§7119. Appendix J—65 Toxic Pollutants—Reserved
Appendix K—Industrial Categories Subject to National Categorical Pretreatment Standards (Reserved)	§7121. Appendix K—Industrial Categories Subject to National Categorical Pretreatment Standards—Reserved
Appendix L—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula	§7123. Appendix L—Selected Industrial Subcategories Considered Dilute for Purposes of the Combined Wastestream Formula
Appendix M—Sampling Procedures	§7125. Appendix M—Sampling Procedures
Appendix N—Pollutants Eligible for a Removal Credit	§7127. Appendix N—Pollutants Eligible for a Removal Credit
Appendix O—LPDES Permit Testing Requirements for Publicly Owned Treatment Works (LAC 33:IX.2331.J)	§7129. Appendix O—LPDES Permit Testing Requirements for Publicly Owned Treatment Works (LAC 33:IX.2501.J)
Appendix P—Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge	§7131. Appendix P—Procedure to Determine the Annual Whole Sludge Application Rate for a Sewage Sludge
Appendix Q—Pathogen Treatment Processes	§7133. Appendix Q—Pathogen Treatment Processes
Appendix R—Financial Assurance Documents	§7135. Appendix R—Financial Assurance Documents

James H. Brent, Ph.D.
Assistant Secretary

RULE

**Department of Health and Hospitals
Board of Medical Examiners**

**Acupuncturists' and Acupuncturists' Assistants' Fees
(LAC 46:XLV.185 and 187)**

Editor's Note: This Rule was printed in error in the January 20, 2004 edition of the *Louisiana Register* on page 41.

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:1270, R.S. 37:1281, R.S. 37:1356-1360, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended its rules prescribing the fees payable by acupuncturists and acupuncturists' assistants for the issuance and annual renewal of certification issued by the board. LAC 46:XLV, Subpart 1, Chapter 1, Subchapter H, §§185 and 187. The effective date of this Rule is February 20, 2004.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

**Subchapter H. Acupuncturists' and Acupuncturists'
Assistants Fees**

§185. Certification

A. For processing an application for certification as an acupuncturist or as an acupuncturist assistant, a fee of \$200 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:1360.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:41, repromulgated LR 30:234 (February 2004).

§187. Annual Renewal

A. For processing an application for annual renewal of an acupuncturist's or acupuncturist assistant's certification, a fee of \$100 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:1360.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:41 (January 2004), repromulgated LR 30:234 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#020

RULE

**Department of Health and Hospitals
Board of Medical Examiners**

**Athletic Trainers' Fees
(LAC 46:XLV.159, 161, 163, 165, 3107, 3129 and 3157)**

Editor's Note: This Rule was printed in error in the January 20, 2004 edition of the *Louisiana Register* on page 42.

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:3301-3312, R.S. 37:1270, R.S. 37:1281, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended its existing Rules prescribing the fees payable for initial certification, annual renewal and temporary permits issued by the board for athletic trainers, LAC 46:XLV, Subpart 1, Chapter 1, Subchapter F, §§159, 161, 163, 165 and Subpart 2, Chapter 31, Subchapters B, §3107, D, §3129 and G, §3157. The effective date of this Rule is February 20, 2004.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

Subchapter F. Athletic Trainers Fees

§159. Scope of Subchapter

A. The rules of this Subchapter prescribe the fees and costs applicable to the certification of athletic trainers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:3301-3312.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:42 (January 2004), repromulgated LR 30:234 (February 2004).

§161. Certification, Permits, and Examination

A. For processing applications for certification as an athletic trainer, a fee of \$125 shall be payable to the board.

B. For issuing a temporary permit, a fee of \$50 shall be payable to the board.

C. For registration for and taking of the certification examination administered by the board, an applicant shall pay the fee that is charged by the entity developing the examination.

D. When an applicant is required by these rules to take the examination administered by the board, the fee prescribed by §161.C shall be added to the applicable application processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:3301-3312.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:42 (January 2004), repromulgated LR 30:234 (February 2004).

§163. Annual Renewal

A. For processing an application for annual renewal of an athletic trainer's certification, a fee of \$100 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:3301-3312.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:42 (January 2004), repromulgated LR 30:235 (February 2004).

§165. Reinstatement of License

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:3301-3312.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), repealed by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:42 (January 2004), repromulgated LR 30:235 (February 2004).

Subpart 2. Licensure and Certification

Chapter 31. Athletic Trainers

Subchapter B. Requirements and Qualifications for Certification

§3107. Requirements for Certification

A. - A.4. ...

5. satisfy the applicable fees as prescribed by Chapter 1 of these rules;

A.6. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:3301-3312.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:522 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:42 (January 2004), repromulgated LR 30:235 (February 2004).

Subchapter D. Application

§3129. Application Procedure

A. - G ...

H. Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 1 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:3301-3312.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:524 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 24:938 (May 1998), LR 30:42 (January 2004), repromulgated LR 30:235 (February 2004).

Subchapter G. Certificate Issuance, Termination, Renewal, Reinstatement

§3157. Renewal of Certificate

A. Every certificate issued by the board under this Subchapter shall be renewed annually on or before its date of expiration by submitting to the board an application for renewal, upon forms supplied by the board, together with

evidence of the qualifications requisite to renewal as specified in §3159 and the applicable renewal fee prescribed in Chapter 1 of these rules.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281 and R.S. 37:3301-3312.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:526 (August 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:42 (January 2004), repromulgated LR 30:235 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#021

RULE

Department of Health and Hospitals Board of Medical Examiners

Clinical Exercise Physiologists Fees (LAC 46:XLV.221, 223, 225, 3713, and 3743)

Editor's Note: This Rule was printed in error in the January 20, 2004 edition of the *Louisiana Register* on page 43.

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:3421-3433, R.S. 37:1270, R.S. 37:1281, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has adopted rules and amended its existing rules prescribing the fees payable by clinical exercise physiologists for the issuance and renewal of a license by the board, LAC 46:XLV, Subpart 1, Chapter 1, Subchapter L, §§221, 223, 225, and Subpart 2, Chapter 37, Subchapters C, §3713 and E, §3743. The effective date of this Rule is February 20, 2004.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part XLV. Medical Professions Subpart 1. General

Chapter 1. Fees and Costs

Subchapter L. Clinical Exercise Physiologists Fees

§221. Scope of Subchapter

A. The rules of this Subchapter prescribe the fees and costs applicable to the licensing of clinical exercise physiologists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3421-3433, R.S. 37:1270 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:43 (January 2004), repromulgated LR 30:235 (February 2004).

§223. Licenses and Permits

A. For processing an application for a license as a clinical exercise physiologist, a fee of \$150 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3421-3433, R.S. 37:1270 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:43 (January 2004), repromulgated LR 30:235 (February 2004).

§225. Annual Renewal

A. For processing an application for annual renewal of a license as a clinical exercise physiologist, a fee of \$100 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3421-3433, R.S. 37:1270 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:43 (January 2004), repromulgated LR 30:236 (February 2004).

Subpart 2. Licensure and Certification

Chapter 37. Clinical Exercise Physiologists

Subchapter C. Application

§3713. Application Procedure

A. - F. ...

G Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 1 of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3421-3433 and R.S. 37:1270.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:406 (April 1997), amended LR 30:43 (January 2004), repromulgated LR 30:236 (February 2004).

Subchapter E. License Issuance, Expiration, Renewal and Termination

§3743. Renewal of License

A. Every license issued by the board under this Chapter shall be renewed annually on or before its date of expiration by submitting to the board an application for renewal, upon forms supplied by the board, together with a renewal fee as prescribed by Chapter 1 of these rules and documentation of satisfaction of the continuing professional education requirements prescribed by Subchapter G of these rules.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3421-3433, R.S. 37:1270 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 23:409 (April 1997), amended 24:1498 (August 1998), LR 30:43 (January 2004), repromulgated LR 30:236 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#022

RULE

**Department of Health and Hospitals
Board of Medical Examiners**

**Midwives' Fees
(LAC 46:XLV.203, 205, 2313 and 2345)**

Editor's Note: This Rule was printed in error in the January 20, 2004 edition of the *Louisiana Register* on page 43.

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:3240-3257, R.S. 37:1270, R.S. 37:1281, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended its Rules prescribing the fees payable by midwives for the issuance and renewal of a license by the board. LAC 46:XLV, Subpart 1, Chapter 1, Subchapter J,

§§203, 205 and Subpart 2, Chapter 23, Subchapters C, §2313 and F, §2345. The effective date of this Rule is February 20, 2004.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

Subchapter J. Midwives' Fees

§203. Licenses and Permits

A. For processing an application for a midwifery license, a fee of \$200 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3240-3257, R.S. 37:1270, R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:43 (January 2004), repromulgated LR 30:236 (February 2004).

§205. Renewal

A. For processing an application for biannual renewal of a midwifery license, a fee of \$100 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3240-3257, R.S. 37:1270, R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:44 (January 2004), repromulgated LR 30:236 (February 2004).

Subpart 2. Licensure and Certification

Chapter 23. Licensed Midwives

Subchapter C. Application

§2313. Application Procedure

A. - F. ...

G Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 1 of these rules.

H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3240-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:514 (August 1986), amended 17:779 (August 1991), LR 30:44 (January 2004), repromulgated LR 30:236 (February 2004).

Subchapter F. License Issuance, Termination, Renewal, Reinstatement

§2345. Renewal of License

A. Every license issued by the board under this Chapter shall be renewed biannually on or before its date of expiration by submitting to the board an application for renewal, upon forms supplied by the board, together with the renewal fee prescribed in Chapter 1 of these rules.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:3240-3257.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 12:516 (August 1986), amended 17:779 (August 1991), LR 30:44 (January 2004), repromulgated LR 30:236 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#023

RULE

Department of Health and Hospitals Board of Medical Examiners

Occupational Therapists and Occupational Therapy Assistants Fees (LAC 46:XLV.173, 175, 1913 and 1947)

Editor's Note: This Rule was printed in error in the January 20, 2004 edition of the *Louisiana Register* on page 44.

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:3001-3014, R.S. 37:1270, R.S. 37:1281, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended its Rules prescribing the fees payable for the issuance of initial license and annual license renewal by occupational therapists and occupational therapy assistants, as well as that applicable to temporary permits issued by the board. LAC 46:XLV, Subpart 1, Chapter 1, Subchapter G, §§173, 175 and Subpart 2, Chapter 19, Subchapters C, §1913 and F, §1947. The effective date of this Rule is February 20, 2004.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

Subchapter G. Occupational Therapists and

Occupational Therapy Assistants Fees

§173. Licenses and Permits

A. For processing an application for an occupational therapist's license a fee of \$150 shall be payable to the board.

B. For processing an application for an occupational therapy assistant's license a fee of \$100 shall be payable to the board.

C. For issuing a temporary permit, a fee of \$50 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014, R.S. 37:1270, R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:44 (January 2004), repromulgated LR 30:237 (February 2004).

§175. Annual Renewal

A. For processing an application for annual renewal of an occupational therapist's license, a fee of \$100 shall be payable to the board.

B. For processing an application for annual renewal of an occupational therapy assistant's license a fee of \$75 shall be payable to the board.

C. If the application for renewal is received beyond the deadline designated by the board, a late renewal fee of \$35 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014, R.S. 37:1270, R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health

and Hospitals, Board of Medical Examiners, LR 30:44 (January 2004), repromulgated LR 30:237 (February 2004).

Subpart 2. Licensure and Certification

Chapter 19. Occupational Therapists and

Occupational Therapy Assistants

Subchapter C. Application

§1913. Application Procedure

A. - G. ...

H. Each application submitted to the board shall be accompanied by the applicable fee, as provided in Chapter 1 of these rules.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:44 (January 2004), repromulgated LR 30:237 (February 2004).

Subchapter F. License Issuance, Termination, Renewal and Reinstatement

§1947. Renewal of License

A. Every license issued by the board under this Subchapter shall be renewed annually on or before its date of expiration by submitting to the board an application for renewal, upon forms supplied by the board, together with the renewal fee prescribed in Chapter 1 of these rules and documentation of satisfaction of the continuing professional education requirements prescribed by Subchapter H of these rules.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3001-3014 and R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 20:1003 (September 1994), LR 24:1499 (August 1998), LR 30:44 (January 2004), repromulgated LR 30:237 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#024

RULE

Department of Health and Hospitals Board of Medical Examiners

Physician Assistants' Fees (LAC 46:XLV.149, 153, 1509 and 1517)

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:1270, R.S. 37:1281, R.S. 37:1360.23, R.S. 37:1360.24, R.S. 37:1360.27, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended its Rules prescribing the fees payable by physician assistants for initial issuance and renewal of certification issued by the board to physician assistants. LAC 46:XLV, Subpart 1, Chapter 1, Subchapter E, §§149, 153, Subpart 2, Chapter 15, §§1509 and 1517. The Rules are set forth below.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Professions
Subpart 1. General

Chapter 1. Fees and Costs

Subchapter E. Physician Assistants' Fees

§149. Certification

A. For processing an application for certification as a physician assistant, a fee of \$250 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:1362.23, R.S. 37:1360.24.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:238 (February 2004).

§153. Annual Renewal

A. For processing an application for annual renewal of a physician assistant's certification, a fee of \$150 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:1362.23, R.S. 37:1360.27.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:238 (February 2004).

Subpart 2. Licensure and Certification

Chapter 15. Physician Assistants

§1509. Application for Licensure; Procedure

A.1. - 2. ...

3. payment of the applicable fee as provided in Chapter 1 of these rules; and

4. ...

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:1360.23, R.S. 37:1360.24.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:110 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1103 (November 1991), LR 22:202 (March 1996), LR 25:29 (January 1999), LR 30:238 (February 2004).

§1517. Expiration of Licensure; Renewals;

Modification; Notification of Intent to Practice

A. ...

B. Every license issued by the board under this Chapter shall be renewed annually on or before the first day of the month in which the licensee was born, by submitting to the board an application for renewal upon forms supplied by the board, together with satisfactory documentation of current certification by the National Commission on Certificate of Physician Assistants. Each application for renewal shall be accompanied by the applicable fee as provided in Chapter 1 of these rules.

C. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:1360.23, R.S. 37:1360.24.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 4:111 (April 1978), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:1104 (November

1991), LR 22:203 (March 1996), LR 24:1498 (August 1998), LR 25:31 (January 1999), LR 30:238 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#039

RULE

Department of Health and Hospitals
Board of Medical Examiners

Physicians' and Surgeons' Fees
(LAC 46:XLV.125, 127 and 131)

Editor's Note: This Rule was printed in error in the January 20, 2004 edition of the Louisiana Register on page 45.

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:1270 and R.S. 37:1281, and the provisions of the Administrative Procedure Act, R.S. 49:953, has amended its Rules prescribing the fees payable by physicians for initial issuance and renewal of medical licensure, as well as those applicable to a graduate education temporary permit, visiting physician permit, short-term residency permit, institutional or temporary permit and intern registration. The effective date of this Rule is February 20, 2004.

Title 46

PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Professions
Subpart 1. General

Chapter 1. Fees and Costs

Subchapter C. Physicians' and Surgeons' Fees

§125. Licenses, Permits, and Examination

A. For processing applications for licensure of the type indicated, the following fees shall be payable to the board.

1. Standard application? \$250
2. Reciprocity application? \$350

B. For processing applications for permits of the type indicated, the following fees shall be payable to the board.

1. Graduate medical education temporary permit? \$200
2. Visiting physician permit? \$100
3. Short-term residency permit? \$100
4. Other institutional or temporary permits? \$100

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:906 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 17:603 (June 1991), LR 21:467 (May 1995), LR 21:1238 (November 1995), LR 30:45 (January 2004), repromulgated LR 30:238 (February 2004).

§127. Postgraduate Education Registration

A. For processing an application for and issuance of a certificate of registration pursuant to Subchapter J of Chapter 3 of these rules, a fee of \$50 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR

10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 21:1238 (November 1995), LR 30:45 (January 2004), repromulgated LR 30:238 (February 2004).

§131. Annual Renewal

A. For processing a licensee's annual renewal of license under §417 of these rules, a fee of \$300 shall be payable to the board.

B. For processing a permit holder's annual renewal of a graduate medical education temporary permit, a fee of \$100 shall be payable to the board.

C. For processing renewal of an institutional or other temporary permit, a fee of \$100 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270 and 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended LR 12:767 (November 1986), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 21:1238 (November 1995), LR 30:45 (January 2004), repromulgated LR 30:239 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#025

RULE

**Department of Health and Hospitals
Board of Medical Examiners**

Podiatrists' Fees
(LAC 46:XLV.139, 141 and 143)

Editor's Note: This Rule was printed in error in the January 20, 2004 edition of the *Louisiana Register* on page 45.

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:1270, R.S. 37:1281, R.S. 37:613, R.S. 37:618, R.S. 37:621-622, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended its Rules prescribing the fees payable for initial issuance and renewal of podiatric licensure, as well as those applicable to temporary permits, and issuance of an intern registration. LAC 46:XLV, Subpart 1, Chapter 1, Subchapter D, §§139-143. The effective date of this Rule is February 20, 2004.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

Subchapter D. Podiatrists Fees

§139. Licenses, Permits, and Examination

A. For processing an application for licensure as a podiatrist, a fee of \$300 shall be payable to the board.

B. For issuing a temporary permit, a fee of \$100 shall be payable to the board.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:613, R.S. 618, R.S. 621-622.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:46 (January 2004), repromulgated LR 30:239 (February 2004).

§141. Annual Renewal

A. For processing a podiatrist's annual renewal of license, a fee of \$200 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:613, R.S. 618, R.S. 621-622.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:907 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:46 (January 2004), repromulgated LR 30:239 (February 2004).

§143. Podiatric Postgraduate Education Registration

A. For processing an application for and issuance of a certificate of registration pursuant to Subchapter K of Chapter 13 of these rules, a fee of \$50 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, R.S. 37:1281, R.S. 37:613, R.S. 618, R.S. 621-622.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:46 (January 2004), repromulgated LR 30:239 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#026

RULE

**Department of Health and Hospitals
Board of Medical Examiners**

Registered Respiratory Therapists' and
Certified Respiratory Therapists' Fees
(LAC 46:XLV.193, 195, and 197)

Editor's Note: This Rule was printed in error in the January 20, 2004 edition of the *Louisiana Register* on page 46.

The Louisiana State Board of Medical Examiners (board), pursuant to the authority vested in the board by R.S. 37:3351-3361, R.S. 37:1270, R.S. 37:1281, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., has amended Rules prescribing the fees payable by registered respiratory therapists and certified respiratory therapists for the issuance of an initial license, annual license renewal, and a temporary license by the board. LAC 46:XLV, Subpart 1, Chapter 1, Subchapter I, §§193, 195 and 197. The effective date of this Rule is February 20, 2004.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 1. General

Chapter 1. Fees and Costs

**Subchapter I. Respiratory Therapists and Respiratory
Therapy Technicians**

§193. Scope of Subchapter

A. The rules of this Subchapter prescribe the fees and costs applicable to the licensing of registered respiratory therapists and certified respiratory therapists.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, R.S. 37:1270 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:46 (January 2004), repromulgated LR 30:239 (February 2004).

§195. Licenses

A. For processing an application for licensing a registered respiratory therapist, a fee of \$150 shall be payable to the board.

B. For processing an application for licensing a certified respiratory therapist, a fee of \$100 shall be payable to the board.

C. For processing a temporary license, a fee of \$50 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, R.S. 37:1270, R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Medical Examiners, LR 10:908 (November 1984), amended by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:46 (January 2004), repromulgated LR 30:240 (February 2004).

§197. Annual Renewal

A. For processing an application for annual renewal of a registered respiratory therapist's license, a fee of \$100 shall be payable to the board.

B. For processing an application for annual renewal of a certified respiratory therapist's license a fee of \$75 shall be payable to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3351-3361, R.S. 37:1270 and R.S. 37:1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 30:46 (January 2004), repromulgated LR 30:240 (February 2004).

John B. Bobear, M.D.
Executive Director

0402#027

RULE

Department of Health and Hospitals Office of the Secretary

Admissions Criteria for Inpatient Facilities (LAC 48:I.1607)

Editor's Note: LAC 48:I.1607 was promulgated in the January 20, 2004 issue of the *Louisiana Register* on pages 47-48 and is being repromulgated to correct typographical errors.

Under the authority of Act 1249 of the 2003 Regular Session of the Louisiana Legislature, the Louisiana Department of Health and Hospitals has adopted the following Rule governing admissions criteria for inpatient facilities operated by the Department of Health and Hospitals. Each office within the Department of Health and Hospitals that operates inpatient facilities, i.e., Office of the Secretary, Office for Addictive Disorders, Office for Citizens with Developmental Disabilities, and Office of Mental Health, has established admissions criteria included in this Rule.

Title 48

PUBLIC HEALTH? GENERAL

Part I. General Administration

Subpart 1. General

Chapter 16. Admissions Criteria for Inpatient Facilities

§1607. Inpatient Mental Health Facilities Operated by the Office of Mental Health

A. In order to be admitted a person must qualify as a candidate for services in an inpatient setting as indicated on a published Level of Functioning Scale or other instrument identified by the Office of Mental Health as clinically appropriate. Such Level of Functioning Scale must be based on scientifically accepted practice standards and must demonstrate adequate psychometric properties of validity and reliability. The person must also meet the standard for inpatient care as specified in the Office of Mental Health Single Point of Entry (SPOE) Admissions Criteria, which is specified in the following.

B. Adult Admission Criteria. At least one criterion from Severity of Illness must be met and all of the Intensity of Service Criteria must be met.

1. Severity of Illness Criteria (Must meet one or more of a, b, or c)

a. Patient presents as a danger to self as evidenced by:

- i. a suicide attempt within the past 72 hours; or
- ii. documentation that the patient has a current suicide plan, specific suicide intent, or recurring suicidal ideation; or
- iii. documentation of self-mutilative behavior occurring within the past 72 hours

b. Patient presents as a danger to others due to a DSM Axis I diagnosis as evidenced by any of the following:

- i. dangerously aggressive behavior during the past seven days due to a DSM Axis I diagnosis; or
- ii. threats to kill or seriously injure another person with the means to carry out the threat and the threatening behavior is due to a DSM Axis I diagnosis; or
- iii. documentation that the patient has a current homicide plan, specific homicidal intent, or recurrent homicidal ideation and this is due to a DSM Axis I diagnosis.

c. Patient is gravely disabled and unable to care for self due to a DSM Axis I diagnosis as evidenced by:

- i. documentation of a serious impairment in function (as compared to others of the same age) in one or more major life roles (school, job, family, interpersonal relations, self-care, etc.) due to a DSM Axis I diagnosis; and
- ii. patient presents with acute onset or acute exacerbation of hallucinations, delusions, or illusions of such magnitude that the patient's well-being is threatened; or
- iii. an inability of the patient to comply with prescribed psychiatric and/or medical health regimens as evidenced by the following:

(a). patient has a history of de-compensation without psychotropic medications and patient refuses to use these medications as an outpatient; or

(b). patient is at risk of health or life due to non-compliance with medical regimens (e.g., insulin-dependent diabetes, etc.) and patient refuses these medical regimens as an outpatient.

2. Intensity of Service Criteria

a. Treatment of the patient's psychiatric condition requires services on an inpatient hospital basis. These services include, but are not limited to:

i. suicide precautions, unit restrictions, and continual observation and limiting of behavior to protect self or others;

ii. active intervention by a psychiatric team to prevent assaultive behavior;

iii. 24 hour observation and medication stabilization necessitated by patient behaviors that indicate a therapeutic level of medication has not been reached; and

b. services provided in the hospital can reasonably be expected to improve the patient's condition or prevent further regression so that the services will no longer be needed by the patient; and

c. services in the community do not meet, and/or do not exist to meet the treatment needs of the patient, or the patient has been unresponsive to treatment at a less intensive level of care.

C. Children's Admission Criteria. At least one criterion from Severity of Illness must be met, and all of the Intensity of Service Criteria must be met.

1. Severity of illness criteria must meet one or more of Subparagraph a, b, or c:

a. the child is a danger to self (Clauses i, ii, iii or iv and v must exist to meet this criterion):

i. the child has made an attempt to take his/her own life in the last 24 hours. Details of the attempt must be documented; or

ii. the child has demonstrated self-mutilative behavior within the past 24-hours. Details of behavior must be documented; or

iii. the child has a clear plan to seriously harm him/herself, overt suicidal intent, recurrent suicide thoughts, and lethal means available to follow the plan. This information can be from the child or a reliable source. Details of the plan must be documented; or

iv. due to a DSM Axis I diagnosis, the child is in serious danger of dying or sustaining grave bodily injury to him/her self; and

v. it is the judgment of a mental health professional that the child is at a significant risk of making a suicide attempt or due to a DSM Axis I diagnosis, is in serious danger of dying or sustaining grave bodily injury to him/herself without immediate inpatient intervention;

b. the child is a danger to others or property due to a DSM Axis I diagnosis as indicated by: (Clauses i, ii, or iii and iv must exist and include the specific DSM criteria that justify this diagnosis):

i. the child has actually engaged in behavior harmful or potentially harmful to others or caused serious damage to property, which would pose a serious threat of injury, or harm to others within the last 24 hours. Description of the behavior and extent of injury or damage must be documented, as well as the time the behavior occurred relative to present; or

ii. the child has made threats to kill or seriously injure others or seriously damage property, which would pose a threat of injury or harm to others, and has effective means to carry out the threats. Details of the threats must be documented; or

iii. a mental health professional has information from the child or a reliable source that the child has a current plan, specific intent, or recurrent thoughts to seriously harm others or property. Details must be documented; and

iv. it is the judgment of a mental health professional that the child is at a significant risk of making a homicide attempt or engaging in other seriously aggressive behavior without immediate inpatient intervention;

c. the child is gravely disabled due to a DSM Axis I diagnosis as indicated by (Clauses i, and either ii, iii or iv must exist and include the specific DSM criteria that justify this diagnosis):

i. the child has serious impairment of functioning compared to others of the same age in one or more major life roles (school, family, interpersonal relations, self-care, etc.) Specific descriptions of the following must be documented:

(a). deficits in control, cognition or judgment;

(b). circumstances resulting from those deficits in self-care, personal safety, social/family functioning, academic or occupational performance;

(c). prognostic indicators which predict the effectiveness of inpatient treatment; and

ii. severe thought disorganization or clinical deterioration or the acute onset of psychosis has rendered the child unmanageable and unable to cooperate in non-hospital treatment; or

iii. there is a need for medication therapy or complex diagnostic testing where the child's level of functioning precludes cooperation with treatment in an outpatient or non-hospital based regimen, and may require close supervision of medication and/or forced administration of medication; or

iv. a medical condition co-exists with a DSM Axis I diagnosis which, if not monitored/treated appropriately, places the child's life or well-being at serious risk.

2. Intensity of Service Criteria

a. Treatment of the patient's psychiatric condition requires services on an inpatient hospital basis. These services include, but are not limited to:

i. suicide precautions, unit restrictions, and continual observation and limiting of behavior to protect self or others;

ii. active intervention by a psychiatric team to prevent assaultive behavior;

iii. 24 hour observation and medication stabilization necessitated by patient behaviors that indicate a therapeutic level of medication has not been reached; and

b. services provided in the hospital can reasonably be expected to improve the patient's condition or prevent further regression so that the services will no longer be needed by the patient; and

c. services in the community do not meet, and/or do not exist to meet the treatment needs of the patient, or the patient has been unresponsive to treatment at a less intensive level of care.

D. Exclusionary Criteria-Adult. If one or more of the following is met, admission is denied.

1. Patient has a major medical or surgical illness or injury that would prevent active participation in a psychiatric treatment program (patients must be medically stable).

2. Patient has criminal charges pending and does not have a DSM Axis I diagnosis.

3. Patient has anti-social behaviors that are a danger to others and those anti-social behaviors are characterological rather than due to a DSM Axis I diagnosis.

4. Patient has a DSM Axis II diagnosis of mental retardation without an accompanying DSM Axis I diagnosis.

5. Patient has a Substance Abuse Disorder as defined in DSM and does not otherwise meet the severity of illness and intensity of service criteria.

E. Exclusionary Criteria-Children. If one or more of the following is met, admission is denied.

1. The child has a major medical or surgical illness or injury that prevents active participation in a psychiatric treatment program.

2. The child has criminal charges pending and does not otherwise meet severity of illness and intensity of service criteria.

3. The child has anti-social behaviors that are a danger to others and does not have a DSM Axis I diagnosis.

4. The child has a DSM Axis II diagnosis of mental retardation and does not otherwise meet severity of illness and intensity of service criteria.

5. The child lacks a place to live and/or family supports and does not otherwise meet severity of illness and intensity of service criteria.

6. The child has been suspended or expelled from school and does not otherwise meet severity of illness and intensity of service criteria.

7. The child has a substance abuse disorder as defined in DSM and does not otherwise meet the severity of illness and intensity of service criteria.

AUTHORITY NOTE: Promulgated in accordance with R.S. 28:20.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, LR 30:47 (January 2004), repromulgated LR 30:240 (February 2004).

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

0402#087

RULE

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

Adult Day Health Care? Prospective Payment System (LAC 50:II.10939)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends LAC 50:II 10939 under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part II. Medical Assistance Program

Subpart 3. Standards for Payment

Chapter 109. Standards for Payment? Adult Day Health Care

§10939. Prospective Payment System

A. General Provisions

1. Development. Adult Day Health Care (ADHC) providers shall be reimbursed a per diem rate for services provided under a prospective payment system (PPS). The system shall be designed in a manner that recognizes and reflects the cost of direct care services provided. The reimbursement methodology is designed to improve the quality of care for all adult day health care recipients by ensuring that direct care services are provided at an acceptable level while fairly reimbursing the providers.

2. The prospective payment methodology establishes blended rates consisting of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs.

3. - 3.d ...

4. Rate Setting. Adult day health care providers shall be reimbursed blended rates consisting of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs plus a direct care incentive.

a. The PPS rate is based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports.

i. Direct Care Costs. A statewide base rate for direct care is computed at 115 percent of the median facility per diem direct care costs submitted on all full year cost reports except those for which an audit disclaimer has been issued. Direct care costs are trended forward using the Consumer Price Index (CPI)? Medical Services.

ii. Care Related Costs. A statewide base rate for care related costs is computed at 105 percent of the median facility per diem care related costs submitted on all acceptable full year cost reports except those for which an audit disclaimer has been issued. Care related costs are trended forward using the CPI? All Items.

iii. Administrative and Operating Costs (AOC). A statewide base rate for administrative and operating costs is computed at 105 percent of the median facility per diem administrative and operating costs submitted on all acceptable full year cost reports except for those for which an audit disclaimer has been issued and are trended forward using the CPI? All Items.

iv. Property. The property rate is computed at the median of property costs submitted on all acceptable full year cost reports. Inflation will not be added to property costs.

b. The facility specific prospectively determined rate is based on facility specific reasonable allowable costs. The facility specific prospectively determined rate shall be limited to 80 percent of the nursing facility intermediate care II rate in effect on July 1, 2002 exclusive of the provider fee.

i. Direct Care Costs. Facility specific direct care is based on the facility specific per diem reasonable allowable direct care costs submitted on the acceptable FY 2001 full year cost report. Direct care costs are trended forward using the Consumer Price Index (CPI)? Medical Services.

ii. Care Related Costs. Facility specific care related cost is based on the facility specific per diem reasonable allowable care related costs submitted on the acceptable FY 2001 full year cost report. Care related costs are trended forward using the CPI? All Items.

iii. Administrative and Operating Costs (AOC). Facility specific AOC is based on the facility specific per diem reasonable allowable AOC submitted on the acceptable FY 2001 full year cost report. AOC are trended forward using the CPI? All Items.

iv. Property. Facility specific property cost is based on the facility specific per diem reasonable allowable property costs submitted on the acceptable FY 2001 full year cost report. Inflation will not be added to property costs.

v. Facilities participating prior to August 1, 2003 who have not filed a full year acceptable cost report shall have the facility specific prospectively determined rate for August 1, 2003 through June 30, 2004 based on budgeted data and limited to 80 percent of the nursing facility weighted average case mix rate in effect on July 1, 2003.

vi. For rates effective July 1, 2004 and thereafter, facilities receiving audit disclaimers shall receive a rate equal to the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports trended forward in accordance with this §10939.

c. All trending shall be from the midpoint of the year preceding the cost report year to the midpoint of the year preceding the rate year.

d. Application of an inflationary adjustment to reimbursement rates in non-rebasing years shall apply only when the legislature allocates funds for this purpose.

e. A direct care incentive based on legislative appropriation shall be added to the per diem rate effective August 1, 2003.

5. Total Per Diem Rate. The per diem rate for providers filing acceptable full year cost reports is the sum of 50 percent of the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports plus 50 percent of the facility specific prospectively determined rate based on facility specific reasonable allowable costs plus the direct care incentive.

6. New providers enrolled in the Medicaid Program effective August 1, 2003 and thereafter shall receive the PPS rate based on the base year median reported cost for all ADHC providers filing acceptable cost reports trended forward in accordance with this §10939 plus the direct care incentive.

7. Minimum Rate. The minimum adult day health care rate shall be the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports plus the direct care incentive.

8. Cost Settlement. The direct care cost component and the direct care incentive shall be subject to cost settlement. Should an ADHC facility's cost report reveal that the provider did not expend an amount equal to 90 percent of the median direct care rate component trended forward for

direct care services plus 90 percent of the direct care incentive, the Medicaid program will recover the difference between 90 percent of the median direct care rate component trended forward for direct care services plus 90 percent of the direct care incentive and the actual direct care amount expended.

B. Cost Reporting

1. Providers of ADHC services are required to file annual acceptable cost reports of all reasonable and allowable costs. An acceptable cost report is one that is prepared in accordance with the requirements of this section and the provider has supporting documentation necessary for completion of a desk review or audit. The annual cost reports are the basis for determining reimbursement rates. A copy of all reports and statistical data must be retained by the facility for no less than five years following the date reports are submitted to the bureau. A chart of accounts and an accounting system on the accrual basis or converted at year end are required in the cost reporting preparation process. The bureau or its designee will perform desk reviews of the cost reports. In addition to the desk review, a representative number of the facilities shall be subject to a full-scope, annual on-site audit. All ADHC cost reports shall be filed with a fiscal year from July 1 through June 30.

B.2 - C.1.e.iv. ...

2. Rate Determination

a. Calculation of Base Rate. Rates for both the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports and the facility specific prospectively determined rate based on facility specific reasonable allowable costs are calculated from cost report data. Allowable costs include those costs incurred by providers to conform to state licensure and federal certification standards. General cost principles are applied during the desk review and audit process to determine allowable costs. These general cost principles include determining whether the cost is ordinary, necessary, and related to the delivery of care; the cost is what a prudent and cost conscious business person would pay for the specific goods or services in the open market or in an arm's length transaction; and the cost is for goods or services actually provided to the center. Through the desk review and/or audit process, adjustments and/or disallowances may be made to a provider's reported costs. "HIM-15," the Medicare Provider Reimbursement Manual, is the final authority for allowable costs unless the Louisiana Department of Health and Hospitals has set a more restrictive policy.

C.2.b. - C.2.c. ...

d. The inflated median shall be increased to establish the base rate median component as follows.

i. The inflated direct care median shall be multiplied times 115 percent to establish the direct care base rate component.

ii. The inflated care related median shall be multiplied times 105 percent to establish the care related base rate component.

iii. The administrative and operating median shall be multiplied times 105 percent to establish the administrative and operating base rate component.

e. At least every three years, audited and desk reviewed cost report items will be compared to the rate

components calculated for the cost report year to insure that the rates remain reasonably related to costs.

f. Formulae. Each median cost component shall be calculated as follows.

i. Direct Care Cost Component. Direct care per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for Medical Services. The direct care rate component shall be set at 115 percent of the inflated median.

ii. Care Related Cost Component. Care related per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost of the center at the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward using the Consumer Price Index for All Items. The care related rate component shall be set at 105 percent of the inflated median.

iii. Administrative and Operating Cost Component. Administrative and operating per diem cost from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost of the midpoint of the array shall be the median cost. Should there be an even number of arrayed cost, an average of the two midpoint centers shall be the median cost. The median cost shall be trended forward by dividing the value of the CPI? All Items index for December of the year proceeding the base rate year by the value of the index for the December of the year preceding the cost report year. The administrative and operating rate component shall be set at 105 percent of the inflated median.

iv. Property Cost Component? Property. The property per diem costs from all acceptable full year cost reports shall be arrayed from lowest to highest. The cost at the midpoint of the array shall be the median cost. This will be the rate component. Inflation will not be added to property costs.

g. Formulae. Each facility specific prospectively determined cost component shall be calculated as follows.

i. Direct Care Cost Component. The direct care per diem costs from each facility's full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this §10939.

ii. Care Related Cost Component. The care related per diem costs from each facility's full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this §10939.

iii. Administrative and Operating Cost Component. The administrative and operating per diem cost from each facility's acceptable full year cost reports shall be trended forward using the Consumer Price Index for Medical Services in accordance with this §10939.

iv. Property Cost Component? Property. The property per diem costs from each facility's acceptable full year cost reports shall be the property cost component. Inflation will not be added to property costs.

v. Facilities participating prior to August 1, 2003 that have not filed a full year acceptable cost report shall have the facility specific prospectively determined rate for

August 1, 2003 through June 30, 2004 based on budgeted data and limited to 80 percent of the nursing facility weighted average case mix rate in effect on July 1, 2003.

vi. For rates effective July 1, 2004 and thereafter, facilities receiving audit disclaimers shall receive a rate equal to the PPS rate based on the median FY 2001 reported cost for all ADHC providers filing acceptable full year cost reports trended forward in accordance with this rule. No facility specific cost component will be included in the per diem of facilities receiving audit disclaimers.

C.2.h. - C.2.h.ii. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:2356 (November 2002), amended LR 30:242 (February 2004).

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

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

0402#079

RULE

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

All Inclusive Care for the Elderly
(LAC 50:XXIII.Chapters 1-13)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing adopts LAC 50:XXIII.Chapters 1-13 in the Medical Assistance Program as authorized by RS. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE Part XXIII. All Inclusive Care for the Elderly

Chapter 1. General Provisions

§101. Purpose and Scope

A. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing implements the Program of All Inclusive Care for the Elderly (PACE) in accordance with federal regulations at 42 CFR 460 et seq., as published in the *Federal Register* on November 24, 1999 and amended on October 2, 2002, and as may be amended in the future. These regulations set forth:

1. the requirements that an entity must meet to be approved as a PACE organization that operates a PACE program under Medicare and Medicaid;
2. how individuals may qualify to enroll in a PACE program;
3. how Medicare and Medicaid payments will be made for PACE services;
4. provisions for federal and state monitoring of PACE programs; and
5. procedures for sanctions and terminations.

B. The purpose of the Program of All Inclusive Care for the Elderly is to provide prepaid, capitated, comprehensive health care services designed to meet the following objectives:

1. enhance the quality of life and autonomy for frail, older adults;
2. maximize dignity of, and respect for, older adults;
3. enable frail, older adults to live in the community as long as medically and socially feasible; and
4. preserve and support the older adult's family unit.

C. This Part XXIII sets forth the election of state options under the federal regulations and additional requirements established by the state for the efficient operation of the program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:244 (February 2004).

§103. Organization Application and Evaluation

A. A PACE organization shall be licensed as an adult day health care (ADHC) facility. The Department of Health and Hospitals (DHH) shall grant appropriate waivers of ADHC licensing requirements in instances where ADHC licensing regulations conflict with PACE requirements when such waivers are determined to have no adverse effect on participant health and safety and quality of life.

B. A PACE organization shall not be required to be licensed as a health maintenance organization under the Louisiana regulations for risk based entities.

C. A PACE organization must be a non-profit entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:245 (February 2004).

§105. Administrative Requirements

A. A PACE organization must have a fiscally sound operation, as demonstrated by:

1. total assets greater than total unsubordinated liabilities;
2. sufficient cash flow and adequate liquidity to meet obligations as they become due;
3. a net operating surplus or a financial plan for solvency that is satisfactory to the Center for Medicaid and Medicare Services (CMS) and the Department of Health and Hospitals.

B. A PACE organization shall operate under the control of an identifiable governing body such as a board of directors, which must include at least one community representative. The following advisory committees shall also be established to advise the board of directors:

1. Consumer Advisory Committee;
2. Ethics Committee;
3. Restraint Committee;
4. Other committees as required by CMS and/or DHH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:245 (February 2004).

Chapter 3. Services

§301. Medicare and Medicaid Coordination

A. If a Medicare beneficiary or Medicaid recipient chooses to enroll in a PACE program:

1. the participant, while enrolled in a PACE program, must receive Medicare and Medicaid benefits solely through the PACE organization; and

2. Medicare and Medicaid benefit limitations and conditions relating to amount, duration, scope of services, deductibles, co-payments, coinsurance, or other cost-sharing do not apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:245 (February 2004).

§303. Services Provided

A. The PACE benefit package for all participants, regardless of the source of payment, must include:

1. all Medicaid-covered services, as specified in the state's approved Medicaid plan;
2. interdisciplinary assessment and treatment planning;
3. primary care, including physician and nursing services;
4. social work services;
5. restorative therapies, including:
 - a. physical therapy;
 - b. occupational therapy; and
 - c. speech-language pathology services;
6. personal care and supportive services;
7. nutrition counseling;
8. recreational therapy;
9. transportation;
10. meals;
11. medical specialty services including, but not limited

to:

- a. anesthesiology;
- b. audiology;
- c. cardiology;
- d. dentistry;
- e. dermatology;
- f. gastroenterology;
- g. gynecology;
- h. internal medicine;
- i. nephrology;
- j. neurosurgery;
- k. oncology;
- l. ophthalmology;
- m. oral surgery;
- n. orthopedic surgery;
- o. otorhinolaryngology;
- p. plastic surgery;
- q. pharmacy consulting services;
- r. podiatry;
- s. psychiatry;
- t. pulmonary disease;

- u. radiology;
 - v. rheumatology;
 - w. general surgery;
 - x. thoracic and vascular surgery; and
 - y. urology;
12. laboratory tests, x-rays and other diagnostic procedures;
13. drugs and biologicals;
14. prosthetics, orthotics, durable medical equipment, corrective vision devices, such as:
- a. eyeglasses and lenses;
 - b. hearing aids;
 - c. dentures; and
 - d. repair and maintenance of these items;
15. acute inpatient care, including:
- a. ambulance;
 - b. emergency room care and treatment room services;
 - c. semi-private room and board;
 - d. general medical and nursing services;
 - e. medical surgical/intensive care/coronary care unit;
 - f. laboratory tests, x-rays and other diagnostic procedures;
 - g. drugs and biological;
 - h. blood and blood derivatives;
 - i. surgical care, including the use of anesthesia;
 - j. use of oxygen;
 - k. physical, occupational, respiratory therapies, and speech-language pathology services; and
 - l. social services;
16. nursing facility care including:
- a. semi-private room and board;
 - b. physician and skilled nursing services;
 - c. custodial care;
 - d. personal care and assistance;
 - e. drugs and biologicals;
 - f. physical, occupational, recreational therapies, and speech-language pathology, if necessary;
 - g. social services; and
 - h. medical supplies and appliances;
17. other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:245 (February 2004).

§305. Excluded Services

A. Services excluded from coverage are:

1. any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service;
2. private room and private duty nursing services in an inpatient facility, (unless medically necessary), and nonmedical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the interdisciplinary team as part of the participant's plan of care);
3. cosmetic surgery, which does not include surgery that is required for improved functioning of a malformed

part of the body resulting from an accidental injury or for reconstruction following mastectomy;

4. experimental medical, surgical or other health procedures;

5. services furnished outside of the United States except as follows:

- a. in accordance with 42 CFR 424.122-424.124; or
- b. as permitted under the state's approved Medicaid plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:246 (February 2004).

§307. Conditions of Service

A. A PACE organization must establish and implement a written plan to furnish care that meets the needs of each participant in all care settings 24 hours a day, every day of the year.

B. The PACE organization must furnish comprehensive medical, health, and social services that integrate acute and long-term care.

C. These services must be furnished in at least the PACE center, the home, and inpatient facilities.

D. The PACE organization may not discriminate against any participant in the delivery of required PACE services based on race, ethnicity, national origin, religion, sex, age, mental or physical disability or source of payment.

E. The frequency of a participant's attendance at a center is determined by the interdisciplinary team, based on the needs and preferences of each participant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:246 (February 2004).

§309. Emergency Services

A. A PACE organization must establish and maintain a written plan to handle emergency care. The written plan must ensure that CMS, the state, and PACE participants are held harmless if the PACE organization does not pay for emergency services.

B. Emergency care is appropriate when services are needed immediately because of an injury or sudden illness and the time required to reach the PACE organization or one of its contract providers would cause risk of permanent damage to the participant's health. Emergency services include inpatient and outpatient services that:

1. are furnished by a qualified emergency services provider, other than the PACE organization or one of its contract providers, either in or out of the PACE organization's service area;
2. are needed to evaluate or stabilize an emergency medical condition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:246 (February 2004).

Chapter 5. Recipient Enrollment

§501. Eligibility

A. In order to be eligible for services from a PACE site an applicant must:

1. be 55 year of age or older;
2. be determined by the state administering agency to need the level of care required under the state Medicaid plan for coverage of nursing facility services;
3. reside in the service area of the PACE organization; and
4. at the time of enrollment, an individual must be able to live in a community setting without jeopardizing his or her health or safety.

B. Eligibility to enroll in a PACE program is not restricted to an individual who is either a Medicare beneficiary or Medicaid recipient. A potential PACE enrollee may be, but is not required to be, any or all of the following:

1. entitled to Medicare Part A;
2. enrolled under Medicare Part B; or
3. eligible for Medicaid.

C. Persons shall be considered to have met the criteria for determining that an individual is able to live in a community setting without jeopardizing his or her health or safety when the answer to all of the following questions is determined to be in the affirmative.

1. Does the individual or caregiver have a desire to remain in the community?
2. If the individual is not able to live safely alone, is there a primary caregiver at home, or a willingness to use another caregiver or provider to meet the individual's needs?
3. Can the caregiver maintain a safe physical environment in the home?
4. Are hygiene, nutrition, medical care, and support systems adequate?
5. If behavioral problems exist, can they be managed to prevent risk to self or others?
6. Can a plan of care be developed to meet the individual's needs?

D. A PACE organization shall assess the potential participant to ensure that he or she can be cared for appropriately in a community setting and that he or she meets all requirements for PACE eligibility. PACE eligibility decisions are subject to approval by the state administering agency as determined necessary.

E. Reevaluation of Eligibility

1. DHH shall annually reevaluate whether the participant continues to meet level of care for nursing facility services. DHH may permanently waive the annual recertification of level of care requirements for a participant if it determines that there is no reasonable expectation of improvement or significant change in the participant's condition because of the severity of a chronic condition or the degree of impairment of functional capacity.

2. DHH may determine that a PACE participant who no longer meets the state Medicaid nursing facility level of care requirements may be deemed to continue to be eligible for the PACE program until the next annual reevaluation, if, in the absence of continued coverage under this program, the participant reasonably would be expected to meet the nursing facility level of care requirement within the next six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:247 (February 2004).

§503. Enrollment

A. Enrollment Period

1. A participant's enrollment in the program is effective on the first day of the calendar month following the date the PACE organization receives the signed enrollment agreement.

2. Enrollment continues until the participant's death, regardless of changes in health status, unless either of the following actions occurs:

- a. the participant voluntarily disenrolls; or
- b. the participant is involuntarily disenrolled (see §505.B below).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:247 (February 2004).

§505. Disenrollment

A. A PACE organization shall submit proposed denial of enrollment determinations of applicants for health and safety reasons and all involuntary disenrollments of participants to DHH for review prior to notifying applicants/participants of such adverse decisions. DHH shall review denials of PACE enrollment eligibility and disenrollments by the end of the third business day after receipt from the PACE organization to determine whether the PACE organization has adequately documented acceptable grounds. Failure of DHH to provide a decision within this timeframe shall constitute approval of the PACE organization decision. The decision by DHH shall be binding.

B. Involuntary Disenrollment

1. A participant may be involuntarily disenrolled for any of the following reasons:

- a. a participant fails to pay, or to make satisfactory arrangements to pay, any premium due the PACE organization after a 30-day grace period;
- b. the participant engages in disruptive or threatening behavior, as described in Paragraph 2 below;
- c. the participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances;
- d. the participant is determined no longer to meet the state Medicaid nursing facility level of care requirements and is not deemed eligible;
- e. the PACE program agreement with CMS and DHH is not renewed or is terminated;
- f. the PACE organization is unable to offer health care services due to the loss of state licenses or contracts with outside providers; or
- g. the participant who is permanently placed in a nursing facility fails to pay, or to make satisfactory arrangements to pay, the amount of patient liability that would be required to be paid by a Medicaid eligible resident of a nursing facility if he/she was not a participant in a PACE organization.

2. The following are behaviors considered disruptive or threatening behavior for purposes of involuntary disenrollment:

- a. behavior that jeopardizes his or her health or safety, or the safety of others; or
- b. consistent refusal to comply with his or her individual plan of care or the terms of the PACE enrollment agreement by a participant with decision-making capacity, but not if the behavior is related to a mental or physical condition of the participant. Noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:247 (February 2004).

Chapter 7. Quality Assessment and Performance Improvement

§701. Organization Responsibilities

A. A PACE organization must develop, implement, maintain, and evaluate an effective, data-driven quality assessment and performance improvement program.

B. The program must reflect the full range of services furnished by the PACE organization.

C. A PACE organization must take actions that result in improvements in its performance in all types of care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:248 (February 2004).

§703. Quality Assessment and Performance Improvement Plan

A. A PACE organization must have a written quality assessment and performance improvement plan.

B. The PACE governing body must review the plan annually and revise it, if necessary.

C. At a minimum, the plan must specify how the PACE organization proposes to meet the following requirements:

1. identify areas to improve or maintain the delivery of services and patient care;
2. develop and implement plans of action to improve or maintain quality of care;
3. document and disseminate to PACE staff and contractors the results from the quality assessment and performance improvement activities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:248 (February 2004).

§705. Minimum Requirements

A. A PACE organization's quality assessment and performance improvement program must include, but is not limited to, the use of objective measures to demonstrate improved performance with regard to:

1. utilization of PACE services, such as decreased inpatient hospitalizations and emergency room visits;
2. caregiver and participant satisfaction;

3. outcome measures that are derived from data collected during assessments, including data on the following:

- a. physiological well being;
 - b. functional status;
 - c. cognitive ability;
 - d. social/behavioral functioning;
 - e. quality of life of participants;
4. effectiveness and safety of staff-provided and contracted services, including:
- a. competency of clinical staff;
 - b. promptness of service delivery;
 - c. achievement of treatment goals and measurable outcomes;

5. nonclinical areas, such as grievances and appeals, transportation services, meals, life safety, and environmental issues.

B. Outcome measures must be based on current clinical practice guidelines and professional practice standards applicable to the care of PACE participants.

C. The PACE organization must meet or exceed minimum levels of performance, established by CMS and the state administering agency, on standardized quality measures, such as influenza immunization rates, which are specified in the PACE program agreement.

D. The PACE organization must ensure that all data used for outcome monitoring are accurate and complete.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:248 (February 2004).

§707. Internal Activities

A. A PACE organization must do the following:

1. use a set of outcome measures to identify areas of good or problematic performance;
2. take actions targeted at maintaining or improving care based on outcome measures;
3. incorporate actions resulting in performance improvement into standards of practice for the delivery of care and periodically track performance to ensure that any performance improvements are sustained over time;
4. set priorities for performance improvement, considering prevalence and severity of identified problems, and give priority to improvement activities that affect clinical outcomes;
5. immediately correct any identified problem that directly or potentially threatens the health and safety of a PACE participant.

B. A PACE organization must designate an individual to coordinate and oversee performance improvement activities.

C. Involvement in Quality Assessment and Performance Improvement Activities

1. A PACE organization must ensure that all interdisciplinary team members, PACE staff, and contract providers are involved in the development and implementation of quality assessment and performance improvement activities and are aware of the results of these activities.

2. The quality improvement coordinator must encourage a PACE participant and his or her caregivers to be

involved in quality assessment and performance improvement activities, including providing information about their satisfaction with services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:248 (February 2004).

§709. Additional Activities

A. A PACE organization must meet external quality assessment and reporting requirements as specified by CMS or the state administering agency, in accordance with Section 460.202 of the Social Security Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:249 (February 2004).

§711. Committees with Community Input

A. A PACE organization must establish one or more committees with community input to:

1. evaluate data collected pertaining to quality outcome measures;
2. address the implementation of, and results from, the quality assessment and performance improvement plan;
3. provide input related to ethical decision-making, including end-of-life issues and implementation of the Patient Self-Determination Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:249 (February 2004).

Chapter 9. Sanctions

§901. Violations

A. Sanctions may be imposed against a PACE organization if it commits one of the following violations:

1. fails substantially to provide medically necessary items and services to a participant that are covered PACE services, and that failure has adversely affected (or has substantial likelihood of adversely affecting) the participant;
2. involuntarily disenrolls a participant in violation of Section 460.164;
3. discriminates in the enrollment or disenrollment of Medicare beneficiaries or Medicaid recipients, or both, who are eligible to enroll in a PACE program on the basis of an individual's health status or need for health care services;
4. engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment, except as permitted by Section 460.150, by Medicare beneficiaries or Medicaid recipients whose medical condition or history indicates a need for substantial future medical services;
5. imposes charges on participants enrolled under Medicare or Medicaid for premiums in excess of the premiums permitted;
6. misrepresents or falsifies information that is furnished to:

- a. CMS or the state under this Part XXIII; or
- b. an individual or any other entity under this Part XXIII;

7. prohibits or otherwise restricts a covered health care professional from advising a participant who is a patient of the professional about the participant's health status, medical care, or treatment for the participant's condition or disease, regardless of whether the PACE program provides benefits for that care or treatment, if the professional is acting within his or her lawful scope of practice;

8. operates a physician incentive plan that does not meet the requirements of Section 1876(i)(8) of the Social Security Act; or

9. employs or contracts with any individual who is excluded from participation in Medicare or Medicaid under Section 1128 or Section 1128A of the Social Security Act (or with any entity that employs or contracts with that individual) for the provision of health care, utilization review, medical social work, or administrative services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:249 (February 2004).

§903. Imposition of Sanctions by CMS

A. The CMS may impose the following sanctions for violations specified in §901:

1. suspend enrollment of Medicare beneficiaries;
2. suspend Medicare payment to the PACE organization;
3. deny payment to the state for medical assistance for services furnished under the PACE program agreement. The state will suspend payments to the PACE organization when payment of the federal portion of PACE reimbursement is denied;
4. impose civil money penalties as specified in federal regulations.

B. The CMS or the state may determine that the PACE organization is not in substantial compliance with PACE requirements, and may take one or more of the following actions:

1. condition the continuation of the PACE program agreement upon timely execution of a corrective action plan;
2. withhold some or all payments under the PACE program agreement until the organization corrects the deficiency;
3. terminate the PACE program agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:249 (February 2004).

Chapter 11. Appeals

§1101. Participant Rights, Grievances, and Appeals

A. The PACE organization must have a formal written appeals process in accordance with 42 CFR 460.122, with specified timeframes for response, to address noncoverage or nonpayment of a service, and involuntary disenrollment.

B. Additional appeal rights under Medicare or Medicaid are available to the participant if an adverse decision is made in the PACE organization appeal process, or if the participant is involuntarily disenrolled from the PACE program. A PACE organization must inform a participant in

writing of additional appeal rights available under Medicare or Medicaid.

C. Medicaid-eligible participants who appeal through Medicaid shall be heard by the DHH Bureau of Appeals within the timeframes applicable to processing Medicaid appeals except in cases where federal PACE requirements require a more expeditious decision. The PACE organization shall prepare the Summary of Evidence in preparation for the appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:249 (February 2004).

Chapter 13. Reimbursement

§1301. Payment

A. Participants shall be eligible for Medicaid payment of the PACE premium on their behalf if they meet the categorically needy income and resource criteria for Medicaid eligibility for nursing facility and Home and Community Based Services waiver services.

B. Participants are eligible for Medicare payment of the PACE premium on their behalf if they are covered by Medicare. The amount of Medicare premiums is calculated by the Centers for Medicare and Medicaid Services, the federal oversight agency.

C. Medicaid payment to a PACE organization on behalf of a Medicaid-eligible participant shall be a prospective monthly capitated amount that is less than the amount that would otherwise have been paid under the State Plan if the participant was not enrolled under the PACE program.

1. Statewide upper payment limits shall be calculated for each state fiscal year using statewide data from actual paid fee-for-service claims for populations who are age 55 or older in nursing facilities and in Home and Community Based Services waivers that utilize nursing facility level of care and serve people age 55 or older.

2. Statewide upper payment limits and Medicaid premiums for PACE shall be calculated in accordance with the approved State Plan methodology for such calculation, including trending of historical data. Premiums for every PACE organization in the state will be based on the statewide upper payment limits.

3. Premium amount shall be a negotiated rate, not to exceed 95 percent of the upper payment limit.

D. There shall be a minimum of two Medicaid upper payment limits calculated annually:

1. one for participants who are eligible for both Medicare and Medicaid; and

2. one for participants who are eligible only for Medicaid.

E. Medicaid payment to a PACE organization shall be made for each Medicaid-eligible participant who is enrolled on the first day of the month.

1. Enrolled participants are those who have signed an enrollment agreement.

2. Medicaid-eligible participants are those who have been determined to be eligible for Medicaid payment effective as of or before the first day of the month, including those who are retroactively eligible, when such date is on or before the first day of the month.

F. The amount of the Medicaid premium is a fixed amount regardless of changes in the participant's health status.

G. A PACE organization may not charge a premium to a participant who is eligible for both Medicare and Medicaid, or who is only eligible for Medicaid.

H. Participants who are not eligible for Medicaid must pay a premium to the PACE organization equal to the amount of the Medicaid premium, except that a different negotiated amount may be paid as a governmental premium on behalf of participants whose care is financed by governmental agencies such as Veterans Administration.

I. Participants who are not eligible for Medicaid and are also not eligible for either Medicare Part A or Medicare Part B must pay a premium to the PACE organization equal to the amount of the Medicaid premium and also amount(s) equal to the Medicare premium for Part A or Part B, or both.

J. A PACE participant who is in a nursing facility reimbursed by PACE on his/her behalf shall be responsible for payment of patient liability.

1. The amount of patient liability is the same amount that would be required to be paid by a Medicaid eligible resident of a nursing facility if he/she was not a participant in a PACE organization.

2. The patient liability obligation for Medicare recipients begins with the first day of the first full calendar month after the participant is a resident in the nursing facility for 90 consecutive days. The patient liability obligation for non-Medicare recipients begins after it is determined that the participant is permanently placed in a nursing facility, and may coincide with the date for imposition of patient liability obligation for Medicare recipients.

3. The PACE organization shall determine whether the patient liability is to be paid to the PACE organization or the nursing facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, Title XIX of the Social Security Act, and 42 CFR 460 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:250 (February 2004).

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

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

0402#083

RULE

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

Durable Medical Equipment Program Motorized Wheelchairs

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the

Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing establishes provisions governing recipient criteria and prior authorization for motorized wheelchairs. In addition, the bureau amends the August 20, 1998 Rule to clarify the provisions governing the repair of motorized wheelchairs.

Wheelchairs, Motorized and/or Custom Motorized Recipient Criteria

A. Motorized Wheelchairs

1. For purposes of this rule, the term *motorized* shall have the same meaning as power, electric or any means of propulsion other than manual. A motorized wheelchair must be medically necessary. The recipient must meet all of the following criteria in order to be considered for a motorized wheelchair:

a. the recipient is not functionally ambulatory. Not functionally ambulatory means the recipient's ability to ambulate is limited such that without use of a wheelchair, he/she would otherwise be generally bed or chair confined;

b. the recipient is unable to operate a wheelchair manually due to severe weakness of the upper extremities due to a congenital or acquired neurological or muscular disease/condition or is unable to propel any type of manual wheelchair because of other documented health problems; and

c. the recipient is capable of safely operating the controls for a motorized wheelchair and can adapt to or be trained to use a motorized wheelchair effectively.

B. A motorized wheelchair is covered if the recipient's condition is such that the requirement for a motorized wheelchair is long term (at least six months).

Prior Authorization

A. All wheelchairs and modifications required to meet the needs of a particular recipient are subject to prior authorization. Prior authorization will be made for only one wheelchair at a time. Backup chairs, either motorized or manual, will be denied as not medically necessary. All requests must include:

1. a completed PA -01 form;

2. a physician's prescription for a motorized wheelchair. If the recipient is enrolled in Community Care, the prescription must be written by the recipient's primary care physician (PCP). The physician must specifically state that the prescription is for a motorized wheelchair;

3. medical documentation from a physician is required to support the provisions set forth in the Recipient Criteria Section, Subparagraphs A.1.a-b;

4. a seating evaluation performed, signed and dated by the physical therapist or occupational therapist that performed the seating evaluation. The seating evaluation shall:

a. indicate the appropriateness of the specific wheelchair requested and all modifications and/or attachments to the specific wheelchair and its ability to meet

the recipient's long term medical needs. Options that are primarily beneficial in allowing the recipient to perform leisure or recreational activities are not covered;

b. include the dated signature of the physician who prescribed the motorized wheelchair, confirming:

i. the recipient's diagnosis or condition is such that a motorized wheelchair is medically necessary; and

ii. he or she has seen the seating evaluation and motorized wheelchair recommendation;

5. documentation indicating that the recipient is capable of safely operating the controls for a motorized wheelchair and can adapt to or be trained to use the motorized wheelchair effectively. It is not sufficient for a Medicaid provider of motorized wheelchairs to indicate that a recipient is capable of safely operating the controls for a motorized wheelchair and can adapt to or be trained to use the motorized wheelchair effectively. Such documentation shall include:

a. a signed and dated statement from the recipient's physician, physical therapist or occupational therapist that he or she has determined that the recipient has the cognitive, motor and perceptual abilities needed to safely operate the controls of a motorized wheelchair. This statement shall be verified by the notes and recommendation of the physician, physical therapist or occupational therapist making such statement; and

b. a signed and dated statement from the recipient's physician, physical therapist or occupational therapist that he or she has determined that the recipient can adapt to or be trained to use the motorized wheelchair effectively. This statement shall be verified by the notes and recommendation of the physician, physical therapist or occupational therapist making such statement.

Repairs and Modifications

A. Requests for repairs to motorized wheelchairs will be considered for basic repairs only. Basic repairs are those which are requested to repair an existing component of the recipient's current motorized wheelchair.

B. Requests for modifications or reconstruction of the recipient's current motorized wheelchair shall not be considered basic repairs. Requests for modifications or reconstruction of the recipient's current motorized wheelchair must be submitted in accordance with prior authorization criteria. Modifications or reconstruction will be denied if it is more cost effective to provide a new motorized wheelchair.

C. It is expected that all repairs and modifications of motorized wheelchairs shall be completed within one month, unless there is a justifiable reason for a delay. Rental of a manual wheelchair may be prior authorized on a monthly basis as a temporary replacement, if necessary, when the recipient's motorized wheelchair is being repaired or modified.

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

0402#080

RULE

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

Early and Periodic Screening,
Diagnosis and Treatment Program
Dental Services? Reimbursement
(LAC 50:XV.6903)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 50:XV.6903 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment Program

Chapter 69. Dental Services

§6903. Reimbursement

A. Reimbursement fees are increased as follows for certain designated procedure codes. The procedure codes have been amended to comply with the Health Insurance Portability and Accountability Act.

Procedure Code	Description	Fee
D0120	Periodic Oral Exam	\$18
D0150	Comprehensive Oral Exam	\$20
D0220	Radiograph-Periapical-First Film	***
D0230	Radiograph-Periapical-Each Additional Film	***
D0272	Radiograph-Bitewing-Two Films	***
D1110	Adult Prophylaxis	\$29
D1120	Child Prophylaxis	***
D1351	Sealant-Per Tooth	\$17
D1510	Space Maintainer-Unilateral	\$95
D1515	Space Maintainer-Bilateral	\$177
D2140	Amalgam-One Surface, Primary or Permanent	***
D2150	Amalgam-Two Surface, Primary or Permanent	***
D2160	Amalgam-Three Surface, Primary or Permanent	***
D2161	Amalgam-Four or more Surface, Permanent	\$88
D2330	Resin-based Composites-One Surface	***
D2331	Resin-based Composites-Two Surface	***
D2332	Resin-based Composites-Three Surface	***
D2335	Resin-based Composites-4 or More Surfaces, Anterior	\$88
D2390	Resin-based Composite Crown, Anterior	\$88
D2930	Stainless Steel Crown, Primary	\$88
D2931	Stainless Steel Crown, Permanent	\$88
D2932	Prefabricated Resin Crown	\$84
D2950	Core Buildup, including any pins	\$55
D2954	Prefabricated Post and Core in addition to crown	\$75
D3220	Pulpotomy-Deciduous Tooth Only	***
D3310	Root Canal-One Canal	***
D3320	Root Canal-Two Canals	***
D3330	Root Canal-Three Canals	***
D4341	Periodontal Scaling and Root Planning	\$75
D4355	Full Mouth Debridement	\$58
D5110	Complete Denture, Maxillary	\$495
D5120	Complete Denture, Mandibular	\$495
D5130	Immediate Complete Denture, Maxillary	\$495
D5140	Immediate Complete Denture, Mandibular	\$495

D5211	Partial Denture, Resin Base, Maxillary	\$470
D5212	Partial Denture, Resin Base, Mandibular	\$470
D5510	Repair Complete Broken Denture Base	\$100
D5520	Repair Missing or Broken Teeth-Complete Denture, Per Tooth	\$52/\$26*
D5610	Repair Resin Denture Base, Partial Denture	\$100
D5630	Repair or Replace Broken Clasp, Partial Denture	\$95
D5640	Replace Broken Teeth, Partial Denture, Per Tooth	\$52/\$26*
D5650	Add Tooth to Existing Partial Denture	\$52/\$26*
D5660	Add Clasp to Existing Partial Denture	\$95
D5750	Reline Complete Denture, Maxillary (Lab)	\$238
D5751	Reline Complete Denture, Mandibular (Lab)	\$238
D5760	Reline Partial Denture, Maxillary (Lab)	\$208
D5761	Reline Partial Denture, Mandibular (Lab)	\$208
D5820	Interim Partial Denture, Maxillary	\$300
D5821	Interim Partial Denture, Mandibular	\$300
D7140	Extraction, Erupted Tooth or Exposed Root	***
D7210	Surgical Extraction	***
D7220	Removal of Impacted Tooth, Soft Tissue	\$86
D7230	Removal of Impacted Tooth, Partially Bony	\$136
D7240	Removal of Impacted Tooth, Completely Bony	\$161
D7241	Removal of Impacted Tooth, Completely Bony with Unusual Surgical Complications	\$186
D8050	Interceptive Orthodontic Treatment, Primary Dentition	\$350**
D8060	Interceptive Orthodontic Treatment, Transitional Dentition	\$350**
D8070	Comprehensive Orthodontic Treatment, Transitional Dentition	\$3,600**
D8080	Comprehensive Orthodontic Treatment, Adolescent Dentition	\$3,600**
D8090	Comprehensive Orthodontic Treatment, Adult Dentition	\$3,600**
D9110	Palliative (emergency) Dental Pain Treatment	\$25
D9241	Intravenous Conscious Sedation/Analgesia-First 30 Minutes	\$94

Refer to the EPSDT Manual for a complete maximum fee schedule of authorized services.

* Rate for each subsequent tooth in the same arch

** Manually-priced maximum fee

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:176 (February 2003), amended LR 30:252 (February 2004).

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

0402#081

RULE

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

Early and Periodic Screening, Diagnosis and Treatment Program? Personal Care and Extended and/or Multiple Daily Skilled Nursing Services
(LAC 50:XV.7305, 7307, 7311, and 7501)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing has amended LAC 50:XV.7305, 7307, and 7311 and adopted LAC 50:XV.Chapter 75 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the

Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis and Treatment

Chapter 73. Personal Care Services

§7305. Recipient Qualifications

A. - A.3. ...

4. A parent or other caregiver must be in the home with an EPSDT eligible 14 years of age or younger. Recipients over 14 years of age must be mentally and intellectually competent to direct their own care if they are to be left with the PCS worker without the presence of a parent or other caregiver.

5. Early and Periodic Screening, Diagnosis, and Treatment personal care services must be prescribed by the recipient's attending physician initially and every 180 days thereafter (or rolling 6 months), and when changes in the plan of care occur. The plan of care shall be acceptable for submission to BHSF only after the physician signs and dates the completed form. The physician's signature must be an original signature and not a rubber stamp.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:177 (February 2003), amended LR 30:253 (February 2004).

§7307. Prior Authorization

A. - D. ...

E. Recipients who have been designated by DHH as chronic needs cases are exempt from the standard prior authorization process. Although a new request for prior authorization must still be submitted every 180 days, the provider shall only be required to submit a PA request form accompanied by a statement from a physician verifying that the recipient's condition has not improved and the services currently approved must be continued. Only DHH or its designee can grant the designation of a chronic needs case to a recipient.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:177 (February 2003), amended LR 30:253 (February 2004).

§7311. Service Limits

A. EPSDT personal care services are not subject to service limits. The units of service approved shall be based on the physical requirements of the recipient and medical necessity for the covered services in the EPSDT-PCS Program.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:178 (February 2003), amended LR 30:253 (February 2004).

Chapter 75. Extended and/or Multiple Daily Skilled Nursing

§7501. Medically Fragile

A. A medically fragile individual is one who has a medically complex condition characterized by multiple, significant medical problems that require extended care. Medically fragile individuals require most or all of the following services/aids:

1. use of home monitoring equipment;
2. IV therapy;
3. ventilator or tracheotomy care;
4. feeding tube and nutritional support;
5. frequent respiratory care;
6. medication administration;
7. catheter care;
8. frequent positioning needs;
9. special accommodations such as specially equipped vehicles or medical devices in order to attend school.

B. Under the EPSDT Program, continuous nursing care by a registered nurse (RN) or a licensed practical nurse (LPN) may be provided to children up to age 21 who are considered "medically fragile." Children who meet the continuous care criteria, which must be prior authorized, may leave the home and have the nurse provide services in any setting other than a school or institutions such as a hospital, skilled nursing facility or intermediate care facility for the mentally retarded.

C. Medically fragile recipients meet the medical necessity criteria for home health services if the individual has received prior authorization for multiple daily home visits and/or extended skilled nursing visits in accordance with the certifying physician's orders that document and meet the following criteria:

1. the medical condition of the recipient meets the medical necessity requirement for skilled nursing services and the provision of these services in the home is the most appropriate level of medical care; and
2. failure to receive skilled nursing services in the home would place the recipient at risk of developing additional medical problems or could cause further debilitation; and
3. the recipient requires skilled nursing services on a regular basis and that these services cannot be obtained in an outpatient setting before or after normal school hours. Therefore, home health services may be provided to the recipient/student in the home before or after normal school hours.

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:253 (February 2004).

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

0402#082

RULE

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

Public Hospitals
Reimbursement Methodology
Upper Payment Limit

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing will utilize the upper payment limit for state government-owned or operated hospitals as set forth in the 42 CFR §447.272(b) and §447.321(b). The hospital payment differential for any year shall be the difference between the upper limit of aggregate payments to state government-owned or operated hospitals, as defined in the 42 CFR §447.272(a)(1) and §447.321(a)(1), and the aggregate Medicaid reimbursement paid to these hospitals for the year.

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

0402#084

RULE

**Department of Natural Resources
Office of Conservation**

Statewide Order No. 29-B? General Requirements
(LAC 43:XIX.303)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the State of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, R.S. 4:C, the Louisiana Office of Conservation hereby amends an existing Rule at Statewide Order No. 29-B (LAC 43:XIX.303). The Rule concerns the authorization of subsurface disposal of wastes associated with the exploration, development, and production of oil and gas resources in disposal wells under the jurisdiction of the Office of Conservation. The amended Rule will allow for the administrative approval for produced water disposal into a productive zone, in which the productive mechanism of the zone is aquifer expansion (water drive).

The amended Rule addresses authorization procedures, establishes disposal zone and disposal well status standards, citing and written consent requirements.

Title 43

NATURAL RESOURCES

**Part XIX. Office of Conservation–General Operations
Subpart 1. Statewide Order No. 29-B**

**Chapter 3. Pollution Control–Onsite Storage,
Treatment and Disposal of Nonhazardous
Oilfield Waste (NOW) Generated from the
Drilling and Production of Oil and Gas
Wells (Oilfield Pit Regulations)**

§303. General Requirements

A. Produced water generated from the drilling and production of oil and gas wells shall be disposed of into subsurface formations, unless discharged or disposed of according to the provisions of §303.E, or transported offsite in accordance with LAC 43:XIX, Subpart 1, Chapter 5.

B. - C. ...

D. Produced water and other NOW generated in the drilling and production of oil and gas wells shall not be disposed of into a zone producing or productive of hydrocarbons except as provided for in LAC 43:XIX.303.O or such disposal is approved by the Office of Conservation after a public hearing or unless prior approval to use the proposed zone for such disposal can be documented.

E. - M.3. ...

N. Evidence of contamination of a groundwater aquifer or USDW may require compliance with the monitoring program of §309, compliance with the liner requirements of §307.A.1, or immediate closure of the pit.

O. The commissioner may authorize, without the necessity of a public hearing, the disposal of produced water into a zone producing or productive of hydrocarbons upon application of the operator of an existing or proposed disposal well. Such written request shall include the following:

1. the appropriate permit application as per the requirements of LAC 43:XIX.Chapter 4;
2. evidence establishing the production mechanism of the proposed disposal zone is aquifer expansion (water drive);
3. evidence demonstrating the subject disposal well is not productive in the proposed disposal zone;
4. a plat showing the subject disposal well is not located within 330' of a property line as it is defined in LAC 43:XIX.1901;
5. written consent of all operators of record with existing wells within a 1/4 mile radius of the subject well; and
6. such other information which the commissioner may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 26:2799 (December 2000), amended LR 30:254 (February 2004).

James H. Welsh
Commissioner

0402#045

RULE

**Department of Natural Resources
Office of Conservation**

**Statewide Order No. 29-L-3? Termination of Units
(LAC 43:XIX.3101, 3103, and 3105)**

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, R.S. 4.C, the Louisiana Office of Conservation has amended an existing Rule, Statewide Order No. 29-L-2 (LAC 43:XIX.3101, 3103, and 3105). The Rule concerns the terminations of oil and gas unit(s) for a pool established by the commissioner of conservation. The amended Rule will allow the termination of any unit or units for a pool provided each of the items listed below apply as of the date the application is filed with the commissioner.

1. A period of five years has elapsed without any production from the unit or units.
2. There is no well located on the unit which is capable of producing from the pool for which the unit or units is established.
3. A period of a year and 90 days has elapsed without any drilling, reworking, recompletion, plugging back, or deepening operations having been conducted on a well located on the unit in an attempt to obtain or restore production from the pool for which the unit or units were established.
4. There is no unexpired drilling permit for the drilling of a new well on the unit to a depth which would penetrate the pool for which the unit or units were established.

Title 43

NATURAL RESOURCES

Part XIX. Office of Conservation? General Operations

Subpart 13. Statewide Order No. 29-L-3

Chapter 31. Termination of Units

§3101. Scope

A. This order establishes rules and regulations for termination of any unit established by the commissioner of conservation pursuant to the authority of Title 30 of the Revised Statutes of 1950.

AUTHORITY NOTE: Promulgated in accordance with RS. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 15:741 (September 1989), repromulgated LR 19:776 (June 1993), amended LR 21:1083 (October 1995), LR 30:255 (February 2004).

§3103. Definitions

A. Unless the context otherwise requires, the words defined in this Section shall have the following meaning when found in this order.

District Manager? the manager of any one of the districts of the state of Louisiana under the Office of Conservation, and refers specifically to the manager within whose district the *pool* for which any *unit(s)* are sought to be terminated are located.

Interested Party? any person, as person is defined in Title 30 of the Revised Statutes of 1950, who owns an interest in any *unit(s)* sought to be terminated.

Pool? an underground reservoir containing a common accumulation of crude petroleum or natural gas or both. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term *pool*.

Unit? any *unit(s)*, whether one or more, established for a particular *pool*, by order of the commissioner of conservation pursuant to authority of Subsection B of Section 9 or Subsection B or C of Section 5 of Title 30 of the Revised Statutes of 1950.

Well? all *wells* drilled within the confines of any *unit(s)* sought to be terminated.

AUTHORITY NOTE: Promulgated in accordance with RS.30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 15:741 (September 1989), repromulgated LR 19:776 (June 1993), amended LR 21:1083 (October 1995), LR 30:255 (February 2004).

§3105. Order

A. Termination of All Existing Units for a Pool

1. On and after the effective date hereof, a supplemental order terminating all existing units established by the commissioner for a pool may be issued after written application and upon proper showing in the manner provided herein, and in the absence of protest without the necessity of a public hearing, when with respect to the pool for which the unit was established, a period of one year and 90 days has elapsed without:

- a. production from the pool; and
- b. the existence of a well proven capable of producing from the pool; and
- c. drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well to secure or restore production from the pool.

2. Each application for unit termination shall be filed with the commissioner with a copy to the district manager and each interested party. Interested parties need not be furnished information described in §3105.A.2.b, d and e. The application shall include the following:

- a. a plat showing all existing units established for the pool, with each well located thereon, together with order number(s) and effective date of the order(s) of the commissioner establishing said units. Each well shall be identified on such plat by operator of record, serial number and well name and number or by reference to an appropriate attachment;
- b. a signed statement indicating the status of each well. Should there exist a well which has not been plugged and abandoned in accordance with LAC 43:XIX.137, sufficient geological, engineering, or other data with detailed explanation thereof to clearly demonstrate that said well is not capable of producing from the pool;
- c. a signed statement indicating that with respect to the pool for which the unit was established, to the best of

applicant's knowledge, a period of one year and 90 days has elapsed without:

- i. production from the pool; and
- ii. the existence of a well proven capable of producing from the pool; and
- iii. drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well to secure or restore production from the pool;
- d. a list of all interested parties identified by the applicant after reasonable search to whom a copy of the application has been sent;
- e. an application fee as established by LAC 43:XIX.201 et seq.

3. Notice of the filing of the application of unit termination shall be published in the official journal of the state of Louisiana giving notice that unless a written protest is filed with the commissioner within the 30-day period from the date of publication of notice, the commissioner may issue a supplemental order for such unit termination. In the event written objection is filed within said 30-day period, the applicant may apply for a public hearing for consideration of the application.

4. In the event that production from the pool is subsequently reestablished from an existing well which was deemed not capable of producing from the pool as of the effective date of unit termination, the operator of record of such well shall immediately apply to the commissioner for a public hearing, after 30-day legal notice, to consider evidence concerning whether the previously existing unit on which the well is located should be reestablished for such well.

B. Termination of Any Existing Unit for a Pool

1. On and after the effective date hereof, a supplemental order terminating any existing unit(s) established by the commissioner for a pool may be issued after written application and upon proper showing in the manner provided herein, and in the absence of protest without the necessity of a public hearing, when with respect to the unit(s) to be terminated, each of the following apply as of the date the application for unit termination is filed with the commissioner:

- a. a period of five years has elapsed without any production from the unit(s); and
- b. there is no well located on the unit(s) which is capable of producing from the pool for which the unit(s) was established; and
- c. a period of one year and 90 days has elapsed without any drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well located on the unit(s) to be terminated in an attempt to secure or restore production from the pool for which the unit(s) was established.

2. Each application for unit termination shall be filed with the commissioner with a copy to the district manager and each interested party. Interested parties need not be furnished information described in §3105.B.2.b, d and e. The application shall include the following:

- a. a plat showing the existing unit(s) to be terminated, with each well located thereon, together with order number and effective date of the order of the commissioner establishing said unit(s). Each well shall be identified on such plat by operator of record, serial number

and well name and number or by reference to an appropriate attachment;

- b. a signed statement indicating the status of each well. Should there exist a well which has not been plugged and abandoned in accordance with LAC 43:XIX.137, sufficient geological, engineering, or other data with detailed explanation thereof to clearly demonstrate that said well located on the unit(s) is not capable of producing from the pool for which the unit(s) was created;

- c. a signed statement indicating that with respect to the unit(s) to be terminated, to the best of applicant's knowledge, each of the following apply as of the date the application for unit termination is filed with the commissioner:

- i. a period of five years has elapsed without any production from the unit(s); and
- ii. there is no well located on the unit(s) to be terminated which is capable of producing from the pool for which the unit(s) was established; and
- iii. a period of one year and 90 days has elapsed without any drilling, reworking, recompletion, deepening or plugging back operations having been conducted on a well located on the unit(s) in an attempt to secure or restore production from the pool for which the unit(s) was established; and
- iv. there is no unexpired drilling permit for the drilling of a new well on the unit(s) to be terminated to a depth which would penetrate the pool for which the unit(s) was established;

- d. a list of all interested parties identified by the applicant after reasonable search to whom a copy of the application has been sent;

- e. an application fee as established by LAC 43:XIX.201 et seq.

3. Notice of the filing of the application of unit termination shall be published in the official journal of the state of Louisiana giving notice that unless a written protest is filed with the commissioner within the 30-day period from the date of publication of notice, the commissioner may issue a supplemental order for such unit termination. In the event written objection is filed within said 30-day period, the applicant may apply for a public hearing for consideration of the application.

C. The effective date of any supplemental order issued hereunder can not be prior to the expiration of the legal advertisement period, reference §3105.A.3 and §3105.B.3 hereof. Consequently, any activity described in §3105.A.1 and §3105.B.1 hereof, occurring between the date of the signed statement, reference §3105.A.2.c and §3105.B.2.c hereof and the expiration of the legal advertisement period, shall result in application denial.

D. Any supplemental order issued hereunder approving the application terminating any unit(s) created for the pool shall be filed for record as provided in Section 11.1 of Title 30 of the Revised Statutes of 1950.

E. This order supersedes Statewide Order Number 29-L-2 and shall be effective on and after December 20, 2003.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:4 et seq.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, LR 15:741 (September 1989), amended LR 19:776 (June 1993), repromulgated LR

James H. Welsh
Commissioner

0402#044

RULE

**Department of Natural Resources
Office of Conservation
Pipeline Division**

**Hazardous Liquids Pipeline Safety
(LAC 33:V.30112, 30161, 30204 and 30905)**

Editor's Note: LAC 33:V.30112, 30161, 30204 and 30905 were promulgated in the December 20, 2003 issue of the *Louisiana Register* on pages 2804-2847 and are being repromulgated to correct typographical errors.

The Louisiana Office of Conservation has amended LAC 33:V.301 et seq. in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. and pursuant to power delegated under the laws of the state of Louisiana and particularly Title 30 of the Louisiana Revised Statutes of 1950, Section 30:501 et seq. This Rule replaces the current minimum pipeline safety requirements for hazardous liquids pipelines with new codification, technical changes and the addition of new requirements.

There will be negligible costs to directly affected persons or hazardous liquids pipeline operators. Benefits will be realized by persons near hazardous liquids pipelines through safer construction and operation standards imposed by the Rule amendments. Moreover, Louisiana presently receives approximately \$148,000 in federal funds and \$62,000 in pipeline fees to administer the Hazardous Liquids Pipeline Safety Program. Failure to amend the Louisiana Rules to make them consistent with federal regulations would cause the state to lose federal funding.

Title 33

ENVIRONMENTAL QUALITY

**Part V. Hazardous Waste and
Hazardous Materials**

Subpart 3. Natural Resources

**Chapter 301. Transportation of Hazardous Liquids by
Pipeline [49 CFR Part 195]**

**§30112. Unusually Sensitive Areas (USAs)
[49 CFR 195.6]**

A. As used in this Subpart, a USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.

1. A USA drinking water resource is:

a. the water intake for a Community Water System (CWS) or a Non-Transient Non-Community Water System (NTNCWS) that obtains its water supply primarily from a surface water source and does not have an adequate alternative drinking water source;

b. the Source Water Protection Area (SWPA) for a CWS or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer and does not have an adequate alternative drinking water source. Where a state has not yet

identified the SWPA, the Wellhead Protection Area (WHPA) will be used until the state has identified the SWPA; or

c. the sole source aquifer recharge area where the sole source aquifer is a karst aquifer in nature.

2. An USA ecological resource is:

a. an area containing a *critically imperiled species or ecological community*;

b. a multi-species assemblage area;

c. a migratory waterbird concentration area;

d. an area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community is aquatic, aquatic dependent, or terrestrial with a limited range; or

e. an area containing an imperiled species, threatened or endangered species, depleted marine mammal species, or an imperiled ecological community where the species or community occurrence is considered to be one of the most viable, highest quality, or in the best condition as identified by an element occurrence ranking (EORANK) of A (excellent quality) or B (good quality).

3. As used in this Subpart:

Adequate Alternative Drinking Water Source? a source of water that currently exists, can be used almost immediately with a minimal amount of effort and cost, involves no decline in water quality, and will meet the consumptive, hygiene, and fire fighting requirements of the existing population of impacted customers for at least one month for a surface water source of water and at least six months for a groundwater source.

Aquatic or Aquatic Dependent Species or Community? a species or community that primarily occurs in aquatic, marine, or wetland habitats, as well as species that may use terrestrial habitats during all or some portion of their life cycle, but that are still closely associated with or dependent upon aquatic, marine, or wetland habitats for some critical component or portion of their life-history (i.e., reproduction, rearing and development, feeding, etc).

Class I Aquifer? an aquifer that is surficial or shallow, permeable, and is highly vulnerable to contamination. *Class I aquifers* include:

i. *Unconsolidated Aquifers (Class Ia)?* that consist or surficial, unconsolidated, and permeable, alluvial, terrace, outwash, beach, dune, and other similar deposits. These aquifers generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all *Class Ia aquifers* are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of these aquifers is the thickness of the unsaturated zone and the presence of fine-grained material;

ii. *Soluble and Fractured Bedrock Aquifers (Class Ib)?* lithologies in this class include limestone, dolomite, and locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally, these aquifers have a wide range of permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral

ground water movement along preferred pathways, which result in a high degree of vulnerability;

iii. *Semiconsolidated Aquifers (Class Ic)*? that generally contain poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated units, such as occurs in parts of the High Plains Aquifer; or

iv. *Covered Aquifers (Class Id)*? that are any *Class I aquifer* overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrine, and loess deposits.

Class IIA Aquifer? Higher Yield Bedrock Aquifer that is consolidated and is moderately vulnerable to contamination. These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gallons per minute to be included in this class. Local fracturing may contribute to the dominant primary porosity and permeability of these systems.

Community Water System (CWS)? a public water system that serves at least 15 service connections used by year-round residents of the area or regularly serves at least 25 year-round residents.

Critically Imperiled Species or Ecological Community (Habitat)? an animal or plant species or an *ecological community* of extreme rarity, based on The Nature Conservancy's Global Conservation Status Rank. There are generally five or fewer occurrences, or very few remaining individuals (less than 1,000) or acres (less than 2,000). These species and ecological communities are extremely vulnerable to extinction due to some natural or man-made factor.

Depleted Marine Mammal Species? a species that has been identified and is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.). The term *depleted* refers to marine mammal species that are listed as threatened or endangered, or are below their optimum sustainable populations (16 U.S.C. 1362). The term *marine mammal* means "any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)" (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porpoises, and whales.

Ecological Community? an interacting assemblage of plants and animals that recur under similar environmental conditions across the landscape.

Element Occurrence Rank (EORANK)? the condition or viability of a species or *ecological community* occurrence, based on a population's size, condition, and landscape context. EORANKs are assigned by the Natural Heritage Programs. An EORANK of A means an excellent quality and an EORANK of B means good quality.

Imperiled Species or Ecological Community (Habitat)? a rare *species* or *ecological community*, based on The Nature Conservancy's Global Conservation Status Rank. There are generally six to 20 occurrences, or few remaining individuals (1,000 to 3,000) or acres (2,000 to 10,000). These *species* and *ecological communities* are vulnerable to extinction due to some natural or man-made factor.

Karst Aquifer? an aquifer that is composed of limestone or dolomite where the porosity is derived from connected solution cavities. *Karst aquifers* are often cavernous with high rates of flow.

Migratory Waterbird Concentration Area? a designated *Ramsar site* or a *Western Hemisphere Shorebird Reserve Network site*.

Multi Species Assemblage Area? an area where three or more different *critically imperiled or imperiled species* or *ecological communities*, threatened or *endangered species*, *depleted marine mammals*, or *migratory water bird concentrations* co-occur.

Non-Transient Non-community Water System (NTNCWS)? a *public water system* that regularly serves at least 25 of the same persons over six months per year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

Public Water System (PWS)? a system that provides the public water for human consumption through pipes or other constructed conveyances, if such systems has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. These systems include the sources of the water supplies, i.e., surface or ground. *PWS* can be community, non-transient non-community, or transient non-community systems.

Ramsar Site? a site that has been designated under the Convention on Wetlands of International Importance Especially as Waterfowl Habitat Program. *Ramsar sites* are globally critical wetland areas that support migratory waterfowl. These include wetland areas that regularly support 20,000 waterfowl; wetland areas that regularly support substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity; and wetland areas that regularly support 1 percent of the individuals in a population of one species or subspecies of waterfowl.

Sole Source Aquifer (SSA)? an area designed by the U.S. Environmental Protection Agency under the *Sole Source Aquifer* Program as the "sole or principal" source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50 percent or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard. A *sole source aquifer* that is karst in nature is one composed of limestone where the porosity is derived from connected solution cavities. They are often cavernous, with high rates of flow.

Source Water Protection Area (SWPA)? that the area delineated by the state for a public water supply system (*PWS*) or including numerous *PWSs*, whether the source is ground water or surface water or both, as part of the state source water assessment program (*SWAP*) approved by EPA under §1453 of the Safe Drinking Water Act.

Species? species, subspecies, population stocks, or distinct vertebrate populations.

Terrestrial Ecological Community with a Limited Range? a non-aquatic or non-aquatic dependent *ecological community* that covers less than five acres.

Terrestrial Species with a Limited Range? a non-aquatic or non-aquatic dependent animal or plant *species* that has a range of no more than five acres.

Threatened and Endangered Species (T&E)? an animal or plant *species* that has been listed and is protected under the Endangered Species Act of 1973, as amended (ESA 73)(16 U.S.C. 1531 et seq.).

i. *Endangered Species?* any *species* which is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532).

ii. *Threatened Species?* any *species* which is likely to become an *endangered species* within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532).

Transient Non-Community Water System (TNCWS)? a *public water system* that does not regularly serve at least 25 of the same persons over six months per year. This type of water system serves a transient population found at rest stops, campgrounds, restaurants, and parks with their own source of water.

Wellhead Protection Area (WHPA)? the surface and subsurface area surrounding a well or well field that supplies a *public water system* through which contaminants are likely to pass and eventually reach the water well or well field.

Western Hemisphere Shorebird Reserve Network (WHSRN) Site? an area that contains migratory shorebirds concentrations and has been designated as a hemispheric reserve, international reserve, regional reserve, or *endangered species* reserve. Hemispheric reserves host at least 500,000 shorebirds annually or 30 percent of a *species* flyaway population. International reserves host 100,000 shorebirds annually or 15 percent of a *species* flyaway population. Regional reserves host 20,000 shorebirds annually or 5 percent of a *species* flyaway population. *Endangered species* reserves are critical to the survival of *endangered species* and no minimum number of birds is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 28:83 (January 2002), amended LR 29:2808 (December 2003), repromulgated LR 30:257 (February 2004).

§30161. Internal Design Pressure [49 CFR 195.106]

A. Internal design pressure for the pipe in a pipeline is determined in accordance with the following formula:

$$P = (2 St/D) \times E \times F$$

P= Internal design pressure in p.s.i. (kPa) gauge.

S= Yield strength in pounds per square inch (kPa) determined in accordance with §30161.B.

t= Nominal wall thickness of the pipe in inches (millimeters). If this is unknown, it is determined in accordance with §30161.C.

D= Nominal outside diameter of the pipe in inches (millimeters).

E= Seam joint factor determined in accordance with §30161.E.

F= A design factor of 0.72, except that a design factor of 0.60 is used for pipe, including risers, on a platform located off-shore or on a platform in inland navigable waters, and 0.54 is

used for pipe that has been subjected to cold expansion to meet the specified minimum yield strength and is subsequently heated, other than by welding or stress relieving as a part of welding, to temperature higher than 900°F (482°C) for any period of time or over 600°F (316°C) for more than one hour. [49 CFR 195.106(a)]

B. The yield strength to be used in determining the internal design pressure under §30161.A is the specified minimum yield strength. If the specified minimum yield strength is not known, the yield strength to be used in the design formula is one of the following: [49 CFR 195.106(b)]

1. the yield strength determined by performing all of the tensile tests of API Specification 5L on randomly selected specimens with the following number of tests: [49 CFR 195.106(b)(1)(i)]

Pipeline Size	Number of Tests
Less than 6-5/8 in. (168 mm) nominal outside diameter	One test for each 200 lengths
6-5/8 through 12-3/4 in. (168 through 323 mm.) nominal outside diameter	One test for each 100 lengths
Larger than 12-3/4 in. (324 mm.) nominal outside diameter	One test for each 50 lengths

2. if the average yield-tensile ratio exceeds 0.85, the yield strength shall be taken as 24,000 psi (165,474 kPa). If the average yield tensile ratio is 0.85 or less, the yield strength of the pipe is taken as the lower of the following: [49 CFR 195.106(b)(1)(ii)]

a. eighty percent of the average yield strength determined by the tensile tests; [49 CFR 195.106(b)(1)(ii)(A)]

b. the lowest yield strength determined by the tensile tests; [49 CFR 195.106(b)(1)(ii)(B)]

3. if the pipe is not tensile tested as provided in Subsection B, the yield strength shall be taken as 24,000 psi (165,474 kPa). [49 CFR 195.106(b)(2)]

C. If the nominal wall thickness to be used in determining internal design pressure under §30161.A is not known, it is determined by measuring the thickness of each piece of pipe at quarter points on one end. However, if the pipe is of uniform grade, size, and thickness, only 10 individual lengths or five percent of all lengths, whichever is greater, need be measured. The thickness of the lengths that are not measured must be verified by applying a gage set to the minimum thickness found by the measurement. The nominal wall thickness to be used is the next wall thickness found in commercial specifications that is below the average of all the measurement taken. However, the nominal wall thickness may not be more than 1.14 times the smallest measurement taken on pipe that is less than 20 in. (508 mm) nominal outside diameter, nor more than 1.11 times the smallest measurement taken on pipe that is 20 in. (508 mm) or more in nominal outside diameter. [49 CFR 195.106(c)]

D. The minimum wall thickness of the pipe may not be less than 87.5 percent of the value used for nominal wall thickness in determining the internal design pressure under §30161.A. In addition, the anticipated external loads and external pressures that are concurrent with internal pressure must be considered in accordance with §30163 and §30165 and, after determining the internal design pressure, the nominal wall thickness must be increased as necessary to

compensate for these concurrent loads and pressures. [49 CFR 195.106(d)]

E.1. The seam joint factor used in §30161.A is determined in accordance with the following table. [49 CFR 195.106(e)]

Specification	Pipe Class	Seam Joint Factor
ASTMA53	Seamless	1.00
	Electric resistance Welded	1.00
	Furnace lap welded	0.80
	Furnace butt welded	0.60
ASTM A 106	Seamless	1.00
	Seamless	1.00
ASTMA333/A 333M	Seamless	1.00
	Welded	1.00
ASTMA381	Double submerged arc welded	1.00
ASTMA671	Electric fusion welded	1.00
ASTMA672	Electric fusion welded	1.00
ASTMA691	Electric fusion welded	1.00
API 5L	Seamless	1.00
	Electric resistance welded	1.00
	Electric flash welded	1.00
	Submerged arc welded	1.00
	Furnace lap welded	0.80
	Furnace butt welded	0.60

2. The seam joint factor for pipe which is not covered by this Subsection must be approved by the commissioner/administrator. [49 CFR 195.106(e)]

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 15:629 (August 1989), amended LR 20:441 (1994), LR 21:817 (August 1995), LR 27:1525 (September 2001), LR 29:2814 (December 2003), repromulgated LR 30:259 (February 2004).

Chapter 302. Transportation of Hazardous Liquids by Pipeline? Construction [49 CFR Part 195 Subpart D]

§30204. Inspection? General [49 CFR 195.204]

A. Inspection must be provided to ensure the installation of pipe or pipeline systems in accordance with the requirements of this Chapter. No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected. [49 CFR 195.204]

B. Each operator shall notify by facsimile [(225) 342-5529] the Pipeline Safety Section of the Office of Conservation, Louisiana Department of Natural Resources, of proposed pipeline construction at least seven days prior to commencement of said construction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:753.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2817 (December 2003), repromulgated LR 30:260 (February 2004).

Chapter 309. Transportation of Hazardous Liquids by Pipeline? Appendices [49 CFR Part 195]

§30905. Appendix C to Subpart 3? Guidance for Implementation of Integrity Management Program [49 CFR Part 195 Appendix C]

This Appendix gives guidance to help an operator implement the requirements of the integrity management

program rule in §30450 and §30452. Guidance is provided on:

1. information an operator may use to identify a high consequence area and factors an operator can use to consider the potential impacts of a release on an area;
2. risk factors an operator can use to determine an integrity assessment schedule;
3. safety risk indicator tables for leak history, volume or line size, age of pipeline, and product transported, an operator may use to determine if a pipeline segment falls into a high, medium or low risk category;
4. types of internal inspection tools an operator could use to find pipeline anomalies;
5. measures an operator could use to measure an integrity management program's performance;
6. types of records an operator will have to maintain; and
7. types of conditions that an integrity assessment may identify that an operator should include in its required schedule for evaluation and remediation.

I. Identifying a High Consequence Area and Factors for Considering a Pipeline Segment's Potential Impact on a High Consequence Area

A. The rule defines a High Consequence Area as a high population area, an other populated area, an unusually sensitive area, or a commercially navigable waterway. The Office of Pipeline Safety (OPS) will map these areas on the National Pipeline Mapping System (NPMS). An operator, member of the public, or other government agency may view and download the data from the NPMS home page <http://www.npms.rspa.dot.gov>. OPS will maintain the NPMS and update it periodically. However, it is an operator's responsibility to ensure that it has identified all high consequence areas that could be affected by a pipeline segment. An operator is also responsible for periodically evaluating its pipeline segments to look for population or environmental changes that may have occurred around the pipeline and to keep its program current with this information. (Refer to §30452.D.3.) For more information to help in identifying high consequence areas, an operator may refer to:

1. Digital Data on populated areas available on U.S. Census Bureau maps;
2. Geographic Database on the commercial navigable waterways available on <http://www.bts.gov/gis/ntatlas/networks.html>;
3. the Bureau of Transportation Statistics database that includes commercially navigable waterways and non-commercially navigable waterways. The database can be downloaded from the BTS website at <http://www.bts.gov/gis/ntatlas/networks.html>.

B. The rule requires an operator to include a process in its program for identifying which pipeline segments could affect a high consequence area and to take measures to prevent and mitigate the consequences of a pipeline failure that could affect a high consequence area. (See §30452.F and I.) Thus, an operator will need to consider how each pipeline segment could affect a high consequence area. The primary source for the listed risk factors is a US DOT study on instrumented Internal Inspection devices (November 1992). Other sources include the National Transportation Safety Board, the Environmental Protection Agency and the

Technical Hazardous Liquid Pipeline Safety Standards Committee. The following list provides guidance to an operator on both the mandatory and additional factors:

1. terrain surrounding the pipeline. An operator should consider the contour of the land profile and if it could allow the liquid from a release to enter a high consequence area. An operator can get this information from topographical maps such as U.S. Geological Survey quadrangle maps;

2. drainage systems such as small streams and other smaller waterways that could serve as a conduit to a high consequence area;

3. crossing of farm tile fields. An operator should consider the possibility of a spillage in the field following the drain tile into a waterway;

4. crossing of roadways with ditches along the side. The ditches could carry a spillage to a waterway;

5. the nature and characteristics of the product the pipeline is transporting (refined products, crude oils, highly volatile liquids, etc.) Highly volatile liquids become gaseous when exposed to the atmosphere. A spillage could create a vapor cloud that could settle into the lower elevation of the ground profile;

6. physical support of the pipeline segment such as by a cable suspension bridge. An operator should look for stress indicators on the pipeline (strained supports, inadequate support at towers), atmospheric corrosion, vandalism, and other obvious signs of improper maintenance;

7. operating conditions of the pipeline (pressure, flow rate, etc.) Exposure of the pipeline to an operating pressure exceeding the established maximum operating pressure;

8. the hydraulic gradient of the pipeline;

9. the diameter of the pipeline, the potential release volume, and the distance between isolation points;

10. potential physical pathways between the pipeline and the high consequence area;

11. response capability (time to respond, nature of response);

12. potential natural forces inherent in the area (flood zones, earthquakes, subsidence areas, etc.).

II. Risk Factors for Establishing Frequency of Assessment

A. By assigning weights or values to the risk factors, and using the risk indicator tables, an operator can determine the priority for assessing pipeline segments, beginning with those segments that are of highest risk, that have not previously been assessed. This list provides some guidance on some of the risk factors to consider (see §30452.E). An operator should also develop factors specific to each pipeline segment it is assessing, including:

1. populated areas, unusually sensitive environmental areas, National Fish Hatcheries, commercially navigable waters, areas where people congregate;

2. results from previous testing/inspection. (See §30452.H.);

3. leak history. (See leak history risk table.);

4. known corrosion or condition of pipeline. (See §30452.G.);

5. cathodic protection history;

6. type and quality of pipe coating (disbonded coating results in corrosion);

7. age of pipe (older pipe shows more corrosion—may be uncoated or have an ineffective coating) and type of pipe seam. (See Age of Pipe risk table.);

8. product transported (highly volatile, highly flammable and toxic liquids present a greater threat for both people and the environment) (see product transported risk table.);

9. pipe wall thickness (thicker walls give a better safety margin);

10. size of pipe (higher volume release if the pipe ruptures);

11. location related to potential ground movement (e.g., seismic faults, rock quarries, and coal mines); climatic (permafrost causes settlement—Alaska); geologic (landslides or subsidence);

12. security of throughput (effects on customers if there is failure requiring shutdown);

13. time since the last internal inspection/pressure testing;

14. with respect to previously discovered defects/anomalies, the type, growth rate, and size;

15. operating stress levels in the pipeline;

16. location of the pipeline segment as it relates to the ability of the operator to detect and respond to a leak. (e.g., pipelines deep underground, or in locations that make leak detection difficult without specific sectional monitoring and/or significantly impede access for spill response or any other purpose);

17. physical support of the segment such as by a cable suspension bridge;

18. non-standard or other than recognized industry practice on pipeline installation (e.g., horizontal directional drilling).

B. Example. This example illustrates a hypothetical model used to establish an integrity assessment schedule for a hypothetical pipeline segment. After we determine the risk factors applicable to the pipeline segment, we then assign values or numbers to each factor, such as, high (5), moderate (3), or low (1). We can determine an overall risk classification (A, B, C) for the segment using the risk tables and a sliding scale (values 5 to 1) for risk factors for which tables are not provided. We would classify a segment as C if it fell above 2/3 of maximum value (highest overall risk value for any one segment when compared with other segments of a pipeline), a segment as B if it fell between 1/3 to 2/3 of maximum value, and the remaining segments as A.

i. For the baseline assessment schedule, we would plan to assess 50 percent of all pipeline segments covered by the rule, beginning with the highest risk segments, within the first 3 1/2 years and the remaining segments within the seven-year period. For the continuing integrity assessments, we would plan to assess the C segments within the first two years of the schedule, the segments classified as moderate risk no later than year three or four and the remaining lowest risk segments no later than year five.

ii. For our hypothetical pipeline segment, we have chosen the following risk factors and obtained risk factor values from the appropriate table. The values assigned to the risk factors are for illustration only.

Age of pipeline: assume 30 years old (refer to "Age of Pipeline" risk table)-

Risk Value=5

Pressure tested: tested once during construction-

Risk Value=5

Coated: (yes/no)-yes

Coating Condition: Recent excavation of suspected areas showed holidays in coating (potential corrosion risk)-

Risk Value=5

Cathodically Protected: (yes/no)-yes-Risk

Value=1

Date cathodic protection installed: five years after pipeline was constructed (Cathodic protection installed within one year of the pipeline's construction is generally considered low risk.)-Risk Value=3

Close interval survey: (yes/no)-no-Risk

Value=3

Close interval survey: (yes/no)-no-Risk

Value=5

Internal Inspection tool used: (yes/no)-no-Risk

Value=5

Date of pig run? In last five years-Risk

Value=1

Anomalies found: (yes/no)-yes, but do not pose an immediate safety risk or environmental hazard-Risk Value=3

Leak History: yes, one spill in last 10 years. (refer to "Leak History" risk table)-Risk Value=2

Product transported: Diesel fuel. Product low risk. (refer to "Product" risk table)-Risk Value=1

Pipe size: 16 inches. Size presents moderate risk (refer to "Line Size" risk table)-Risk Value=3

iii. Overall risk value for this hypothetical segment of pipe is 34. Assume that we have two other pipeline segments for which we conduct similar risk rankings. The second pipeline segment has an overall risk value of 20, and the third segment, 11. For the baseline assessment we would establish a schedule where we assess the first segment (highest risk segment) within two years, the second segment within five years and the third segment within seven years. Similarly, for the continuing integrity assessment, we could establish an assessment schedule where we assess the highest risk segment no later than the second year, the second segment no later than the third year, and the third segment no later than the fifth year.

III. Safety Risk Indicator Tables for Leak History, Volume or Line Size, Age of Pipeline, and Product Transported

Safety Risk Indicator	Leak History (Time-dependent defects) ¹
High	>3 Spills in last 10 years
Low	<3 Spills in last 10 years

¹Time-dependent defects are those that result in spills due to corrosion, gouges, or problems developed during manufacture, construction or operation, etc.

Line Size or Volume Transported	
Safety Risk Indicator	Line Size
High	≥ 18"
Moderate	10" -16" nominal diameters
Low	≤ 8" nominal diameter

Age of Pipeline	
Safety Risk Indicator	Age Pipeline Condition Dependent ²
High	>25 years
Low	<25 years

²Depends on pipeline's coating and corrosion condition, and steel quality, toughness, welding.

Product Transported		
Safety Risk Indicator	Considerations ³	Product Examples
High	(Highly volatile and flammable)	(Propane, butane, Natural Gas Liquid (NGL), ammonia).
	Highly toxic	(Benzene, high Hydrogen Sulfide content crude oils).
Medium	Flammable- flashpoint<100F	(Gasoline, JP4, low flashpoint crude oils).
Low	Non-flammable- flashpoint 100+F	(Diesel, fuel oil, kerosene, JP5, most crude oils).

³The degree of acute and chronic toxicity to humans, wildlife, and aquatic life; reactivity; and volatility, flammability, and water solubility determine the Product Indicator. Comprehensive Environmental Response, Compensation and Liability Act Reportable Quantity values may be used as an indication of chronic toxicity. National Fire Protection Association health factors may be used for rating acute hazards.

IV. Types of Internal Inspection Tools to Use

An operator should consider at least two types of internal inspection tools for the integrity assessment from the following list. The type of tool or tools an operator selects will depend on the results from previous internal inspection runs, information analysis and risk factors specific to the pipeline segment:

1. geometry internal inspection tools for detecting changes to ovality, e.g., bends, dents, buckles or wrinkles, due to construction flaws or soil movement, or other outside force damage;
2. metal loss tools (ultrasonic and magnetic flux leakage) for determining pipe wall anomalies, e.g., wall loss due to corrosion;
3. crack detection tools for detecting cracks and crack-like features, e.g., stress corrosion cracking (SCC), fatigue cracks, narrow axial corrosion, toe cracks, hook cracks, etc.

V. Methods to Measure Performance

A. General

1. This guidance is to help an operator establish measures to evaluate the effectiveness of its integrity management program. The performance measures required will depend on the details of each integrity management program and will be based on an understanding and analysis of the failure mechanisms or threats to integrity of each pipeline segment.

2. An operator should select a set of measurements to judge how well its program is performing. An operator's objectives for its program are to ensure public safety, prevent or minimize leaks and spills and prevent property and environmental damage. A typical integrity management program will be an ongoing program it may contain many elements. Therefore, several performance measure are likely to be needed to measure the effectiveness of an ongoing program.

B. Performance Measures. These measures show how a program to control risk on pipeline segments that could affect a high consequence area is progressing under the integrity management requirements. Performance measures generally fall into three categories.

1. Selected Activity Measures? Measures that monitor the surveillance and preventive activities the operator has implemented. These measures indicate how

well an operator is implementing the various elements of its integrity management program.

2. Deterioration Measures? Operation and maintenance trends that indicate when the integrity of the system is weakening despite preventive measures. This category of performance measure may indicate that the system condition is deteriorating despite well executed preventive activities.

3. Failure Measures? Leak History, incident response, product loss, etc. These measures will indicate progress towards fewer spills and less damage.

C. Internal vs. External Comparisons. These comparisons show how a pipeline segment that could affect a high consequence area is progressing in comparison to the operator's other pipeline segments that are not covered by the integrity management requirements and how that pipeline segment compares to other operator's pipeline segments.

1. Internal? Comparing data from the pipeline segment that could affect the high consequence area with data from pipeline segments in other areas of the system may indicate the effects from the attention given to the high consequence area.

2. External? Comparing data external to the pipeline segment (e.g., OPS incident data) may provide measures on the frequency and size of leaks in relation to other companies.

D. Examples. Some examples of performance measures an operator could use include:

1. a performance measurement goal to reduce the total volume from unintended releases by __ percent (percent to be determined by operator) with an ultimate goal of zero;

2. a performance measurement goal to reduce the total number of unintended releases (based on a threshold of five gallons) by __ percent (percent to be determined by operator) with an ultimate goal of zero;

3. a performance measurement goal to document the percentage of integrity management activities completed during the calendar year;

4. a performance measurement goal to track and evaluate the effectiveness of the operator's community outreach activities;

5. a narrative description of pipeline system integrity, including a summary of performance improvements, both qualitative and quantitative, to an operator's integrity management program prepared periodically;

6. a performance measure based on internal audits of the operator's pipeline system per this Subpart;

7. a performance measure based on external audits of the operator's pipeline system per this Subpart;

8. a performance measure based on operational events (for example: relief occurrences, unplanned valve closure, SCADA outages, etc.) that have the potential to adversely affect pipeline integrity;

9. a performance measure to demonstrate that the operator's integrity management program reduces risk over time with a focus on high risk items;

10. a performance measure to demonstrate that the operator's integrity management program for pipeline

stations and terminals reduces risk over time with a focus on high risk items.

VI. Examples of Types of Records an Operator Must Maintain

The rule requires an operator to maintain certain records. (See §30452.L). This Section provides examples of some records that an operator would have to maintain for inspection to comply with the requirement. This is not an exhaustive list:

1. a process for identifying which pipelines could affect a high consequence area and a document identifying all pipeline segments that could affect a high consequence area;

2. a plan for baseline assessment of the line pipe that includes each required plan element;

3. modification to the baseline plan and reasons for the modification;

4. use of and support for an alternative practice;

5. a framework addressing each required element of the integrity management program, updates and changes to the initial framework and eventual program;

6. a process for identifying a new high consequence area and incorporating it into the baseline plan, particularly, a process for identifying population changes around a pipeline segment;

7. an explanation of methods selected to assess the integrity of line pipe;

8. a process for review of integrity assessment results and data analysis by a person qualified to evaluate the results and data;

9. the process and risk factors for determining the baseline assessment interval;

10. results of the baseline integrity assessment;

11. the process used for continual evaluation, and risk factors used for determining the frequency of evaluation;

12. process for integrating and analyzing information about the integrity of a pipeline, information and data used for the information analysis;

13. results of the information analyses and periodic evaluations;

14. the process and risk factors for establishing continual reassessment intervals;

15. justification to support any variance from the required reassessment intervals;

16. integrity assessment results and anomalies found, process for evaluating and remediating anomalies, criteria for remedial actions and actions taken to evaluate and remediate the anomalies;

17. other remedial actions planned or taken;

18. schedule for evaluation and remediation of anomalies, justification to support deviation from required remediation times;

19. risk analysis used to identify additional preventive or mitigative measures, records of preventive and mitigative actions planned or taken;

20. criteria for determining EFRD installation;

21. criteria for evaluating and modifying leak detection capability;

22. methods used to measure the program's effectiveness.

VII. Conditions that May Impair a Pipeline's Integrity

Section 30452.H requires an operator to evaluate and remediate all pipeline integrity issues raised by the integrity assessment or information analysis. An operator must develop a schedule that prioritizes conditions discovered on the pipeline for evaluation and remediation. The following are some examples of conditions that an operator should schedule for evaluation and remediation:

- A. any change since the previous assessment;
- B. mechanical damage that is located on the top side of the pipe;
- C. an anomaly abrupt in nature;
- D. an anomaly longitudinal in orientation;
- E. an anomaly over a large area;
- F. an anomaly located in or near a casing, a crossing of another pipeline, or an area with suspect cathodic protection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:703.

HISTORICAL NOTE: Promulgated by the Department of Natural Resources, Office of Conservation, Pipeline Division, LR 29:2840 (December 2003), repromulgated LR 30:260 (February 2004).

James H. Welsh
Commissioner

0402#055

RULE

**Department of Public Safety and Correction
Corrections Services**

Access to and Release of Active
and Inactive Records? Adult
(LAC 22:I.101)

Editor's Note: This Rule is being repromulgated to correct an error. This Rule originally ran in the January 20, 2004 edition of the *Louisiana Register* and may be viewed in its entirety on pages 75-77.

The Department of Public Safety and Corrections, Corrections Services, in accordance with R.S. 15:823, and the Administrative Procedure Act, R.S. 49:950 et seq., hereby repeals the current LAC 22:I.101, Records of Adult Offenders and Ex-Offenders, in its entirety and adopts LAC 22:I.101, Access to and Release of Active and Inactive Records.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE AND LAW
ENFORCEMENT**

Part I. Corrections

Chapter 1. Secretary's Office

**§101. Access to and Release of Active and Inactive
Records**

A. Purpose. To establish the secretary's policy and procedures for access to and release of active and inactive inmate records.

B. Applicability. This regulation applies to all persons employed by the department and those who are under contract with the department. The assistant secretary/office of adult services, all wardens-adult and the director of probation and parole-adult are responsible for implementing

this regulation and conveying its contents to all affected persons.

C. Definitions

Application for Pardon or Parole? for the purpose of this regulation, an *application for pardon or parole* is defined as any time that an inmate has made an *application for pardon or parole*, (including medical parole) or has been released on diminution of sentence (Good Time Parole Supervision-GTPS).

Law Enforcement Agencies? those agencies designed to enforce federal, state or municipal laws and who receive public funds as their primary source for operation, i.e., sheriff's offices, local and state police departments, departments of corrections, U.S. attorneys, district attorneys, and the Federal Bureau of Investigation (FBI).

Sex Offender, Serial Sexual Offender, Sexually Violent Predator, Child Predator? inmates committed to the department for a crime listed in R.S. 15:536 and 15:541. (See Paragraph N.1, List of Sex Offenses.)

D. Release of Information and Records

1. The pre-sentence investigation report, the pre-parole report, the clemency report, the information and data gathered by the staffs of the Board of Pardons and Board of Parole, the prison record, and any other information obtained by the Boards or Corrections Services, in the discharge of official duties shall be confidential and shall not be subject to public inspection nor be disclosed directly or indirectly to anyone except as in accordance with this regulation.

2. Following an *application for pardon or parole*, all information pertaining to an individual's misconduct while incarcerated, statistical information, information pertaining to disposition of criminal charges and incarcerations, and information of a general nature including an individual's age, offense, date of conviction, length of sentence, any correspondence by a public official which requests, or may be determined to be in support of, or in opposition to, the pardon or parole of an individual, and discharge date shall be released to the general public at any time upon request.

NOTE: This provision shall not apply to any public official correspondence which requests, or may be determined to be in support of, or in opposition to, the pardon or parole of an individual, which was received prior to August 15, 1997.

3. An inmate's DOC number and assigned location may be released without restriction.

4. Except as noted below, any communication with the Board of Pardons or Board of Parole urging parole, pardon, clemency, or commutation of sentence or otherwise regarding an inmate shall be deemed a public record and subject to public inspection.

a. Exception. Any letter written by, or on behalf of, any victim of a crime committed by an inmate under consideration for parole, pardon, clemency, or commutation of sentence, or any letter written in opposition to pardon, clemency, or commutation of sentence shall be confidential and shall not be deemed a public record and subject to public inspection. This exception shall not apply to any elected or appointed public official.

5. Information on a particular inmate may be released without special authorization, subject to other restrictions that may be imposed by federal law or by other provisions of state law, to the following:

- a. Board of Parole;

- b. Board of Pardons;
- c. governor;
- d. sentencing judge;
- e. district attorneys;
- f. *law enforcement agencies*;
- g. Department of Public Safety and Corrections personnel, including legal representatives and student workers;
- h. appropriate governmental agencies or public officials, when access to such information is imperative for the discharge of the responsibilities of the requesting agency, official or court officer and the information is not reasonably available through any other means; and
- i. court officers with court orders specifying the information requested.

6. Fingerprints, photographs, and information pertaining to arrests and disposition of criminal charges, as well as information regarding escapes may be released to law enforcement agencies without special authorization.

7. The secretary or his designee may approve the reading (but not copying) of confidential information by the following:

- a. social service agencies assisting in the treatment of the inmate or ex-offender; and
- b. approved researchers who have guaranteed in writing anonymity of all subjects.

8. The secretary or his designee may approve the selective reading (but not copying) of information by a private citizen or organization aiding in the rehabilitation of, or directly involved in the hiring of, the inmate or ex-offender under the following conditions:

- a. it appears that the withholding of the information would be to the inmate's or ex-offender's disadvantage;
- b. the requested information is necessary to further the rehabilitation or the likelihood of hiring the inmate or ex-offender;
- c. the requested information is not reasonably available through other means; and
- d. the inmate or ex-offender has given his written consent to release the information.

NOTE: Each unit will develop and use a "release of information consent form" for this purpose prior to the release of information and a copy will be placed in the inmate's record.

E. Release of Information on Sex Offenders

1. In addition to information which may be released pursuant to Subsection D, criminal history record information regarding sex offenders, serial sexual offenders, sexually violent predators and child predators which pertains to a conviction for which an inmate is currently sentenced to the department's custody may be disseminated without restriction.

2. For the purpose of this regulation, criminal history record information includes the following:

- a. date and parish of conviction;
- b. offense;
- c. docket number;
- d. sentence; and
- e. release dates.

3. A written record pertaining to the dissemination of criminal history record information on sex offenders (see Paragraph N.1, List of Sex Offenses) shall be maintained at

the unit level. The record shall contain the following information:

- a. to whom the criminal history record information was disseminated;
- b. the date the information was disseminated;
- c. the individual to whom the information relates; and
- d. a brief description of the information disseminated.

4. The written record pertaining to the dissemination of criminal history record information on sex offenders shall be retained for a period of not less than one year.

F. Release of Information to Crime Victims

1. Both the information contained in a Victim Notice and Registration Form and the fact that a notification request has been made are confidential. Any questions from outside the department about whether particular persons have requested notification or whether there has been a notification request for particular inmates should be referred to the Crime Victims Services Bureau.

2. Information may be released to victims, witnesses, and others directly injured by the criminal acts of persons under the state's authority in accordance with Department Regulation No. C-01-007 "Crime Victims Services Bureau."

G. Subpoenaed Records

1. Whenever records of an inmate or ex-offender are subpoenaed, they shall be submitted to the appropriate court for a ruling as to whether the information should be turned over to the party who caused the subpoena to be issued. The court shall make this determinate in camera. If the court makes any one of the following determinations, the information shall be withheld:

- a. the information is not relevant to the proceedings; or
- b. the information was derived from communications which were obviously made in the confidence that they would not be disclosed; or
- c. the confidentiality is essential to the future useful relations between the source and the recorder of the information.

2. Should the court authorize disclosure of the records in accordance with the subpoena, the party who caused the subpoena to be issued shall pay a fee for the cost of production of the records in accordance with R.S. 39:241 (see Department Regulation No. A-03-003 "Collection of Fees for Reproduction of Public Records"), unless the court determines that the party has been granted pauper status in accordance with law.

H. Records Not Subpoenaed Submitted to the Courts for Review. The department reserves the right to submit any record to the appropriate court for a ruling as to whether the information should be turned over to the party requesting the information.

I. Access and Release of Medical Records. Access to and release of medical records is governed by Health Care Policy No. HC-33 "Inmate Medical Records."

J. Department's Access to Information and Records of Other Agencies. During the course of any investigation which the department is authorized by law to conduct, or which is necessary for the rehabilitation of persons in the custody of the department, the department shall have access to information and records under the control of any state or

local agency which are reasonably related to the rehabilitation of the inmate.

K. Inmate Access to Records. Information contained in the inmate's record shall be confidential and shall not be released to the inmate except in accordance with this regulation.

1. An inmate may have access to his master prison record, a sentence computation worksheet, any court documents that are related to the term of his instant incarceration, non-confidential unusual occurrence reports, disciplinary reports, information related to educational achievements and participation.

2. An inmate may view and make notes of his state police and/or FBI rap sheet, but shall not be given a copy.

3. An inmate shall not have access to another inmate's active or inactive records.

4. The following is a non-exhaustive list of additional information that will not be accessible to the inmate:

- a. pre-sentence reports;
- b. post-sentence reports;
- c. pre-parole reports;
- d. clemency investigations;
- e. information revealing or tending to reveal the identity of confidential informants;
- f. admission summary;
- g. correspondence from any non-departmental source directed solely to prison officials;
- h. correspondence or inquiries originated by institutional personnel;
- i. investigations conducted by non-departmental agencies, i.e., District Attorney, State Police, FBI, etc.;
- j. investigations conducted by Corrections Services;
- k. non-disciplinary court-related institutional investigations; and
- l. correspondence from victims or witnesses, including Victim Notice and Registration Forms.

5. Each institution shall establish procedures for inmates to follow when requesting copies of documents from their records and the fees charged for such copies.

L. Information Requests. Verbal requests for information are acceptable. However, the secretary or his designee reserves the right to require a written request before releasing any information. In that case, the individual or agency must certify in writing that they will not release the information to any other agency.

M. Fees. The fee schedule for copies of public records is established in Department Regulation No. A-03-003 "Collection of Fees for Reproduction of Public Records."

N.1. List of Sex Offenses

- a. 14:41 Rape
- b. 14:42 Aggravated Rape
- c. 14:42.1 Forcible Rape
- d. 14:43 Simple Rape
- e. 14:43.1 Sexual Battery
- f. 14:43.2 Aggravated Sexual Battery
- g. 14:43.3 Oral Sexual Battery
- h. 14:43.5 Intentional Exposure of AIDS Virus
- i. 14:78 Incest

- j. 14:78.1 Aggravated Incest
- k. 14:80 Felony Carnal Knowledge of a Juvenile
- l. 14:80.1 Misdemeanor Carnal Knowledge of a Juvenile
- m. 14:81 Indecent Behavior with Juveniles
- n. 14:81.1 Pornography Involving Juveniles
- o. 14:81.2 Molestation of a Juvenile
- p. 14:89 Crime against Nature
- q. 14:89.1 Aggravated Crime against Nature
- r. 14:92(A)(7) Contributing to the Delinquency of Juvenile
- s. 14:93.5 Sexual Battery of the Infirm
- t. 14:283(E) Video Voyeurism

2. A conviction for any offense provided in the above list includes a conviction for an equivalent offense under the laws of another state.

3. A conviction for the attempt of the above offenses shall be considered as a sex offender for the purpose of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 44:7, 15:540-542, 15:546-548, 15:549(C), 15:574.12, 15:840.1, C.Cr.P. Art. 877 and 894.1.

HISTORICAL NOTE: Promulgated by the Department of Corrections, Office of the Director, LR 2:107 (April 1976), amended by the Department of Public Safety and Corrections, Corrections Services, LR 30:75 (January 2004), repromulgated LR 30:264 (February 2004).

Richard L. Stalder
Secretary

0402#041

RULE

**Department of Public Safety and Corrections
Gaming Control Board**

Video Draw Poker (LAC 42:XI.Chapter 24)

The Louisiana Gaming Control Board hereby amends LAC 42:XI.2403, 2405, 2407, 2409, 2411, 2413, 2417, 2419, and 2421 in accordance with R.S. 27:15 and 24, and the Administrative Procedure Act, R.S. 49:950 et seq.

Title 42

LOUISIANA GAMING

Part XI. Video Poker

Chapter 24. Video Draw Poker

§2403. Definitions

The provisions of the Louisiana Video Draw Poker Devices Control Law relating to the definitions of words, terms, and phrases are hereby incorporated by reference and made a part hereof, and shall apply and govern the interpretation of these regulations, except as otherwise specifically declared or as is clearly apparent from the context of the regulations herein. The following words, terms, and phrases shall have the ascribed meaning indicated below.

* * *

Applicant? the person who has completed an *application* to the division for a license or permit to participate in the video gaming industry in Louisiana.

Application? the process by which a person requests a license or permit, or the renewal of a license or permit, for participation in the video gaming industry in Louisiana.

Permittee? for purposes of these rules, shall have the same meaning as *video draw poker employee* as provided in R.S. 27:301.

Warehouse? a secure and limited access structure or room, approved by the division, utilized for the storage of video gaming devices and/or their components.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:266 (February 2004).

§2405. Application and License

A. Initial and Renewal Applications

1. All applications for a license shall be submitted on forms provided by the division and mailed to an address provided by the division.

2. - 15. ...

B. Requirements for Licensing

1.a. No person shall be granted a license, and no license shall be renewed unless the applicant demonstrates to the division that he is suitable for licensing, and thereafter continues to maintain suitability, as provided in the Act.

b. All applicants for a license and licensees shall be current in filing all applicable tax returns and in the payment of all taxes, interest and penalties owed to all appropriate local taxing authorities, the state of Louisiana and the Internal Revenue Service, excluding contested amounts pursuant to applicable statutes, and excluding items for which the Department of Revenue and Taxation and the Internal Revenue Service have accepted a payment schedule of back taxes.

2. - 3.b. ...

4.a. The appropriate annual fee shall be paid by all licensees regardless of the expiration date of the license on or before July 1 of each year.

b. Proof of current tax filings and payments, including tax clearance certificates from the state and all appropriate local taxing authorities shall be submitted to the division along with the annual fee as provided in Subparagraph B.4.a. no later than July 1 of each year.

5. Repealed.

6. All nonrefundable fees required for application/renewal and any administrative fines or penalties shall be made payable to the Department of Public Safety and Corrections and remitted to an address provided by the division.

7. Repealed.

8. - 10. ...

11. Repealed.

12. - 12.e. ...

C. - C.2. ...

D. Change of Ownership of Licensed Establishment

1. If a change in ownership of a licensed establishment occurs, the division shall be notified, in writing within five days, of the Act of sale or transfer.

2. When a licensed establishment which requires an alcoholic beverage license as a condition of the receipt of a video gaming license is sold or transferred, the devices shall be allowed to continue to operate under the old license if:

a. the new owner applies for a state Class "A" general retail or restaurant alcohol permit within 15 days of the act of sale or transfer; and

b. upon issuance of a state Class "A" general retail or restaurant alcohol permit, the new owner applies for a video gaming license within 15 days of said issuance.

3. The devices shall only be allowed to continue in operation under the old license until:

a. the issuance of a video draw poker license in the name of the new owner;

b. a determination by the division that the new applicant is unsuitable;

c. denial of the new license application; or

d. the passage of 180 days from submission of the application to the division.

4. The new owner shall provide, at the time of application to the division, a certified copy of the act of sale or transfer, a copy of all appropriate documentation which indicates the date the licensed establishment began the Alcohol and Tobacco Control Commission application process, and a copy of the permit issued by the Alcohol and Tobacco Control Commission.

5. If any of the documents required by this Section are not submitted with the new owner's application, the division may immediately disable the devices.

6. If the 180-day period has elapsed prior to the issuance of a new video gaming license, the devices shall be disabled and the device owner shall immediately make arrangements to remove and transfer the devices from the formerly licensed establishment.

7. Upon the issuance of a license to a new owner or the passage of 180 days, whichever occurs first, the license issued to the prior owner shall expire and be surrendered to the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 24:955 (May 1998), LR 26:346 (February 2000), LR 26:2322 (October 2000), LR 27:61 (January 2001), LR 30:267 (February 2004).

§2407. Operation of Video Draw Poker Devices

A. Responsibilities of Licensees

1. The licensee or a designated representative of the licensed establishment shall be required to be physically present and available within the licensed establishment at all times during all hours of operation; shall ensure that the devices are not tampered with, abused, or altered in any way; and shall prevent the play of video draw poker devices by persons under the age of 21 and prevent access to the gaming area by persons under the age of 18. The penalty for violation of this subsection shall be \$250 for the first

offense, \$500 for the second offense, and \$1,000 for the third offense. The penalty for fourth and subsequent offenses shall be administrative action, including, but not limited to, suspension or revocation.

2 - 7. ...

8. Repealed.

9 - 12. ...

13. Repealed.

14. ...

a. The signs shall be placed at the entrances to device areas with lettering at least 3 inches in height stating that there are gaming devices inside, no one under 18 allowed in gaming area, and no one under the age of 21 allowed to play gaming devices.

15 - 15.c. Repealed.

16 - 17. ...

B. Video Draw Poker Employees and Permits

1. The division shall issue a video draw poker employee permit to persons determined to be suitable pursuant to the provisions of the Act and rules adopted by the Louisiana Gaming Control Board pursuant to the Administrative Procedure Act.

2. All video draw poker employees shall possess a valid video draw poker employee permit in addition to a valid state issued driver's license, identification card or United States military identification card. The penalty for violation of this subsection shall be \$25 for the first offense, \$50 for the second offense, and \$75 for the third offense. The penalty for fourth and subsequent offenses shall be administrative action, including, but not limited to, suspension or revocation of the permit.

3. All video draw poker employee applications must be submitted on forms prescribed by the Louisiana Gaming Control Board.

a. All applications shall be submitted to the division via delivery by the United States Postal Service certified or registered mail, return receipt requested, or a commercial interstate carrier.

b. All applications shall contain a telephone number and permanent address for receipt of correspondence and service of documents by the division.

c. All video draw poker employees shall submit a renewal application to the division at least sixty days prior to expiration of their permit to avoid a lapse in their ability to work as video draw poker employees.

4. All applicants shall provide all additional information requested by the division. If applicants fail to provide all additional information requested by the division, the application shall be denied.

5. All video draw poker employees or applicants shall notify the division in writing of all changes of address, phone numbers, and other required information in the application within 10 calendar days of the effective date of the change.

6. No person shall be granted a permit and no permit will be renewed unless the applicant demonstrates to the division that he is suitable for permitting and thereafter continues to maintain suitability, as provided in the Act.

7. All applicants and video draw poker employees shall attend all hearings, meetings, seminars, and training sessions required by the division. The division shall not be

responsible for any cost incurred by the applicants and/or video draw poker employees.

8. Permittees employed as a designated representative shall have the ability to locate all records and documents of the licensed establishment and possess the knowledge of all day to day operations of the licensed establishment.

9. All video draw poker employees shall have knowledge of these rules and the provisions of the Act.

C. - D.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 25:85 (January 1999), LR 27:205 (February 2001), LR 30:267 (February 2004).

§2409. Revenues

A. - A.4. ...

B. Device Operation Fees

1. ...

2. The division shall prorate the device operation fee that is required for each enabled video gaming device on a quarterly basis in accordance with the following schedule of dates of enrollment. For devices enrolled:

a. July 1 through September 30, the whole operation fee is due;

b. October 1 through December 31, three quarters of the operation fee is due;

c. January 1 through March 31, one half of the operation fee is due;

d. ...

3. The annual device operation fee may be paid in quarterly installments as prescribed by the Act.

4. - 6.d. ...

C. Franchise Payments

1. ...

2. All device owners shall establish and maintain a single bank account exclusively for the electronic funds transfer (sweep) of franchise payments to the designated bank of the state treasurer.

a. - c. Repealed.

d. The payments shall be transferred electronically into the designated bank of the state treasurer semi-monthly or as otherwise prescribed by the division. Licensees shall authorize the division to initiate these transfers.

e. The funds shall be electronically transferred (swept) no later than the tenth day after the fifteenth and last day of every month. Any account found with insufficient funds shall constitute a violation of this Section.

f. Electronic funds transfers shall be calculated based upon device polling from the first through the fifteenth, and the sixteenth through the last day of every month.

g. Any delinquent monies not forwarded to the bank designated by the state treasurer by electronic funds transfers at the time of the transfer shall be subject to an interest penalty of 0.000575 per day (21 percent per annum). The interest penalty shall be in addition to any other penalties imposed by the division.

3. A device owner who has a nonsufficient fund return within the past three years shall be required to maintain a

minimum balance at all times in the video gaming sweep account, or the account shall at all times be secured by a line of credit or bond issued by a bank or security company acceptable to the state treasurer. For purposes of this rule the term "bond" shall include cash, cash equivalent instruments or such other instruments as the division determines provide immediate liquidity.

a. The minimum balance and the security shall be equivalent to at least 15 percent of the previous month's net device revenues of all video gaming devices of the device owner.

b. No withdrawals at any time from the device owner's video gaming account, including electronic funds transfers, shall cause the account balance to be less than the minimum balance requirement prescribed above.

4. All licensed device owners shall be liable for that portion of net device revenues from such times as the funds are received into the device until said funds are deposited into the designated bank of the state treasurer.

D. Supplemental Purses for Horsemen

1. Repealed.

2. Forms provided by the division shall be used to record amounts earned for purse supplements and shall be filed with the division, the Horsemen's Benevolent and Protective Association, and the Louisiana State Racing Commission by the twentieth day of every month.

2.a. - 3.b. Repealed.

4. The division may at all times oversee any and all operations pertaining to video gaming and may review and/or audit any account or fund used for receipt and/or disbursement of any of the aforementioned income.

E. - E.2.h. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:268 (February 2003).

§2411. Regulatory, Communication, and Reporting Responsibilities

A. General Provisions

1. - 11. ...

12. All licensed manufacturers and distributors shall maintain a current record of devices received, devices sold, and devices in inventory, and if requested, must provide this information to the division.

13. ...

14. All licensed manufacturers and distributors shall provide the division with a current list of authorized service entities and other personnel that they have certified. The list, which shall be updated and provided quarterly in a format specified by the division, shall include, but not be limited to, the following information:

A.14.a. - C.5. ...

D. Licensed Device Owners

1. - 3. ...

4. Repealed.

5. Except as otherwise provided in this Section, all licensed device owners shall only purchase or lease video gaming devices from, or sell or lease video gaming devices to, licensed distributors, or other licensed device owners.

6. Repealed.

7. - 9. ...

E. Licensed Establishments

1. - 2.c. ...

3. All licensed establishments that are qualified truck stop facilities shall provide to the division all necessary diesel and gasoline fuel sales data consisting of beginning and ending pump meter readings and summaries of all diesel and gasoline fuel sales, in gallons. Such information shall be given to the division on a monthly basis, on a form supplied by the division.

4. ...

5. The division shall evaluate each monthly report to establish the average monthly fuel sales for the quarter in question. This shall determine the number of electronic video draw poker devices that can be legally operated at the truck stop facility during the next quarterly period. The division shall disable or enable devices in accordance with the Act.

6. Repealed.

E.7. - F.4. ...

G. Required Forms

1. - 2. ...

3. If applicable, all licensees shall provide the division with all required device-related reports, to include, but not be limited to, the following:

a. ...

b. GAMING DEVICE OWNERSHIP TRANSFER NOTIFICATION, which shall be submitted for any change of ownership of any device within five business days of the change of ownership;

G.3.c. - H.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:269 (February 2004).

§2413. Devices

A. Device Specifications

1. All devices shall include all of the specifications and features as provided in R.S. 27:302. In addition, all devices shall include the following specifications and features:

a. - c. ...

d. accept only United States coins and/or currency.

e. - h. ...

i. permanent serial numbers not to exceed nine alpha and/or numeric characters. The serial number plate shall be located in the upper (front) right side panel of the device, unless otherwise approved by the division, and shall contain the following information:

A.1.i.i. - 4. ...

5. Devices shipped to and transported through Louisiana shall at all times remain in the demonstration mode. In addition, no device operating in demonstration mode shall accept coin or currency.

A.6. - C.2. ...

D. Enrollment Procedures

1. - 2. ...

3. Validation decals shall be issued by the division for devices and shall be promptly affixed by a division representative to an enrolled device. The validation decal shall be affixed to the upper (front) right side of the device, or as otherwise approved by the division.

E. - G.3. ...

H. Devices Permanently Removed from Service

1. - 3. ...

4. For purposes of this Section, devices permanently removed from service shall mean devices:

- a. that are sold back or otherwise returned, and shipped to the distributor or manufacturer;
- b. that are damaged beyond repair due to theft, vandalism, or natural disasters; or
- c. that are completely dismantled for parts or destroyed and properly discarded as waste.

H.5. - J.2. ...

K. Warehouses

1. Devices stored in a warehouse shall be stored in a manner which easily displays the device serial number plate and/or the state issued permit sticker.

2. Device owners who wish to share warehouse space must execute a written lease agreement outlining the conditions and method of the space sharing. A copy of the lease agreement, along with a diagram indicating the method of device separation, must be sent to the division within five calendar days from the date of execution.

a. The shared warehouse must be partitioned in such a manner as to visually distinguish each device owner's video gaming devices.

b. Device owners shall not commingle their video gaming devices.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq. and R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 23:1322 (October 1997), LR 25:85 (January 1999), LR 30:269 (February 2004).

§2417. Code of Conduct of Licensees and Permittees

A. - A.3. ...

B. Unsuitable Conduct

1. - 3. ...

4. Any person required to be found suitable or approved in connection with the granting of any license or permit shall have a continuing duty to notify the division of his/her/its arrest, summons, citation or charge for any criminal offense or violation including D.W.I.; however, minor traffic violations need not be included. All licenses and permittees shall have a continuing duty to notify the division of any fact, event, occurrence, matter or action that may affect the conduct of gaming or the business and financial arrangements incidental thereto or the ability to conduct the activities for which the licensee or permittee is licensed or permitted. Such notification shall be made within ten calendar days of the arrest, summons, citation, charge, fact, event, occurrence, matter or action.

5. ...

C. Additional Causes for Disciplinary Action

1. Further instances of conduct by a licensee or permittee where the division or board may sanction a

licensee or permittee shall include but not be limited to when:

a. - i. ...

j. unavailability of the licensees or permittees, their designated representatives, or any agents of the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq., R.S. 27:15 and 24.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 27:59 (January 2001), LR 30:270 (February 2004).

§2419. Investigations

A. - A.4. ...

B. Inspections

1. - 1.d. ...

2. Inspection of Records

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

b. The division may require a licensee to submit any and all video gaming records or documents that are necessary for the facilitation and/or completion of an investigation pertaining to a violation of these rules or the Act.

3. - 3.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:270 (February 2004).

§2421. Miscellaneous

A. Required Meetings

1. The division may summon a licensee or permittee to appear for a consultation, explanation, discussion, clarification, training session, or other meeting considered by the division to be of potential benefit, or otherwise aid in the effective regulation of the video gaming industry.

A.2. - G.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 33:4862.1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, Gaming Enforcement Section, Video Gaming Division, LR 18:196 (February 1992), amended LR 21:582 (June 1995), amended by the Department of Public Safety and Corrections, Gaming Control Board, LR 30:270 (February 2004).

Hillary J. Crain
Chairman

0402#040

RULE

Department of Public Safety and Corrections Office of State Police

Collection, Submission, Receipt, Identification,
Storage and Disposal of DNA Samples
(LAC 55:1.2703, 2705, 2725, and 2740-2747)

Pursuant to R.S. 15:601 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S.

49:950 et seq., the Department of Public Safety and Corrections, Public Safety Services, Office of State Police has amended LAC 55:I.Chapter 27. The following rules and regulations establish guidelines for the collection, submission, receipt, identification, storage and disposal of DNA samples for arrestees as defined in R.S. 15:601 et seq. and for peace officers as defined in R.S. 40:2405.4 et seq.

Title 55

PUBLIC SAFETY

Part I. State Police

Chapter 27. Collection, Submission, Receipt, Identification, Storage and Disposal of DNA Samples

Subchapter A. Convicted Offenders

§2703. Collection, Submission, and Identification of DNA Samples for Convicted Offenders

A. All DNA samples obtained for DNA Analysis from a convicted offender shall be collected using an approved Louisiana State Police Crime Laboratory DNA Database Collection kit as supplied by the department.

1 - 5.i. ...

j. In the event a convicted offender resists the taking of the DNA sample and the collector must use reasonable force in accordance with R.S. 15:601-620, the collector may collect any type of biological sample approved by the Louisiana State Police Crime Laboratory. The following types of biological sample collections are hereby approved for these instances:

- i. blood stain from finger prick on FTA card;
- ii. buccal swab;
- iii. phlebotomy draw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:206 (February 2001), repromulgated LR 27:1702 (October 2001), amended LR 30:271 (February 2004).

§2705. Record Keeping of DNA Samples for Convicted Offenders

A. The individual who collects each DNA sample shall provide an accurate, up-to-date list of every DNA sample collected each day of collection. Any failed attempts to collect blood from an offender and the reason for the failure (e.g. refusal of offender to submit, failure to keep scheduled appointment) shall also be indicated. The list will include the following information: the kit number, the offender's name, the name of the person collecting the sample and the submitting agency together with any additional data which the director deems necessary. This information shall be forwarded on an audit form provided by the department to the CODIS DNA Unit on a daily basis, via U.S. mail. If the mailing envelopes are hand delivered to the crime laboratory, the audit form shall accompany the mailing envelopes being delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:207 (February 2001), repromulgated LR 27:1703 (October 2001), amended LR 30:271 (February 2004).

Subchapter B. Arrestees

§2725. Record Keeping of DNA Samples for Arrestees

A. The individual who collects each DNA sample shall provide an accurate, up-to-date list of every DNA sample collected each day of collection. Any failed attempts to collect a sample from an arrestee and the reason for the failure (e.g. refusal of arrestee to submit) shall also be indicated. The list will include the following information: the kit number, the arrestee's name, the name of the person collecting the sample and the submitting agency together with any additional data which the director deems necessary. This information shall be forwarded on an audit form provided by the department to the CODIS DNA Unit on a daily basis, via U.S. mail. If the mailing envelopes are hand delivered to the crime laboratory, the audit form shall accompany the mailing envelopes being delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:2370 (November 2002), amended LR 30:271 (February 2004).

Subchapter C. Peace Officers

§2740. Scope, Purpose and Application

A. Scope, Purpose, and Application. To provide rules and regulations governing the collection, submission, receipt, identification, storage and/or disposal of DNA samples for peace officers pursuant to R.S. 40:2405.4.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:271 (February 2004).

§2741. Definitions

Biological Sample? biological evidence of any nature that is utilized to conduct DNA analysis.

Crime Laboratory? Louisiana State Police *Crime Laboratory* of the Department of Public Safety and Corrections, Public Safety Services.

Department? Department of Public Safety and Corrections, Public Safety Services.

Director? the *Director* of the Louisiana State Police *Crime Laboratory*.

DNA? deoxyribonucleic acid.

DNA Analysis? DNA typing tests that generate numerical identification information and are obtained from a DNA sample.

DPS and C? Department of Public Safety and Corrections.

Peace Officer? same meaning as R.S. 40:2402.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:271 (February 2004).

§2742. Collection of DNA Samples for Peace Officers

A. All biological samples obtained for DNA Analysis from a peace officer shall be buccal swabs and shall be collected using sterile cotton tip swabs as provided by the agency employing the peace officer who is required to have his biological sample collected pursuant to R.S. 40:2405.4.

1. The agency employing the peace officer shall provide all materials necessary to collect a biological sample from any peace officer required to provide a sample pursuant to R.S. 40:2405.4.

2. The supplies necessary to collect a buccal swab shall include the following:

- a. one pack of two sterile cotton tip swabs;
- b. one pair of gloves;
- c. one paper type envelope to store the samples once collected;
- d. evidence tape for sealing the paper envelope.

3. In order to collect the biological sample, the collector shall adhere to the following procedures.

- a. Have the subject open his or her mouth. If there is foreign matter in the mouth, such as tobacco or gum, have the subject rinse his or her mouth out with water.
- b. Remove one sterile cotton swab and collect the specimen by rubbing the swab vigorously on the inside surfaces of the cheeks and gums thoroughly. While slowly turning the swab (so that all sides of the swab are in contact with the side of the cheek) rub the swab up and down and back and forth in the mouth about 10 times.
- c. Allow the buccal swab to dry for at least 30 minutes.
- d. After allowing the buccal swab to dry for at least thirty minutes. Place the buccal swab in the paper type envelope. Do not place the swab back into the original sterile swab packaging.
- e. Repeat Subparagraph b with the remaining swab.
- f. Place the second cotton tip swab immediately inside the paper type envelope with the first swab.
- g. Seal the paper type envelope. Place evidence seal over envelope seal. Write the date and collector's initials partially on the paper type envelope and partially on the evidence seal.

4. The collector shall print the name of the peace officer, the date of collection and the name of the collector on the paper type envelope used to store the samples once collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:271 (February 2004).

§2743. Storage of Biological Samples

A. All agencies employing any peace officer required to provide a biological sample pursuant to R.S. 40:2405.4 shall be responsible for storing said samples in a secure location. All agencies shall ensure that no unauthorized access to any biological sample taken from any peace officer is permitted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:272 (February 2004).

§2745. Disposition of Biological Samples Following Termination Peace Officer Employment

A. If the employment of a peace officer who is required to have a DNA sample collected pursuant to R.S. 40:2405.4 terminates for any reason, the law enforcement agency that collected the sample may destroy the buccal swab or return it to the peace officer from whom the sample was collected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:272 (February 2004).

§2747. Severability

A. If any article, section, subsection, sentence, clause or phrase of LAC 55:I:2320 et seq. is for any reason determined to be unconstitutional, contrary to statute, in excess of authority, or otherwise inoperative, such determination shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of LAC 55:I:2701 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2405.4.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 30:272 (February 2004).

Christopher A. Keaton
Undersecretary

0402#008

RULE

**Department of Transportation and Development
Office of Highways/Engineering**

**Wireless Telecommunications Permit
(LAC 70:II.Chapter 15)**

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Transportation and Development has amended Chapter 15 of Part II of Title 70 entitled "DOTD Wireless Telecommunications Permit," in accordance with R.S. 48:381.2.

**Title 70
TRANSPORTATION
Part II. Utilities**

Chapter 15. DOTD Wireless Telecommunications Permit

§1509. Fees

A. The following fees shall apply to wireless telecommunications installations placed within state highway rights-of-way.

Type of Tower	Annual Fee
Self-Supporting Tower/Antenna	\$3,500
Monopole/Antenna	\$2,000
Attachments to Existing Utility/Light Poles	\$1,500
Co-Location on DOTD Tower	\$3,500
Video Cameras	Supply feed to DOTD

B. Repealed.

C - E ...

F. The department may waive fees for those permit applicants who erect facilities, attachments or cameras for the use of the department or other state agencies or political subdivisions to conduct departmental or state work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 25:98 (January, 1999), amended LR 30:272 (February 2004).

§1513. Co-Location

A. ...

B. Wireless facility operators, in certain instances, may be permitted to strengthen DOTD-owned towers, at the sole cost of the wireless facility operator, to provide additional structural capacity for multiple users. Alternatively, the tower structure may be replaced, rather than modified. Ownership of the new or modified tower and responsibility for maintaining the tower shall be negotiated prior to issuance of the permit, and shall be stated on the front of the permit. Applicant shall submit a structural analysis with the permit application. DOTD retains the right in perpetuity to have its antennae, pre-existing or added subsequent to permit issue, mounted on the new or modified tower.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381.2.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 25:99 (January, 1999), amended LR 30:272 (February 2004).

Kam K. Movassaghi, Ph.D., P.E.
Secretary

0402#043

RULE

**Department of Treasury
Teachers' Retirement System**

Earnable Compensation (LAC 58:III.201)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, the Board of Trustees of Teachers' Retirement System of Louisiana has adopted policies governing the Earnable Compensation Accounts, LAC 58:III.201 as follows.

Title 58

RETIREMENT

Part III. Teachers' Retirement System of Louisiana

Chapter 2. Earnable Compensation Accounts

§201. Earnable Compensation Accounts

A. Earnable compensation shall not include compensation paid to an active member or to an inactive member of Teachers' Retirement System of Louisiana (TRSL) if the compensation is paid by a secondary employer and is reported to the Internal Revenue Service (IRS) on a Form 1099, but only if both the following occur.

1. The individual contract is for \$1,000 or less, and a Form 1099 is issued.

2. The cumulative amount of the Form 1099 payments issued by a single secondary employer to that member does not exceed \$15,000 in a fiscal year.

B. If an individual contract is for more than \$1,000, then that entire payment is earnable compensation subject to TRSL employer and employee contributions.

C. If the cumulative amount of the Form 1099 payments issued by a single secondary employer to that member exceeds \$15,000 in a fiscal year, then all Form 1099 payments in excess of \$15,000 in that TRSL fiscal year are earnable compensation subject to TRSL employer and employee contributions.

Note: A secondary employer is one who does not report W-2 earnings on this member.

D. Earnable compensation shall include any and all compensation paid to a retiree of this system by a TRSL-covered employer regardless of IRS reporting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:701(10).

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the Teachers' Retirement System of Louisiana, LR 30:273 (February 2004).

Bonita B. Brown, CPA
Director

0402#086

Notices of Intent

NOTICE OF INTENT

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

Program Participation, Fee Payment and Penalties (LAC 7:XV.321)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry hereby proposes to amend regulations regarding annual assessment fees and late fees for the Boll Weevil Eradication Program.

The Department of Agriculture and Forestry intends to amend these rules and regulations for the purpose of reducing the annual assessment fee of \$10 an acre to \$6 an acre and to also reduce the late fee for failure to pay all assessments from \$3 an acre to \$1.50 an acre. The operating costs for the Boll Weevil Eradication Program has fallen due to the program entering the maintenance phase for eradicating boll weevils and therefore costs less to maintain.

These Rules are enabled by R.S. 3:1607 and 1609.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 3. Boll Weevil

§321. Program Participation, Fee Payment and Penalties

A. Upon passage of the referendum, all cotton producers growing cotton in an eradication zone shall be required to participate in the eradication program.

B. Assessments on cotton producers in the eradication zones shall be levied as follows.

1. In the Red River Eradication Zone cotton producers shall each year submit to the ASCS office the annual assessment as set by the commission following the adjudicatory procedure of the Administrative Procedure Act, which assessment shall not exceed \$6 per acre for each acre of certified cotton acreage on file with ASCS.

2. In the Louisiana Eradication Zone cotton producers shall each year submit to the ASCS office the annual assessment as set by the commission following the adjudicatory procedure of the Administrative Procedure Act which assessment shall not exceed \$6 per acre for each acre of certified cotton acreage on file with ASCS.

B.3. - D. ...

E. Any cotton producer failing to pay all assessments by the later of July 1 or final certification of the current growing season shall, in addition to the assessment fee and other penalties provided in the Boll Weevil Eradication Law and these regulations, be subject to a penalty fee of \$1.50 per acre.

F. - I. ...

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

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Boll Weevil Eradication Commission, LR 21:20 (January 1995), amended LR 21:669 (July 1995), LR 23:195 (February 1997), LR 24:2231 (December 1998), LR 25:829 (May 1999), LR 30:

Family Impact Statement

The proposed amendments to Rules LAC XV.321 regarding the Boll Weevil Eradication Program should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons may submit written comments on the proposed Rules through March 25, 2004, to Dr. John Andries, Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble concerning the proposed Rules is available.

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Program Participation, Fee Payment and Penalties

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no estimated implementation costs or savings to state or local governmental units. The operating costs for the Boll Weevil Eradication Program has declined due to the program entering the maintenance phase for eradicating boll weevils and therefore costs less to maintain.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There will be a decrease in revenue collections to state and local government units. The Boll Weevil Eradication Commission intends to reduce the annual assessment fee of \$10 an acre for the Red River Zone and \$15 an acre for the Louisiana Zone to \$6 an acre and to also reduce the late fee for failure to pay all assessments from \$3 an acre to \$1.50 an acre.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be a reduction in costs and an increase in economic benefits to directly affected persons or non-governmental groups due to the decrease in assessment and penalty fees associated with the boll weevil eradication program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

There will be no impact on competition and employment in the public and private sectors.

Skip Rhorer Robert E. Hosse
Assistant Commissioner General Government Section Director
0402#054 Legislative Fiscal Office

NOTICE OF INTENT

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

Testing Procedures and Quarantines of Pet Turtles
(LAC 7:XXI.Chapter 23)

Editor's Note: This Notice of Intent is being repromulgated to correct errors, it was originally promulgated in the January 20, 2004 issue of the *Louisiana Register* on pages 103-104.

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Agriculture and Forestry proposes to amend regulations regarding microbiological testing procedures and quarantines for the farming and selling of Louisiana pet turtles.

The Department of Agriculture and Forestry is amending these rules and regulations to enhance the accuracy and consistency of the testing for salmonella by requiring that all follow up testing of positive samples be done by the same state operated reference laboratory; thereby providing maximum protection for the industry and the public in the production of a safe wholesome product and to further assist the industry in its efforts to lift the FDA ban that was imposed on the sale of pet turtles in the United States and to increase the industry's ability to control *Salmonella* spp.

This Rule comply with and are enabled by R.S. 3:2358.2. No preamble concerning the proposed Rules is available.

Title 7

AGRICULTURE AND ANIMALS

Part XXI. Diseases of Animals

Chapter 23. Pet Turtles

§2311. Microbiological Test Procedures

A. - B. ...

C. If any group of turtles or turtle eggs test positive for *Salmonella* spp, the owner of each such group may request that the group be tested again for *Salmonella* spp. Any such request must be made within seven days of the date the quarantine is issued. The owner may request a retest of the group as a whole using the same sampling procedures as used for the original test or the owner may subdivide the affected positive group into a maximum of four equal subgroups. Each such subgroup shall be separately identified, simultaneously randomly sampled and tested. The Louisiana Veterinary Medical Diagnostic Laboratory shall conduct the retesting, whether from the group as a whole or from any of the subgroups in accordance with normal protocol. The Louisiana Veterinary Medical Diagnostic Laboratory test results, whether from the group as a whole or from any of the subgroups shall be the final and conclusive test results. Any group or subgroup that tests positive for *Salmonella* spp shall be disposed of in accordance with the law and these regulations.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.12.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:351 (April 1991) amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), LR 30:

§2315. Quarantine

A. - A.3. ...

4. All groups of turtles or groups of turtle eggs that are found to be positive for *Salmonella* spp shall be quarantined and disposed of as provided by law and these regulations unless a second test has been timely requested by the owner. In the event that a second test has been timely requested by the owner then the group, if tested as a whole, or any subgroup that test positive for *salmonella* spp in the second test shall be disposed of in accordance with the law and these regulations within 21 days after the second test results are obtained.

5. Quarantined eggs or turtles shall be subject to identification, inventory and verification by agents of the department. Records, physical examination and photographs may be used to verify the inventory of quarantined eggs or turtles.

6. - 6.b. ...

7. All turtles and/or eggs belonging to a group which has either received a second notice of contamination with harmful bacteria or otherwise ordered disposed of by the department shall be disposed of in a manner approved by the department within 21 days of the receipt of the second notice.

8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2 and 3:2358.12.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Animal Health Services, LR 17:352 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1570 (August 2000), LR 30:

§2321. Proper Disposal

A. Because of the danger posed by the emergence of bacteria resistant to antibiotics used to kill *Salmonella* and other harmful bacteria, licensed pet turtle farmers shall follow approved disposal procedures including but not limited to the following.

1. Eggs or turtles that have been found to contain *Salmonella*, Arizona or other harmful bacteria shall be disposed of in a manner approved by the department.

2. Chlorine or antibiotic solutions shall be disposed of in a manner approved by the department.

B. Dead or deformed turtles and also those turtles not sold within 12 months of certification shall be disposed of in a manner as approved by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:2358.2, 3:2358.9 and 3:2358.10.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Animal Health Services, LR 17:353 (April 1991), amended by the Department of Agriculture and Forestry, Office of the Commissioner, LR 26:1571 (August 2000), LR 30:

Family Impact Statement

The proposed Rules in Part XXI. Chapter 23, Pet Turtles should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D or on family formation,

stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Interested persons should submit written comments on the proposed Rules to Dr. Maxwell Lea through the close of business on March 26, 2004 at 5825 Florida Blvd., Baton Rouge, LA 70806. No preamble regarding these Rules is necessary.

Bob Odom
Commissioner

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Testing Procedures and
Quarantines of Pet Turtles**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs or savings to state or local governmental units are anticipated. The Department of Agriculture and Forestry is amending these rules and regulations to enhance the accuracy and consistency of the testing for *Salmonella spp* by requiring that all follow up testing of positive samples be done by the same state operated reference laboratory; thereby providing maximum protection for the industry and the public in the production of a safe wholesome product and to further assist the industry in its efforts to lift the FDA ban that was imposed on the sale of pet turtles in the United States and to increase the industry's ability to control *Salmonella spp*.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is estimated to be no effect on revenue collections of the state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is estimated to be no costs and/or economic benefits to directly affected persons or non-governmental units, other than any indirect benefit that comes from enhanced health and safety requirements.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments are not anticipated to have an effect on competition and employment other than any indirect benefit that comes from enhanced health and safety requirements.

Skip Rhorer
Assistant Commissioner
0402#052

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Agriculture and Forestry
Office of the Commissioner
Office of the Louisiana Seed Commission**

**Sugarcane (Tissue Culture) Certification Standards
(LAC 7:XIII.207)**

Editor's Note: This Notice of Intent was promulgated in the January 20, 2004 issue of the *Louisiana Register* on pages 104-105 and is being repromulgated for corrections

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and R.S. 3:1433, the Department of Agriculture and Forestry, Office of the Louisiana Seed Commission, proposes to amend regulations governing sugarcane (tissue culture) certification standards.

The Louisiana Seed Commission, at the request of the sugarcane industry, is proposing to amend the Rules regarding sugarcane (tissue culture) certification standards to include Sugarcane Ratoon Stunting Disease (RSD) and Sugarcane Yellow Leaf Virus testing to prevent the introduction and spread of these potential harmful diseases into Louisiana sugarcane. These Rules are also being amended to reduce the tolerances for other varieties, Sugarcane Borer and Johnson grass within a certified seed cane field, to bring these tolerances in line with current acceptable industry levels.

These Rules are enabled by R.S. 3:1433.

Title 7

AGRICULTURE AND ANIMALS

Part XIII. Seeds

Chapter 1. Louisiana Seed Law

§207. Sugarcane (Tissue Culture) Certification Standards

A. Limitation of Stand Eligibility

1. Source of foundation stock is limited only to material obtained from the Louisiana State University Agricultural Center or USDA-ARS Sugarcane Research Unit sugarcane variety selection programs that has been processed through the LSUAC sugarcane quarantine program.

a. Foundation stock shall be tested on a yearly basis for Sugarcane Ratoon Stunting Disease by the LSU Ag Center Sugarcane Disease Detection Lab based on the protocol provided by the lab. The applicant for certification shall provide to the Louisiana Department of Agriculture and Forestry verification that foundation stock has been tested for Sugarcane Ratoon Stunting Disease (RSD)

2. – 4.b ...

B. Field Inspections. At least four field inspections shall be made each year to determine if certified seedcane is being produced that apparently meets field standards.

a. Collection of leaf samples for the detection of Sugarcane Yellow Leaf Virus shall be made at the 3rd inspection.

b. Individual fields shall be sampled by Louisiana Department of Agriculture & Forestry inspectors for the detection of Sugarcane Yellow Leaf Virus according to the following guidelines.

Field Size in Acres	# Leaf Tissue Samples per Field
Less than 5 Acres *	25
5 - 10 Acres	50
Greater than 10 Acres	75
*Minimum of 25 Leaf Tissue Samples per Field	

c. Tissue samples shall be submitted to the LSU Ag Center Sugarcane Disease Detection Lab for analysis.

d. The department shall have the right to re-inspect, re-sample and re-test fields that are out of tolerance for sugarcane yellow leaf virus prior to certification.

C. Land Requirements. The land shall be followed one summer from the previous crop.

D. Field Standards

Factor	Foundation	Registered	Certified
Isolation	10 ft.	10 ft.	10 ft.
Other Varieties (obvious)	None	1.00%	1.00%
Off-Type (definite)	None	1.00%	1.00%
Noxious Weeds:			
Johnsongrass	None	5 Plants/Acre	5 Plants/Acre
Itchgrass	None	1 Plant/Acre	1 Plant/Acre
Other Weeds:			
Browntop panicum (Panicum fasciculatum)	None	20 Plants/Acre	20 Plants/Acre
Harmful Diseases:			
Sugarcane Yellow Leaf Virus*	None	10.00%	10.00%
Sugarcane Mosaic Virus**	None	10.00%	10.00%
Sugarcane Smut**	None	0.50%	0.50%
Harmful Insects:			
Sugarcane Borer***	None	5.00%	5.00%
*Determined by lab analysis for the LSU Sugarcane Disease Detection Lab.			
**Plants exhibiting symptoms.			
***Determined by percentage of internodes bored.			

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 12:825 (December 1986), amended by the Department of Agriculture and Forestry, Office of Agriculture and Environmental Sciences, LR 23:1284 (October 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Office of the Louisiana Seed Commission, LR 30:

Family Impact Statement

The proposed amendments to Title 7 Part XIII. §207, regarding sugarcane (tissue culture) certification standards, should not have any known or foreseeable impact on any family as defined by R. S. 49:972.D or on family formation, stability and autonomy. Specifically there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

All interested persons may submit written comments on the proposed Rules through March 26, 2004, to Eric Gates,

Department of Agriculture and Forestry, 5825 Florida Blvd., Baton Rouge, LA 70806. All interested persons will be afforded an opportunity to submit data, views or arguments in writing at the address above. No preamble concerning the proposed Rules is available

Bob Odom
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Sugarcane (Tissue Culture) Certification Standards

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs or savings to state or local governmental units are anticipated.

The Louisiana Seed Commission, at the request of the sugarcane industry, is proposing to amend the Rules regarding sugarcane (tissue culture) certification standards to include Sugarcane Ratoon Stunting Disease (RSD) and Sugarcane Yellow Leaf Virus testing to prevent the introduction and spread of these potential harmful diseases into Louisiana sugarcane. These Rules are also being amended to reduce the tolerances for Other Varieties, Sugarcane Borer and Johnson grass within a certified seed cane field, to bring these tolerances in line with current acceptable industry levels.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is estimated to 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 is estimated to be no costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed amendments are not anticipated to have an effect on competition and employment.

Skip Rhorer
Assistant Commissioner
0402#053

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Civil Service Civil Service Commission

Retesting Standards

The State Civil Service Commission will hold a public hearing on Wednesday, March 3, 2004, to consider the following Rule proposal. The hearing will begin at 9 a.m. and will be held in the Louisiana Purchase Room, Suite 1-100, Claiborne Building, 1201 North Third Street, Baton Rouge, LA.

The following will be considered at the meeting.

Current Rule

7.4 Minimum Qualifications and Retest Eligibility Standards

(a) - (c) ...

(d) An applicant who is admitted to a continuously open Civil Service written test series, except those covered

by Rule 7.4(d) 2 may test up to three (3) times for the same test series in any twelve (12) month period provided at least four (4) weeks have elapsed from the date he or she last took that examination. The applicant's official grade shall be the most recent examination.

Proposed Amendment to Rule 7.4(d)

(d) An applicant who is admitted to a continuously open Civil Service written test series, except those covered by Rule 7.4(d)2 may test up to three times for the same test series in any twelve-month period provided at least four weeks have elapsed from the date he or she last took that examination. When an applicant repeats a test, the applicant's official grade shall be the highest grade obtained on the examination.

Explanation

This proposed provision allows candidates to keep their highest grade earned on a written examination, rather than their most recent test score earned.

Family Impact Statement

The proposed Civil Service Rule change will have no impact upon:

1. the effect on the stability of the family;
2. the effect on the authority and rights of parents regarding the education and supervision of their children;
3. the effect on the functioning of the family;
4. the effect on family earnings and family budget;
5. the effect on the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Persons interested in making comments relative to this proposal may do so at the public hearing or by writing to the Director of State Civil Service at Post Office Box 94111, Baton Rouge, LA 70804-9111.

If any accommodations are needed, please notify us prior to this meeting.

Allen H. Reynolds
Director

0402#019

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? High School Diploma and Endorsements (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The State Board of Elementary and Secondary Education (SBESE) at its October, 2003 meeting approved revisions to Standard 2.099.02 of the *Louisiana Handbook for School Administrators: Bulletin 741* to add two additional courses to the list of courses meeting the requirement for one unit in Computer Technology. These courses are Computer Technology I and Computer Technology II. Also, the policy

is corrected to add a line of text that was inadvertently left off the last time this policy was revised.

Title 28

EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§901. School Approval Standards and Regulations

A. Bulletin 741

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education LR 1:483 (November 1975), amended by the Board of Elementary and Secondary Education, LR 28:269 (February 2002), LR 28:272 (February 2002), LR 28:991 (May 2002), LR 28:1187 (June 2002), LR 30:

2.099.02 High School Diploma and Endorsements Standard Diploma

Incoming freshmen 2003-2004 and thereafter meeting the Minimum Requirements for High School Graduation listed below and the requirements listed in 2.099.00 and 2.099.01, and completing four Carnegie units in an area of concentration, including one course that incorporates computer applications, shall be eligible for a standard diploma. An area of concentration shall be courses selected to prepare students for postsecondary education and/or a career.

The 23 units required for graduation shall include 16 required units and 7 elective units; the elective units can be earned at technical colleges as provided in Standard 2.103.35.

Academic Endorsement

Students meeting the requirements for a standard diploma, and satisfying the following performance indicators shall be eligible for an academic endorsement to a standard diploma:

1. Students shall meet the current course requirements for the Tuition Opportunity Program for Students (TOPS) Opportunity Award.
2. Students shall complete one additional Carnegie unit in mathematics, science, or social studies.
3. Students shall pass all four components of the GEE 21 with a score of Basic or above, or one of the following combinations of scores with the English Language Arts score at Basic or above:
 - ?? One Approaching Basic, 1 Mastery or Advanced, Basic or above in the remaining two
 - ?? Two Approaching Basic, 2 Mastery or above.
4. Students shall complete one of the following requirements:
 - ?? Senior Project
 - ?? One Carnegie unit in an AP course with a score of 3 or higher on the AP exam
 - ?? One Carnegie unit in an IB course with a score of 4 or higher on the IB exam
 - ?? Three college hours of non-remedial, articulated credit in mathematics, social studies, science, foreign language, or English Language Arts.
5. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award.

6. Students shall achieve an ACT Composite Score of 23.

Career/Technical Endorsement

Students meeting the requirements for a standard diploma, and satisfying the following performance indicators shall be eligible for a career/technical endorsement to a standard diploma:

1. Students shall meet the current course requirements for the Tuition Opportunity Program for Students (TOPS) Opportunity Award or the TOPS Tech Award.

2. Students shall pass the English Language Arts, mathematics, science, and social studies components of the GEE 21 at the Approaching Basic level or above.

3. Students shall complete a minimum of ninety work hours of work-based learning experience (as defined in the SDE Diploma Endorsement Guidebook) and complete one of the following requirements:

?? Industry-based certification from the list of industry-based certifications approved by BESE

?? Three Carnegie credits in a Career/Technical area that articulate to a postsecondary institution, either by actually obtaining the credits and/or being waved from having to take such hours.

Industry-based certification is a portable, recognized credential (tangible evidence) that an individual has successfully demonstrated skill competencies on a core set of content and performance standards in a specific set of work-related tasks, single occupational area, or a cluster of related occupational areas.

Articulated credit/dual enrollment is a program of study allowing high school students to earn credits toward a high school diploma and a postsecondary degree or certification simultaneously. Written agreements formalize programs of study, the transfer of academic and vocational credits among institutions, and the role of secondary and postsecondary instructors.

4. Students shall meet the current minimum grade-point average requirement for the TOPS Opportunity Award or the TOPS Tech Award.

5. Students shall achieve the current minimum ACT Composite Score (or SAT Equivalent) for the TOPS Opportunity Award or the TOPS Tech Award.

Minimum Requirements for High School Graduation
(Effective for Incoming Freshmen 2003-2004 and thereafter)

ENGLISH 4 units
Shall be English I, II, and III, in consecutive order; and English IV or Business English.

MATHEMATICS 3 units
Shall be selected from the following courses and may include a maximum of 2 entry level courses (designated by E): Introductory Algebra/Geometry (E), Algebra I-Part 1 (E), Algebra IPart 2, Integrated Mathematics I (E), Integrated Mathematics II, Integrated Mathematics III, Applied Mathematics I (E), Applied Mathematics II, Applied Mathematics III, Algebra I (E), Geometry, Algebra II, Financial Mathematics, Advanced Mathematics I, Advanced Mathematics II, Pre-Calculus, Calculus, Probability and Statistics, and Discrete Mathematics

SCIENCE 3 units
Shall be 1 unit of Biology I;
1 unit of Physical Science or Integrated Science (but not both), or Chemistry I, Physics I, or Physics of Technology I;

1 unit from Aerospace Science, Biology II, Chemistry II, Earth Science, Environmental Science, Physics II, Physics of Technology II, Agriscience I, Agriscience II, or any other course not already taken from the Physical Science cluster, or a locally designed elective.

?? If a student takes Physical Science or Integrated Science, s/he may then take Chemistry I, Physics I, or Physics of Technology I as the required science course. If a student takes Chemistry I, Physics I, or Physics of Technology I to fulfill the Physical Science requirement, s/he may not then take Physical Science or Integrated Science as the third required science course but may take such courses as one of the eight allowed elective graduation requirements.

?? Both Agriscience I and II must be completed for one unit of science credit.

All Advanced Placement Science Courses will be accepted for credit.

SOCIAL STUDIES 3 units
Shall be American History, one-half unit of Civics, one-half unit of Free Enterprise; and one of the following: World History, World Geography, or Western Civilization.

HEALTH EDUCATION 1/2 unit
PHYSICAL EDUCATION 1 1/2 units

Shall be Physical Education I and Physical Education II, or Adaptive Physical Education for eligible special education students.

NOTE: The substitution of JROTC is permissible. A maximum of four units may be used toward graduation.

COMPUTER TECHNOLOGY 1 unit
Shall be taken from the following:
Computer/Technology Literacy (1/2 credit)
Computer Applications or Business Computer Applications (1 credit)
Computer Architecture (1 credit)
Computer Science I, II (1 credit each)
Computer Systems and Networking I, II (1 credit each)
Desktop Publishing (1/2 credit)
Digital Graphics & Animation (1/2 credit)
Multimedia Presentations (1 credit)
Web Mastering or Web Design (1/2 credit)
Independent Study in Technology Applications (1 credit)
Word Processing (1 credit)
Telecommunications (1/2 credit)

Introduction to Business Computer Applications (1 credit)
Technology Education Computer Applications (1 credit)
Advanced Technical Drafting (1 credit)
Computer Electronics I (1 credit)
Computer Electronics II (1 credit)

ELECTIVES 7 units
TOTAL 23 units

Refer to Standards 2.037.02 and 2.058.02 relative to appropriate student scheduling and counseling.

* * *

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule effect the stability of the family? No.
2. Will the proposed Rule effect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule effect the functioning of the family? No.
4. Will the proposed Rule effect family earnings and family budget? No.
5. Will the proposed Rule effect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit comments until 4:30 p.m., April 10, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: **Bulletin 741? Louisiana Handbook for School Administrators? High School Diploma and Endorsements**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
Bulletin 741, the Louisiana Handbook for School Administrators, would be revised to add two additional courses to the list of courses meeting the requirement for one unit in Computer Technology. This policy change will not involve any implementation costs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no effects on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no effects on costs or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There are no effects on competition and employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
0402#091

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School Administrators? Membership in Teachers' Retirement System of Louisiana? Part-Time, Seasonal, or Temporary Classroom Teacher (LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The State Board of Elementary and Secondary Education (SBESE) at its meeting in December, 2003 approved a definition of a classroom teacher for the purposes of membership in Teachers' Retirement System of Louisiana. This change was required by Act 640 of the 2003 Regular Legislative Session and signed by the governor.

Title 28 EDUCATION

Part I. Board of Elementary and Secondary Education Chapter 9. Bulletins, Regulations, and State Plans Subchapter A. Bulletins and Regulations §901. School Approval Standards and Regulations

A. Bulletin 741

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

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

* * *

2.018.00 Membership in Teachers' Retirement System of Louisiana Part-Time, Seasonal, or Temporary Classroom Teacher

A. R.S. 11:162(C) provides that membership in Teachers' Retirement System of Louisiana shall be required of part-time, seasonal, or temporary employees, as defined in 26 CFR 31.3121 (b)(7)-2, who are classroom teachers and who have or earn five or more years of creditable service in the Teachers' Retirement System of Louisiana.

B. Classroom Teacher

1. For the purposes of R.S. 11:162(C), classroom teacher shall mean:

An employee of a city, parish, or other local public school board or special school under the control of the State Board of Elementary and Secondary Education or any educational institution supported by and under the control of the State Board of Elementary and Secondary Education, or any city or parish school board:

a. Whose job description and assigned duties include the instruction of pupils in courses in traditional or

nontraditional classroom situations for which daily pupil attendance figures for the school system are kept; and

b. Who is classified under Object Code 112, as provided in Bulletin 1929, Louisiana Administrative Code Title 28, Part XLI, §901.B.1.b, or is performing the functions, on a substitute basis, of an individual classified under Object Code 112.

2. Instruction of pupils, as used in Subparagraph (B)(1)(a), shall include activities dealing directly with the interaction between teachers and pupils. Instruction may be provided for pupils in a school classroom, in another location such as a home or hospital, and in other learning situations such as those involving co-curricular activities. Instruction may also be provided through some other approved medium such as television, radio, telephone, and correspondence.

3. Classroom teachers shall include, but not be limited to, traditional subject area, special education, library media, resource, itinerant, music, band, chorus, physical education, home economics, agriculture, industrial arts, computer science, and business teachers.

4. A teacher's status as an "employee," as used in Paragraph (B)(1), shall be consistent with the employment classification made by his or her employing agency, pursuant to applicable law.

* * *

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule effect the stability of the family? No.

2. Will the proposed Rule effect the authority and rights of parents regarding the education and supervision of their children? No.

3. Will the proposed Rule effect the functioning of the family? No.

4. Will the proposed Rule effect family earnings and family budget? No.

5. Will the proposed Rule effect the behavior and personal responsibility of children? No.

6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit comments until 4:30 p.m., April 10, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 741? Louisiana Handbook for School Administrators? Membership in Teachers' Retirement System of Louisiana? Part-Time, Seasonal, or Temporary Classroom Teacher

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Bulletin 741, the Louisiana Handbook for School Administrators, would be revised to add a definition of a classroom teacher for the purpose of membership in Teachers' Retirement System of Louisiana. This policy change will not involve any implementation costs.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no effects on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no effects on costs or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There are no effects on competition and employment.

Marlyn Langley
Deputy Superintendent
Management and Finance
0402#088

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for School
Administrators? Record of Suspensions or Expulsions
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The proposed change would add the words "suspended" or "suspension" in each reference related to the transfer of a student's school disciplinary records. The proposed changes are being requested to bring the Board of Elementary and Secondary Education Policy in line with the new provision under *No Child Left Behind* that require states to put procedures in place to facilitate the transfer of disciplinary records, with respect to a suspension or expulsion, when a student enrolls in another public or private school.

**Title 28
EDUCATION**

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

§901. School Approval Standards and Regulations

A. Bulletin 741

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

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

* * *

System Policies and Standards

Record of Suspensions or Expulsions

1.060.07 Any student who has been suspended or expelled from any public or nonpublic school within or outside the state of Louisiana shall provide to any public school or school system in the state to which the student is seeking admission information on the dates of any suspension or expulsion and the reason(s) for which the student was suspended or expelled. Additionally, the transfer of a student's records by any public school or school system in the state to any other public or nonpublic school or school system shall include information on the dates of any suspensions or expulsions and the reason or reason(s) for which the student was suspended or expelled.

Refer to R.S. 17:416 (B)(3).

School Policies and Standards

Record of Suspensions or Expulsions

2.060.07 Any student who has been suspended or expelled from any public or nonpublic school within or outside the state of Louisiana shall provide to any public school or school system in the state to which the student is seeking admission information on the dates of any suspension or expulsion and the reason(s) for which the student was suspended or expelled. Additionally, the transfer of a student's records by any public school or school system in the state to any other public or nonpublic school or school system shall include information on the dates of any suspensions or expulsions and the reason or reason(s) for which the student was suspended or expelled.

* * *

Family Impact Statement

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed rule? Yes.

Interested persons may submit comments until 4:30 p.m., April 10, 2004, to: Nina Ford, State Board of Elementary

and Secondary Education, P. O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 741? Louisiana
Handbook for School Administrators
Record of Suspensions or Expulsions**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
The proposed change will affect school records transfer policies. There is no estimated cost to state or local governmental units to implement the policy change.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There will be no effect on revenue collections by state or local governmental units.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
The proposed change may reduce the number students who cause discipline problems in schools because the disciplinary records will follow students to any school in which enrollment is requested. This may increase the amount of time students spend learning skills that will help to create a more highly educated and highly skilled workforce.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
Employers will have a more disciplined and skilled pool from which to select potential employees.

Marlyn Langley
Deputy Superintendent
Management and Finance
0402#090

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 741? Louisiana Handbook for
School Administrators? Social Studies
(LAC 28:I.901)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement revisions to *Bulletin 741? The Louisiana Handbook for School Administrators*, referenced in LAC 28:I.901.A, promulgated by the Board of Elementary and Secondary Education in LR 1:483 (November 1975). The State Board of Elementary and Secondary Education (SBESE) at its October 2003 meeting approved revisions to Standard 2.105.21 of the *Louisiana Handbook for School Administrators: Bulletin 741* to add the requirement that the course of Free Enterprise include instruction in personal financial literacy. This change was required by Louisiana Senate Bill 38 which was passed in 2003 and signed by the governor.

**Title 28
EDUCATION**

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

§901. School Approval Standards and Regulations

A. Bulletin 741

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

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

* * *

Social Studies

2.105.21 Three units of social studies shall be required for graduation. They shall be American History; 1/2 unit of Civics and 1/2 unit of Free Enterprise; and one of the following: World History, World Geography, or Western Civilization. The social studies course offerings shall be as follows:

Course Title	Units
American Government	1
American History	1
Civics	1
Economics	1
Free Enterprise System	1
Law Studies	1
Psychology	1
Sociology	1
Western Civilization	1
World Geography	1
World History	1
Economics may be taught by a teacher certified in business education.	

Beginning with the 2004-2005 school year, Free Enterprise shall include instruction in personal finance. Such instruction shall include but shall not be limited to the following components:

- ?? Income
- ?? Money management
- ?? Spending and credit
- ?? Savings and investing.

* * *

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights of parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.

4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? Yes.

Interested persons may submit comments until 4:30 p.m., April 10, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Bulletin 741? Louisiana Handbook
for School Administrators Social Studies**

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
Bulletin 741, the Louisiana Handbook for School Administrators, would be revised to stipulate that the course of Free Enterprise should include instruction in personal financial literacy. This policy change will not involve any implementation costs.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
There are no effects on revenue collections.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
There are no effects on costs or economic benefits to directly affected persons or non-governmental groups.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
There are no effects on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0402#089

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

Bulletin 746? Louisiana Standards for State Certification of School Personnel? Mild/Moderate Special Education Certification Structure for Undergraduate Programs (LAC 28:I.903)

In accordance with R.S. 49:950, et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to Bulletin 746, *Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This policy provides a new undergraduate certification program structure for Special Education Mild to Moderate Disabilities. The structure is a result of Blue Ribbon Commission teacher quality initiatives and aligns policy with the No Child Left Behind Act of 2001. This action aligns the Twelve-Hour Rule Policy with

the No Child Left Behind Act of 2001 and continues the state's Blue Ribbon Commission for Teacher Quality initiatives.

Title 28
EDUCATION

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

* * *

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

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

* * *

New Certification Structure

Recommended Changes For Mild/Moderate Programs

Level 1 (Initial) Certification

1. Ensure that all teacher education programs address the attached competencies (See Appendix A) within each pathway to certification in mild/moderate disabilities.

2. Use a performance-based model that aligns Council of Exceptional Children (CEC), National Council for Accreditation of Teacher Education (NCATE), Louisiana Teacher Assistance and Assessment Program (LATAAP), and Louisiana Components of Effective Teaching (LCET) standards in special education certification with the ten Interstate New Teacher Assessment and Support Consortium (INTASC) Core Principles for all special education teacher candidates.

3. Require the local education agency to partner with cooperating universities to support and provide certification efforts including supervision of clinical/applied and/or school-based hours; technical assistance, induction, and evaluation for employed teachers on provision licenses.

4. Hold universities accountable for the competencies/standards and outcomes, but allow flexibility in the design, implementation, and scheduling of certification programs.

5. Piggyback/integrate general/special education sooner. Articulation between/among the departments in colleges of

education (example: behavior management could be taught across the curriculum).

6. Develop a mentor model that would begin early in the preparation program to model "good teaching practices" for special education pre-service level students.

7. Ensure that higher education faculty communicate or pass on the "culture" of active learning/retraining IHE professionals. Include teaching using universal design intertechnology and modeling new technical methods.

8. Support teacher education programs to use data related to reflections on practice to assist revision of the program of study.

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

Level 2 Certification

1. Require all new teachers to receive mentoring during their first year of the Louisiana Teacher Assistance and Assessment Program and have them undergo the assessment during the second year with a person certified in the specialized area of certification.

2. Require all teachers to pass the teacher assessment and teach for a total of three years before being issued a Level 2 teaching certificate. During this time teachers will develop a professional development plan to continue the lifelong learning process. The hours/courses taken during this time should expand the knowledge of the teachers in a specific targeted area related to their area of certification.

3. Do not allow for the addition of an area of special education certification based upon the passage of the content Praxis examination alone.

4. Require all new teachers to undergo a predetermined amount of professional development during a five year time period in order to have their teaching certificates renewed for 5 years. Have the Louisiana Department of Education develop the details for the professional development system during 2002-2003.

Mild/Moderate Special Education Undergraduate Program For Grades Pk-3, Grades 1-5, Grades 4-8, Grades 6-12

Effective August 1, 2005

Mild/Moderate Special Education Undergraduate Program Structure		Mild/Moderate Special Education Grades PK-3	Mild/Moderate Special Education Grades 1-5	Mild/Moderate Special Education Grades 4-8	Mild/Moderate Special Education Grades 6-12
General Education Coursework	English	12 hours	12 hours	12 hours	6 hours
	Mathematics	9 hours	12 hours	12 hours	6 hours
	Sciences	9 hours	15 hours	15 hours	9 hours
	Social Studies	6 hours	12 hours	12 hours	6 hours
	Arts	3 hours	3 hours	3 hours	3 hours
FOCUS AREA SPECIAL EDUCATION & CONTENT		Special Education & Young Child	Special Education & Reading/Language Arts & Mathematics	Special Education & One Middle School Content Area	Special Education & One High School Content Area
		Special Education Focus Area: A total of 18 hours of special education coursework.* Reading/Language Arts Focus Area: A total of 12 hours of content/methodology. Mathematics Focus Area: A total of 9 hours of content/methodology. Early Childhood Focus Area: A total of 12 hours in nursery school and kindergarten.	Special Education Focus Area: A total of 18 hours of special education coursework.* Reading/Language Arts Focus Area: A total of 12 hours of content/methodology. Mathematics Focus Area: A total of 9 hours of content/methodology	Special Education Focus Area: A total of 18 hours of special education coursework.* One Middle School Content Focus Area: A total of 19 hours in one of the following content areas: Mathematics, English, Science, or Social Studies. (Note: General Education coursework may be used to create the 19 hours.)	Special Education Focus Area: A total of 18 hours of special education coursework.* One High School Content Focus Area: A total of 31 hours in one content area (Note: General Education coursework may be used to create the 31 hours.)
Knowledge of the Learner and the Learning Environment	Child Development/Psychology, Adolescent Psychology, Educational Psychology, The Learner with Special Needs, Classroom Organization and Management, and Multicultural Education	15 hours	15 hours	15 hours	15 hours
	Reading			6 hours	3 hours
Methodology and Teaching	Teaching Methodology and Strategies	6 hours (Science & Social Studies must be addressed.)	6 hours (Science & Social Studies must be addressed.)	6 hours	6 hours
	Student teaching**	9 hours	9 hours	9 hours	9 hours
	Flexible Hours for the University's Use***	4 hours	1 hour	9-12 hours	12-21 hours
TOTAL HOURS		124 hours	124 hours	124 hours	124 hours

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

* Program must address the mild/moderate special education competencies identified in Appendix A.

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

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

Appendix A

Competencies: Mild/Moderate Disabilities

Reference: CEC Performance Based Standards and Review Procedures

Standard 1: Foundations

Special educators understand the field as an evolving and changing discipline based on philosophies, evidence-based principles and theories, relevant laws and policies, diverse and historical points of view, and human issues that have historically influenced and continue to influence the field of special education and the education and treatment of individuals with exceptional needs both in school and society. Special educators understand how these influence professional practice, including assessment, instructional planning, implementation, and program evaluation. Special educators understand how issues of human diversity can impact families, cultures, and schools, and how these complex human issues can interact with issues in the delivery of special education services. They understand the relationships of organizations of special education to the organizations and functions of schools, school systems, and other agencies. Special educators use this knowledge as a ground upon which to construct their own personal understandings and philosophies of special education.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special Emphasis: Ensure the knowledge and skills of connection and crossover between general education and special education personnel preparation.

Standard 2: Development and Characteristics of Learners

Special educators know and demonstrate respect for their students first as unique human beings. Special educators understand the similarities and differences in human development and the characteristics between and among individuals with and without exceptional learning needs (ELN)¹. Moreover, special educators understand how exceptional conditions can interact with the domains of human development and they use this knowledge to respond to the varying abilities and behaviors of individual's with ELN. Special educators understand how the experiences of individuals with ELN can impact families, as well as the individual's ability to learn, interact socially, and live as fulfilled contributing members of the community.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special Emphasis: Extend the knowledge and skills of the Individualized Family Service Planning as students age to begin earlier transition planning. Ensure knowledge and skills of transition planning for each school change (e.g., preschool to elementary, elementary to middle/junior high, junior high to high school).

Standard 3: Individual Learning Differences

Special educators understand the effects that an exceptional condition² can have on an individual's learning in school and throughout life. Special educators understand that the beliefs, traditions, and values across and within cultures can affect relationships among and between students, their families, and the school community. Moreover, special educators are active and resourceful in seeking to understand how primary language, culture, and familial backgrounds interact with the individual's exceptional condition to impact the individual's academic and social abilities, attitudes, values, interests, and career options. The understanding of these learning differences and their possible interactions provide the foundation upon which special educators individualize instruction to provide meaningful and challenging learning for individuals with ELN.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special Emphasis: Ensure knowledge and use of the *General Education Access Guide*. Also ensure use of instructional technology for all students. Include skills and knowledge of diversity issues as a critical part of individual learning differences.

Standard 4: Instructional Strategies

Special educators possess a repertoire of evidence-based instructional strategies to individualize instruction for individuals with ELN. Special educators select, adapt, and use these instructional strategies to promote challenging learning results in general and special curricula³ and to appropriately modify learning environments for individuals with ELN. They enhance the learning of critical thinking, problem solving, and performance skills of individuals with ELN, and increase their self-awareness, self-management, self-control, self-reliance, and self-esteem. Moreover, special educators emphasize the development, maintenance, and generalization of knowledge and skills across environments, settings, and the lifespan.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special Emphasis: Ensure knowledge and skills of research-based diagnostic and prescriptive approaches to teaching reading and mathematics.

Standard 5: Learning Environments and Social Interactions

Special educators actively create learning environments for individuals with ELN that foster cultural understanding, safety and emotional well being, positive social interactions, and active engagement of individuals with ELN. In addition, special educators foster environments in which diversity is valued and individuals are taught to live harmoniously and productively in a culturally diverse world. Special educators shape environments to encourage the independence,

self-motivation, self-direction, personal empowerment, and self-advocacy of individuals with ELN. Special educators help their general education colleagues integrate individuals with ELN in regular environments and engage them in meaningful learning activities and interactions. Special educators use direct motivational and instructional interventions with individuals with ELN to teach them to respond effectively to current expectations. When necessary, special educators can safely intervene with individuals with ELN in crisis. Special educators coordinate all these efforts and provide guidance and direction to paraeducators and others, such as classroom volunteers and tutors.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special Emphasis: Ensure knowledge and use of technology/assistive technology and universal design.

Standard 6: Language

Special educators understand typical and atypical language development and the ways in which exceptional conditions can interact with an individual's experience with and use of language. Special educators use individualized strategies to enhance language development and teach communication skills to individuals with ELN. Special educators are familiar with augmentative, alternative, and assistive technologies to support and enhance communication of individuals with exceptional needs. Special educators match their communication methods to an individual's language proficiency and cultural and linguistic differences. Special educators provide effective language models, and they use communication strategies and resources to facilitate understanding of subject matter for individuals with ELN whose primary language is not English.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special Emphasis: Ensure knowledge of typical and atypical language development, language models, and communication strategies.

Standard 7: Instructional Planning

Individualized decision-making and instruction is at the center of special education practice. Special educators develop long-range individualized instructional plans anchored in both general and special curricula. In addition, special educators systematically translate these individualized plans into carefully selected shorter-range goals and objectives taking into consideration an individual's abilities and needs, the learning environment, and a myriad of cultural and linguistic factors. Individualized instructional plans emphasize explicit modeling and efficient guided practice to assure acquisition and fluency through maintenance and generalization. Understanding of these factors as well as the implications of an individual's exceptional condition, guides the special educator's

selection, adaptation, and creation of materials, and the use of powerful instructional variables. Instructional plans are modified based on ongoing analysis of the individual's learning progress. Moreover, special educators facilitate this instructional planning in a collaborative context including the individuals with exceptionalities, families, professional colleagues, and personnel from other agencies as appropriate. Special educators also develop a variety of individualized transition plans, such as transitions from preschool to elementary school and from secondary settings to a variety of postsecondary work and learning contexts. Special educators are comfortable using appropriate technologies to support instructional planning and individualized instruction.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special Emphasis: Ensure knowledge and skills of student-centered planning and instruction.

Standard 8: Assessment

Assessment is integral to the decision-making and teaching of special educators and special educators use multiple types of assessment information for a variety of educational decisions. Special educators use the results of assessments to help identify exceptional learning needs and to develop and implement individualized instructional programs, as well as to adjust instruction in response to ongoing learning progress. Special educators understand the legal policies and ethical principles of measurement and assessment related to referral, eligibility, program planning, instruction, and placement for individuals with ELN, including those from culturally and linguistically diverse backgrounds. Special educators understand measurement theory and practices for addressing issues of validity, reliability, norms, bias, and interpretation of assessment results. In addition, special educators understand the appropriate use and limitations of various types of assessments. Special educators collaborate with families and other colleagues to assure non-biased, meaningful assessments and decision-making. Special educators conduct formal and informal assessments of behavior, learning, achievement, and environments to design learning experiences that support the growth and development of individuals with ELN. Special educators use assessment information to identify supports and adaptations required for individuals with ELN to access the general curriculum and to participate in school, system, and statewide assessment programs. Special educators regularly monitor the progress of individuals with ELN in general and special curricula. Special educators use appropriate technologies to support their assessments.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special emphasis: None added

Standard 9: Professional and Ethical Practice

Special educators are guided by the profession's ethical and professional practice standards. Special educators practice in multiple roles and complex situations across wide age and developmental ranges. Their practice requires ongoing attention to legal matters along with serious professional and ethical considerations. Special educators engage in professional activities and participate in learning communities that benefit individuals with ELN, their families, colleagues, and their own professional growth. Special educators view themselves as lifelong learners and regularly reflect on and adjust their practice. Special educators are aware of how their own and others attitudes, behaviors, and ways of communicating can influence their practice. Special educators understand that culture and language can interact with exceptionalities, and are sensitive to the many aspects of diversity of individuals with ELN and their families. Special educators actively plan and engage in activities that foster their professional growth and keep them current with evidence-based best practices. Special educators know their own limits of practice and practice within them.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special emphasis: Require a professional development plan for teacher candidates with a yearly professional growth target that will focus on specific competencies of the needs of students with mild/moderate disabilities (e.g., intensive levels of support for students with moderate disabilities, emotional behavioral disabilities, sensory disabilities, severe learning disabilities, technology/assistive technology).

Standard 10: Collaboration

Special educators routinely and effectively collaborate with families, other educators, related service providers, and personnel from community agencies in culturally responsive ways. This collaboration assures that the needs of individuals with ELN are addressed throughout schooling. Moreover, special educators embrace their special role as advocate for individuals with ELN. Special educators promote and advocate the learning and well being of individuals with ELN across a wide range of settings and a range of different learning experiences. Special educators are viewed as specialists by a myriad of people who actively seek their collaboration to effectively include and teach individuals with ELN. Special educators are a resource to their colleagues in understanding the laws and policies relevant to Individuals with ELN. Special educators use collaboration to facilitate the successful transitions of individuals with ELN across settings and services.

Beginning special educators demonstrate their mastery of this standard through the mastery of the CEC Common Core Knowledge and Skills, as well as through the CEC Specialty areas of Learning Disabilities, Mental Retardation, and Individualized General Curriculum Knowledge and Skills for which the program is preparing candidates.

Special emphasis: Ensure knowledge and skills of collaboration and advocacy with families. Ensure the university, LEA, and teacher candidate know and understand how students with disabilities can access and make progress

within the general education curriculum with instructional strategies/adaptations/accommodations/modifications.

1. "Individual with exceptional learning needs" is used throughout to include individuals with disabilities and individuals with exceptional gifts and talents.
2. "Exceptional Condition" is used throughout to include both single and co-existing conditions. These may be two or more disabling conditions or exceptional gifts or talents coexisting with one or more disabling condition.
3. "Special Curricula" is used throughout to denote curricular areas not routinely emphasized or addressed in general curricula, e.g., social, communication, motor, independence, self-advocacy.

* * *

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the Rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a Rule in accordance with the applicable provisions of the law relating to public records.

1. Will the proposed Rule affect the stability of the family? No.
2. Will the proposed Rule affect the authority and rights or parents regarding the education and supervision of their children? No.
3. Will the proposed Rule affect the functioning of the family? No.
4. Will the proposed Rule affect family earnings and family budget? No.
5. Will the proposed Rule affect the behavior and personal responsibility of children? No.
6. Is the family or a local government able to perform the function as contained in the proposed Rule? No.

Interested persons may submit comments until 4:30 p.m., April 10, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746? Louisiana Standards for State Certification of School Personnel

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This policy provides a new undergraduate certification program structure for Special Education Mild to Moderate Disabilities. The structure is a result of Blue Ribbon Commission teacher quality initiatives and aligns policy with the No Child Left Behind Act of 2001. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or nongovernmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0402#092

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Board of Elementary and Secondary Education

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

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, notice is hereby given that the Board of Elementary and Secondary Education approved for advertisement an amendment to *Bulletin 746? Louisiana Standards for State Certification of School Personnel*, referenced in LAC 28:I.903.A. This new Bulletin 746 policy adds a requirement for demonstration of reading competencies by alternate teacher certification program completers, as required by Act 28 of the 2003 Legislative Session.

**Title 28
EDUCATION**

Part I. Board of Elementary and Secondary Education

Chapter 9. Bulletins, Regulations, and State Plans

Subchapter A. Bulletins and Regulations

§903. Teacher Certification Standards and Regulations

A. Bulletin 746

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

HISTORICAL NOTE: Promulgated by the Board of Elementary and Secondary Education in LR 1:183, 311, 399, 435, 541 (April, July, September, October, December 1975), LR 28:2505-2508 (December 2002), LR 29:117, 119 (February 2003), LR 29:119-121 (February 2003), LR 29:121, 23 (February 2003), LR 30:

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Louisiana Alternate Certification Programs

**Practitioner Teacher Program
Alternative Path to Certification**

State-approved private providers and Louisiana colleges or universities with an approved teacher education program may choose to offer a Practitioner Teacher Program. Practitioner Teacher Programs may offer certification in Grades 1-6, Grades 4-8, or Grades 7-12 (regular or special education). The Practitioner Teacher Program is a streamlined certification path that combines intensive coursework and full-time teaching.

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

a. Possess a baccalaureate degree from a regionally accredited university.

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

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

d. Pass the PRAXIS content specific examinations:

(1). Candidates for Grades 1-6 (regular and special education): pass the *Elementary Education: Content Knowledge* specialty examination;

(2). Candidates for Grades 4-8 (regular and special education): pass the *Middle School: Content Knowledge* specialty examination;

(3). Candidates for Grades 7-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area.

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

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

2. Teaching Preparation (Summer)

9 credit hours (or equivalent 135 contact hours)

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

Grades 1-6, 4-8, and 7-12 practitioner teachers will successfully complete courses (or equivalent contact hours) pertaining to child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design, and instructional strategies before starting their teaching internships.

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

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

3. Teaching Internship and First-Year Support

12 credit hours (or equivalent 180 contact hours)

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

4. Teaching Performance Review (End of First Year)

Program providers, principals, mentors, and practitioner teachers will form teams to review first-year teaching performance of practitioner teachers and determine the extent to which the practitioner teachers have demonstrated teaching proficiency. If practitioner teachers demonstrated proficiency, they will enter into the assessment portion of the Louisiana Teacher Assistance and Assessment Program during the next fall. (If a practitioner teacher who passed the assessment portion of the Louisiana Teacher Assistance and Assessment program prior to entering the Practitioner Teacher Program continues to demonstrate the Louisiana Components of Effective Teaching at the "competent" level, the team may, by unanimous decision, exempt the teacher from completing the assessment part of the Louisiana Teacher Assistance and Assessment Program.)

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

5. Prescriptive Plan Implementation (Second Year)

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

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

6. Louisiana Assessment Program (Second Year)

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

7. PRAXIS Review (Second Year)

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

8. Certification Requirements

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

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

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

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

C. Passed the Louisiana Teacher Assistance and Assessment Program.

D. Completed prescriptive plans (if weaknesses were demonstrated).

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

1). Grades 1-6 (regular and special education): Elementary Education: Content Knowledge Examination #0014

2). Grades 4-8 (regular and special education): *Middle School: Content Knowledge* specialty examination

3). Grades 7-12 (regular and special education): PRAXIS *content specialty examination(s)* in the content area(s) in which they intend to teach. (Note: This examination was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.)

4). All-Level K-12 areas (art, dance, foreign language, health and physical education, and music): Content specialty examination in area(s) in which candidate intends to teach. (Note: This examination was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.) Provider must develop a process to assure that candidates for all-level certification demonstrate necessary performance skills in the area of certification.

F. Passed the *pedagogy* examination (PRAXIS)

a. Grades PK-3: Principles of Learning and Teaching K-6

b. Grades 1-6: Principles of Learning and Teaching K-6

c. Grades 4-8: Principles of Learning and Teaching 5-9

d. Grades 7-12 and All-Level K-12 Certification: *Principles of Learning and Teaching 7-12*

e. Mild/Moderate Special Education 1-12: special education examinations (to be determined)

G All candidates entering an alternate certification program after May 1, 2004, will be required to demonstrate proficiency in the Reading Competencies as adopted by the State Board of Elementary and Secondary Education through a reading competency assessment, prior to receiving a Level 1 or higher professional teaching certificate.

9. Ongoing Support (Second and Third Year)

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

10. Professional License (Practitioner License to Level 2)

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

Undergraduate/Graduate Courses and Graduate Programs

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

Masters Degree Program

Alternative Path to Certification

A Louisiana college or university with an approved teacher education program may choose to offer an alternative certification program that leads to a master's degree. The college or university may choose to offer the masters degree program as either a Master of Education or a Master of Arts in Teaching. Masters Degree Programs may offer certification in Grades PK-3, 1-6, 4-8, 7-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music), or Mild-Moderate Special Education.

Admission to the Program

To be admitted, individuals should:

1. Possess a baccalaureate degree from a regionally accredited university.
2. Have a 2.50 GPA, or higher, on undergraduate work.
3. Pass the Pre-Professional Skills Test (e.g. reading, writing, and mathematics) on the PRAXIS (Individuals who already possess a graduate degree will be exempted from this requirement.)
4. Pass the PRAXIS content-specific subject area examination:
 - a. Candidates for PK-3 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;
 - b. Candidates for Grades 1-6 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;
 - c. Candidates for Grades 4-8 (regular and special education): pass the Middle School: *Content Knowledge* specialty examination;
 - d. Candidates for Grades 7-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area.
 - e. Candidates for All-Level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area.
5. Meet other non-course requirements established by the college or university.

Program Requirements

1. Knowledge of Learner and the Learning Environment
15 credit hours

Grades PK-3, 1-6, 4-8, and 7-12: Child or adolescent development or psychology, the diverse learner, classroom management/organization, assessment, instructional design and instructional strategies

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

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

2. Methodology and Teaching

12-15 credit hours

Methods courses and field experiences. NOTE: For all-level K-12 areas (Art, Dance, Foreign Language, Health and Physical Education, and Music), experiences should be provided across grades K-12.

3. Student Teaching or Internship

6-9 credit hours

NOTE: For all-level K-12 areas (Art, Dance, Foreign Language, Health and Physical Education, and Music), experiences should be provided across grades K-12.

Total: 33-39 credit hours

Certification Requirements

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

1. Passed PPST components of the PRAXIS. (Note: This test was required for admission.)
2. Completed coursework (undergraduate and masters program) with an overall 2.50 or higher GPA.
3. Passed the specialty examination (PRAXIS) for the area of certification. (Note: This test was required for admission.)
 - a. Grades PK-3 (regular and special education): *Elementary Education: Content Knowledge (#0014)* specialty examination
 - b. Grades 1-6 (regular and special education): *Elementary Education: Content Knowledge (#0014)* specialty examination
 - c. Grades 4-8 (regular and special education): *Middle School: Content Knowledge* specialty examination
 - d. Grades 7-12 (regular and special education) and All-Level K-12 Certification: *Specialty content examination in areas to be certified.* (Note: This examination was required for admission.) If no examination was adopted for Louisiana in the certification area, for admission purposes, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area.
4. Passed the *pedagogy* examination (PRAXIS)
 - a. Grades PK-3: Principles of Learning and Teaching K-6
 - b. Grades 1-6: Principles of Learning and Teaching K-6
 - c. Grades 4-8: Principles of Learning and Teaching 5-9
 - d. Grades 7-12 and All-Level K-12 Certification: *Principles of Learning and Teaching 7-12*
 - e. Mild/Moderate Special Education 1-12: special education examinations (to be determined)
5. All candidates entering an alternate certification program after May 1, 2004, will be required to demonstrate

proficiency in the Reading Competencies as adopted by the State Board of Elementary and Secondary Education through a reading competency assessment, prior to receiving a Level 1 or higher professional teaching certificate.

Non-Masters/Certification-Only Program

Alternative Path to Certification

This program is designed to serve those candidates who may not elect participation in or be eligible for certification under either the Practitioner Teacher Alternate Certification Program or the Master's Degree Alternate Certification Program. The program may also be accessible in some areas of the state in which the other alternate certification programs are not available. A college or university may offer this program only in those certification areas in which that institution has a State-approved teacher education program. Non-Master's/ Certification-Only Programs may offer certification in PK-3, 1-6, 4-8, and 7-12, All-Level K-12 (art, dance, foreign language, health and physical education, and music), or Mild-Moderate Special Education.

Admission to the Program

To be admitted, individuals should:

1. Possess a baccalaureate degree from a regionally accredited university;
2. Have a 2.20 GPA, or higher, on undergraduate coursework. [An overall 2.50 GPA is required for certification; those candidates with a GPA lower than 2.50 may have to take additional courses in the program to achieve a 2.50 GPA];
3. Pass the PRAXIS Pre-Professional Skills Test (PPST) (Individuals who already possess a graduate degree will be exempted from this requirement.); and
4. Pass the PRAXIS content-specific subject area examination:
 - a. Candidates for PK-3 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;
 - b. Candidates for Grades 1-6 (regular and special education): pass the Elementary Education: Content Knowledge (#0014) specialty examination;
 - c. Candidates for Grades 4-8 (regular and special education): pass the *Middle School: Content Knowledge* specialty examination;
 - d. Candidates for Grades 7-12 (regular and special education): pass the PRAXIS content specialty examination(s) in the content area(s) in which they intend to teach. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area.
 - e. Candidates for All-Level K-12 areas of art, dance, foreign language, health and physical education, and music: pass the content specialty examination. If no examination has been adopted for Louisiana in the certification area, candidates must present a minimum of 31 semester hours of coursework specific to the content area. Provider must develop a process to assure that candidates demonstrate necessary performance skills in the all-level certification area.

Program Requirements

This program will provide the same rigor as other certification routes provided by aligning with such empirically-based standards as National Council for the Accreditation of Teacher Education (NCATE), Interstate

New Teacher Assessment and Support Consortium (INTASC), Louisiana Components of Effective Teaching (LCET), and the Louisiana Content Standards. This program will also emphasize collaboration between the university and the school districts in order to share and exchange strategies, techniques, and methodologies; and integrate field-based experiences into the curriculum.

Program Structure

1. Knowledge of Learner and the Learning Environment*

12 hours

Grades PK-3, 1-6, 4-8, and 7-12: Child or adolescent development/psychology, the diverse learner, classroom management/organization/environment, assessment, instructional design, and reading/instructional strategies that are content- and level-appropriate.

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

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

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

2. Methodology and Teaching

6 hours

Methods courses to include case studies and field experiences. NOTE: For all-level K-12 areas (Art, Dance, Foreign Language, Health and Physical Education, and Music), experiences should be provided across grades K-12.

3. Internship or Student Teaching

6 hours

Will include methodology seminars that are participant-oriented. NOTE: For all-level K-12 areas (Art, Dance, Foreign Language, Health and Physical Education, and Music), internship or student teaching experiences should be provided across grades K-12.

4. Prescriptive Plan

1-9 hours

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

Total 24-33 hours

Certification Requirements

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

1. Passed the PPST components of the PRAXIS. (*Note: This test was required for admission.*) (Individuals who already possess a graduate degree will be exempted from this requirement).
2. Completed all coursework (including the certification program) with an overall 2.5 or higher GPA.

3. Passed the specialty examination (PRAXIS) for the area(s) of certification. (Note: This test was required for admission.)

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

b. Grades 1-6: Elementary Education: Content Knowledge (#0014) specialty examination

c. Grades 4-8: Middle School: *Content Knowledge* specialty examination

d. Grades 7-12 and All-Level K-12 Certification: *Specialty content examination in areas to be certified.* (Note: This test was required for admission. If no examination was adopted for Louisiana in the certification area, candidates were required to present a minimum of 31 semester hours of coursework specific to the content area for admission to the program.)

4. Passed the *pedagogy* examination (PRAXIS)

a. Grades PK-3: Principles of Learning and Teaching K-6

b. Grades 1-6: Principles of Learning and Teaching K-6

c. Grades 4-8: Principles of Learning and Teaching 5-9

d. Grades 7-12 and All-Level K-12 Certification: *Principles of Learning and Teaching 7-12*

e. Mild/Moderate Special Education 1-12: special education examinations.

5. All candidates entering an alternate certification program after May 1, 2004, will be required to demonstrate proficiency in the Reading Competencies as adopted by the State Board of Elementary and Secondary Education through a reading competency assessment, prior to receiving a Level 1 or higher professional teaching certificate.

Deadline Dates For Louisiana Alternate Programs

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

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

* * *

Family Impact Statement

In accordance with Section 953 and 974 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a Family Impact Statement on the rule proposed for adoption, repeal or amendment. All Family Impact Statements shall be kept on file in the State Board Office which has adopted, amended, or repealed a rule in accordance with the applicable provisions of the law relating to public records.

Please respond to the following:

1. Will the proposed rule affect the stability of the family? No

2. Will the proposed rule affect the authority and rights or parents regarding the education and supervision of their children? No

3. Will the proposed rule affect the functioning of the family? No

4. Will the proposed rule affect family earnings and family budget? No

5. Will the proposed rule affect the behavior and personal responsibility of children? No

6. Is the family or a local government able to perform the function as contained in the proposed rule?

Interested persons may submit comments until 4:30 p.m., April 10, 2004, to Nina Ford, State Board of Elementary and Secondary Education, P.O. Box 94064, Capitol Station, Baton Rouge, LA 70804-9064.

Weegie Peabody
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Bulletin 746? Louisiana Standards for State Certification of School Personnel Reading Competencies Policy for Alternate Certification Programs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This new Bulletin 746 policy adds a requirement for demonstration of reading competencies by alternate teacher certification program completers, as required by Act 28 of the 2003 Legislative Session. The adoption of this policy will cost the Department of Education approximately \$700 (printing and postage) to disseminate the policy.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This policy will have no effect on revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This policy will have no effect on competition and employment.

Marlyn J. Langley
Deputy Superintendent
Management and Finance
0402#093

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Contingency Plan for NO_x Emissions
(LAC 33:III.2201 and 2202)(AQ239)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been

initiated to amend the Air regulations, LAC 33:III.2201 and 2202 (Log #AQ239).

The proposed Rule revises LAC 33:III.Chapter 22 emission factors for industrial boilers and stationary gas turbines in the five-parish Baton Rouge ozone nonattainment area. The revised emission factors will be triggered or implemented should the Baton Rouge ozone nonattainment area fail to achieve attainment with the one-hour ozone air quality standard by the Clean Air Act statutory attainment date of November 15, 2005. The Rule, if implemented, will lower NO_x emissions by approximately 3,000 tons annually. On April 24, 2003, the Environmental Protection Agency reclassified or "bumped up," by operation of law, the Baton Rouge ozone nonattainment area from a classification of "serious" to "severe," effective June 23, 2003 (68 FR 20077). The five-parish Baton Rouge ozone nonattainment area includes the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. Under Section 182(c)(9) of the 1990 Clean Air Act, area plans must include requirements for contingency provisions to take effect without further action by the state upon a failure by the state to meet the applicable milestone. This Rule contains such contingency provisions, which will take effect in the event that the Baton Rouge ozone nonattainment area fails to come into compliance with the one-hour National Ambient Air Quality Standard for ozone by the attainment date. The Rule will be included in a revision to the attainment State Implementation Plan (SIP) that must be submitted to the Environmental Protection Agency by June 23, 2004. Failure to promulgate the proposed rule to establish the contingency provisions would cause the SIP submittal to be deemed incomplete. The basis and rationale for this proposed Rule are to comply with the provisions of the 1990 Clean Air Act Amendments.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

Chapter 22. Control of Emissions of Nitrogen Oxides (NO_x)

§2201. Affected Facilities in the Baton Rouge Nonattainment Area and the Region of Influence

- A. - C.20. ...
- D. Emission Factors

1. Except as provided in LAC 33:III.2202, the following tables list NO_x emission factors that shall apply to affected point sources located at affected facilities in the Baton Rouge Nonattainment Area or the Region of Influence.

Category	Maximum Rated Capacity	NO _x Emission Factor ^a
Electric Power Generating System Boilers:		
Coal-fired	>= 40 to <80 MMBtu/Hour	0.50 pound/MMBtu
	>= 80 MMBtu/Hour	0.21 pound/MMBtu

Category	Maximum Rated Capacity	NO _x Emission Factor ^a
Number 6 Fuel Oil-fired	>= 40 to <80 MMBtu/Hour	0.30 pound/MMBtu
	>= 80 MMBtu/Hour	0.18 pound/MMBtu
All Others (gaseous or liquid)	>= 40 to <80 MMBtu/Hour	0.20 pound/MMBtu
	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Industrial Boilers	>= 40 to <80 MMBtu/Hour	0.20 pound/MMBtu
	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Process Heater/Furnaces:		
Ammonia Reformers	>= 40 to <80 MMBtu/Hour	0.30 pound/MMBtu
	>= 80 MMBtu/Hour	0.23 pound/MMBtu
All Others	>= 40 to <80 MMBtu/Hour	0.18 pound/MMBtu
	>= 80 MMBtu/Hour	0.08 pound/MMBtu
Stationary Gas Turbines:		
Peaking Service, Fuel Oil-fired	>= 5 to <10 MW	0.37 pound/MMBtu
	>= 10 MW	0.30 pound/MMBtu
Peaking Service, Gas-fired	>= 5 to <10 MW	0.27 pound/MMBtu
	>= 10 MW	0.20 pound/MMBtu
All Others	>= 5 to <10 MW	0.24 pound/MMBtu
	>= 10 MW	0.16 pound/MMBtu
Stationary Internal Combustion Engines:		
Lean-burn	>= 150 to <320 Hp	10 g/Hp-hour
	>= 320 Hp	4 g/Hp-hour
Rich-burn	>= 150 to <300 Hp	2 g/Hp-hour
	>= 300 Hp	2 g/Hp-hour

^a based on the higher heating value of the fuel.
^b equivalent to 65 ppmv (15 percent O₂, dry basis) with an F factor of 8710 dscf/MMBtu.
^c equivalent to 43 ppmv (15 percent O₂, dry basis) with an F factor of 8710 dscf/MMBtu.

Category	Maximum Rated Capacity	NO _x Emission Factor ^a
Electric Power Generating System Boilers:		
Coal-fired	>= 80 MMBtu/Hour	0.21 pound/MMBtu
Number 6 Fuel Oil-fired	>= 80 MMBtu/Hour	0.18 pound/MMBtu
All Others (gaseous or liquid)	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Industrial Boilers	>= 80 MMBtu/Hour	0.10 pound/MMBtu
Process Heater/Furnaces:		
Ammonia Reformers	>= 80 MMBtu/Hour	0.23 pound/MMBtu
All Others	>= 80 MMBtu/Hour	0.08 pound/MMBtu
Stationary Gas Turbines:		
Peaking Service, Fuel Oil-fired	>= 10 MW	0.30 pound/MMBtu
Peaking Service, Gas-fired	>= 10 MW	0.20 pound/MMBtu
All Others	>= 10 MW	0.16 pound/MMBtu
Stationary Internal Combustion Engines:		
Lean-burn	>= 1500 Hp	4 g/Hp-hour
Rich-burn	>= 300 Hp	2 g/Hp-hour

^a all factors are based on the higher heating value of the fuel.
^b equivalent to 43 ppmv (15 percent O₂, dry basis) with an F factor of 8710 dscf/MMBtu.

D.2 - I.5. ...

J. Effective Dates

1. Except as provided in LAC 33:III.2202, the owner or operator of an affected facility shall modify and/or install and bring into normal operation NO_x control equipment and/or NO_x monitoring systems in accordance with this Chapter as expeditiously as possible, but by no later than May 1, 2005.

2. Except as provided in LAC 33:III.2202, the owner or operator shall complete all initial compliance testing, specified by Subsection G of this Section, for equipment modified with NO_x reduction controls or a NO_x monitoring system to meet the provisions of this Chapter within 60 days of achieving normal production rate or after the end of the shake down period, but in no event later than 180 days after initial start-up. Required testing to demonstrate the performance of existing, unmodified equipment shall be completed in a timely manner, but by no later than November 1, 2005.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 28:290 (February 2002), repromulgated LR 28:451 (March 2002), amended LR 28:1578 (July 2002), LR 30:

§2202. Contingency Plan

A. This Section shall become effective only in the event that the United States Environmental Protection Agency (EPA) determines and notifies the department in accordance with Section 181(b)(2) of the Clean Air Act as amended [42 USC 7511(b)(2)] that the Baton Rouge Nonattainment Area has failed to attain the 1-hour ozone National Ambient Air Quality Standard (NAAQS) by its appropriate attainment deadline (November 15, 2005, for areas classified as "severe") or any extension of the deadline approved by the EPA in accordance with Section 181(a)(5) of the Clean Air Act as amended [42 USC 7511(a)(5)].

B. Emission Factors. The emission factors for the sources listed below in Table B-1 shall supersede the factors for the like sources in Table D-1A of LAC 33:III.2201.D.1. All requirements of LAC 33:III.2201 shall remain applicable to such sources, except as superseded by this Section.

Table B-1. Contingency Plan Emission Factors		
Category	Maximum Rated Capacity	NO _x Emission Factor ^a
Industrial Boilers	>= 80 MMBtu/Hour	0.08 pound/MMBtu
Stationary Gas Turbines (except peaking)	>= 10 MW	0.092 pound/MMBtu

^a based on the higher heating value of the fuel.

C. Effective Dates

1. An owner or operator of a source subject to an emission factor provided in Table B-1 of Subsection B of this Section shall comply with such emission factor as expeditiously as possible, but not later than two years after determination and notification by the EPA in accordance with Subsection A of this Section.

2. Required testing to demonstrate the performance of existing, unmodified equipment shall be completed in a

timely manner, but by no later than 30 months after determination and notification by the EPA in accordance with Subsection A of this Section.

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

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

A public hearing will be held on March 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to the SIP to incorporate this proposed rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith Schuerman at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ239. Such comments must be received no later than April 2, 2004, at 4:30 p.m., and should be sent to Judith Schuerman, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ239.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Contingency Plan for NO_x Emissions**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no known implementation costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

State government emissions fee collections are estimated to be reduced by approximately \$40,000 per year, due to the reductions of about 3,000 tons per year of NO_x that will result from the proposed Rule. This would not take effect until about 2008 depending on various circumstances. There is no effect on local government.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

It is anticipated that this proposed rule will affect about 26 facilities that operate industrial boilers and stationary gas turbines in the Baton Rouge ozone nonattainment area. Estimated total costs for all 26 facilities are in the \$3 to \$20 million range. The final costs will depend on the type of technology that each facility will need to install in order to comply with the proposed Rule. It is possible that some facilities may be able to use equipment already installed to meet the proposed requirements in which case their costs would be relatively minor. Other facilities may find it necessary to purchase additional equipment, which could entail substantial costs. For these reasons there is considerable variation in the cost estimate. This cost will only be incurred if the proposed Rule is required to be implemented.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Because of the potentially high implementation costs some facilities may shut down, thus affecting competition and employment.

James H. Brent, Ph.D.
Assistant Secretary
0402#035

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Fugitive Emission Control
(LAC 33:III.2121 and 2122)(AQ237)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.2121 and 2122 (Log #AQ237).

This proposed Rule updates the state fugitive emission control regulations to clarify requirements for instrumentation systems, designate "no detectable emissions" (NDE) valves, and allow for alternate monitoring for flanges. The changes make the state regulations more consistent with federal fugitive control regulations, particularly the Maximum Achievable Control Technology (MACT) standards of 40 CFR 63. This Rule adopts the definition of instrumentation system included in the Synthetic Organic Chemical Manufacturing Industry Hazardous Organic NESHAP (SOCMI HON) MACT (40 CFR 63, Subpart H). The proposed changes are not required by a federal regulation and do not alter the position of these fugitive emission control regulations in the Stringency Table of the Louisiana Fugitive Emission Program Consolidation Guidelines. The regulated community asked for an update to the state fugitive air emission control regulations, particularly to make fugitive component definitions and applicability more consistent with the federal regulations for Leak Detection and Repair (LDAR) programs, such as the MACT standards of 40 CFR 63. This Rule is also being proposed as a revision to the Louisiana State Implementation Plan (SIP) for air quality. The basis and rationale for this

proposed Rule are to improve the permitting of fugitive air emissions regulated under LAC 33:III.2121 and 2122.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY**

Part III. Air

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2121. Fugitive Emission Control

A. Applicability. This regulation is applicable to equipment in petroleum refineries, natural gas processing plants, the synthetic organic chemical manufacturing industry (SOCMI), the methyl tertiary butyl ether (MTBE) manufacturing industry, and the polymer manufacturing industry that contains any of the following components that are intended to operate in VOC service 300 hours or more during the calendar year:

- a. pumps;
- b. compressors;
- c. pressure relief devices;
- d. open-ended valves or lines;
- e. process drains;
- f. valves;
- g. agitators;
- h. instrumentation systems; and
- i. connectors.

B. - C.3.b. ...

c. Any valve that is designated for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of Clauses C.1.b.ii and iv and C.2.b.ii of this Section if the valve:

- i. has no external actuating mechanism in contact with the process fluid (e.g., diaphragm valves, sealed bellows valves);
- ii. is operated with emissions less than 500 ppm above background as measured in accordance with this Section; and
- iii. is tested for compliance with Clause C.3.c.ii of this Section initially upon designation and annually thereafter.

C.4. - F.4. ...

G Definitions. Terms used in this Section are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

Instrumentation System? a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow). Valves and connectors are the predominant types of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inch and smaller and connectors nominally 0.75 inch and smaller in diameter are considered instrumentation systems for the purposes of

these regulations. Valves greater than nominally 0.5 inch and connectors greater than nominally 0.75 inch associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

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 16:959 (November 1990), LR 17:654 (July 1991), LR 21:1330 (December 1995), LR 22:1128 (November 1996), LR 22:1212 (December 1996), LR 24:22 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:1433 (July 2000), LR 26:1433 (July 2000), LR 26:2452 (November 2000), LR 30:

**§2122. Fugitive Emission Control for Ozone
Nonattainment Areas and Specified Parishes**

A. Applicability

1. This regulation is applicable to each process unit at petroleum refineries, natural gas processing plants, the synthetic organic chemical manufacturing industry (SOCMI), the methyl tertiary butyl ether (MTBE) manufacturing industry, and the polymer manufacturing industry that contains any of the following components that are intended to operate in VOC service 300 hours or more during the calendar year:

- a. pumps;
- b. compressors;
- c. pressure relief devices;
- d. open-ended valves or lines;
- e. process drains;
- f. valves;
- g. agitators;
- h. instrumentation systems; and
- i. connectors.

2. - 6.d. ...

B. Definitions. Terms used in this Section are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

Instrumentation System? a group of equipment components used to condition and convey a sample of the process fluid to analyzers and instruments for the purpose of determining process operating conditions (e.g., composition, pressure, flow). Valves and connectors are the predominant types of equipment used in instrumentation systems; however, other types of equipment may also be included in these systems. Only valves nominally 0.5 inch and smaller and connectors nominally 0.75 inch and smaller in diameter are considered instrumentation systems for the purposes of these regulations. Valves greater than nominally 0.5 inch and connectors greater than nominally 0.75 inch associated with instrumentation systems are not considered part of instrumentation systems and must be monitored individually.

C. Fugitive Emission Control Requirements

1. Leak Limitations

a. No component in petroleum refineries, SOCMI, MTBE, and polymer manufacturing industry shall be allowed to leak volatile organic compounds exceeding an instrument reading of 1,000 ppmv or greater for valves,

connectors, instrumentation systems, pressure relief devices, and process drains; 5,000 ppmv for pumps and compressors; or 10,000 ppmv for agitators, as outlined in Subsection D of this Section, when tested by Method 21 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003).

b. No component in natural gas processing plants shall be allowed to leak volatile organic compounds exceeding an instrument reading off of 2,500 ppmv for valves, connectors, instrumentation systems, pressure relief devices, process drains, and open-ended valves and lines; 5,000 ppmv for pumps and compressors; or 10,000 ppmv for agitators, as outlined in Subsection D of this Section, when tested by Method 21 (40 CFR Part 60, Appendix A, as incorporated by reference at LAC 33:III.3003).

C.1.c - C.3. ...

4. Percent of leaking components at a process unit shall be determined for a test period as follows:

$$\% C_{lv} = [C_{lv}] / [C_{tv}] * 100\% \quad \text{Eq.1}$$

where:

% C_{lv} = percent of leaking valves, flanges, or pumps.

C_{lv} = number of valves, flanges, or pumps found leaking during the monitoring period.

C_{tv} = total number of valves, flanges, or pumps monitored during the period.

5. Total percent of leaking and unrepairable components shall be determined as follows:

$$\% C_{tlvp} = [C_{tlv}] / [C_{ttv} = C_{tvp}] * 1-00\% \quad \text{Eq. 2}$$

where:

% C_{tlvp} = total percent of leaking and unrepairable valves, flanges, or pumps.

C_{tlv} = number of valves, flanges, or pumps found leaking or defined as unrepairable.

C_{ttv} = total number of valves, flanges, or pumps tested during the period.

C_{tvp} = total number of valves, flanges, or pumps which were defined as unrepairable.

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

d. Monitor all flanges in accordance with either Clause D.1.d.i or ii of this Section.

i. Inspect all flanges weekly by visual, audible, and olfactory means.

ii. Monitor all flanges four times per year (quarterly) using a leak detection device as follows.

(a). Either two hundred or 10 percent, whichever is less, of the flanges shall be monitored each period in accordance with a written sampling plan.

(b). The sampling plan shall ensure that at least 66 percent of the flanges monitored each period shall not have been previously monitored, until all flanges within the process have been monitored.

e. Inspect weekly, by visual, audible, and olfactory means, all instrumentation systems.

f. Records of the visual, audible, and olfactory inspections of connectors and instrumentation systems are not required unless a leak is detected.

2. - 3.d. ...

e. Any valve that is designated for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the

requirements of Clauses D.1.b.iii and v and D.2.b.ii of this Section if the valve:

i. has no external actuating mechanism in contact with the process fluid (e.g., diaphragm valves, sealed bellows valves);

ii. is operated with emissions less than 500 ppm above background as measured in accordance with this Section; and

iii. is tested for compliance with Clause D.3.e.ii of this Section initially upon designation and annually thereafter.

4. - 5. ...

E. Alternate Control Techniques. The monitoring schedule in Subsection D of this Section may be modified as follows.

1. - 1.f. ...

g. Existing equipment that has been monitored under LAC 33:III.2121 for fugitives at the leak definition of 10,000 ppmv can initially elect to use this alternate standard if the unit has data documented with the department by either January 1, 1996, or for the 12 months prior to becoming subject to this Section, that indicates the percent of leaking valves (Eq. 1) is less than or equal to a 2.0 percent leak rate at 10,000 ppmv for the required time period.

2. ...

3. Alternate Standards for Flanges Subject to Clause D.1.d of this Section? Skip Period Leak Detection and Repair

a. An owner or operator may elect to comply with one of the alternative work practices specified in Clause E.3.b or Paragraph E.4 of this Section. However, the administrative authority* must be notified in writing before implementing one of the alternative work practices.

b. After four consecutive quarterly leak detection periods with the percent of leaking flanges (Eq. 1) equal to or less than 1.0, an owner or operator may begin to skip three of the quarterly leak detection periods for the flanges in gas/vapor and light liquid service.

c. If the percent of leaking flanges (Eq. 1) is greater than 1.0, or the total percent of leaking and unrepairable flanges (Eq. 2) is greater than 2.0, the owner or operator shall comply with the requirements as described in Subsection D of this Section but subsequently can again elect to use this Subsection when the requirements are met.

d. The percent of leaking flanges (Eq. 1) shall be determined by dividing the sum of components found leaking during the current monitoring period by the total number of flanges that were tested and multiplying the results by 100 percent.

e. An owner or operator must keep a record of the percent of flanges found leaking during each leak detection period and the total percentage of leaking and unrepairable flanges.

4. Alternative Standards for Flanges? Increased Monitoring Frequency. If the percent of leaking flanges (Eq. 1) in a test period is greater than 1.0, or the total percent of leaking and unrepairable flanges (Eq. 2) is greater than 2.0, then an increase in the frequency of monitoring may be required by the administrative authority*.

5. Alternate Standard for Batch Processes. As an alternate to complying with the requirements in Subsection D of this Section an owner or operator of a batch process in

VOC service may elect to comply with one of the following alternative work practices. The batch product-process equipment shall be tested with a gas using the procedures specified in Subparagraph E.5.a of this Section or with a liquid as specified in Subparagraph E.5.b of this Section.

a. The following procedures shall be used to pressure test batch product-process equipment using a gas (e.g., air or nitrogen) to demonstrate compliance.

i. The batch product-process equipment train shall be pressurized with a gas to the operating pressure of the equipment. The equipment shall not be tested at a pressure greater than the pressure setting of the lowest relief valve setting.

ii. Once the test pressure is obtained, the gas source shall be shut off.

iii. The test shall continue for not less than 15 minutes, unless it can be determined in a shorter period of time that the allowable rate of pressure drop was exceeded. The pressure in the batch product-process equipment shall be measured after the gas source is shut off and at the end of the test period. The rate of change in pressure in the batch product-process equipment shall be calculated using the following equation:

$$\frac{P}{t} = \frac{P_f - P_i}{t_f - t_i}$$

Eq.3

where:

P/t = change in pressure, psia/hr.

P_f = final pressure, psia.

P_i = initial pressure, psia.

t_f - t_i = elapsed time, hours.

iv. The pressure shall be measured using a pressure measurement device (gauge, manometer, or equivalent) that has a precision of ±2.5 millimeters (±0.05 psig) of mercury in the range of test pressure and is capable of measuring pressures up to the relief set pressure of the pressure relief device.

v. A leak is detected if the rate of change in pressure is greater than 6.9 kPa (1 psig) in one hour or if there is visible, audible, or olfactory evidence of fluid loss.

b. The following procedures shall be used to pressure test batch product-process equipment using a liquid to demonstrate compliance.

i. The batch product-process equipment train, or section of the train, shall be filled with the test liquid (e.g., water, alcohol). Once the equipment is filled, the liquid source shall be shut off.

ii. The test shall be conducted for a period of at least 60 minutes, unless it can be determined in a shorter period of time that the test is a failure.

iii. Each seal in the equipment being tested shall be inspected for indications of liquid dripping or other indications of fluid loss. If there are any indications of liquids dripping or of fluid loss, a leak is detected.

iv. If a leak is detected, it shall be repaired and the batch product-process equipment shall be retested before VOCs are fed to the equipment.

v. If the batch product-process equipment fails the retest or the second of two consecutive pressure tests, it

shall be repaired as soon as practicable, but not later than 30 calendar days after the equipment is placed in VOC service.

F. - G.6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:1102 (October 1994), repromulgated LR 20:1279 (November 1994), amended LR 22:1129 (November 1996), LR 22:1212 (December 1996), repromulgated LR 23:197 (February 1997), amended LR 23:1678 (December 1997), LR 24:22 (January 1998), LR 24:1285 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2453 (November 2000), LR 28:1764 (August 2002), LR 30:

A public hearing will be held on March 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to the SIP to incorporate this proposed Rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith Schuerman at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ237. Such comments must be received no later than April 2, 2004, at 4:30 p.m., and should be sent to Judith Schuerman, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ237.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Fugitive Emission Control**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no costs or savings to state or local governmental units to implement this Rule.

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)

Economic benefits, if any, will be minor. Fugitive emissions at industrial facilities that are monitored under a Leak Detection and Repair (LDAR) program for compliance with these rules are often administered by outside contractors. Monitoring of fugitive leaks quarterly under the new definition and applicability of instrumentation systems may save, for example, approximately \$1,200 per year for a typical large chemical plant spending approximately \$50,000 annually for contracted leak detection monitoring. Other changes in the Rule, e.g., the option of monitoring flanges using a leak detector, instead of visually, would increase the cost of a monitoring contract; however, this would be a voluntary cost.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition since all facilities must follow the same rules. There is no effect on employment.

James H. Brent, Ph.D.
Assistant Secretary
0402#037

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Incorporation by Reference? 2003
(LAC 33:I.3931; V.3099; IX.2301, 4901,
and 4903; and XV.1517)(OS053*)

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.3931; V.3099; IX.2301, 4901, and 4903; and XV.1517 (Log #OS053*).

This proposed Rule is identical to federal regulations found in 10 CFR 71, Appendix A, January 1, 2003 and 40 CFR Parts 117.3, 136, 266, Appendices HX and XI-XIII, 302.4, 401, and 405-471, July 1, 2003, which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4314, Baton Rouge, LA 70821-4314. No fiscal or economic impact will result from the proposed Rule; therefore, the Rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This proposed Rule incorporates by reference into LAC 33:I, V, IX, and XV the corresponding regulations in 10 CFR 71, Appendix A, January 1, 2003 and 40 CFR Parts 117.3, 136, 266, Appendices I-IX and XI-XIII, 302.4, 401, and 405-471, July 1, 2003. In order for Louisiana to maintain equivalency with federal regulations, the most current Code of Federal Regulations must be adopted into the LAC. This rulemaking is necessary to maintain delegation,

authorization, etc., granted to Louisiana by EPA. This incorporation by reference package is being proposed to keep Louisiana's regulations current with their federal counterparts. The basis and rationale for this proposed Rule are to mirror the federal regulations in order to maintain equivalency.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

A. Incorporation by Reference of Federal Regulations. Except as provided in Subsection B of this Section, the following federal reportable quantity lists are incorporated by reference:

1. 40 CFR 117.3, July 1, 2003, Table 117.3? Reportable Quantities of Hazardous Substances Designated Pursuant to Section 311 of the Clean Water Act; and

2. 40 CFR 302.4, July 1, 2003:

A.2.a. - B.Note @. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 30. Hazardous Waste Burned in Boilers and Industrial Furnaces

§3099. Appendices—Appendix A, B, C, D, E, F, G, H, I, J, K, and L

Appendix A. Tier I and Tier II Feed Rate and Emissions Screening Limits For Metals

A. 40 CFR 266, Appendix I, July 1, 2003, is hereby incorporated by reference.

Appendix B. Tier I Feed Rate Screening Limits for Total Chlorine

A. 40 CFR 266, Appendix II, July 1, 2003, is hereby incorporated by reference.

Appendix C. Tier II Emission Rate Screening Limits for Free Chlorine and Hydrogen Chloride

A. 40 CFR 266, Appendix III, July 1, 2003, is hereby incorporated by reference.

Appendix D. Reference Air Concentrations

A. 40 CFR 266, Appendix IV, July 1, 2003, is hereby incorporated by reference, except that in regulations incorporated thereby, references to 40 CFR 261, Appendix VIII and 266, Appendix V shall mean LAC 33:V.3105.Table 1 and 3099.Appendix E, respectively.

Appendix E. Risk Specific Doses (10⁻⁵)

A. 40 CFR 266, Appendix V, July 1, 2003, is hereby incorporated by reference.

Appendix F. Stack Plume Rise [Estimated Plume Rise (in Meters) Based on Stack Exit Flow Rate and Gas Temperature]

A. 40 CFR 266, Appendix VI, July 1, 2003, is hereby incorporated by reference.

Appendix G. Health-Based Limits for Exclusion of Waste-Derived Residues

A. 40 CFR 266, Appendix VII, July 1, 2003, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII, 266.112(b)(1) and (b)(2)(i), and 268.43 shall mean LAC 33:V.3105.Table 1, 3025.B.1 and B.2.a, and Chapter 22.Table 2, respectively.

Appendix H. Organic Compounds for Which Residues Must be Analyzed

A. 40 CFR 266, Appendix VIII, July 1, 2003, is hereby incorporated by reference.

Appendix I. Methods Manual for Compliance with the BIF Regulations

A. 40 CFR 266, Appendix IX, July 1, 2003, is hereby incorporated by reference, except as follows.

A.1. - B. ...

Appendix J. Lead-Bearing Materials That May Be Processed in Exempt Lead Smelters

A. 40 CFR 266, Appendix XI, July 1, 2003, is hereby incorporated by reference.

Appendix K. Nickel or Chromium-Bearing Materials That May Be Processed in Exempt Nickel-Chromium Recovery Furnaces

A. 40 CFR 266, Appendix XII, July 1, 2003, is hereby incorporated by reference, except that the footnote should be deleted.

Appendix L. Mercury-Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units

A. 40 CFR 266, Appendix XIII, July 1, 2003, is hereby incorporated by reference, except that in regulations incorporated thereby, 40 CFR 261, Appendix VIII shall mean LAC 33:V.3105.Table 1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:827 (September 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:300 (March 2001), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 30:

Part IX. Water Quality

Subpart 2. The Louisiana Pollutant Discharge

Elimination System (LPDES) Program

Chapter 23. Definitions and General LPDES Program Requirements

§2301. General Conditions

A - E. ...

F. All references to the *Code of Federal Regulations* (CFR) contained in this Chapter shall refer to those regulations published in the July 1, 2003 CFR, unless otherwise noted.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:199 (February 1997), LR 23:722 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 30:

Chapter 49. Incorporation by Reference

§4901. 40 CFR Part 136

A. 40 CFR Part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants, July 1, 2003, in its entirety, and amendments to Part 136 in 68 FR 43271-43283, July 21, 2003, and 68 FR 54934, September 19, 2003, are hereby incorporated by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2231 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 30:

§4903. 40 CFR Chapter I, Subchapter N

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2003, are hereby incorporated by reference.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), LR 30:

Part XV. Radiation Protection

Chapter 15. Transportation of Radioactive Material

§1517. Incorporation by Reference

A. The department incorporates by reference 10 CFR Part 71, Appendix A, January 1, 2003.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2104 and 2113.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 26:1270 (June 2000), amended LR 27:2233 (December 2001), LR 28:997 (May 2002), LR 29:701 (May 2003), LR 30:

A public hearing will be held on March 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral

comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith Schuerman at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS053*. Such comments must be received no later than March 26, 2004, at 4:30 p.m., and should be sent to Judith Schuerman, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this Rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS053*.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0402#033

NOTICE OF INTENT

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Notification Requirements for Unauthorized Discharges (LAC 33:I.3903, 3915, 3917, 3919, 3923, 3925, 3931, 6919, and 6923; III.1105, 1513, 2103, 2115, 2303, 2307, 2719, and 5107; V.1109, 1913, 2271, 2805, 2909, 4101, 4107, 4211, 4241, and 5309; VI.201; VII.315, 711, 713, and 715; IX.503 and 2701; XI.707, 713, and 715; and XV.341, 485, 486, 487, 492, 712, and 2051)(OS052)

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.3903, 3915, 3917, 3919, 3923, 3925, 3931, 6919, and 6923; III.1105, 1513, 2103, 2115, 2303, 2307, 2719, and 5107; V.1109, 1913, 2271, 2805, 2909, 4101, 4107, 4211, 4241, and 5309; VI.201; VII.315, 711, 713, and 715.; IX.503 and 2701; XI.707, 713, and 715; and XV.341, 485, 486, 487, 492, 712, and 2051 (Log # OS052).

This proposed Rule clarifies notification requirements for ongoing discharges vs. multiple constituent discharges, amends the procedure for notification in the event of a non-

emergency discharge, inserts in the various Environmental Quality regulations the reference to LAC 33:I.Chapter 39 in order to direct all those needing to notify authorities of discharges to the necessary reporting procedures, amends the language "verbal" or "telephone" notification to "prompt" notification, and updates telephone numbers. The table of reportable quantities of unauthorized discharges is updated with corrections and additions, which will promulgate Emergency Rule OS052E1 that was effective on December 10, 2003. The quantities of unauthorized discharges of toxic air pollutants as a result of bypassing emission control devices that warrant notification of authorities are identified. The basis and rationale for this Rule are to clarify that the procedures for responding to unauthorized discharges to the environment are for all media and to make corrections to reporting requirements.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part I. Office of the Secretary

Subpart 2. Notification

Chapter 39. Notification Regulations and Procedures for Unauthorized Discharges

Subchapter A. General

§3903. Purpose

A. -A.3. ...

4. to provide the department with the discharge information that shall be used to ensure compliance with permit terms and conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

Subchapter B. Requirements for Emergency Notification

§3915. Notification Requirements for Unauthorized Discharges That Cause Emergency Conditions

A. -A.1. ...

2. One notification to the hotline for any unauthorized discharge will suffice for unauthorized discharges that continue for more than one day if the initial notification clearly states that the discharge is expected to continue for more than one day.

3. The hotline must be immediately notified of any adverse change in the nature or rate of the discharge. Additional notifications must be made for discharges of multiple constituents when they originate from different causes or sources or they are substantially different in nature from the discharges in the initial notification.

A.4. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2204(A), 2194(C) and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office

of Environmental Assessment, Environmental Planning Division, LR 26:2442 (November 2000), LR 30:

Subchapter C. Requirements for Prompt Notification

§3917. Notification Requirements for Unauthorized Discharges That Do Not Cause an Emergency Condition

A. In the event of an unauthorized discharge that exceeds a reportable quantity specified in Subchapter E of this Chapter but that does not cause an emergency condition, the discharger shall promptly notify the department within 24 hours after learning of the discharge. Notification should be made to the Office of Environmental Compliance, Surveillance Division Single Point of Contact (SPOC) in accordance with LAC 33:I.3923.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), repromulgated LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), repromulgated LR 27:38 (January 2001), amended LR 30:

§3919. Notification Requirements for Unauthorized Discharges with Groundwater Contamination Impact

A. In the event that any unauthorized discharge results in the contamination of the groundwaters of the state or otherwise moves in, into, within, or on any saturated subsurface strata, the discharger shall promptly notify the Office of Environmental Compliance, Surveillance Division SPOC in accordance with LAC 33:I.3923.

B. Dischargers are not relieved from any requisite written notification procedures in LAC 33:I.3925 or of any permit or license terms and conditions issued under the Louisiana Environmental Quality Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2076(D), 2183(I), and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), repealed LR 19:1022 (August 1993), repromulgated and amended LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:

Subchapter D. Notification Procedures

§3923. Prompt Notification Procedures

A. Prompt notification shall be given to the Office of Environmental Compliance, Surveillance Division SPOC as follows:

1. by the Online Incident Reporting screens found at <http://www.deq.louisiana.gov/surveillance/irf/forms/>;

2. by e-mail utilizing the Incident Report Form and instructions found at <http://www.deq.louisiana.gov/surveillance>;

3. by telephone at (225) 219-3640 during office hours, or at (225) 342-1234 after hours and on weekends and holidays; or

4. for radiation incidents, by telephone at (225) 765-0160.

B. Mobile or marine radio notifications should be directed to the nearest communication center or to a telephone center for forwarding of the notification by telephone.

C. Content of Prompt Notifications. The following guidelines will be utilized as appropriate, based on the conditions and circumstances surrounding any unauthorized discharge, to provide relevant information regarding the nature of the discharge:

1. the name of the person making the notification and the telephone number where any return calls from response agencies can be placed;
2. the name and location of the facility or site where the unauthorized discharge is imminent or has occurred, using common landmarks. In the event of an incident involving transport, include the name and address of the transporter and generator;
3. the date and time the incident began and ended, or the estimated time of continuation if the discharge is continuing;
4. the extent of any injuries and identification of any known personnel hazards that response agencies may face;
5. the common or scientific chemical name, the U.S. Department of Transportation hazard classification, and the best estimate of amounts of any or all discharged pollutants;
6. a brief description of the incident sufficient to allow response agencies to formulate their level and extent of response activity; and
7. for unauthorized emissions of toxic air pollutants listed in LAC 33:III.Chapter 51, Table 51.2 or 51.3 or radioactive material, the following supplemental information:
 - a. the location of the source facility or stack;
 - b. the time at onset of the emission;
 - c. the prevailing local wind direction and estimated wind velocity at the time of onset; and
 - d. the duration of the emission if stopped at the time of notification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§3925. Written Notification Procedures

A. Written reports for any unauthorized discharge that requires emergency notification under LAC 33:I.3915.A or prompt notification under LAC 33:I.3917 or 3919 shall be submitted by the discharger to the Office of Environmental Compliance, Surveillance Division SPOC in accordance with this Section within seven calendar days after the notification required by LAC 33:I.3915.A, 3917, or 3919, unless otherwise provided for in a valid permit or other department regulation.

1. ...
2. If delivered by other means (e.g., hand-delivered, faxed, etc.), the submittal date of the written notification will be the date of receipt by the department.

B. Written notification reports shall include, but not be limited to, the following information:

1. the name, address, telephone number, Agency Interest (AI) number (number assigned by the department) if applicable, and any other applicable identification numbers of the person, company, or other party who is filing the written report, and specific identification that the report is the written follow-up report required by this Section;

2. the time and date of prompt notification, the state official contacted when reporting, the name of the person making that notification, and identification of the site or facility, vessel, transport vehicle, or storage area from which the unauthorized discharge occurred;

3. ...
4. details of the circumstances (unauthorized discharge description and root cause) and events leading to any unauthorized discharge, including incidents of loss of sources of radiation, and if the release point is subject to a permit:
 - a. the current permitted limit for the pollutant(s) released;
 - b. the permitted release point/outfall ID; and
 - c. which limits were exceeded (SO₂ limit, mass emission limit, opacity limit, etc.) for air releases;
5. the common or scientific chemical name of each specific pollutant that was released as the result of an unauthorized discharge, including the CAS number and U.S. Department of Transportation hazard classification, and the best estimate of amounts of any or all released pollutants (total amount of each compound expressed in pounds, including calculations);
6. a statement of the actual or probable fate or disposition of the pollutant or source of radiation and what off-site impact resulted;

7. - 11. ...
12. what other agencies were notified;
13. the names of all other responsible parties of which the reporting party is aware;
14. a determination by the discharger of whether or not the discharge was preventable, or if not, an explanation of why the discharge was not preventable;
15. the extent of injuries, if any; and
16. the estimated quantity, identification, and disposition of recovered materials, if any.

C. Written notification reports shall be submitted to the Office of Environmental Compliance, Surveillance Division SPOC by mail or fax. The transmittal envelope and report or fax cover page and report should be clearly marked "UNAUTHORIZED DISCHARGE NOTIFICATION REPORT."

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C) and 2204(A).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:182 (February 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2443 (November 2000), LR 30:

Subchapter E. Reportable Quantities for Notification of Unauthorized Discharges

§3931. Reportable Quantity List for Pollutants

- A. - A.2.b. ...
- B. Modifications or Additions. The following table contains modifications to the federal reportable quantity lists incorporated by reference in Subsection A of this Section, as well as reportable quantities for additional pollutants.

Pollutant	CAS No. ¹	RCRA ² Waste Number	Pounds
Acetaldehyde	75070	U001	100 ⁺

[See Prior Text in Allyl chloride – Antimony*]			

Pollutant	CAS No. ¹	RCRA ² Waste Number	Pounds
Antimony compounds	20008		100
Barium*	7440393		100
Barium compounds	20020		100
Biphenyl	92524		100
1-Butanol	71363	U031	5000/1000 [@]
Butenes (all isomers except 1,3 butadiene)	25167673		100 ⁺
n-Butyl alcohol	71363	U031	5000/1000 [@]

[See Prior Text in Carbonic dichloride]			
Carbonyl sulfide	463581		100

[See Prior Text in Chlorinated Dibenzo Furans, all isomers - Chromium ^{3*}]			
Chromium compounds	20064		100

[See Prior Text in Copper ³]			
Copper compounds	20086		100

[See Prior Text in Cumene]			
1,3-Dichloropropylene	542756		100

[See Prior Text in Ethyl acrylate]			
Ethylene	74851		5000 or 100 ⁺
Ethylene glycol	107211		5000
Glycol ethers **			100

[See Prior Text in Hexane - 1,3-Isobenzofurandione]			
Manganese*	7439965		100
Manganese compounds			100

[See Prior Text in Methanethiol]			
Methyl acrylate	96333		10

[See Prior Text in Methyl ethyl ketone (MEK) - 4-Methyl-2-pentanone]			
Methylene diphenyl isocyanate	101688		1000

[See Prior Text in Nitric acid – Propionaldehyde]			
Propylene	115071		100 ⁺

[See Prior Text in Strontium sulfide – Thiomethanol]			
Toluene	108883	U220	100 ⁺

[See Prior Text in Vinyl acetate - Volatile Organic Compounds not otherwise listed ^d]			
Highly reactive volatile organic compounds listed below: acetaldehyde; butenes (all isomers); ethylene; propylene; toluene; xylene (all isomers); and/or isoprene5			100 ⁺

[See Prior Text in F003 - F005, Methyl ethyl ketone]			

Note * - Note⁴ ...

⁵ The combined emission of these highly reactive VOC shall be totaled to determine if a RQ has been exceeded.

Note[@] ...

⁺ The RQ listed denotes the reportable quantities that will apply to unauthorized emissions based on total mass emitted into the atmosphere for facilities in the following parishes: Ascension, East Baton Rouge, Iberville, Livingston, West Baton Rouge, St. Charles, St. James, St. John the Baptist, Pointe Coupee, and West Feliciana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2025(J), 2060(H), 2076(D), 2183(I), 2194(C), 2204(A), and 2373(B).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 11:770 (August 1985), amended LR 19:1022 (August 1993), LR 20:183 (February 1994), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 21:944 (September 1995), LR 22:341 (May 1996), amended by the Office of the Secretary, LR 24:1288 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:

Subpart 4. Emergency Response Regulations

Chapter 69. Emergency Response Regulations

§6919. Emergency Response Storage Facility

Requirements

A. - A.1. ...

a. Storage of material generated from the abatement and/or cleanup of an off-site emergency condition may be authorized by the administrative authority for up to 90 days. Storage of such material maintained in an emergency response facility shall be in accordance with the requirements in Paragraph A.2 of this Section.

A.1.b. - A.2.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), and (15).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:978 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§6923. Characterization of Stored Material

A. The responsible person must determine the character (chemical composition and regulatory status) of any material stored in an emergency response storage facility before the time allowed for storage in accordance with LAC 33:I.6919 has elapsed and prior to any subsequent management activities, except as authorized by the administrative authority.

B. Except as otherwise provided by this Chapter, materials generated from the abatement and/or cleanup of an off-site emergency condition or off-site contamination as a result of a discharge of a pollutant must be managed according to the requirements of all applicable regulations including, but not limited to, LAC 33:V and VII.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011(D)(1), (14), (15) and 2025.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:979 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

Part III. Air

Chapter 11. Control of Emissions of Smoke

§1105. Smoke from Flaring Shall Not

Exceed 20 Percent Opacity

A. The emission of smoke from a flare or other similar device used for burning in connection with pressure valve releases for control over process upsets shall be controlled so that the shade or appearance of the emission does not exceed 20 percent opacity (LAC 33:III.1503.Table 4) for a combined total of six hours in any 10 consecutive days. If it appears the emergency cannot be controlled in six hours, the Office of Environmental Compliance shall be notified by the

emitter in accordance with LAC 33:I.3923 as soon as possible after the start of the upset period. Such notification does not imply the administrative authority will automatically grant an exemption to the source(s) of excessive emissions.

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 25:656 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2450 (November 2000), LR 30:

Chapter 15. Emission Standards for Sulfur Dioxide

§1513. Recordkeeping and Reporting

A. The owner or operator of any facility subject to the provisions of this Chapter shall record and retain at the site for at least two years the data required to demonstrate compliance with or exemption from these provisions. All emissions data shall be recorded in the units of the standard using the averaging time of the standard. These data shall be made available to a representative of the department or the U.S. EPA on request. Compliance data shall be reported to the department annually in accordance with LAC 33:III.918. In addition, quarterly reports of three-hour excess emissions and reports of emergency occurrences in accordance with LAC 33:I.Chapter 39 shall be made.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 18:376 (April 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

Chapter 21. Control of Emission of Organic Compounds

Subchapter A. General

§2103. Storage of Volatile Organic Compounds

A. - I.5. ...

6. records of the type(s) of VOC stored and the length of time stored for any storage tank exempted under Paragraph G.5 of this Section.

7. - 7.b. ...

J. The facility shall provide notice of any use of a storage tank exempted under Paragraph G.5 of this Section. The notice shall be provided to the Office of Environmental Compliance in the manner identified in LAC 33:I.3923.A in advance, if possible, but no later than 24 hours after the tank starts filling.

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 15:1065 (December 1989), repromulgated LR 16:27 (January 1990), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:360 (April 1991), LR 18:1121 (October 1992), LR 20:1376 (December 1994), LR 21:1223 (November 1995), repromulgated LR 21:1333 (December 1995), amended LR 22:453 (June 1996), LR 22:1212 (December 1996), LR 24:20 (January 1998), LR 24:2242 (December 1998), LR 25:657 (April 1999), LR 25:852 (May 1999), amended by the Office of Environmental Assessment,

Environmental Planning Division, LR 26:2452 (November 2000), LR 28:1763 (August 2002), LR 30:

§2115. Waste Gas Disposal

Any waste gas stream containing VOC from any emission source shall be controlled by one or more of the applicable methods set forth in Subsections A-G of this Section. This Section shall apply to all waste gas streams located at facilities that have the potential to emit 50 TPY or more of VOC in the parishes of Ascension, Calcasieu, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge, or 100 TPY or more of VOC in any other parish. This Section does not apply to waste gas streams that must comply with a control requirement, meet an exemption, or are below an applicability threshold specified in another section of this Chapter. This Section does not apply to waste gas streams that are required by another federal or state regulation to implement controls that reduce VOC to a more stringent standard than would be required by this Section.

A. - K.4. ...

L. This Section does not apply to safety relief and vapor blowdown systems where control cannot be accomplished because of safety or economic considerations. However, the emissions from these systems shall be reported to the department as required under LAC 33:III.918. Emergency occurrences shall be reported in accordance with LAC 33:I.Chapter 39.

M. ...

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 16:960 (November 1990), LR 17:654 (July 1991), LR 18:1122 (October 1992), LR 19:317 (March 1993), LR 22:1212 (December 1996), LR 24:21 (January 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1764 (August 2002), LR 30:

Chapter 23. Control of Emissions for Specific Industries¹

Subchapter B. Aluminum Plants

§2303. Standards for Horizontal Stud Soderberg

Primary Aluminum Plants and Prebake Primary Aluminum Plants

A. - F.1.d. ...

2. Every horizontal stud Soderberg process primary aluminum plant and prebake process primary aluminum plant shall furnish, upon request to the department, such other data as the administrative authority may require to evaluate the plant's emission control program. Such plants shall immediately report any unauthorized emissions of any air contaminants to the Office of Environmental Compliance in accordance with LAC 33:I.3923.

G. - G.3. ...

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 Environmental Assessment, Environmental Planning Division, LR 26:2455 (November 2000), LR 30:

Subchapter D. Nitric Acid Industry

§2307. Emission Standards for the Nitric Acid Industry

A. - C.1. ...

a. A four-hour start-up exemption from emission regulations may be authorized by the administrative authority for plants not subject to 40 CFR Part 60, Subpart G, as incorporated by reference in LAC 33:III.Chapter 30, which have been shut down. It is recognized that existing nitrogen oxide abatement equipment is effective only at normal operating temperatures. This provision allows the necessary time to bring up a facility from a cold start to near steady state condition. A report, in writing, explaining the conditions and duration of the start-up and listing the steps necessary to remedy, prevent, and limit the excess emissions, shall be submitted to the Office of Environmental Compliance, Surveillance Division within seven calendar days of the occurrence using the procedures provided in LAC 33:I.3925.

1.b. - 2. ...

a. A four-hour exemption from emission regulations may be extended by the administrative authority to plants not subject to 40 CFR Part 60, Subpart G, as incorporated by reference in LAC 33:III.Chapter 30, where upsets have caused excessive emissions and on-line operating changes will eliminate a temporary condition. A report, in writing, explaining the conditions and duration of the upset and listing the steps necessary to remedy, prevent, and limit the excess emissions shall be submitted to the Office of Environmental Compliance, Surveillance Division within seven calendar days of the occurrence using the procedures provided in LAC 33:I.3925.

C.2.b. - H.2. ...

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 23:1680 (December 1997), LR 24:1286 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2455 (November 2000), LR 30:

Chapter 27. Asbestos-Containing Materials in Schools and State Buildings Regulation

§2719. Operations and Maintenance

A. - F.2.b. ...

c. Provide a prompt notification to the Office of Environmental Compliance of the major fiber release episode in accordance with LAC 33:I.3923 and in writing as specified in LAC 33:I.3925.

d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2344 and 40:1749.1.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 15:735 (September 1989), amended Office of Air Quality and Radiation Protection, Air Quality Division, LR 20:649 (June 1994), LR 22:699 (August 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2456 (November 2000), LR 30:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5107. Reporting Requirements, Availability of Information, and Public Notice Provisions

A. - B.1. ...

2. Emission Control Bypasses. Except as provided in Paragraph B.6 of this Section, for any unauthorized discharge into the atmosphere of a toxic air pollutant as a result of bypassing an emission control device, when the emission control bypass was not the result of an upset, and the quantity of the unauthorized bypass is greater than or equal to the lower of the Minimum Emission Rate (MER) in Table 51.1 of this Chapter or a reportable quantity (RQ) in LAC 33:I.3931, or the quantity of the unauthorized bypass is greater than one pound and there is no MER or RQ for the substance in question, the owner or operator of the source shall provide prompt notification to the Office of Environmental Compliance of the bypass no later than 24 hours after the beginning of the bypass in the manner provided in LAC 33:I.3923. Where the emission control bypass was the result of an upset, the owner or operator shall comply with Paragraph B.3 of this Section.

3. Nonemergency Conditions. Except as provided in Paragraph B.6 of this Section, for any unauthorized discharge of a toxic air pollutant into the atmosphere that does not cause an emergency condition, the rate or quantity of which is in excess of that allowed by permit, compliance schedule, or variance, or for upset events that exceed the reportable quantity in LAC 33:I.3931, the owner or operator of the source shall immediately, but in no case later than 24 hours, provide prompt notification to the Office of Environmental Compliance in the manner provided in LAC 33:I.3923.

B.4. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2060 and 2001 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1363 (December 1992), LR 19:890 (July 1993), amended by the Office of the Secretary, LR 19:1022 (August 1993), repromulgated LR 19:1142 (September 1993), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 23:58 (January 1997), LR 24:1276 (July 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2004 (September 2000), LR 26:2460 (November 2000), LR 29:2778 (December 2003), LR 30:

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality—Hazardous Waste

Chapter 11. Generators

Subchapter A. General

§1109. Pre-Transport Requirements

A. - E.7.d.iv.(b). ...

(c). in the event of a fire, explosion, or other release that could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the

Office of Environmental Compliance in accordance with LAC 33:I.3923.

7.e. - 12. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709 and 716 (May 2001), LR 27:1014 (July 2001), LR 30:

Chapter 19. Tanks

§1913. Response to Leaks or Spills and Disposition of Leaking or Unfit-for-Use Tank Systems

A tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must satisfy the following requirements.

A. - C.2. ...

D. Notifications, Reports (LAC 33:V.105.A)

1. Any release to the environment, except as provided in LAC 33:V.1913.D.2, must be reported to the Office of Environmental Compliance in accordance with LAC 33:I.3923 within 24 hours of its detection. If the release has been reported in accordance with LAC 33:V.105.J, that report will satisfy this requirement.

D.2. - F.NOTE ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 13:651 (November 1987), LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2475 (November 2000), LR 30:

Chapter 22. Prohibitions on Land Disposal

Subchapter B. Hazardous Waste Injection Restrictions

§2271. Exemptions to Allow Land Disposal of a Prohibited Waste by Deep Well Injections

A. - T.1. ...

a. notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 within 24 hours of obtaining such evidence;

T.1.b. - Z. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 22:22 (January 1996), amended LR 23:299 (March 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2479 (November 2000), LR 30:

Chapter 28. Drip Pads

§2805. Design and Operating Requirements

Owners and operators of drip pads must ensure that the pads are designed, installed, and operated in accordance with LAC 33:V.2805.A or C.

A. - N.1.c. ...

d. within 24 hours after discovery of the condition, notify the Office of Environmental Compliance in accordance with LAC 33:I.3923 and, within 10 working days, provide written notice to the Office of Environmental Compliance using the procedures provided in LAC 33:I.3925, including a description of the steps that will be taken to repair the drip pad and clean up any leakage, and the schedule for accomplishing this work.

N.2. - P. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 18:1375 (December 1992), amended LR 21:266 (March 1995), LR 21:944 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2482 (November 2000), LR 30:

Chapter 29. Surface Impoundments

§2909. Emergency Repairs; Contingency Plans

A. - B.5. ...

6. notify the Office of Environmental Compliance of the problem in accordance with LAC 33:I.3923 within 24 hours of detection and in writing using the procedures provided in LAC 33:I.3925 within seven days after detecting the problem.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2483 (November 2000), LR 30:

Chapter 41. Recyclable Materials

§4101. Applicability

A. - C. ...

D. Upon transport of a recyclable material from the generation site and out of the direct control of the generator, the owner of the recyclable material shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 within 24 hours of any determination that the material shall not be used, reused, or recycled. Following such a determination the recyclable material is no longer considered a recyclable material and is fully subject to all requirements of these regulations.

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 11:988 (October 1985), amended LR 11:1139 (December 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2498 (November 2000), LR 30:

§4107. Spills

A. Any spill of recyclable material that could possibly endanger human health or adversely affect the environment shall be reported to the department in accordance with LAC 33:I.Chapter 39.

B. - C. ...

D. Whenever a spill of recyclable material occurs that requires immediate removal to protect human health or the

environment, the transporter shall immediately notify the Office of Environmental Compliance in accordance with LAC 33:I.3923.

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 11:988 (October 1985), amended LR 11:1139 (December 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2498 (November 2000), LR 30:

Chapter 42. Conditional Exemption for Low-Level Mixed Waste Storage and Disposal

§4211. How Could You Lose the Conditional Exemption for Your LLMW and What Action Must You Take?

A. - A.1.c. ...

2. If the failure to meet any of the conditions may endanger human health or the environment, you must also immediately notify the Office of Environmental Compliance in accordance with LAC 33:I.3923 and submit a written report within five days using the procedures provided in LAC 33:I.3925. Failures that may endanger human health or the environment include, but are not limited to, discharge of a CERCLA reportable quantity or other leaking or exploding tanks or containers or detection of radionuclides above background or hazardous constituents in the leachate collection system of a storage area. If the failure may endanger human health or the environment, you must follow the provisions of your emergency plan.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1006 (May 2002), amended LR 28:2181 (October 2002), LR 30:

§4241. How Could You Lose the Transportation and Disposal Conditional Exemption for Your Waste and What Actions Must You Take?

A. - A.1.c. ...

2. If the failure to meet any of the conditions may endanger human health or the environment, you must also immediately notify the Office of Environmental Compliance in accordance with LAC 33:I.3923 and submit a written report within five days using the procedures provided in LAC 33:I.3925.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Office of Environmental Assessment, Environmental Planning Division, LR 28:1008 (May 2002), amended LR 28:2181 (October 2002), LR 30:

Chapter 53. Military Munitions

§5309. Standards Applicable to the Storage of Solid Waste Military Munitions

A. - A.1.d. ...

e. the owner or operator must provide prompt notice to the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 within 24 hours from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of Paragraph A.1 of this Section that may endanger health or the environment. In addition, a written

submission, using the procedures provided in LAC 33:I.3925, describing the circumstances shall be provided within five days from the time the owner or operator becomes aware of any loss or theft of the waste military munitions or any failure to meet a condition of Paragraph A.1 of this Section;

A.1.f. - E. ...

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 24:1757 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2510 (November 2000), LR 30:

Part VI. Inactive and Abandoned Hazardous Waste and Hazardous Substance Site Remediation

Chapter 2. Site Discovery and Evaluation

§201. Site Discovery

A. Site Discovery Reporting Requirements. As part of a program to identify inactive or uncontrolled contaminated sites, the owner, operator, or other responsible person shall report to the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 any sites where hazardous substances have been, or could have been, disposed of or discharged. This Section sets forth the requirements for reporting such sites.

B. - B.1.d. ...

2. The department must be notified regardless of whether the contaminants were discovered before or after the effective date of these regulations.

3. The department shall be notified in writing using the procedures provided in LAC 33:I.3925 within 30 calendar days of the discovery of the discharge or disposal of any hazardous substance at an inactive or uncontrolled site. The date that the department was officially notified shall be determined as follows:

3.a. - 5.f. ...

C. Voluntary Reporting. In addition to the mandatory reporting by those persons listed under Subsection B of this Section, all members of the public are encouraged to report to the department any suspected discharge, disposal, or presence of any hazardous substance at any inactive or uncontrolled site. This voluntary reporting can be made by contacting the Office of Environmental Compliance in the manner provided in LAC 33:I.3923.

D. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2171 et seq., 2221 et seq., and 2271 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 25:2182 (November 1999), amended LR 26:2511 (November 2000), LR 28:1762 (August 2002), LR 30:

Part VII. Solid Waste

Subpart 1. Solid Waste Regulations

Chapter 3. Scope and Mandatory Provisions of the Program

§315. Mandatory Provisions

All persons conducting activities regulated under these regulations shall comply with the following provisions.

A. - J. ...

K. Reporting of Unauthorized Discharge. Any discharge, deposit, injection, spill, dumping, leaking, or placing of solid waste into or on the water, air, or land of the state in

contravention of the act, these regulations, or the terms and conditions of a permit issued thereunder, or any accident, fire, explosion, or other emergency that results in such unauthorized solid waste discharge, shall be reported by any person causing, allowing, or suffering said discharge or by any person with knowledge of the discharge to the Office of Environmental Compliance in accordance with LAC 33:I.Chapter 39.

L. ...

M. Notice of Damage to Structures in a Solid Waste Facility. The Office of Environmental Compliance shall be notified in the manner provided in LAC 33:I.3923 when damage to or degradation of any structure of a solid waste facility occurs that would impair the ability of the facility to meet the conditions of its permit.

N. - R.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 LR 19:1143 (September 1993), LR 19:1315 (October 1993), repromulgated LR 19:1421 (November 1993), amended LR 22:279 (April 1996), amended by the Office of Waste Services, Solid Waste Division, LR 23:954 (August 1997), amended by the Office of Waste Services, Solid Waste Division, LR 23:1145 (September 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2516 (November 2000), LR 30:

Chapter 7. Solid Waste Standards

Subchapter B. Landfills, Surface Impoundments, Landfarms

§711. Standards Governing Landfills (Type I and II)

A. - D.3.a.iii. ...

(a). immediately take all necessary steps to ensure protection of human health and notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923;

(b). within 30 days of detection, submit a remediation plan to the Office of Environmental Assessment, Environmental Technology Division for the methane gas releases. The plan shall describe the nature and extent of the problems and the proposed remedy and shall include an implementation schedule. The plan must be implemented within 60 days of detection.

iv. The permit holder shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 when strong odors occur at facility boundaries.

D.3.a.v. - F.3.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 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2523 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:

§713. Standards Governing Surface Impoundments (Type I and II)

A. - D.3.a.iii. ...

(a). immediately take all necessary steps to ensure protection of human health and notify the Office of

Environmental Compliance in the manner provided in LAC 33:I.3923;

(b). within 30 days of detection, submit a remediation plan for the methane gas releases to the Office of Environmental Assessment, Environmental Technology Division. The plan shall describe the nature and extent of the problem and the proposed remedy, and shall include an implementation schedule. The plan must be implemented within 60 days of detection.

iv. The permit holder shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 when strong odors occur at facility boundaries or when methane gas levels exceed the limit specified in Clause D.3.a.ii of this Section.

D.3.a.v. - F.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 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2524 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:

§715. Standards Governing Landfarms (Type I and II)

A. - D.3.a.iii. ...

(a). immediately take all necessary steps to ensure protection of human health and notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923;

(b). within 60 days of detection, submit a remediation plan for the methane gas releases to the Office of Environmental Assessment, Environmental Technology Division. The plan shall describe the nature and extent of the problem and the proposed remedy, and shall include an implementation schedule.

iv. The permit holder shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 when strong odors occur at facility boundaries.

D.3.a.v. - F.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 24:2251 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2525 (November 2000), repromulgated LR 27:704 (May 2001), amended LR 30:

Part IX. Water Quality

Subpart 1. Water Pollution Control

Chapter 5. Enforcement

§503. Investigations

A. Any person may file an oral or written complaint concerning an alleged violation or environmental problem with the Office of Environmental Compliance in the manner provided in LAC 33:I.3923. The complainant may remain anonymous, if desired, and such a request for anonymity shall not be considered as a prejudicial factor in evaluation of the appropriate response to the complaint.

B. - D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 11:1066 (November 1985), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2543 (November 2000), LR 30:

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

Chapter 27. LPDES Permit Conditions

§2701. Conditions Applicable to All Permits

The following conditions apply to all LPDES permits. Additional conditions applicable to LPDES permits are in LAC 33:IX.2703. All conditions applicable to LPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved state regulations) must be given in the permit.

A. - L.5. ...

6. Twenty-Four Hour Reporting

a. The permittee shall report any noncompliance that may endanger health or the environment in the manner provided in LAC 33:I.Chapter 39. Any information shall be provided promptly within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

b. - b.iii. ...

c. The state administrative authority may waive the written report on a case-by-case basis for reports under LAC 33:IX.2701.L.6.b if a prompt report under LAC 33:I.3923 has been received within 24 hours.

L.7. - N.4. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Water Pollution Control Division, LR 23:724 (June 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2553 (November 2000), LR 28:468 (March 2002), LR 30:

Part XI. Underground Storage Tanks

Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

§707. Reporting of Suspected Releases

A. All owners, operators, employees, agents, contractors, or assigns having knowledge of any of the conditions listed below shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 within 24 hours after becoming aware of the occurrence or, if they have knowledge of an emergency condition, shall report it immediately in accordance with LAC 33:I.Chapter 39. After discovery of any of the following conditions, owners and operators of UST systems shall follow the procedures specified in LAC 33:XI.711:

1. released regulated substances are discovered at the UST site or in the surrounding area (such as the presence of

free product or vapors in soils, basements, sewer and utility lines, or nearby surface water);

2. unusual operating conditions are observed (such as the erratic behavior of product-dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced;

3. monitoring results from a release detection method required under LAC 33:XI.703.B and C indicate that a release may have occurred, unless:

a. the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring conducted within 24 hours does not confirm the initial result; or

b. in the case of inventory control, a second month of data does not continue to indicate a loss.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:

§713. Reporting and Cleanup of Spills and Overfills

A. Owners and operators of UST systems must contain, immediately clean up, and report a spill or overfill to the Office of Environmental Compliance in accordance with LAC 33:I.3923 within 24 hours. The owner or operator shall begin corrective action in accordance with LAC 33:XI.715 in the following cases.

1. A spill or overfill of petroleum has resulted in a release to the environment that exceeds one barrel (42 gallons) or that causes a sheen on nearby surface water. If the spill or overfill results in an emergency condition, as defined in LAC 33:I.3905, the incident must be reported in accordance with LAC 33:I.Chapter 39 immediately, but in no case later than one hour, regardless of the amount released.

2. A spill or overfill of a hazardous substance has resulted in a release to the environment that equals or exceeds the reportable quantity for that substance in LAC 33:I.3931. If the spill or overfill results in an emergency condition, as defined in LAC 33:I.3905, the incident must be reported in accordance with LAC 33:I.Chapter 39 immediately, but in no case later than one hour, regardless of the amount released. A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center, under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to appropriate authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986 (40 CFR 355.40).

B. Follow-up written reports must be submitted within seven calendar days, as required by LAC 33:I.3925. The written report must satisfy the requirements of LAC 33:I.3925.B and C.

C. Owners and operators of UST systems must contain and immediately clean up a spill or overfill of petroleum that is less than one barrel and a spill or overfill of a hazardous substance that is less than the reportable quantity. If cleanup

cannot be accomplished within 24 hours, owners and operators must immediately notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923.

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 18:728 (July 1992), amended by the Office of the Secretary, LR 19:1022 (August 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:

§715. Release Response and Corrective Action for UST Systems Containing Petroleum or Hazardous Substances

A. - B. ...

1. Report the release to the Office of Environmental Compliance in accordance with LAC 33:I.3923.

2. Take immediate action to prevent any further release of the regulated substance into the environment.

3. Identify and mitigate fire, explosion, and vapor hazards.

C. - C.1.f. ...

2. Within 20 days after release confirmation or another reasonable period of time determined by the department in writing, owners and operators must submit a report to the Office of Environmental Compliance, Surveillance Division summarizing the initial abatement steps taken under Paragraph C.1 of this Section and any resulting information or data.

D. - D.1.e. ...

2. Within 60 days of release confirmation or another reasonable period of time determined by the department in writing, owners and operators must submit the information collected in compliance with Paragraph D.1 of this Section to the Office of Environmental Assessment, Remediation Services Division in a manner that demonstrates its applicability and technical adequacy, or in a format and according to the schedule required by the department.

E. Free Product Removal. At sites where investigations under Subparagraph C.1.f of this Section indicate the presence of free product, owners and operators must remove free product to the maximum extent practicable as determined by the Office of Environmental Assessment, Remediation Services Division, while continuing, as necessary, any actions initiated under Subsections B-D of this Section, or preparing for actions required under Subsections F-G of this Section. To meet the requirements of this Subsection, owners and operators must take the following actions.

1. - 3. ...

4. Unless directed to do otherwise by the department, prepare and submit to the Office of Environmental Assessment, Remediation Services Division, within 45 days after confirming a release, a free product removal report that provides at least the following information:

E.4.a. - 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 24:2253 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:

Part XV. Radiation Protection

Chapter 3. Licensing of Radioactive Material

Subchapter D. Specific Licenses

§341. Reporting Requirements for General and Specific Licenses

A. Immediate Report. Each licensee shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 as soon as possible but not later than four hours after the discovery of an event that prevents immediate protective actions necessary to avoid exposures to radiation or radioactive materials that could exceed regulatory limits or releases of licensed material that could exceed regulatory limits (events may include fires, explosions, toxic gas releases, etc.).

B. Twenty-Four Hour Report. Each licensee shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 within 24 hours after the discovery of any of the following events involving licensed material:

1. - 4.b. ...

C. Preparation and Submission of Reports. Reports made by licensees in response to the requirements of LAC 33:XV.341 must be made as follows.

1. Licensees shall make reports required by LAC 33:XV.341.A and B to the Office of Environmental Compliance in the manner provided in LAC 33:I.3923. To the extent that the information is available at the time of notification, the information provided in these reports must include:

a. - d. ...

e. any personnel radiation exposure data available.

2. Each licensee who makes a report required by LAC 33:XV.341.A or B shall submit a written follow-up report within 30 days of the initial report to the Office of Environmental Compliance by using the procedures provided in LAC 33:I.3925. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all of the necessary information and the appropriate distribution is made. These written reports must be sent to the department. The reports must include the following:

a. - f. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 21:554 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2573 (November 2000), LR 30:

Chapter 4. Standards for Protection Against Radiation

Subchapter J. Reports

§485. Reports of Stolen, Lost, or Missing Licensed or Registered Sources of Radiation

A. - A.3. ...

B. Written Reports. Each licensee or registrant required to make a report in accordance with LAC 33:XV.485.A shall, within 30 days after making the telephone report, make a written report to the Office of Environmental Compliance

using the procedures provided in LAC 33:I.3925 and setting forth the following information:

1. - 6. ...

C. Subsequent to filing the written report, the licensee or registrant shall also report to the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 or 3925 additional substantive information on the loss or theft within 30 days after the licensee or registrant learns of such information.

D. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2579 (November 2000), LR 30:

§486. Notification of Incidents

A. Immediate Notification. Notwithstanding other requirements for notification, each licensee or registrant shall immediately report to the Office of Environmental Compliance in accordance with LAC 33:I.3923 each event involving a source of radiation possessed by the licensee or registrant that may have caused or threatens to cause any of the following conditions:

1. - 2. ...

B. Twenty-Four Hour Notification. Each licensee or registrant shall, within 24 hours of discovery of the event, report to the Office of Environmental Compliance in accordance with LAC 33:I.3923 each event involving loss of control of a licensed or registered source of radiation possessed by the licensee or registrant that may have caused, or threatens to cause, any of the following conditions:

B.1. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended LR 22:973 (October 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2579 (November 2000), LR 26:2770 (December 2000), LR 30:

§487. Reports of Exposures, Radiation Levels, and Concentrations of Radioactive Material Exceeding the Constraints or Limits

A. Reportable Events. In addition to the notification required by LAC 33:XV.486, each licensee or registrant shall submit a written report to the Office of Environmental Compliance using the procedures provided in LAC 33:I.3925 within 30 days after learning of any of the following occurrences:

A.1. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment,

Environmental Planning Division, LR 26:2579 (November 2000), LR 26:2771 (December 2000), LR 27:1231 (August 2001), LR 30:

§492. Reports of Leaking or Contamination From Sealed Sources

A. The licensee or registrant shall file a report within five days with the Office of Environmental Compliance using the procedures provided in LAC 33:I.3925 if the test for leakage or contamination required in accordance with LAC 33:XV.426 indicates a sealed source is leaking or a source of contamination. The report shall include the equipment involved, the test results, and the corrective action taken.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 19:1421 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2580 (November 2000), LR 30:

Chapter 7. Use of Radionuclides in the Healing Arts **§712. Notifications, Reports, and Records of Misadministrations**

A. For a misadministration:

1. the licensee shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 no later than the next calendar day after discovery of the misadministration;

2. the licensee shall submit a written report to the Office of Environmental Compliance using the procedures provided in LAC 33:I.3925 within 15 days after discovery of the misadministration. The written report shall include the licensee's name; the prescribing physician's name; a brief description of the event; why the event occurred; the effect on the individual who received the administration; what improvements are needed to prevent recurrence; actions taken to prevent recurrence; whether the licensee notified the individual, or the individual's responsible relative or guardian (this person will be subsequently referred to as "the individual" in this Section), and if not, why not, and if the individual was notified, what information was provided to the individual. The report shall not include the individual's name or other information that could lead to identification of the individual. To meet the requirements of this Section, the notification of the individual receiving the misadministration may be made instead to that individual's responsible relative or guardian, when appropriate;

A.3. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR18:34 (January 1992), amended LR 24:2102 (November 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2588 (November 2000), LR 30:

Chapter 20. Radiation Safety Requirements for Wireline Service Operations and Subsurface Tracer Studies

Subchapter D. Notification

§2051. Notification of Incidents, Abandonment, and Lost Sources

A. The licensee shall immediately notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 and subsequently within 30 days by confirmatory report using the procedures provided in LAC 33:I.3925 if the licensee knows or has reason to believe that a sealed source has been ruptured. The report must designate the well or other location, describe the magnitude and extent of the release of licensed materials, assess the consequences of the rupture, and explain efforts planned or being taken to mitigate these consequences.

B. Whenever a sealed source or device containing radioactive material is lodged downhole, the licensee shall:

1. ...

2. notify the Office of Environmental Compliance immediately in the manner provided in LAC 33:I.3923 if radioactive contamination is detected at the surface or if the source appears to be damaged and provide a follow-up written report to the Office of Environmental Compliance using the procedures provided in LAC 33:I.3925 within 30 days of detection.

C. - C.1.c. ...

2. notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 giving the circumstances of the loss, and request approval of the proposed abandonment procedures; and

3. file a written report with the Office of Environmental Compliance using the procedures provided in LAC 33:I.3925 within 30 days of the abandonment, setting forth the following information:

C.3.a. - E. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Nuclear Energy Division, LR 13:569 (October 1987), repealed and repromulgated by the Office of Air Quality and Radiation Protection, Radiation Protection Division, LR 18:34 (January 1992), amended LR 21:555 (June 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2606 (November 2000), LR 29:1473 (August 2003), LR 30:

A public hearing will be held on March 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith Schuerman at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS052. Such comments must be received no later than April 2, 2004, at 4:30 p.m., and should be sent to Judith Schuerman, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314,

Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS052.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Notification Requirements for Unauthorized Discharges

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

No implementation costs or savings to state or local governmental units are expected to result from the proposed Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

No effects on revenue collections of state or local governmental units are expected to result from the proposed Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

No costs or economic benefits to directly affected persons or non-governmental groups are expected to result from the proposed Rule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

No effect on competition or employment is expected to result from the proposed Rule.

James H. Brent, Ph.D.
Assistant Secretary
0402#034

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

Severe Ozone Nonattainment Area Major Source Fee
(LAC 33:III.209)(AQ238)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.209 (Log #AQ238).

This proposed Rule establishes the methodology for computation of a federally-required fee on major sources in the five-parish Baton Rouge severe ozone nonattainment area. The fee will be assessed on major sources that emit 25 tons per year or more of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) and that are located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The fee is required by Sections 185 and 182(f) of the Clean Air Act and will be assessed to major sources if the five-parish Baton Rouge ozone nonattainment area fails to achieve attainment with the one-hour ozone air quality standard by November 2005. This proposed rule fulfills a Clean Air Act requirement for the five-parish Baton Rouge ozone nonattainment area under the current classification of severe. The Rule will be included in a revision to the attainment State Implementation Plan (SIP) that must be submitted to the Environmental Protection Agency by June 23, 2004. Failure to promulgate the proposed rule to establish nonattainment area major source fees would cause the SIP submittal to be deemed incomplete. The basis and rationale for this Rule are to satisfy requirements specified in Section 185 and Section 182(f) of the federal Clean Air Act.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

**Title 33
ENVIRONMENTAL QUALITY
Part III. Air**

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§209. Annual Fees

A. ...

B. All parties conducting activities for which the Clean Air Act Amendments of 1990 Section 185 fees apply shall be subject to the payment of such fees by the due date indicated on the invoice. Except as provided for in Paragraph B.1 of this Section, any owner or operator of a major stationary source that is located in the Baton Rouge Severe Nonattainment Area (Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge Parishes) shall pay a fee in accordance with Paragraph B.3 of this Section beginning in 2007 and in each calendar year thereafter until the Baton Rouge Nonattainment Area achieves attainment with the 1-hour National Ambient Air Quality Standard for ozone (40 CFR 50.9), or until the U.S. EPA revokes the 1-hour ozone standard.

1. Exemptions

a. No major stationary source shall be required to pay fees required by this Subsection for emissions that occur during an extension year granted by the EPA administrator according to Section 181(a)(5) of the Clean Air Act.

b. Any emissions unit that begins initial operation after the attainment year shall not be subject to the requirements of this Subsection.

c. Any emissions unit that meets the *clean emissions unit* criteria shall not be subject to the requirements of the Subsection.

2. Definitions. All terms used in this Section, unless the context otherwise requires or unless specifically defined in the Louisiana Environmental Quality Act or in other regulations promulgated by the secretary of the department or his predecessor, shall have their usual meanings, except for those terms specifically defined as follows.

Attainment Year? the calendar year that the Baton Rouge Nonattainment Area is required to reach attainment of the 1-hour national ambient air quality ozone standard.

Baseline Amount? the yearly average of the sum of actual volatile organic compounds (VOC) and nitrogen oxides (NO_x) emitted from nonexempt units during any three years from 1998 through 2002. The *baseline amount* shall be determined in accordance with Paragraph B.3 of this Section.

Clean Emissions Unit? an emissions unit that meets one of the following criteria:

i. is equipped with an emission control technology with a minimum control efficiency of at least 95 percent; or

ii. is equipped with emission control technology that meets the requirements for Best Available Control Technology (BACT).

Major Stationary Source? any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of either VOC or NO_x.

3. Baseline Determination. Facilities shall identify the three years that are most representative of normal operations to be used in the calculation of the baseline amount. The identification will be submitted with the annual emissions inventory submitted in accordance with LAC 33.III.919 for the calendar year 2007.

4. Fee Requirements

a. For VOC and NO_x, each major stationary source shall be assessed an annual fee payable to the department in accordance with LAC 33:III.215. The fee shall be calculated as follows:

$$\text{Fee} = [A - (0.8 \times B)] \times C$$

where:

A= the sum of VOC and NO_x emissions in tons per year actually emitted during the previous calendar year.

B= the baseline amount.

C= a fee of \$5000 per ton, adjusted by the Consumer Price Index in accordance with Section 185 of the Clean Air Act, as amended [42 USC 7511d(b)(3)].

b. If the sum of VOC and NO_x emissions (A) is less than or equal to 80 percent of the baseline amount (B), the fee shall be set to zero.

c. By the end of calendar year 2007 and each year thereafter, the department shall assess a fee for emissions in the previous calendar year.

d. By the due date indicated on the invoice and each year thereafter, each facility subject to this Subsection shall remit the assessed fee to the department in accordance with LAC 33:III.215. See LAC 33:III.217 for late payment fees. See LAC 33:III.219 for action taken regarding nonpayment of the fee.

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 14:611 (September 1988), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 30:

A public hearing will be held on March 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, LA 70802. The hearing will also be for the revision to the SIP to incorporate this proposed Rule. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith Schuerman at the address given below or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ238. Such comments must be received no later than April 2, 2004, at 4:30 p.m., and should be sent to Judith Schuerman, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ238.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Severe Ozone Nonattainment Area Major Source Fee

- I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)
There are no estimated implementation costs or savings to state or local governmental units.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
Promulgation of this proposed rule establishes the federally-required fees for major industrial sources of ozone-forming emissions located in the Baton Rouge severe ozone nonattainment area. This proposed Rule could result in an estimated increase in state revenues of approximately \$85,000,000 per year (based upon the 2002 annual emissions inventory) beginning at the earliest in 2007, should the Baton

Rouge area fail to achieve the one-hour ozone air quality standard by November 2005.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Should the Baton Rouge nonattainment area fail to achieve the ozone air quality standard by November 2005, estimated fees to be assessed to industry located in the parishes of Ascension, East Baton Rouge, Iberville, Livingston and West Baton Rouge would total approximately \$85,000,000 annually.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

All major source facilities located in the five-parish nonattainment area would have to comply with the same rules, so competition in the five-parish nonattainment area would not be affected. Competition with facilities located outside the nonattainment area could be affected. Every facility in the nonattainment area would have the option of reducing emissions to avoid or reduce the fee. Some facilities might shut down instead of paying the proposed fees, which would reduce employment.

James H. Brent, Ph.D.
Assistant Secretary
0402#036

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor Board of Architectural Examiners

Per Diem Compensation (LAC 46:I.317)

Under the authority of R.S. 37:144(C) and in accordance with the provisions of R.S. 49:951 et seq., the Board of Architectural Examiners (board) gives notice that rule making procedures have been initiated for the amendment of LAC 46:I.317.C pertaining to the compensation which board members receive for discharging their duties and responsibilities. The existing Rule provides that the per diem compensation of board members for discharging their duties and responsibilities shall be \$75 per day. The proposed Rule provides that the per diem compensation of board members for discharging their duties and responsibilities shall be the same as members of the Louisiana legislature. R.S. 24:31 provides that the compensation of the members of the legislature shall be equal to the rate allowable for per diem deduction under §162(h)(1)(B)(ii) of Title 26 of the United States Code for the location of the state capital during their attendance on that body.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part I. Architects

Chapter 3. Organization

§317. National Council of Architectural Registration Boards

A. - B. ...

C. Effective July 1, 2004, out of the funds of the board each board member shall be compensated equal to the rate of compensation allowable for members of the legislature for each day in attending board meetings and hearings, attending NCARB regional and national meetings, issuing certificates and licenses, necessary travel, and discharging other duties, responsibilities, and powers of the board. In addition, out of

said funds each board member, the executive director, and the board attorney shall be reimbursed reasonable and necessary travel, meals, lodging, clerical, and other incidental expenses incurred while performing the duties, responsibilities, and powers of the boards, including but not limited to performing the aforesaid specific activities.

AUTHORITY NOTE: Promulgated and amended in accordance with R.S. 37:144-45.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Architectural Examiners, December 1965, amended May 1973, amended and promulgated LR 4:333 (September 1978), amended LR 10:738 (October 1984), LR 12:760 (November 1986), amended by the Department of Economic Development, Board of Architectural Examiners, LR 15:732 (September 1989), amended by the Office of the Governor, Board of Architectural Examiners, LR 30:

Interested persons may submit written comments on this proposed Rule to Mary "Teeny" Simmons, Executive Director, Board of Architectural Examiners, 9625 Fenway Avenue, Suite B, Baton Rouge, LA 70809.

Mary "Teeny" Simmons
Executive Director

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Per Diem Compensation**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The estimated implementation costs to the Louisiana State Board of Architectural Examiners associated with this proposed Rule will be approximately \$4,750 for the next fiscal year (2004-2005), and somewhat more for each fiscal year thereafter depending upon inflation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no estimated effect on revenue collections of state or local governmental units associated with this proposed Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule would increase per diem payments for board members to the rate paid to members of the legislature.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no estimated effect on competition or employment associated with this proposed Rule.

Mary "Teeny" Simmons
Executive Director
0402#065

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Office of the Governor
Used Motor Vehicle and Parts Commission**

Off-Site Displays and Complaints
(LAC 46:V.3606, 3607, and 4501)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and in accordance with Revised Statutes Title 32, Chapter 4A and 4B, the Office of the Governor, Used Motor Vehicle and Parts Commission, notice is hereby given that the Used Motor Vehicle and Parts

Commission, proposes to adopt rules and regulations governing Off-Site Displays in accordance with R.S. 32:772 F(8).

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part V. Automotive Industry

**Subpart 2. Used Motor Vehicle and Parts Commission
Chapter 36. Motor Vehicle Trade Shows and Off-Site**

Displays

§3606. Off-Site Displays? Marine Products

A. The commission must approve all off-site displays of new marine products. A request for an off-site display must be received and approved by the commission seven days prior to the commencement of the display.

B. The location of any off-site display must be within the dealer's defined area of responsibility or within his manufacturer's contracted agreement for the make and model to be displayed.

C. The licensee participating in an off-site display of his product is not required to contact all dealers within a 50 mile radius.

D. Each off-site display of marine products is limited to:

1. one marine dealer;

2. nine days and four displays a year. An off-site display will be permitted at the same location every six months.

E. The number of vehicles at any off-site display of marine products will be left to the discretion of the commission, with a maximum of 20 vehicles per licensee, per display.

F. The presence of any sales personnel, business cards, brochures, pricing sheets and other points of sales devices will be allowed to answer consumer questions. However, marine products cannot be delivered from that off-site display location.

G. Any licensee participating in an off-site display without the approval of the commission will be in violation of R.S. 32:775 7(d) and will result in a minimum penalty of \$500 per vehicle, per display for the first offense.

H. A licensee must furnish a liability insurance binder to the owner of the off-site property. The same liability binder with the off-site property and owner listed must be furnished to the commission with the Off-Site Display Form.

I. This policy is separate from the rules and regulations pertaining to trade shows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772 (E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:

§3607. Off-Site Displays? Motorcycles, ATV's and RV's

A. The commission must approve all off-site displays of new motorcycles, new ATV's, and new RV's. A request or an off-site display must be received and approved by the commission seven days prior to the commencement of the display.

B. The location of any display must be within the dealer's defined area of responsibility for the make and model to be displayed.

C. Each off-site display is limited to 30 days. However, there will not be a limit on the number of off-site displays allowed per year, per licensee.

D. The number of vehicles at any off-site display will be left to the discretion of the commission, with a maximum of six vehicles per licensee, per display.

E. The presence of any sales personnel, business cards, brochures, pricing sheets, or any other points of sale device will not be allowed and will constitute a violation by the dealer of the laws of the rules and regulations of the commission. A 2' x 3' sign indicating the dealership name, address and telephone number is allowed.

F. Any licensee participating in an off-site display without the approval of the commission will be in violation of R.S. 32:775(d) and will result in a minimum penalty of \$500 per vehicle, per display for the first offense.

G. This policy is separate from the rules and regulations pertaining to trade shows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:772 (E).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:

Chapter 45. Complaints

§4501. Complaints

A. All forms of complaints made to the commission must be made on the complaint form provided by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:776(A)(3).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Used Motor Vehicle and Parts Commission, LR 11:1065 (November 1985), amended by the Department of Economic Development, Used Motor Vehicle and Parts Commission, LR 15:260 (April 1989), amended by the Office of the Governor, Used Motor Vehicle and Parts Commission, LR 30:

Family Impact Statement

The proposed Rules of the Louisiana Used Motor Vehicle and Parts Commission should not have any known or foreseeable impact on any family as defined by R.S. 49:972.D, or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. a family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed Rules.

Interested persons may submit written comments no later than 4:30 p.m. on March 20, 2004, to John M. Torrance, Executive Director, 3132 Valley Creek Drive, Baton Rouge, LA 70808, (225) 925-3870.

John M. Torrance
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Off-Site Displays and Complaints

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)

Neither state nor local revenues will be affected as a result of the proposed Rules.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule change should have a positive impact on sales which will result in an indeterminable increase in revenue to dealers.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules on the Off-Site Displays of marine products and motorcycles, ATV's and RV's may have a significant positive impact on competition and employment due to greater exposure of their products to the public. The amendment to the Rule regarding consumer complaints will not affect competition or employment.

John M. Torrance
Executive Director
0402#050

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Office of Public Health

Birth Defects Surveillance System
(LAC 48:V.Chapters 161 and 163)

In accordance with the applicable provision of the Administrative Procedure Act R.S. 49:950 et seq. and the Birth Defects Surveillance System R.S. 40.31.41 through 31.48 et seq., notice is hereby given that the Department of Health and Hospitals, Office of Public Health intends to adopt procedures for the surveillance of birth defects for all children under age 3, for provision of information on appropriate follow-up services to families of children identified as having birth defects, and for protection of the confidentiality of information about children who become part of the birth defects registry as well as the privacy of these individuals and their families.

Title 48

PUBLIC HEALTH? GENERAL

Part V. Public Health Services

Subpart 55. Birth Defects Surveillance System

Chapter 161. General Provisions

§16101. Definitions

Advisory Board? the nine-member advisory board of the program.

Birth Defect? an abnormality of structure, function or metabolism that develops during prenatal, perinatal or early postnatal life that is diagnosed before a child reaches 3 years of age.

Case Finding? the process used to identify potential birth defects cases for inclusion into the central registry or central database of the Louisiana Birth Defects Monitoring Network.

CSHS? the Children's Special Health Services Program within the Office of Public Health.

Confidential Information? information collected through the Louisiana Birth Defects Monitoring Network that is private and protected under state and federal laws.

Director? the program director for the Louisiana Birth Defects Monitoring Network.

Department? the Department of Health and Hospitals.

LBDMN? the Louisiana Birth Defects Monitoring Network, which the office will establish to collect information about children with birth defects. The LBDMN is established to carry out the directives of the Louisiana Birth Defects Surveillance System, which was created under Louisiana Revised Statutes 40.31.41-31.48.

Office? the Office of Public Health within the Department of Health and Hospitals.

Registry? the centralized database where data collected through the LBDMN is housed.

Reporting Source? any physician, nurse or allied health professional, hospital, laboratory, and any other facility or agent directly or indirectly responsible for providing medical services to an individual affected by a birth defect.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.31.48.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:

Chapter 163. Program Procedures

§16301. Procedures for Identification and Referral of Children with Birth Defects

A. The program will include the following.

1. Reporting sources required to report pursuant to the rule shall allow personnel from the department or its contractors to abstract information from the mother's and infant's files on their demographic characteristics, family history of birth defects, and outcomes of that and other pregnancies by that mother, according to the case definition used in LBDMN.

2. The chief operating officer, administrator, manager, director, and/or person in charge of each reporting source shall appoint one staff member as a contact person for the LBDMN surveillance activities. That staff member should be responsible for coordinating scheduled visits by LBDMN staff to review logs, discharge indices, and other case-finding sources, and will be responsible for arranging medical records review visits and record management.

3. LBDMN staff and the contact individual at the reporting source shall establish a schedule of case-finding and record review visits. This schedule shall take into account the capabilities of each individual reporting source in responding to data/info requests, as well as the need for timely case-finding and reporting for the LBDMN.

4. Potential cases are obtained/abstracted through review of medical records, logs, indices, appointment rosters, and other records.

5. The original medical records and other materials provided by the reporting source shall not be removed from that facility. Copies and other data should be made in compliance with existing federal and state laws and regulations.

6. The office will require information from a reporting source to be collected on a birth defects reporting form. This may be an electronic or paper form, as determined by LBDMN procedures.

7. The office will maintain a centralized database to include information reported on the birth defects reporting form.

8. The office will notify parents of infants and children identified of available early intervention services in their community.

B. Implementation

1. All reporting sources must comply with Act 194 of 2001 and these rules by July 1, 2004.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.31.48.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:

§16303. Reporting Requirements

A. The office shall determine the health care facilities and providers which shall be required to report all birth defects, the types of conditions or defects that shall be reported, the type of information that shall be contained in the confidential report and the method for making the report.

B. To ensure an accurate source of data necessary to investigate the incidence, prevalence, and trends of birth defects, a reporting source shall make available to the program staff, office staff, or authorized agent medical records or other information upon request that relates to the occurrence of a birth defect.

C. The department secretary may require, in lieu of active case finding, reporting sources identifying and diagnosing birth defects to report the birth defects to the program within 30 days of diagnosis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.31.48.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:

§16305. Confidentiality

A. Except as specifically authorized by this Chapter, information furnished to a LBDMN employee or to an authorized agent of the office that relates to cases or suspected cases of a birth defect is confidential and may be used only for the purposes outlined in this Chapter.

B. Information relating to individual cases or individual suspected cases of birth defects is not public information and shall not be released or made public except as provided by this Chapter.

C. The LBDMN may release information:

1. for summary reporting purposes, if released without personal identifiers;

2. to medical personnel, appropriate state agencies, health authorities, regional directors, and public officers of parishes and municipalities as necessary to comply with this Chapter and board rules relating to the identification, monitoring, and referral of children with birth defects;

3. to appropriate federal agencies, as authorized by law and provided that the information contains no personal identifiers.

D. No reporting source shall be held civilly or criminally liable for conveying confidential information, except in a case of gross negligence or willful misconduct.

E. A board member, the secretary of the department, an employee of the LBDMN or office, or an authorized agent may not be examined in a civil, criminal, special, or other proceeding as to the existence or contents of pertinent records of or reports or information about a child identified or monitored for a birth defect without the consent of the child's parents, managing conservator, guardian, or legally authorized representative.

F. All employees or authorized agents of the LBDMN or office given access to medical or registry records shall agree, in writing, to maintain confidentiality of information about children with birth defects and to protect the privacy of individuals and families who become part of the LBDMN registry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.31.48.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:

§16307. Access to Information from the Central Registry

A. The LBDMN or other authorized persons may conduct investigations of cases or suspected cases in the LBDMN registry.

B. Access to the central registry information is limited to LBDMN personnel. Other persons with a valid scientific research interest may be granted access to the information upon approval by program director, the board, and the Department's Institutional Review Board. These persons must satisfy any requirements stipulated by the board, and must receive Institutional Review Board permission to obtain the data.

C. All persons granted access to confidential information and data shall agree, in writing, to maintain confidentiality, and shall be subject to civil penalties and/or internal proceedings and penalties if confidentiality is violated. Penalties may include denial of future access to confidential information.

D. The department and LBDMN shall maintain a listing of each person who is given access to confidential information in the LBDMN registry. The listing is public information and shall be made available to the public during the office's normal hours of operation. The listing shall include:

1. the name of the person authorizing access;
2. the name, title, and organizational affiliation of each person who is granted access;
3. the dates of access;
4. the specific information requested;
5. the specific purpose for which the information was used;
6. results of independent research.

E. Progress reports and reports of findings generated from approved studies shall be submitted to the LBDMN staff and board annually or at the conclusion of the project, if the duration is shorter than 12 months.

F. All persons granted access to LBDMN information and data shall certify the destruction of data at the conclusion of the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.31.48.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:

§16309. Program Operation

A. The office shall monitor reporting sources for compliance with all sections of this statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40.31.48.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of Public Health, LR 30:

Family Impact Statement

1. The Effect on the Stability of the Family. Establishing a birth defects surveillance system will have a positive effect on family stability. When investigators detect a birth defects case, information will be provided to the family on how to access health care and other services early in the child's life. This will supply these families with greater resources and support for their unique situation. The surveillance system will have a positive impact on the stability of Louisiana families as a whole by providing critical data for programs to reduce the number of birth defects in the population, therefore reducing the number of infant deaths as well.

2. The Effect on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. Establishing a birth defects surveillance system will have no known impact on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect on the Functioning of the Family. The birth defects surveillance system will have a positive effect on family functioning. Families of children with birth defects will be provided information on how to access health care and social services at no cost, thereby reducing the financial and emotional burden of raising a child with special needs. The system will also serve as a means of early detection of birth defects and developmental disabilities, allowing families to seek services and support as soon as possible in order to maximize their child's potential for learning and development.

4. The Effect on the Family Earnings and Family Budget. Establishing a birth defects surveillance system will have a positive effect on family budgets. Families of children born with birth defects will be directed to health care and social services for early intervention. These no-cost services will decrease the amount spent out-of-pocket on health care, so that a greater percentage of the family earnings can be used for food, clothing, and other items. These cases will be detected early and treated sooner, reducing potential costs to families and state systems for the treatment and rehabilitation of conditions that develop later.

5. The Effect on the Behavior and Personal Responsibility of Children. The birth defects surveillance system is likely to have a positive effect on the behavior and personal responsibility of some children. Children with certain types of birth defects often have behavior problems and learning disabilities that range from mild to severe. Helping affected families access health care, educational and social services as early as possible is likely to result in better developmental and educational outcomes for these children.

6. The Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rule. The operation of the birth defects surveillance system is required and able to be performed at the state government level.

A public hearing on the proposed procedures will be held on March 26, 2004 at 1:00 pm in Room 409, 325 Loyola Avenue, New Orleans, LA. All interested persons will be afforded an opportunity to submit data, views or arguments, orally or in writing, at said hearing. Interested persons may submit written comments to Linda Pippins, Administrator, Children's Special Health Services, DHH/Office of Public

Health, 325 Loyola Ave. Rm. 607, New Orleans, LA 70112
by the close of business on March 29, 2004.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Birth Defects Surveillance System

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is estimated that the implementation of the birth defects surveillance system will result in no increase (or savings) in expenditures for state or local governmental units. The Louisiana Birth Defects Monitoring Network (LBDMN) is currently 100 percent federally funded by a grant from the Centers for Disease Control and Prevention (CDC) of \$201,917. Legislation establishing the LBDMN was passed without funding. Also, the Department of Health and Hospitals/Office of Public Health/Children's Special Health Services program will incur an expense of approximately \$402.60 in FY 2003-2004 funds to pay the Office of the State Register to have the Notice of Intent and the final Rule published in the *Louisiana Register*. This cost will be covered with LBDMN grant funds.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The birth defects surveillance system is unlikely to affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The birth defects surveillance system will have a positive economic benefit for directly affected persons by improving the overall financial situation of their families. Families of children identified as having birth defects will be provided information on how to access health care and other services at no cost, thus reducing the financial burden of raising a child with special needs. This will allow a greater percentage of income to be used for food, clothing, and other family expenses. Certain non-governmental groups (March of Dimes, Louisiana Folic Acid Council) will benefit by having access to better data for more effective birth defects prevention efforts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that implementing the birth defects surveillance system will have little effect on competition and employment.

Sharon Howard
Assistant Secretary
0402#073

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Hospice
(LAC 50:XV.3101 and 3301)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, proposes to amend LAC 50:XV.3101 and 3301 under the Medical Assistance Program as authorized by R.S. 36:254 and

pursuant to Title XIX of the Social Security Act. This proposed Rule is adopted in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

Section 9505 of Public Law 99-272 amended Title XIX of the Social Security Act to permit states, at their option, to provide hospice care to individuals eligible for Medicaid. Although hospice care is an optional service under the Medicaid Program, states that do not cover hospice care must provide reimbursement in certain circumstances for specified services provided in conjunction with Medicare hospice care for Medicare/Medicaid eligible individuals who live in Medicaid reimbursed nursing facilities. The bureau established hospice care as a service for recipients living in nursing facilities (*Louisiana Register*, Volume 19, Number 6).

The bureau implemented a pilot project for hospice care under the Medicaid State Plan for persons who are eligible for Medicaid benefits (*Louisiana Register*, Volume 28, Number 6). The bureau now proposes to amend the June 20, 2002 Rule and establish hospice care as an ongoing Medicaid service program.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule will improve the family functioning, stability, and autonomy as described in R.S. 49:972, since hospice care is an approach to the delivery of care with attention to the needs of terminally ill persons and their families, and since hospice care will help provide consumer choice and a means for recipients to exercise their autonomy over end-of-life issues.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 3. Hospice

Chapter 31. General Provisions

§3101. Introduction

A. ...

B. The bureau terminates the pilot project for hospice care and establishes hospice as a covered service under the Medicaid State Plan.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:

Chapter 33. Provider Participation

§3301. Conditions for Participation

A. Statutory Compliance

1. Coverage of Medicaid hospice care shall be in accordance with:

a. 42 USC 1396d(o);

b. the Medicare Hospice Program guidelines as set forth in 42 CFR Part 418; and

c. §§4305-4308.2 of the Federal Centers for Medicare and Medicaid Services? *State Medicaid Manual*.

2. The state Medicaid Manual shall be the final authority in cases of conflicting rulings of the authorities listed in Subparagraphs a-c.

B. In order to participate, a hospice shall maintain compliance with the Medicare conditions of participation for hospices as set forth in 42 CFR Part 418.50-418.100 and shall have a valid Medicaid provider agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1466 (June 2002), amended LR 30:

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

Interested persons may submit written comments to the following address: Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, March 25, 2004 at 9:30 a.m. in the Wade O. Martin Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Hospice**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that there will be no programmatic costs to the state as a result of implementation of this proposed rule. It is anticipated that \$136 (\$68 SGF and \$68 FED) will be expended in SFY 2003-2004 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic effect on federal revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Implementation of this proposed rule will continue the availability of Hospice care for terminally ill persons (approximately 1,825) who are eligible for Medicaid benefits. Payments to providers of hospice care (58) will also continue. Implementation of this proposed rule will have an economic benefit to hospice providers as it will continue the coverage of hospice as an optional service under the Medicaid State Plan. Including hospice care under Medicaid will help provide consumer choice and will provide a means for recipients to exercise their autonomy over end-of-life issues.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed action will have no effect on competition and employment.

Ben A. Bearden
Director
0402#075

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

**Mental Health Rehabilitation Services
Reimbursement Reduction**

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule under the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2003-2004 General Appropriation Act which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides reimbursement for mental health rehabilitation services under the Medicaid Program. Reimbursement for these services is a prospective, negotiated and non-capitated rate based on the delivery of services as specified in the service agreement and the service package required for the adult and child/youth populations.

Section 11B of Act 14 of the 2003 Regular Session of the Louisiana Legislature directed the commissioner of administration to reduce discretionary state general fund (direct) appropriations contained in the Act by .8 percent across-the-board, or so much thereof more or less as may be necessary, to effect savings of \$17,300,000. Subsequently, the commissioner directed the department to reduce its discretionary expenditures by .8 percent for state fiscal year 2003-2004. In response to the budgetary shortfall, the bureau reduced the established reimbursement rates for mental health rehabilitation services. The reimbursement is 99.2 percent of the rates (a .8 percent reduction) in effect on September 30, 2003 (*Louisiana Register*, Volume 29, Number 9). The commissioner of administration approved this reduction on September 9, 2003. This Rule is being promulgated to continue the provisions contained in the October 1, 2003 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing reduces the established reimbursement rates for mental health rehabilitation services. The reimbursement is 99.2 percent of the rates (.8 percent reduction) in effect on September 30, 2003.

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, March 25, 2004 at 9:30 am in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: **Mental Health Rehabilitation Services Reimbursement Reduction**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed Rule will result in an estimated cost avoidance to the state of \$93,700 for SFY 2003-2004, \$128,822 for SFY 2004-2005 and \$132,686 for SFY 2005-2006. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in SFY 2003-04 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed Rule will reduce federal revenue collections by \$235,688 for SFY 2003-2004, \$323,818 for SFY 2004-2005 and \$333,533 for SFY 2005-2006. \$102 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, which continues the provisions of the October 1, 2003 Emergency Rule, reduces all established reimbursement rates for mental health rehabilitation services (8 percent reduction as required by preamble language in the General Appropriation Act of 2003). It is anticipated that implementation of this proposed Rule will reduce reimbursements to mental health rehabilitation providers (approximately 114) by approximately \$329,592 for SFY 2003-2004, \$452,640 for SFY 2004-2005 and \$466,219 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition as a result of the implementation of this proposed Rule. Mental health rehabilitation providers may determine that it is necessary to reduce staff or staff work hours as a result of the implementation of this proposed Rule.

Ben A. Bearden
Director
0402#076

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Portable X-Ray Services? Portage Fees
(LAC 50:XIX.4319 and 4335)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing hereby adopts LAC 50:XIX.4319 and 4335 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement for x-ray services under the Medicaid Program. Reimbursement for these services is a flat fee established by the bureau.

The administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). This includes standardized procedure codes and definitions. The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing is required to implement these codes and definitions or face monetary sanctions. In compliance with HIPAA requirements, the bureau promulgated an Emergency Rule that clarified the billing procedures for specific x-ray services to conform with the HIPAA compliant descriptions (*Louisiana Register*, Volume 29, Number 9). This proposed Rule is being promulgated to continue the provisions contained in the October 1, 2003 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part XIX. Other Services

Subpart 3. Laboratory and X-Ray

Chapter 43. Billing and Reimbursement

Subchapter A. Billing

§4319. X-Ray Equipment Portage Billing

A. Standard Health Care Financing Administration Common Procedure Codes (HCPCS) modifiers shall be used to bill for x-ray portage fees.

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

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

Subchapter B. Reimbursement

§4335. X-Ray Portage

A. Reimbursement shall be as follows for X-ray equipment portage fees when more than one person receives services.

Procedure	Rate
Transportation per patient, per trip, of portable x-ray equipment and personnel to home or nursing home.	\$17.50

NOTICE OF INTENT

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

Professional Services Program? Anesthesia Services Reimbursement Reduction

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

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

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, March 25, 2004 at 9:30 am in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 pm. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Portable X-Ray Services? Portage Fees

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed Rule will result in an estimated cost avoidance to the state of \$303 for SFY 2003-2004, \$556 for SFY 2004-2005 and \$572 for SFY 2005-2006. It is anticipated that \$204 (\$102 SGF and \$102 FED) will be expended in SFY 2003-04 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed Rule will reduce federal revenue collections by \$915 for SFY 2003-2004, \$1,397 for SFY 2004-2005 and \$1,439 for SFY 2005-2006.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, which continues the provisions of the October 1, 2003 Emergency Rule, standardizes reimbursement codes and fees for transportation of portable x-ray equipment to comply with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II). It is anticipated that implementation of this proposed Rule will decrease payments for x-ray portage fees (to approximately 32 providers) by \$1,422 for SFY 2003-2004, \$1,953 for SFY 2004-2005 and \$2,011 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition and employment as a result of the implementation of this proposed Rule.

Ben A. Bearden
Director
0402#078

H. Gordon Monk
Staff Director
Legislative Fiscal Office

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act and as directed by the 2003-2004 General Appropriation Act which states: "The Secretary shall implement reductions in the Medicaid program as necessary to control expenditures to the level approved in this schedule. The Secretary is hereby directed to utilize various cost containment measures to accomplish these reductions, including but not limited to pre-certification, pre-admission screening and utilization review, and other measures as allowed by federal law." This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing provides coverage and reimbursement for anesthesia services under the Medicaid Program. In September 1992, the Bureau adopted a Rule establishing the reimbursement methodology for anesthesia services (*Louisiana Register*, Volume 18, Number 9). The September 1992 Rule was subsequently amended in April 1997 to clarify the policy governing anesthesia services and to establish policy governing surgery services and reimbursement for designated physician procedure codes (*Louisiana Register*, Volume 23, Number 4).

The Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II) requires national standards for electronic health care transactions and national identifiers for providers, health plans, and employers (*Federal Register*, Volume 65, Number 160). This includes standardized procedure codes and definitions. The department is required to implement these codes and definitions or face monetary sanctions.

Section 11B of Act 14 of the 2003 Regular Session of the Louisiana Legislature directed the commissioner of administration to reduce discretionary state general fund (direct) appropriations contained in the Act by .8 percent across-the-board, or so much thereof more or less as may be necessary, to effect savings of \$17,300,000. The commissioner of administration approved this reduction on September 9, 2003. Subsequently, the commissioner directed the department to reduce its discretionary expenditures by .8 percent for state fiscal year 2003-2004.

In compliance with HIPAA requirements, the bureau amended the September 1992 and April 1997 Rules governing the billing procedures for anesthesia services. In compliance with Act 14 of the 2003 Regular Session of the Louisiana Legislature, the bureau reduced the reimbursement rates for anesthesia services to 100 percent of the 2003 Region 99 Medicare payable (*Louisiana Register*, Volume 29, Number 9). This proposed Rule is promulgated

to continue the provisions contained in the October 1, 2003 Emergency Rule.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

Proposed Rule

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing amends the September 20, 1992 and April 20, 1997 Rules governing the billing and reimbursement of anesthesia services.

A. Billing. Physicians' Current Procedural Terminology (CPT) procedure codes in the anesthesia section of the CPT and the Health Care Common Procedure Coding System (HCPCS) modifiers shall be used to bill for anesthesia, including maternity-related and pediatric anesthesia.

B. Reimbursement. The reimbursement rates for anesthesia procedures are based on 100 percent of the 2003 Region 99 Medicare payable.

1. Reimbursement for maternity-related anesthesia services shall continue to be a flat fee except for the reimbursement for general anesthesia for a vaginal delivery. This service shall continue to be reimbursed according to base units and time units.

2. Reimbursement for conscious sedation. The CPT conscious sedation codes will be used to bill for services rendered to children up to the age of 13 years when a medically controlled state of depressed consciousness is the preferred method of sedation and the procedure can not be accomplished safely and/or effectively without it.

Reimbursement for conscious sedation shall be at a flat rate.

Interested persons may submit written comments to Ben A. Bearden at the Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, March 25, 2004 at 9:30 am in the Wade O. Martin, Jr. Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Anesthesia Services Reimbursement Reduction

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed Rule will result in an estimated cost avoidance to the state of \$151,617 for SFY 2003-2004, \$234,511 for SFY 2004-2005 and \$241,546 for SFY 2005-2006. It is anticipated that \$340 (\$170 SGF and \$170 FED) will be expended in SFY 2003-04 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that implementation of this proposed Rule will reduce federal revenue collections by \$381,377 for SFY 2003-2004, \$589,490 for SFY 2004-2005 and \$607,175 for SFY 2005-2006. \$170 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule, which continues the provisions of the October 1, 2003 Emergency Rule, reduces reimbursement rates for anesthesia services (for maternity related and children up to age 13) and amends billing procedures to comply with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA, Title II). It is anticipated that implementation of this proposed Rule will reduce reimbursements to providers of anesthesia services (approximately 1,603) by approximately \$533,334 for SFY 2003-2004, \$824,001 for SFY 2004-2005 and \$848,721 for SFY 2005-2006.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that there will be no effect on competition or employment as a result of the implementation of this proposed Rule.

Ben A. Bearden
Director
0402#074

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

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

Rehabilitation Reimbursement
(LAC 50:V.30527; XI.303; XV.7101, 7103; and XIX.703)

The Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing promulgates the following Rule in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the Administrative Procedure Act, R.S. 49:950.

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

Act 13 of the 2002 Regular Session of the Louisiana Legislature directed the department to increase the reimbursement for physical therapy, occupational therapy, and speech/language and hearing therapy services provided to children under 3 years of age. In compliance with the Appropriation Bill and as a result of the allocation of additional funds by the Legislature, the bureau promulgated an Emergency Rule that increased the reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of three, regardless of the type of provider performing the services (*Louisiana Register*, Volume 28, Number 7). The bureau increased the reimbursement for additional rehabilitation services provided by outpatient hospitals and home health agencies (*Louisiana Register*, Volume 29, Number 4). This proposed Rule is being promulgated to continue provisions contained in the July 6, 2002 and April 21, 2003 Emergency Rules.

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. This proposed Rule has no known impact on family functioning, stability, or autonomy as described in R.S. 49:972.

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

Title 50

PUBLIC HEALTH? MEDICAL ASSISTANCE

Part V. Hospitals

Subpart 3. Outpatient Hospitals

Chapter 305. Reimbursement

Subchapter C. Rehabilitation Services

§30525. Reimbursement (Ages 3 and Above)

Reserved.

§30527. Reimbursement (Ages 0 - 3)

A. The following are reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of 3, regardless of the type of provider performing the services.

Proce dure	Rate
Initial speech/language evaluation	\$ 70.00
Initial hearing evaluation	\$ 70.00
Speech/language/hearing therapy, 60 minutes	\$ 56.00
Visit w/procedure(s), 45 minutes	\$ 56.00
Visit w/procedure(s), 60 minutes	\$ 74.00
Visit w/procedure(s), 90 minutes	\$112.00
Procedures and modalities, 60 minutes	\$ 74.00
Physical therapy and rehab evaluation	\$ 75.00
Initial occupational therapy evaluation	\$ 70.00
Occupational therapy, 45 minutes	\$ 45.00
Occupational therapy, 60 minutes	\$ 60.00
Physical therapy, 1 modality	\$ 37.00
Physical therapy, 2 or more modalities	\$ 56.00
Physical therapy, 1 or more procedures, and/or modalities, 15 minutes	\$ 18.50
Physical therapy w/procedures, 30 minutes	\$ 37.00
Physical therapy w/procedures, 75 minutes	\$ 92.50

Occupational therapy, 15 minutes	\$ 15.00
Occupational therapy, 30 minutes	\$ 30.00
Speech and hearing therapy, 15 minutes	\$ 14.00
Speech and hearing therapy, 30 minutes	\$ 28.00
Speech and hearing therapy, 45 minutes	\$ 42.00
Speech and hearing therapy, 60 minutes	\$ 56.00

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

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

Part XI. Clinic Services

Subpart 1. Rehabilitation Clinics

Chapter 3. Reimbursement

§301. Reimbursement (Ages 3 and Over)

Reserved.

§303. Reimbursement (Ages 0 - 3)

A. Effective for dates of service on or after November 2 2003, the reimbursement rates for rehabilitation services provided to Medicaid recipients up to the age of 3, regardless of the type of provider performing the services, will be as follows.

Procedure	Rate
Group sp lang hear therapy 1/2 hour	\$ 26
Speech group therapy add 15 minutes	\$ 13
Group sp lang hear therapy 1 hour	\$ 51
Initial sp/lang evaluation	\$ 70
Initial hearing evaluation	\$ 70
Sp/lang/hear therapy 30 minutes	\$ 26
Sp/lang/hear therapy 45 minutes	\$ 39
Sp/lang/hear therapy 60 minutes	\$ 52
Visit w/procedure(s) 30 minutes	\$ 34
Visit w/procedure(s) 45 minutes	\$ 51
Visit w/procedure(s) 60 minutes	\$ 68
Visit w/procedure(s) 75 minutes	\$ 85
Visit w/procedure(s) 90 minutes	\$102
Ctr visit one/more modal/proc 15 minutes	\$ 17
Procedures and modalities 60 minutes	\$ 68
Pt and rehab evaluation	\$ 75
Initial ot evaluation	\$ 70
Ot 30 minutes	\$ 26
Ot 45 minutes	\$ 39
Ot 60 minutes	\$ 52

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

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

Part XV. Services for Special Populations

Subpart 5. Early and Periodic Screening, Diagnosis, and Treatment

Chapter 71. Rehabilitation Services

§7101. Reimbursement (Ages 3 - 21)

A. Medically necessary physical therapy, occupational therapy, and speech therapy required for maintenance of optimum functional levels shall be reimbursed under the EPSDT health services program when such services are rendered to Medicaid-eligible recipients ages 3 through 21. Prior authorization for these services shall be required and a determination of medical necessity shall be made by the Bureau of Health Services Financing prior to approval.

B. - C. ...

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

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:176 (February 2003), amended LR 30:

§7103. Reimbursement (Ages 0 - 3)

A. Effective for dates of services on or after July 4, 2003, rehabilitation service reimbursement rates for Medicaid recipients ages 0 up to 3 provided by EPSDT health services providers will be as follows, regardless of the type of provider performing the services.

Procedure	Rate
Electrical stimulation	\$ 17
Physical therapy-one area—therapeutic-30 minutes	\$ 17
Physical therapy-neuromuscular reed-30 minutes	\$ 17
Physical therapy-gait training-30 minutes	\$ 34
Orthotic training	\$ 14
Kinetic act one area-30 minutes	\$ 14
Physical performance test	\$ 14
Physical therapy evaluation/re-evaluation	\$ 92
Occupational therapy evaluation/re-evaluation	\$ 70
Speech/language evaluation/re-evaluation	\$ 70
Speech/language therapy—30 minutes	\$ 26
Speech/language therapy-add 15 minutes	\$ 13
Group speech/language/hearing therapy—30 minutes	\$ 26
Speech group therapy—20 minutes	\$ 13
Speech group therapy—add 15 minutes	\$ 13
Group Speech/language/hearing therapy—1 hour	\$ 52
Speech/language/hearing therapy—20 minutes	\$ 17
Speech/language/hearing therapy—1 hour	\$ 52
Procedures and modalities—30 minutes	\$ 34
Procedures and modalities—45 minutes	\$ 52

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

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

Part XIX. Other Services

Subpart 1. Home Health

Chapter 7. Rehabilitation Services

§701. Reimbursement (Ages 3 and Above)

Reserved.

§703. Reimbursement (0 - 3)

A. The following rehabilitation services are reimbursed under Medicaid as a home health service by a home health agency rendered to Medicaid-eligible recipients ages 0 up to age 3 regardless of the type of provider performing the services.

Procedure	Rate
Initial speech/language evaluation	\$ 70.00
Initial hearing evaluation	\$ 70.00
Speech/language/hearing therapy, 60 minutes	\$ 56.00
Visit w/procedure(s), 45 minutes	\$ 56.00
Visit w/procedure(s), 60 minutes	\$ 74.00
Visit w/procedure(s), 90 minutes	\$112.00
Procedures and modalities, 60 minutes	\$ 74.00
Physical therapy and rehab evaluation	\$ 75.00
Initial occupational therapy evaluation	\$ 70.00
Occupational therapy, 45 minutes	\$ 45.00
Occupational therapy, 60 minutes	\$ 60.00
Physical therapy, 1 modality	\$ 37.00
Physical therapy, 2 or more modalities	\$ 56.00
Physical therapy, 1 or more procedures, and/or modalities, 15 minutes	\$ 18.50
Physical therapy w/procedures, 30 minutes	\$ 37.00

Physical therapy w/procedures, 75 minutes	\$ 92.50
Occupational therapy, 15 minutes	\$ 15.00
Occupational therapy, 30 minutes	\$ 30.00
Speech and hearing therapy, 15 minutes	\$ 14.00
Speech and hearing therapy, 30 minutes	\$ 28.00
Speech and hearing therapy, 45 minutes	\$ 42.00
Speech and hearing therapy, 60 minutes	\$ 56.00

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

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

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

Interested persons may submit written comments to Ben A. Bearden, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. He is responsible for responding to inquiries regarding this proposed Rule. A public hearing on this proposed Rule is scheduled for Thursday, March 25, 2004 at 9:30 a.m. in the Wade O. Martin Auditorium, State Archives Building, 3851 Essen Lane, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for the receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

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

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Rehabilitation Reimbursement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase state program costs by approximately \$450,461 for SFY 2002-2003, \$463,964 for SFY 2003-2004 and \$477,603 for FY 2004-2005. It is anticipated that \$544 (\$272 SGF and \$272 FED) will be expended in SFY 2003-2004 for the state's administrative expense for promulgation of this proposed Rule and the final Rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will increase federal revenue collections by approximately \$1,104,998 for SFY 2002-2003, \$1,165,857 for SFY 2003-2004, and \$1,200,553 for SFY 2004-2005. \$272 is included in SFY 2003-2004 for the federal administrative expenses for promulgation of this proposed Rule and the final Rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule is being promulgated to continue provisions contained in the July 6, 2002 and April 21, 2003 Emergency Rules relative to increased reimbursement rates for certain rehabilitation procedures (occupational, physical and speech therapies) provided to children (approximately 3,500) under three years of age. It is anticipated that

implementation of this proposed Rule will increase expenditures for rehabilitation services by \$1,555,459 for SFY 2002-2003, \$1,629,277 for SFY 2003-2004, and \$1,678,156 for SFY 2004-2005.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this Rule will not have an effect on competition and employment.

Ben A Bearden
Director
0402#077

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Corrections Services**

Telephone Use and Policy on Monitoring of Calls? Juvenile
(LAC 22:I.314)

In accordance with the Administrative Procedure Act, R.S. 49:953(B), the Department of Public Safety and Corrections, Corrections Services, hereby gives notice of its intent to amend LAC 22:I.314 to change the manner of assigning personal identification numbers to juveniles for placement of telephone calls from the institutions.

Title 22

**CORRECTIONS, CRIMINAL JUSTICE
AND LAW ENFORCEMENT**

Part I. Corrections

Chapter 3. Adult and Juvenile Services

Subchapter A. General

**§314. Telephone Use and Policy on Monitoring
of Calls? Juvenile**

A - C. ...

D. Procedures

1. General

a. Each juvenile will be assigned a personal identification number (PIN), which must be used when placing outgoing telephone calls. The PIN will be the juvenile's JIRMS number.

b. - 5.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:829.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Corrections Services, LR 29:360 (March 2003), amended LR 29:2848 (December 2003), LR 30:

Family Impact Statement

In accordance with the Administrative Procedure Act, R.S. 49:953(A)(1)(a)(viii) and R.S. 49:972, the Department of Public Safety and Corrections, Corrections Services, hereby provides the Family Impact Statement.

The amendment of 22:I.314, *Telephone Use and Policy on Monitoring of Calls? Juvenile*, by the Department of Public Safety and Corrections, Corrections Services, will have no effect on the stability of the family, on the authority and rights of parents regarding the education and supervision of their children, on the functioning of the family, on family earnings and family budget, on the behavior and personal

responsibility of children, or on the ability of the family or a local government to perform the function as contained in the proposed Rule amendment.

Interested persons may submit oral or written comments to Richard L. Stalder, Department of Public Safety and Corrections, P.O. Box 94304, Capitol Station, Baton Rouge, LA 70804-9304, (225) 342-6741. Comments will be accepted through the close of business at 4:30 p.m., on March 20, 2003.

Richard L. Stalder
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Telephone Use and Policy
on Monitoring of Calls? Juvenile**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There will be no estimated costs associated with this Rule amendment.

**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 estimated costs and/or economic benefits directly affecting persons or non-governmental groups.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no anticipated impact on competition and employment.

Robert Barbor
Deputy General Counsel
0402#028

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Exemption for Ships and Ships' Supplies
(LAC 61:I.4403)

Under the authority of R.S. 47:305.1 and R.S. 47:1511 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.4403 relative to the exemption for ships and ships' supplies.

These proposed amendments are necessary due to changes made to R.S. 47:305.1 by Acts 40 and 41 of the 2002 Regular Legislative Session and legal jurisprudence since the Rule's adoption. These proposed amendments supersede any previously issued internal Policy and Procedure Memoranda or other oral or written instructions issued to taxpayers.

Title 61

REVENUE AND TAXATION

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

Chapter 44. Sales and Use Tax Exemptions

§4403. Ships and Ships' Supplies

A. To qualify for exemption under R.S. 47:305.1(A), *materials*, machinery, and equipment that become component parts of *ships, vessels, or barges* of 50 tons *load displacement* and over, built in Louisiana, must be added during construction or reconstruction. *Materials*, machinery, and equipment that replace worn components are not exempt under R.S. 47:305.1(A).

B. Reconstructions qualify for exemption under R.S. 47:305.1(A) if they:

1. modify the craft's function, such as conversion of a deck *barge* to a crane *barge*; or

2. restore the craft to seaworthiness following its destruction by sinking, collision, or fire.

C.1. For the purposes of the exemption provided in R.S. 47:305.1(B), vendors may assume that *ships' supplies and materials* delivered to the dock will be loaded upon the vessel for use or consumption in the maintenance of the vessel.

2. The exemption provided in R.S. 47:305.1(B) for repair services performed upon *ships* and *vessels* operating exclusively in foreign or interstate coastwise *commerce* also applies to component parts removed from those *ships, vessels, or barges* and repaired elsewhere.

D. For the purposes of the exemption granted under R.S. 47:305.1, the following definitions apply:

Commerce? the transporting of goods or persons by *ship, vessel, or barge* exclusively to carry on a trade or business.

Load Displacement? the weight of the volume of water displaced by a *ship, vessel, or barge* when loaded to its maximum capacity.

Owner or Operator? any person who has title to, possession of, or control over the operation of any *ship, vessel, or barge* defined in R.S. 47:305.1.

Ship, Vessel, or Barge? any craft used primarily for transporting persons or property by water, or any craft designed or altered to perform specialized marine-related services, such as dredging, fleeting, geological surveying, cargo transferring, and which possesses all of the following characteristics:

- a. performs its services in navigable waters;
- b. is capable of being moved by floatation from one location to another in navigable waters; and
- c. is registered as a vessel with the United States Coast Guard or is eligible for registration.

Ships' Supplies and Materials? all tangible personal property loaded on and used or consumed in the maintenance or operation of a *ship, vessel, or barge* and its crew.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.1.

HISTORICAL NOTE: Promulgated by the Department of Revenue and Taxation, Sales Tax Section, LR 13:107 (February 1987). Amended by Department of Revenue, Policy Services Division, LR 30:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed Rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed Rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Friday, March 26, 2004. A public hearing will be held on Tuesday, March 30, 2004, at 10 a.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Raymond E. Tangney
Senior Policy Consultant

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Exemption for Ships and Ships' Supplies

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There would be no implementation costs or savings to state or local authorities for this proposal.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There should be no impact on state or local sales tax revenues as a result of this proposed amendment, which implements the amendments to R.S. 47:305.1 enacted by Acts 2002, Nos. 40 and 41 and judicial interpretations of the statute. However, it was estimated that Acts 2002, Nos. 40 and 41, which amended the definition of "foreign or interstate coastwise commerce," resulted in a significant although indeterminable state and local sales and use tax revenue loss at least in the short-run.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There should be no economic costs or benefits to builders of ships of 50 tons load displacement and over and vendors that sell to vessels engaged in foreign or interstate commerce. These amendments only reflect the changes that have been made to R.S. 47:305.1 by Acts 2002, Nos. 40 and 41 and court rulings involving the statute.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

These proposed amendments should have no effect on employment or competition between in-state builders of vessels of 50 tons load displacement and vendors that sell to vessels operating in foreign or interstate commerce. However, this sales tax relief may make this industry more competitive on an interstate basis.

Cynthia Bridges
Secretary
0402#029

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

Issuance and Cancellation of a Lien; Fees
(LAC 61:I.5302)

Under the authority of R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to amend LAC 61:I.5302 relative to the release of real property from the effect and operation of the recorded lien in cases where the tax, penalty, or interest secured by the lien has not been paid.

The amendment conforms LAC 61:I.5302.C.3 to R.S. 47:1578(B)(2), by providing that the Secretary of Revenue may release any real property from the lien when the value of the tax debtor's remaining real property upon which the lien will remain is at least equal to the amount of the remaining tax obligation, including penalties, interest, and costs plus the amount of all liens upon the remaining real property that have priority over the state tax lien.

Title 61

REVENUE AND TAXATION

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

Chapter 53. Miscellaneous Fees

§5302. Issuance and Cancellation of a Lien; Fees

A. - C.2. ...

3. when the lien on the taxpayer's remaining real property is valued at not less than the amount of the remaining tax obligation, including all penalties, interest, and other costs incurred, plus the amount of all prior liens on the remaining property. This provision is subject to approval by the Board of Tax Appeals;

C.4. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:295, R.S. 47:1511, R.S. 47:1577, and R.S. 47:1578.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 28:347 (February 2002), amended LR 30:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the Notice of Intent in the *Louisiana Register*. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed amendment will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed amendment will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed amendment will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed amendment will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. Implementation of this proposed amendment will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Linda Denney, Policy Services Division, 617 North Third Street, Baton Rouge, LA 70802-5428 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m. Monday, March 29, 2004. A public hearing will be held Tuesday, March 30, 2004 at 10 a.m. in the River Room, 7th Floor, 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridge
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

**RULE TITLE: Issuance and
Cancellation of a Lien; Fees**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

This proposed amendment to LAC 61:1.5302 will correct an error in Paragraph C.3 to conform with the language in R.S. 47:1578(B)(2). Implementation of this proposed amendment will have no estimated costs or savings to state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed amendment 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 proposed amendment will have no effect on costs for taxpayers seeking release from tax liens.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)

This proposed amendment will have no effect on competition or employment.

Cynthia Bridges
Secretary
0402#012

H. Gordon Monk
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Revenue
Policy Services Division**

**Manufactured and Mobile Home Settlement Fund
Administration (LAC 61:I.4313)**

Under the authority of Act 1212 of the 2001 Regular Legislative Session and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to repeal LAC 61:I.4313, which established procedures for the administration of the Manufactured and Mobile Home Settlement Fund.

Act 1212 of the 2001 Regular Legislative Session provided for the payment of settlements from lawsuits against the state related to the state sales and use taxes collected on purchases of manufactured and mobile homes. It also created the Manufactured and Mobile Home Settlement Fund to provide for the payment of claims filed by purchasers who were not a party to the lawsuits on manufactured and mobile home purchases between January 1, 1998, and June 30, 2001. The Secretary of Revenue adopted LAC 61:I.4313 to carry out the act's provisions. Effective September 2003, all settlements and claims had been paid and all monies in the Manufactured and Mobile Home Settlement Fund had been expended in accordance with Act 1212. Therefore, the regulation is obsolete and is being repealed.

Title 61

REVENUE AND TAXATION

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

Chapter 43. Sales and Use Tax

**§4313. Administration of Claims Against the
Manufactured and Mobile Home Settlement
Fund as Required by Act 1212 of the 2001
Regular Legislative Session**

Repealed.

AUTHORITY NOTE: Promulgated in Accordance with Acts 2001, No. 1212 and R.S. 47:301.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 27:2261 (December 2001), repealed LR 30:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact Statement is submitted to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed rule will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed rule will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed rule will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed rule will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed rule. Implementation of this proposed rule will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Raymond E. Tangney, Senior Policy Consultant, Policy Services Division, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Friday, March 26, 2004. A public hearing will be held on Tuesday, March 30, 2004, at 1:30 p.m. at the Department of Revenue Headquarters Building, 617 North Third Street, Baton Rouge, LA.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Manufactured and Mobile Home
Settlement Fund Administration**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There would be no implementation costs or savings to state or local authorities from this proposed repeal of LAC 61:I.4313.

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 this proposed repeal of LAC 61:I.4313.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed repeal of LAC 61:I.4313 will have no economic costs or benefits to any persons or non-governmental group.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed repeal of LAC 61:I.4313 will have no effect on competition or employment.

Cynthia Bridges
Secretary
0402#011

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Suspension, Revocation, or Denial of Hunting and Fishing Licenses (LAC 61:I.1351)

Under the authority of R.S. 47:296.3 and 1511 and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, proposes to adopt LAC 61:I.1351 pertaining to the suspension, revocation, or denial of the issuance of hunting and fishing licenses for failure to pay individual income tax.

Revised Statute 47:296.3, entitled "Suspension, Revocation, or Denial of Hunting and Fishing Licenses," provides a mechanism for suspending, revoking, and denying the issuance of a taxpayer's hunting and fishing licenses if the Department of Revenue has a final and nonappealable assessment or judgment against an individual in excess of \$500. This proposed regulation provides the procedures necessary to administer the provisions of this statute.

Title 61

REVENUE AND TAXATION

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

Chapter 13. Income: Individual

§1351. Suspension, Revocation, and Denial of Hunting and Fishing Licenses

A. An individual's hunting and fishing licenses will be suspended, revoked, or denied if the Department of Revenue has a final and nonappealable individual income tax assessment or judgment against the individual in excess of \$500 exclusive of penalty, interest, costs, and other charges.

B. Exceptions

1. If the taxpayer has filed for bankruptcy, then the provisions of this regulation will not apply.

2. An assessment or judgment will not be considered final and nonappealable for purposes of this regulation if, for the applicable tax period:

- a. the taxpayer is in litigation with the department;
- b. the taxpayer is being audited by the department;

or

- c. correspondence is pending.

C. Responsibilities

1. The Department of Revenue is responsible for the following:

- a. properly identifying the affected taxpayer;
- b. accurately notifying the Department of Wildlife and Fisheries of the taxpayer's identity; and
- c. timely notifying the Department of Wildlife and Fisheries if the taxpayer pays the assessment or judgment and regains eligibility for a hunting or fishing license.

2. The Department of Wildlife and Fisheries is responsible for the following:

- a. suspending, revoking or denying hunting and fishing licenses once notified of a taxpayer's identity by the Department of Revenue; and

b. issuing or re-issuing hunting and fishing licenses to taxpayers who have paid their tax debts once notified of this fact by the Department of Revenue.

D. Taxpayer Notification

1. Before the notice of hunting and fishing licenses suspension, revocation, or denial is sent to the Department of Wildlife and Fisheries, the taxpayer will be mailed written notice.

2. The notice will inform the taxpayer that his hunting and fishing licenses will be suspended, revoked, or issuance denied until full payment of the final and nonappealable assessment or judgment is made or until the taxpayer enters into an installment agreement with the Department of Revenue.

3. The notice will be mailed to the address on record and it will be presumed that the taxpayer has received the notice if it is not returned as "Undeliverable."

4. If a taxpayer defaults on a department authorized installment payment plan, no further notice of suspension, revocation, or denial of the issuance of the taxpayer's hunting and fishing licenses will be required.

E. Notification to the Department of Wildlife and Fisheries

1. The Department of Revenue will notify the Department of Wildlife and Fisheries of the name, social security number, and address of the taxpayer for whom the hunting and fishing licenses are required to be suspended, revoked, or issuance denied.

2. The suspension and revocation will remain in effect until the Department of Wildlife and Fisheries is notified otherwise by the Department of Revenue.

3. The Department of Revenue will notify the Department of Wildlife and Fisheries of the name, social security number, and address of the taxpayer for whom the hunting and fishing licenses are to be issued or re-issued.

4. Notifications may be by secured electronic transmission or by magnetic tapes, cartridges, or other electronic media.

5. Notifications will be made weekly unless circumstances warrant a more frequent time schedule, such as the circumstances described in Subsection E.

F. If the taxpayer pays the assessment or judgment in person, notice will be given to the Department of Wildlife and Fisheries to remove the suspension, revocation, or denial of the taxpayer's hunting and fishing licenses from their records. Notice to the Department of Wildlife and Fisheries will be effected as follows:

1. Department of Revenue personnel may fax a clearance to the Department of Wildlife and Fisheries indicating that the assessment or judgment has been paid; or

2. a letter from the secretary or the secretary's designee indicating that the assessment or judgment has been paid may be issued to the taxpayer for presentation to the Department of Wildlife and Fisheries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:296.3 and 1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 30:

Family Impact Statement

As required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature the following Family Impact

Statement is submitted to be published with the notice of intent in the Louisiana Register. A copy of this statement will also be provided to our legislative oversight committees.

1. The effect on the stability of the family. Implementation of this proposed amendment will have no effect on the stability of the family.

2. The effect on the authority and rights of parents regarding the education and supervision of their children. Implementation of this proposed amendment will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The effect on the functioning of the family. Implementation of this proposed amendment will have no effect on the functioning of the family.

4. The effect on family earnings and family budget. Implementation of this proposed amendment will have no effect on family earnings and family budget.

5. The effect on the behavior and personal responsibility of children. Implementation of this proposed amendment will have no effect on the behavior and personal responsibility of children.

6. The ability of the family or a local government to perform the function as contained in the proposed Rule. Implementation of this proposed amendment will have no effect on the ability of the family or a local government to perform this function.

Interested persons may submit data, views, or arguments, in writing to Jennifer Davis, Policy Services Division, Department of Revenue, P.O. Box 44098, Baton Rouge, LA 70804-4098 or by fax to (225) 219-2759. All comments must be submitted by 4:30 p.m., Tuesday, March 29, 2004. A public hearing will be held on Wednesday, March 30, 2004, at 11 a.m. in the River Room Conference Room on the 7th Floor of the LaSalle Building at 617 North Third Street, Baton Rouge, LA 70802-5428.

Cynthia Bridges
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES
RULE TITLE: Suspension, Revocation, or Denial of
Hunting and Fishing Licenses**

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Acts 2003, No. 380 enacted R.S. 47:296.3, entitled "Suspension, revocation, or denial of hunting and fishing licenses," to provide a mechanism for suspending, revoking, and denying the issuance of a taxpayer's hunting and fishing

licenses if the Department of Revenue has a final and nonappealable assessment or judgment against an individual in excess of \$500. This proposed regulation provides the procedures necessary to administer the provisions of the statute.

Implementation of this proposed regulation will result in first-year computer programming costs for the Department of Revenue and the Department of Wildlife and Fisheries of \$35,000 and \$2,000, respectively. Succeeding years' costs for both agencies should be negligible

There will be no implementation costs for local governmental units.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

This proposed regulation may result in an indeterminable increase in state general funds due to the payment of delinquent tax collections and an indeterminable decrease in revenues to the Conservation Fund due to the denial of licenses.

According to Department of Revenue records, there are 57,000 taxpayers that would be denied hunting and fishing licenses for tax debts of \$204 million. However, it is not known how many of the tax delinquents will seek hunting or fishing licenses or if the denial of these licenses will motivate taxpayers to pay the delinquent taxes owed.

The reduction of revenues to the Conservation Fund due to the denial of hunting and fishing licenses cannot be determined. According to the Department of Wildlife and Fisheries, 8.3 percent of Louisiana residents purchase hunting licenses at a cost of \$15 to \$61; 22 percent of Louisiana residents purchase basic or saltwater fishing licenses at a cost of \$9.50 or \$15, respectively; and 0.4 percent of Louisiana residents purchase commercial fishing licenses at a cost of \$55. If all of the tax debtors elected to forego their hunting and fishing licenses rather than pay their tax debts, revenues to the Conservation Fund would be reduced by an unknown amount.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

This proposed regulation allows for suspending, revoking, and denying the issuance of a taxpayer's hunting and fishing licenses if the Department of Revenue has a final and nonappealable assessment or judgment against an individual in excess of \$500. These tax debtors will be directly affected by this regulation. There will be no economic benefit to the affected tax debtors but their costs may increase to the extent that they will be required to pay their debts before a hunting or fishing license can be reinstated or issued.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

This proposed regulation will have no effect on competition or employment.

Cynthia Bridges
Secretary
0402#010

Robert E. Hosse
General Government Section Director
Legislative Fiscal Office

Legislation

LEGISLATION

State Legislature 2003 Regular Session

Administrative Procedure Act (R.S. 49:950 et seq.)

Editor's Note: The following Act is the finished version of the APA as stored in the House of Representatives' Database.

Title 49. STATE ADMINISTRATION

Chapter 13. Administrative Procedure

§950. Title and form of citation

This Chapter shall be known as the Administrative Procedure Act and may be cited as the Administrative Procedure Act.

Added by Acts 1982, No. 129, ¶.

§951. Definitions

As used in this Chapter:

(1) "Adjudication" means agency process for the formulation of a decision or order.

(2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the constitution or laws of the United States or the constitution and statutes of Louisiana, except the legislature or any branch, committee, or officer thereof, any political subdivision, as defined in Article VI, Section 44 of the Louisiana Constitution, and any board, commission, department, agency, officer, or other entity thereof, and the courts.

(3) "Decision" or "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of any agency, in any matter other than rulemaking, required by constitution or statute to be determined on the record after notice and opportunity for an agency hearing, and including non-revenue licensing, when the grant, denial, or renewal of a license is required by constitution or statute to be preceded by notice and opportunity for hearing.

(4) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency, except that an agency is a "person" for the purpose of appealing an administrative ruling in a disciplinary action brought pursuant to Title 37 of the Louisiana Revised Statutes of 1950 prior to the final adjudication of such disciplinary action.

(6) "Rule" means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the

agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. "Rule" includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

(7) "Rulemaking" means the process employed by an agency for the formulation of a rule. Except where the context clearly provides otherwise, the procedures for adoption of rules and of emergency rules as provided in R.S. 49:953 shall also apply to adoption of fees. The fact that a statement of policy or an interpretation of a statute is made in the decision of a case or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts involved does not render the same a rule within this definition or constitute specific adoption thereof by the agency so as to be required to be issued and filed as provided in this Subsection.

Acts 1995, No. 1057, ¶, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1997, No. 1224, ¶.

NOTE: See Acts 1987, No. 240, 2.

§952. Public information; adoption of rules; availability of rules and orders

Each agency which engages in rulemaking shall:

(1) File with the Department of the State Register a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests.

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available.

(3) Make available for public inspection all rules, preambles, responses to comments, and submissions and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions and publish an index of such rules, preambles, responses to comments, submissions, statements, and interpretations on a regular basis.

(4) Make available for public inspection all final orders, decisions, and opinions.

Acts 1966, No. 382, 2, eff. July 1, 1967. Amended by Acts 1978, No. 252, ¶; Acts 1979, No. 578, ¶, eff. July 18, 1979; Acts 1990, No. 1085, ¶, eff. July 31, 1990; Acts 1993, No. 386, ¶.

§953. Procedure for adoption of rules

A. Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(1)(a) Give notice of its intended action and a copy of the proposed rules at least ninety days prior to taking action on the rule. The notice shall include:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved;

(ii) A statement, approved by the legislative fiscal office, of the fiscal impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no fiscal impact will result from such proposed action;

(iii) A statement, approved by the legislative fiscal office, of the economic impact of the intended action, if any; or a statement, approved by the legislative fiscal office, that no economic impact will result from such proposed action;

(iv) The name of the person within the agency who has the responsibility for responding to inquiries about the intended action;

(v) The time when, the place where, and the manner in which interested persons may present their views thereon; and

(vi) A statement that the intended action complies with the statutory law administered by the agency, including a citation of the enabling legislation.

(vii) A statement indicating whether the agency has prepared a preamble which explains the basis and rationale for the intended action, summarizes the information and data supporting the intended action, and provides information concerning how the preamble may be obtained.

(viii) A statement concerning the impact on family formation, stability, and autonomy as set forth in R.S. 49:972.

(b)(i) The notice shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least one hundred days prior to the date the agency will take action on the rule.

(ii) Upon publication of the notice, copies of the full text of the proposed rule shall be available from the agency proposing the rule upon written request within two working days.

(c) Notice of the intent of an agency to adopt, amend, or repeal any rule and the approved fiscal and economic impact statements, as provided for in this Subsection, shall be mailed to all persons who have made timely request of the agency for such notice, which notice and statements shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule change is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the publication date as stated on the outside cover or the first page of said issue.

(2)(a) Afford all interested persons reasonable opportunity to submit data, views, comments, or arguments, orally or in writing. In case of substantive rules, opportunity for oral presentation or argument must be granted if requested within twenty days after publication of the rule as provided in this Subsection, by twenty-five persons, by a governmental subdivision or agency, by an association having not less than twenty-five members, or by a committee of either house of the legislature to which the

proposed rule change has been referred under the provisions of R.S. 49:968.

(b)(i) Make available to all interested persons copies of any rule intended for adoption, amendment, or repeal from the time the notice of its intended action is published in the Louisiana Register. Any hearing pursuant to the provisions of this Paragraph shall be held no earlier than thirty-five days and no later than forty days after the publication of the Louisiana Register in which the notice of the intended action appears. The agency shall consider fully all written and oral comments and submissions respecting the proposed rule.

(ii) The agency shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written or oral comments and submissions. In addition to the response to comments, the agency may prepare a preamble explaining the basis and rationale for the rule, identifying the data and evidence upon which the rule is based, and responding to comments and submissions. Such preamble and response to comments and submissions shall be furnished to the respective legislative oversight subcommittees at least five days prior to the day the legislative oversight subcommittee hearing is to be held on the proposed rule, and shall be made available to interested persons no later than one day following their submission to the appropriate legislative oversight subcommittee. If no legislative oversight hearing is to be held, the agency shall issue a response to comments and submissions and preamble, if any, to any person who presented comments or submissions on the rule and to any requesting person not later than fifteen days prior to the time of publication of the final rule.

(iii) The agency shall, upon request, make available to interested persons the report submitted pursuant to R.S. 49:968(D) no later than one working day following the submittal of such report to the legislative oversight subcommittees.

(3)(a) For the purposes of this Subsection, the statement of fiscal impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such fiscal impact statement shall include a statement of the receipt, expenditure, or allocation of state funds or funds of any political subdivision of the state.

(b) For the purposes of this Subsection, the statement of economic impact shall be prepared by the proposing agency and submitted to the Legislative Fiscal Office for its approval. Such economic impact statements shall include an estimate of the cost to the agency to implement the proposed action, including the estimated amount of paperwork; an estimate of the cost or economic benefit to all persons directly affected by the proposed action; an estimate of the impact of the proposed action on competition and the open market for employment, if applicable; and a detailed statement of the data, assumptions, and methods used in making each of the above estimates.

B.(1) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon shorter notice than that provided in Subsection A of this Section and within five days of adoption states in writing to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of

Representatives, the president of the Senate, and the Department of the State Register, its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The provisions of this Paragraph also shall apply to the extent necessary to avoid sanctions or penalties from the United States, or to avoid a budget deficit in the case of medical assistance programs or to secure new or enhanced federal funding in medical assistance programs. The agency statement of its reason for finding it necessary to adopt an emergency rule shall include specific reasons why the failure to adopt the rule on an emergency basis would result in imminent peril to the public health, safety, or welfare, or specific reasons why the emergency rule meets other criteria provided in this Paragraph for adoption of an emergency rule.

(2) Notice of the emergency rule shall be mailed to all persons who have made timely request of the agency for notice of rule changes, which notice shall be mailed within five days of adoption of the emergency rule. The office of the state register may omit from the Louisiana Register any emergency rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the emergency rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register contains a notice stating the general subject matter of the omitted emergency rule, the reasons for the finding of the emergency submitted by the agency, and stating how a copy thereof may be obtained.

(3) The validity of an emergency rule or fee may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located. The agency shall be made a party to the action. An action for a declaratory judgment under this Paragraph may be brought only by a person to whom such rule or fee is applicable or who would be adversely affected by such rule or fee and only on the grounds that the rule or fee does not meet the criteria for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. The court shall declare the rule or fee invalid if it finds that there is not sufficient evidence that such rule or fee must be adopted on an emergency basis for one or more of the reasons for adoption of an emergency rule as provided in Paragraph (1) of this Subsection. Notwithstanding any other provision of law to the contrary, the emergency rule or fee shall remain in effect until such declaratory judgment is rendered. The provisions of R.S. 49:963 shall not apply to any action brought pursuant to this Paragraph. The provisions of this Paragraph are in addition to R.S. 49:963 and shall not limit any action pursuant to R.S. 49:963.

(4)(a) Within sixty days after adoption of an emergency rule or fee, an oversight subcommittee of either house may conduct a hearing to review the emergency rule or fee and make a determination of whether such rule or fee meets the criteria for an emergency rule or fee as provided in Paragraph (1) of this Subsection and those determinations as provided in R.S. 49:968(D)(3). If within such time period an oversight subcommittee finds an emergency rule or fee unacceptable, it shall prepare a written report containing a copy of the proposed rule or proposed fee action and a summary of the determinations made by the committee and transmit copies thereof as provided in R.S. 49:968(F)(2).

(b) Within sixty days after adoption of an emergency rule or fee, the governor may review such rule or fee and make the determinations as provided in Subparagraph (a) of this Paragraph. If within such time period the governor finds an emergency rule or fee unacceptable, he shall prepare a written report as provided in Subparagraph (a) and transmit copies thereof to the agency proposing the rule change and the Louisiana Register no later than four days after the governor makes his determination.

(c) Upon receipt by the agency of a report as provided in either Subparagraph (a) or (b) of this Paragraph, the rule or fee shall be nullified and shall be without effect.

C. An interested person may petition an agency requesting the adoption, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, considerations, and disposition. Within ninety days after submission of a petition, the agency shall either deny the petition in writing, stating reasons for the denial, or shall initiate rule making proceedings in accordance with this Chapter.

D. When a rule is adopted, amended, or repealed in compliance with federal regulations, the adopting agency's notice of intent and the actual text of the rule as published in the Louisiana Register, must be accompanied by a citation of the Federal Register issue in which the determining federal regulation is published, such citation to be by volume, number, date, and page number.

E. Beginning January 1, 1987, no agency shall adopt, amend, or repeal any rule if the accompanying fiscal impact statement approved by the Legislative Fiscal Office indicates that said rule change would result in any increase in the expenditure of state funds, unless said rule is adopted as an emergency rule pursuant to the requirements of this Section or unless the legislature has specifically appropriated the funds necessary for the expenditures associated with said rule change.

F.(1) Notwithstanding any other provision of this Chapter to the contrary, if the Department of Environmental Quality proposes a rule that is not identical to a federal law or regulation or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall adopt and promulgate such proposed rule separately from any proposed rule or set of proposed rules that is identical to a federal law or regulation or required for compliance with a federal law or regulation. However, if the only difference between the proposed rule or set of proposed rules and the corresponding federal law or regulation is a proposed fee, the Department of Environmental Quality shall not be required to adopt and promulgate such proposed rule or set of proposed rules separately. For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(2) When the Department of Environmental Quality proposes a rule that is not identical to a corresponding federal law or regulation, or is not required for compliance with a federal law or regulation, the Department of Environmental Quality shall provide a brief summary which explains the basis and rationale for the proposed rule, identifies the data and evidence, if any, upon which the rule is based, and identifies any portions of the proposed rule that differ from federal law or regulation if there is a federal law

or regulation which is not identical but which corresponds substantially to the proposed rule. Such summary shall be provided along with the notice of intent and shall be published in the Louisiana Register or made available along with the proposed rule as provided in Item A(1)(b)(ii) of this Section. The Department of Environmental Quality may also provide such a summary when proposing a rule identical to a corresponding federal law or regulation or proposing a rule which is required for compliance with federal law or regulation to explain the basis and rationale for the proposed rule.

(3) Notwithstanding any other provision of this Chapter to the contrary, when the Department of Environmental Quality proposes a rule that is identical to a federal law or regulation applicable in Louisiana, except as provided in Paragraph (4) of this Subsection, it may use the following procedure for the adoption of the rule:

(a) The department shall publish a notice of the proposed rule at least sixty days prior to taking action on the rule as provided below. The notice, which may include an explanation of the basis and rationale for the proposed rule, shall include all of the following:

(i) A statement of either the terms or substance of the intended action or a description of the subjects and issues involved.

(ii) A statement that no fiscal or economic impact will result from the proposed rule.

(iii) The name of the person within the department who has responsibility for responding to inquiries about the intended action.

(iv) The time, place, and manner in which interested persons may present their views thereon including the notice for a public hearing required by R.S. 30:2011(D)(1).

(v) A statement that the intended action complies with the law administered by the department, including a citation of the specific provision, or provisions, of law which authorize the proposed rule.

(b) Notice of the proposed rule shall be published at least once in the Louisiana Register and shall be submitted with a full text of the proposed rule to the Louisiana Register at least seventy days prior to the date the department proposes to formally adopt the rule. The office of the state register may omit from the Louisiana Register any such proposed rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the Louisiana Register contains a notice stating the general subject matter of the omitted proposed rule, the process being employed by the department for adoption of the proposed rule, and stating how a copy of the proposed rule may be obtained.

(c) Notice of the intent of the department to adopt the rule shall be mailed to all persons who have made timely request for such notice, which notice shall be mailed at the earliest possible date, and in no case later than ten days after the date when the proposed rule is submitted to the Louisiana Register.

(d) For the purpose of timely notice as required by this Paragraph, the date of notice shall be deemed to be the date of publication of the issue of the Louisiana Register in which the notice appears, such publication date to be the

publication date as stated on the outside cover or the first page of said issue.

(e) The department shall afford all interested persons an opportunity to submit data, views, comments, or arguments related to the proposed rule, in writing, during a period of no less than thirty days. The department shall consider fully all written comments and submissions respecting the proposed rule.

(f) The department shall make available to all interested persons copies of the proposed rule from the time the notice of its adoption is published in the Louisiana Register.

(g) The department shall issue a response to comments and submissions describing the principal reasons for and against adoption of any amendments or changes suggested in the written comments and submissions and specifically addressing any assertion that the proposed rule is not identical to the federal law or regulation upon which it is based. The department shall issue such response to comments and submissions to any person who presented comments or submissions on the rule and to any requesting person no later than fifteen days prior to the time of publication of the final rule.

(h) No later than fifteen days prior to the time of publication of the final rule in the Louisiana Register, the secretary or any authorized assistant secretary of the department shall (i) certify, under oath, to the governor of the state of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, the president of the Senate, the chairman of the House Committee on the Environment, the chairman of the Senate Committee on Environmental Quality, and the office of the state register that the proposed rule is identical to a specified federal law or regulation applicable in Louisiana and (ii) furnish the chairman of the Senate Committee on Environmental Quality and the chairman of the House Committee on the Environment the response to comments and submissions required under Subparagraph (g) of this Paragraph, together with a copy of the notice required under Subparagraph (a) of this Paragraph.

(i) Unless specifically requested, in writing, by the chairman of the House Committee on the Environment or the chairman of the Senate Committee on Environmental Quality within ten days of the certification provided under Subparagraph (h) of this Paragraph, there shall be no legislative oversight of the proposed rule. If, however, legislative oversight is properly requested, R.S. 49:968 and Items A(2)(b)(ii) and (iii) of this Section, shall thereafter apply with respect to the proposed rule.

(j) In the absence of legislative oversight, the proposed rule may be adopted by the Department of Environmental Quality no earlier than sixty days, nor later than twelve months, after the official notice of the proposed rule was published in the Louisiana Register; provided, however, that the proposed rule shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption.

(4) The procedures set forth in Paragraph (3) of this Subsection for the adoption by the Department of Environmental Quality of rules identical to federal laws or regulations applicable in Louisiana shall not be available for the adoption of any rules creating or increasing fees.

G.(1) Prior to or concurrent with publishing notice of any proposed policy, standard, or regulation pursuant to Subsection A of this Section and prior to promulgating any policy, standard, or final regulation whether pursuant to R.S. 49:954 or otherwise under the authority of the Louisiana Environmental Quality Act, R.S. 30:2001 et seq., the Department of Environmental Quality, after August 15, 1995, shall publish a report, or a summary of the report, in the Louisiana Register which includes:

(a) A statement identifying the specific risks being addressed by the policy, standard, or regulation and any published, peer-reviewed scientific literature used by the department to characterize the risks.

(b) A comparative analysis of the risks addressed by the policy, standard, or regulation relative to other risks of a similar or analogous nature to which the public is routinely exposed.

(c) An analysis based upon published, readily available peer-reviewed scientific literature, describing how the proposed and final policy, standard, or regulation will advance the purpose of protecting human health or the environment against the specified identified risks.

(d) An analysis and statement that, based on the best readily available data, the proposed or final policy, standard, or regulation presents the most cost-effective method practically achievable to produce the benefits intended regarding the risks identified in Subparagraph (a) of this Paragraph.

(2) No regulation shall become effective until the secretary complies with the requirements of Paragraph (1) of this Subsection.

(3) This provision shall not apply in those cases where the policy, standard, or regulation:

(a) Is required for compliance with a federal law or regulation.

(b) Is identical to a federal law or regulation applicable in Louisiana.

(c) Will cost the state and affected persons less than one million dollars, in the aggregate, to implement.

(d) Is an emergency rule under Subsection B of this Section.

(4) For purposes of this Subsection, the term "identical" shall mean that the proposed rule has the same content and meaning as the corresponding federal law or regulation.

(5) In complying with this Section, the department shall consider any scientific and economic studies or data timely provided by interested parties which are relevant to the issues addressed herein and the proposed policy, standard, or regulation being considered.

Acts 1966, No. 382, 3, eff. July 1, 1967. Amended by Acts 1974, No. 284, 1, eff. Jan. 1, 1975; Acts 1975, No. 730, 1; Acts 1976, No. 279, 1; Acts 1978, No. 252, 1; Acts 1980, No. 392, 1. Acts 1983, No. 713, 1; Acts 1984, No. 953, 1; Acts 1985, No. 371, 1, eff. July 9, 1985; Acts 1986, 1st Ex. Sess., No. 11, 1, eff. Jan. 1, 1987; Acts 1987, No. 853, 1; Acts 1990, No. 1063, 1; Acts 1990, No. 1085, 1 and 2, eff. July 31, 1990; Acts 1991, No. 104, 1, eff. June 30, 1991; Acts 1993, No. 119, 1; Acts 1993, No. 274, 1; Acts 1993, No. 386, 1; Acts 1995, No. 512, 1; Acts 1995, No. 642, 1; Acts 1995, No. 1057, 1, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date applicable to Dept. of Health and Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, 3, eff. May 7, 1996; Acts 1999, No. 1183, 1.

§954. Filing; taking effect of rules

A. No rule adopted on or after January 1, 1975, is valid unless adopted in substantial compliance with this Chapter. Each rule making agency shall file a certified copy of its rules with the Department of the State Register. No rule, whether adopted before, on, or after January 1, 1975, shall be effective, nor may it be enforced, unless it has been properly filed with the Department of the State Register. No rule, adopted on or after November 1, 1978, shall be effective, nor may it be enforced, unless prior to its adoption a report relative to the proposed rule change is submitted to the appropriate standing committee of the legislature or to the presiding officers of the respective houses as provided in R.S. 49:968. No rule, adopted on or after September 12, 1980, shall be effective, nor may it be enforced, unless the approved economic and fiscal impact statements, as provided in R.S. 49:953A, have been filed with the Department of State Register and published in the Louisiana Register. The inadvertent failure to mail notice and statements to persons making request for such mail notice, as provided in R.S. 49:953, shall not invalidate any rule adopted hereunder. A proceeding under R.S. 49:963 to contest any rule on the grounds of noncompliance with the procedures for adoption, as given in this Chapter, must be commenced within two years from the date upon which the rule became effective.

B. Each rule hereafter adopted shall be effective upon its publication in the Louisiana Register, said publication to be subsequent to the act of adoption, except that:

(1) If a later date is required by statute or specified in the rule, the later day is the effective date.

(2) Subject to applicable constitutional or statutory provisions, an emergency rule shall become effective on the date of its adoption, or on a date specified by the agency to be not more than sixty days future from the date of its adoption, provided written notice is given within five days of the date of adoption to the governor of Louisiana, the attorney general of Louisiana, the speaker of the House of Representatives, and the president of the Senate, and the Department of the State Register as provided in R.S. 49:953(B). Such emergency rule shall not remain in effect beyond the publication date of the Louisiana Register published in the month following the month in which the emergency rule is adopted, unless such rule and the reasons for adoption thereof are published in said issue; provided, however, that any emergency rule so published shall not be effective for a period longer than one hundred twenty days, except as provided by R.S. 49:967(D), but the adoption of an identical rule under Paragraphs (1), (2) and (3) of Subsection A of R.S. 49:953 is not precluded. The agency shall take appropriate measures to make emergency rules known to the persons who may be affected by them.

Acts 1966, No. 382, 3, eff. July 1, 1967. Amended by Acts 1968, No. 474, 1; Acts 1974, No. 284, 1, eff. Jan. 1, 1975; Acts 1975, No. 730, 1; Acts 1978, No. 252, 1; Acts 1980, No. 392, 1; Acts 1990, No. 248, 1; Acts 1990, No. 1085, 1, eff. July 31, 1990.

§954.1. Louisiana Administrative Code and Louisiana Register; publication; distribution; copies; index; interagency rules

A. The Department of the State Register shall compile, index, and publish a publication to be known as the

Louisiana Administrative Code, containing all effective rules adopted by each agency subject to the provisions of this Chapter, and all boards, commissions, agencies and departments of the executive branch, notwithstanding any other provision of law to the contrary. The Louisiana Administrative Code shall also contain all executive orders issued by the governor on or after May 9, 1972, which are in effect at the time the Louisiana Administrative Code is published. The Louisiana Administrative Code shall be supplemented or revised as often as necessary and at least once every two years.

B. The Department of the State Register shall publish at least once each month a bulletin to be known as the Louisiana Register which shall set forth the text of all rules filed during the preceding month and such notices as shall have been submitted pursuant to this Chapter. It shall also set forth all executive orders of the governor issued during the preceding month and a summary or digest of and fiscal note prepared for each such order as required by the provisions of R.S. 49:215. In addition, the Department of the State Register may include in the Louisiana Register digests or summaries of new or proposed rules; however, if any conflict should arise between the written digest of a rule and the rule, the rule shall take precedence over the written digest.

C. The Department of the State Register shall publish such rules, notices, statements, and other such matters as submitted by the rulemaking agency without regard to their validity. However, the State Register may omit from the Louisiana Register or Louisiana Administrative Code any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule in printed or processed form is made available on application to the adopting agency, and if the Louisiana Register or Louisiana Administrative Code, as the case may be, contains a notice stating the general subject matter of the omitted rule and stating how a copy thereof may be obtained.

D. One copy, or multiple copies if practical, of the Louisiana Register and Louisiana Administrative Code shall be made available upon request to state depository libraries free of charge, and to other agencies or persons at prices fixed by the department of the state register to recover all or a portion of the mailing and publication costs. Notwithstanding the provisions of R.S. 49:951(2) of this Chapter to the contrary, the department of the state register shall provide free copies of the Louisiana Register and the Louisiana Administrative Code to the David R. Poynter Legislative Research Library, the Senate Law Library, and the Huey P. Long Memorial Law Library.

E. The Department of the State Register shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Louisiana Administrative Code.

F. The Department of the State Register may publish advertisements for bids and other legal notices in the Louisiana Register in addition to other publications thereof required by law.

G. The Department of the State Register is hereby authorized and empowered to promulgate and enforce interagency rules for the implementation and administration of this Section.

H. The governor shall be the publisher of the Louisiana Administrative Code and Louisiana Register provided for through the Department of the State Register.

Added by Acts 1974, No. 284, ¶, eff. Jan. 1, 1975. Amended by Acts 1975, No. 730, ¶; Acts 1976, No. 279, ¶; Acts 1978, No. 252, 1; Acts 1982, No. 687, ¶, eff. Aug. 2, 1982; Acts 1988, No. 604, ¶, eff. July 14, 1988; Acts 1988, No. 937, ¶, eff. July 26, 1988; Acts 1990, No. 9, 2; Acts 1993, No. 119, ¶.

§954.2. Unified Oil and Gas Development Regulatory Index; summary

A. All regulatory agencies which have authority to issue or promulgate any general or special rule or regulation, or which issue, monitor compliance with, or otherwise regulate any permit or license, relative to oil and gas development, all as defined in this Section, shall index and summarize the rules or regulations in a manner which, if the language of the rule or regulation has general applicability to other types of businesses or other situations, plainly state or otherwise indicate:

(1) The extent of their applicability to oil and gas development.

(2) The types of permits or licenses which will be required, or which may be required, of any entity in the oil and gas development business.

B. Such index and summaries shall be filed with the office of the commissioner of conservation within the Department of Natural Resources, hereafter referred to as "the commissioner", by December 1, 1992. The commissioner shall make a written acknowledgement of his receipt of the index and summaries and the date thereof.

C. Any agency required to index and summarize its rules and regulations related to oil and gas development shall also file with the commissioner the information required in Subsection A regarding any agency rule or regulation which is finally promulgated or adopted after December 1, 1992, within twenty days of such final promulgation or adoption, along with an indication of its place in the index and summary previously filed with the commissioner.

D. The commissioner may make a written critique of any submission of an index and summaries which the commissioner determines to be unclear or confusing as it relates to oil and gas development, which critique shall contain reasons and/or clarifying questions. The agency shall respond to the critique in a form acceptable to the commissioner within twenty days. It is the intention of this Section that the various departments and offices which have authority to issue rules and regulations under law retain that authority. The commissioner shall only have the authority under this Section to critique submitted indexes and summaries so as to require a satisfactory response to his written reasons or questions concerning how they relate to oil and gas development.

E. After the commissioner has received and approved all of the indexes and summaries required to be received by December 1, 1992, he shall then proceed to merge and compile the indexes and summaries received so as to create a Unified Oil and Gas Regulatory Index. The commissioner shall complete the index within six months. Upon completion of such unified index, the commissioner shall proceed to promulgate such index, and any subsequent amendments, in the manner provided for in this Chapter.

However, the commissioner shall only make such technical revisions of the index during such procedure as is authorized by the agency which promulgated the original rule or regulation.

F. One copy of the Unified Oil and Gas Development Regulatory Index shall be made available to each of the regulatory agencies and to other persons at a reasonable price to be set by the commissioner.

G. Notwithstanding any other law to the contrary, no rule or regulation or permit or license provided for in Subsection A shall be effective, nor shall it be enforced, nor shall its content be considered by any court or any administrative hearing officer or board or other judicial or quasi-judicial body as a valid administrative construction or interpretation of any law, to the detriment of any applicant for a permit related to oil and gas development after December 1, 1992, in any civil or criminal action or proceeding if the filing, or the response to a critique by the secretary, of the index and summaries containing such rule or regulation or license or permit has not been timely made as required in this Section.

H. For purposes of this Section, the following terms shall have the following definitions:

(1) "Index and summaries" means a list of all rules and regulations in numerical order which have general or specific applicability to oil and gas development and environmental matters, with accompanying summaries indicating how the rule applies to oil and gas development.

(2) "Oil and gas development" means the activity of exploring for, locating, transporting property to an oil or gas well drilling site, and the constructing, operating, or maintaining of the land, equipment, buildings, structures, or other property at such site until the well is completed and capable of producing.

(3) "Permit or license" means any permit, license, variance, registration, compliance schedule, order, or any other grant of right or privilege, or any change, renewal, or extension thereof, relative to oil and gas development.

(4) "Regulatory agency" means any office or unit of the Department of Environmental Quality, the Department of Natural Resources, the Department of Revenue, the Mineral Board, and the Wildlife and Fisheries Commission or Department.

(5) "Rule or regulation" means any general or special rule, as that term is defined in R.S. 49:951(6), relative to oil and gas development.

Acts 1991, No. 735, 1, eff. July 18, 1991; Acts 1992, No. 589, 1, eff. July 15, 1992.

§954.3. Environmental Regulatory Code

The Department of Environmental Quality shall codify its rules and regulations in effect on March 1, 1992, in the Environmental Regulatory Code, and thereafter, shall update such codification of its rules and regulations on a quarterly basis. The secretary shall complete and offer for sale at cost the initial codification within one hundred and eighty days from March 1, 1992.

Acts 1991, No. 735, 2, eff. July 18, 1991.

§955. Adjudication; notice; hearing; records

A. In an adjudication, all parties who do not waive their rights shall be afforded an opportunity for hearing after reasonable notice.

B. The notice shall include:

(1) A statement of the time, place, and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes and rules involved;

(4) A short and plain statement of the matters asserted.

If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. Opportunity shall be afforded all parties to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

D. Unless precluded by law, informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

E. The record in a case of adjudication shall include:

(1) All pleadings, motions, intermediate rulings;

(2) Evidence received or considered or a resume thereof if not transcribed;

(3) A statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;

(4) Offers of proof, objections, and rulings thereon;

(5) Proposed findings and exceptions;

(6) Any decision, opinion, or report by the officer presiding at the hearing.

F. The agency shall make a full transcript of all proceedings before it when the statute governing it requires it, and, in the absence of such requirement, shall, at the request of any party or person, have prepared and furnish him with a copy of the transcript or any part thereof upon payment of the cost thereof unless the governing statute or constitution provides that it shall be furnished without cost.

G. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

Acts 1966, No. 382, 3, eff. July 1, 1967.

§956. Rules of evidence; official notice; oaths and affirmations; subpoenas; depositions and discovery; and confidential privileged information

In adjudication proceedings:

(1) Agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. Agencies may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

(2) All evidence, including records and documents in the possession of the agency of which it desires to avail itself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated

shall be available for examination by the parties before being received in evidence.

(3) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

(4) Any agency or its subordinate presiding officer conducting a proceeding subject to this Chapter shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues.

(5)(a) Any agency or its subordinate presiding officer shall have power to sign and issue subpoenas in the name of the agency requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party who wishes to subpoena the witness first deposits with the agency a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671.

(b) A subpoena issued pursuant to this Section shall be served by any agent of the agency, by the sheriff, by any other officer authorized by law to serve process in this state, by certified mail, return receipt requested, or by any person who is not a party and who is at least eighteen years of age. Witnesses subpoenaed to testify before an agency only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party who wishes to subpoena such witness as may be fixed by the agency with reference to the value of the time employed and the degree of learning or skill required.

(c) Whenever any person summoned under this Section neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the agency may apply to the judge of the district court for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt. It shall be the duty of the judge to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him, to proceed to a hearing of the case; and upon such hearing, the judge shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(6) The agency or a subordinate presiding officer or any party to a proceeding before it may take the depositions of witnesses, within or without the state and may conduct discovery in all manners as provided by law in civil actions. Depositions so taken and admissions, responses, and

evidence produced pursuant to discovery shall be admissible in any proceeding affected by this Chapter. The admission of such depositions, admissions, responses, and evidence may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by the agency or presiding officer in accordance with the rules of evidence provided in this Chapter.

(7) Repealed by Acts 1995, No. 760, 2, eff. June 27, 1995.

(8)(a) Records and documents, in the possession of any agency or of any officer or employee thereof including any written conclusions drawn therefrom, which are deemed confidential and privileged shall not be made available for adjudication proceedings of that agency and shall not be subject to subpoena by any person or other state or federal agency.

(b) Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

(c) Any violation of this prohibition shall be a waiver of governmental immunity from suit for damage resulting from any such disclosure.

(d) Notwithstanding the provisions of Subparagraphs (a) and (c) of this Paragraph the state boards and agencies identified in R.S. 13:3715.1(J) may make available and use records and documents, including any written conclusions drawn therefrom, which are otherwise deemed confidential or privileged and which are in the possession of such board or agency or any officer, employee, or agent thereof, or any attorney acting on its behalf in any adjudication proceedings of such agency, provided that in any case involving medical or patient records, the identity of any patient shall be maintained in confidence. Any such records shall be altered so as to prevent the disclosure of the identity of the patient to whom such records or testimony relates. Disclosure by such board or agency or any officer, employee, agent, or attorney acting on behalf of any of them, of any material otherwise deemed privileged or confidential under state law, which is made in response to a federal subpoena, shall not constitute a waiver of governmental immunity from suit for damages resulting from such disclosure. Such boards and agencies, including their officers, employees, agents, and attorneys, shall nevertheless assert any privilege which is recognized and applicable under federal law when responding to any such federal subpoena.

Acts 1966, No. 382, §, eff. July 1, 1967. Amended by Acts 1976, No. 524, 1, eff. Aug. 5, 1976; Acts 1989, No. 156, 1; Acts 1995, No. 760, 1, 2, eff. June 27, 1995; Acts 1999, No. 416, 1; Acts 1999, No. 765, 1.

§957. Examination of evidence by agency

When in an adjudication proceeding a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, or the proposed order is not prepared by a member of the agency, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made final until a proposed order is served upon the parties, and an opportunity is

afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposed order shall be accompanied by a statement of the reasons therefor and of the disposition of each issue of fact or law necessary to the proposed order, prepared by the person who conducted the hearing or by one who has read the record. No sanction shall be imposed or order be issued except upon consideration of the whole record and as supported by and in accordance with the reliable, probative, and substantial evidence. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

Acts 1966, No. 382, 7, eff. July 1, 1967.

§958. Decisions and orders

A final decision or order adverse to a party in an adjudication proceeding shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. The parties by written stipulation may waive, and the agency in the event there is no contest may eliminate, compliance with this Section.

Acts 1966, No. 382, 7, eff. July 1, 1967.

§959. Rehearings

A. A decision or order in a case of adjudication shall be subject to rehearing, reopening, or reconsideration by the agency, within ten days from the date of its entry. The grounds for such action shall be either that:

- (1) The decision or order is clearly contrary to the law and the evidence;
- (2) The party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;
- (3) There is a showing that issues not previously considered ought to be examined in order properly to dispose of the matter; or
- (4) There is other good ground for further consideration of the issues and the evidence in the public interest.

B. The petition of a party for rehearing, reconsideration, or review, and the order of the agency granting it, shall set forth the grounds which justify such action. Nothing in this Section shall prevent rehearing, reopening or reconsideration of a matter by any agency in accordance with other statutory provisions applicable to such agency, or, at any time, on the ground of fraud practiced by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence. On reconsideration, reopening, or rehearing, the matter may be heard by the agency, or it may be referred to a subordinate deciding officer. The hearing shall be confined to those grounds upon which the reconsideration, reopening, or rehearing was ordered. If an application for rehearing shall be timely filed, the period within which judicial review, under the applicable statute, must be sought, shall run from the final disposition of such application.

Acts 1966, No. 382, 9, eff. July 1, 1967.

§960. Ex parte consultations and recusations

A. Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

B. A subordinate deciding officer or agency member shall withdraw from any adjudicative proceeding in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of a subordinate deciding officer or agency member, on the ground of his inability to give a fair and impartial hearing, by filing an affidavit, promptly upon discovery of the alleged disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. The issue shall be determined promptly by the agency, or, if it affects a member or members of the agency, by the remaining members thereof, if a quorum. Upon the entry of an order of disqualification affecting a subordinate deciding officer, the agency shall assign another in his stead or shall conduct the hearing itself. Upon the disqualification of a member of an agency, the governor immediately shall appoint a member pro tem to sit in place of the disqualified member in that proceeding. In further action, after the disqualification of a member of an agency, the provisions of R.S. 49:957 shall apply.

Acts 1966, No. 382, 10, eff. July 1, 1967.

§961. Licenses

A. When the grant, denial, or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this Chapter concerning adjudication shall apply.

B. When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

C. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

Acts 1966, No. 382, 11, eff. July 1, 1967.

§962. Declaratory orders and rulings

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory orders and rulings as to the applicability of any statutory provision or of

any rule or order of the agency. Declaratory orders and rulings shall have the same status as agency decisions or orders in adjudicated cases.

Acts 1966, No. 382, ¶2, eff. July 1, 1967; Acts 1995, No. 947, §, eff. Jan. 1, 1996.

§962.1. Judicial review, rule to show cause for permit applicants

A. If the secretary does not grant or deny a permit, license, registration, variance, or compliance schedule for which the applicant had applied within the time period as provided for in R.S. 30:26 and 2022(C), R.S. 49:214.30(C)(2), and R.S. 56:6(26), the applicant has the authority, on motion in a court of competent jurisdiction, to take a rule on the secretary to show cause in not less than two nor more than thirty days, exclusive of holidays, why the applicant should not be granted the permit, license, registration, variance, or compliance schedule for which the applicant had applied. The rule may be tried out of term and in chambers.

B. In any trial or hearing on the rule, the applicant shall be entitled to a presumption that the facts as stated in the affidavit of the applicant, which shall be attached to the rule are true. The rule of the applicant shall be denied by the court only if the secretary provides clear and convincing evidence of an unavoidable cause for the delay. However, in denying the rule, the court shall decree that the secretary shall grant or deny the application within a time set by the court, or the application shall be granted without further action of the secretary or the court.

C. If the rule is made absolute, the order rendered thereon shall be considered a judgment in favor of the applicant granting the applicant the permit, license, registration, variance, or compliance schedule for which the applicant had applied.

D. The provisions of Subsections A, B, and C of this Section shall not apply to permit applications submitted under the Louisiana Pollutant Discharge Elimination System (LPDES) program under the Louisiana Department of Environmental Quality.

Acts 1991, No. 828, 2; Acts 1995, No. 601, 2.

§963. Judicial review of validity or applicability of rules

A.(1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court of the parish in which the agency is located.

(2) The agency shall be made a party to the action.

B.(1) If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court.

(2) The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

C. The court shall declare the rule invalid or inapplicable if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without substantial compliance with required rulemaking procedures.

D. An action for a declaratory judgment under this Section may be brought only after the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question and only upon a showing that review of the validity and applicability of the rule in conjunction with review of a final agency decision in a contested adjudicated case would not provide an adequate remedy and would inflict irreparable injury.

E. Upon a determination by the court that any statement, guide, requirement, circular, directive, explanation, interpretation, guideline, or similar measure constitutes a rule as defined by R.S. 49:951(6) and that such measure has not been properly adopted and promulgated pursuant to this Chapter, the court shall declare the measure invalid and inapplicable. It shall not be necessary that all administrative remedies be exhausted.

Acts 1966, No. 382, ¶3, eff. July 1, 1967; Acts 1991, No. 639, ¶, eff. July 17, 1991; Acts 1997, No. 1043, ¶, eff. July 11, 1997.

§964. Judicial review of adjudication

A.(1) Except as provided in R.S. 15:1171 through 1177, a person who is aggrieved by a final decision or order in an adjudication proceeding is entitled to judicial review under this Chapter whether or not he has applied to the agency for rehearing, without limiting, however, utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy and would inflict irreparable injury.

(2) No agency or official thereof, or other person acting on behalf of an agency or official thereof shall be entitled to judicial review under this Chapter.

B. Proceedings for review may be instituted by filing a petition in the district court of the parish in which the agency is located within thirty days after mailing of notice of the final decision by the agency or, if a rehearing is requested, within thirty days after the decision thereon. Copies of the petition shall be served upon the agency and all parties of record.

C. The filing of the petition does not itself stay enforcement of the agency decision. The agency may grant, or the reviewing court may order, a stay ex parte upon appropriate terms, except as otherwise provided by Title 37 of the Louisiana Revised Statutes of 1950, relative to professions and occupations. The court may require that the stay be granted in accordance with the local rules of the reviewing court pertaining to injunctive relief and the issuance of temporary restraining orders.

D. Within thirty days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

E. If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for

failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

F. The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

G. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (6) Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

(7) Repealed by Acts 2002, 1st Ex. Sess., No. 89, 3, eff. April 18, 2002.

Acts 1966, No. 382, ¶4, eff. July 1, 1967; Acts 1995, No. 1105, ¶, eff. June 29, 1995; Acts 1997, No. 128, ¶, eff. June 12, 1997; Acts 1997, No. 1216, 2; Acts 1997, No. 1224, ¶; H.C.R. No. 89, 1997 R.S., eff. June 2, 1997; Acts 1999, No. 1332, ¶, eff. July 12, 1999; Acts 2002, 1st Ex. Sess., No. 89, 3, eff. April 18, 2002.

NOTE: See Acts 1995, No. 1105, 2.

NOTE: See Acts 1997, No. 128, 2 relative to applicability of Act.

NOTE: See Acts 1999, No. 1332, 2 relative to the remedial nature of Act.

§964.1. Judicial review; attorney fees; court costs; report

A. If an agency or official thereof, or other person acting on behalf of an agency or official thereof, files a petition for judicial review of a final decision or order in an adjudication proceeding and such agency, official, or person does not prevail in the final disposition of the judicial review, the agency shall be responsible for the payment of reasonable attorney fees and court costs of the other party.

B. Notwithstanding any provision of R.S. 13:4521 to the contrary, an agency or official thereof, or other person acting on behalf of an agency or official thereof, which files a petition for judicial review of a final decision or order in an adjudication proceeding shall be required to pay court costs.

C. All payments for litigation expenses required by this Section shall be paid from the agency's regular operating

budget. Each agency which has paid such litigation expenses shall submit a detailed report of all such payments from the prior fiscal year to its legislative oversight committees and to the Joint Legislative Committee on the Budget no later than November fifteenth of each year. For the purposes of this Subsection and of R.S. 49:992(H), the term "litigation expenses" shall mean court costs and attorney fees of the agency and of any other party if the agency was required to pay such costs and fees.

Acts 2003, No. 1271, ¶, eff. July 11, 2003.

§965. Appeals

An aggrieved party may obtain a review of any final judgment of the district court by appeal to the appropriate circuit court of appeal. The appeal shall be taken as in other civil cases.

Acts 1966, No. 382, ¶5, eff. July 1, 1967.

§965.1. Expenses of administrative proceedings; right to recover

A. When a small business files a petition seeking: (1) relief from the application or enforcement of an agency rule or regulation, (2) judicial review of the validity or applicability of an agency rule, (3) judicial review of an adverse declaratory order or ruling, or (4) judicial review of a final decision or order in an adjudication proceeding, the petition may include a claim against the agency for the recovery of reasonable litigation expenses. If the small business prevails and the court determines that the agency acted without substantial justification, the court may award such expenses, in addition to granting any other appropriate relief.

B. A small business shall be deemed to have prevailed in an action when, in the final disposition, its position with respect to the agency rule or declaratory order or ruling is maintained, or when there is no adjudication, stipulation, or acceptance of liability on its part. However, a small business shall not be deemed to have prevailed, if the action was commenced at the instance of, or on the basis of a complaint by, anyone other than an officer, agent, or employee of the agency and was dismissed by the agency on a finding of no cause for the action or settled without a finding of fault on the part of the small business.

C. An agency shall pay any award made against it pursuant to this Section from funds in its regular operating budget and shall, at the time of its submission of its proposed annual budget, submit to the division of administration and to the presiding officer of each house of the legislature a report of all such awards paid during the previous fiscal year.

D. As used in this Section:

(1) "Reasonable litigation expenses" means any expenses, not exceeding seven thousand five hundred dollars in connection with any one claim, reasonably incurred in opposing or contesting the agency action, including costs and expenses incurred in both the administrative proceeding and the judicial proceeding, fees and expenses of expert or other witnesses, and attorney fees.

(2) "Small business" means a small business as defined by the Small Business Administration, which for purposes of size eligibility or other factors, meets the applicable criteria set forth in 13 Code of Federal Regulations, Part 121, as amended.

Added by Acts 1982, No. 497, ¶.

§966. Construction and effect; judicial cognizance

A. Nothing in this Chapter shall be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. Notwithstanding the foregoing, and except as provided in R.S. 49:967, any and all statutory requirements regarding the adoption or promulgation of rules other than those contained in Sections 953, 954, 954.1 and 968 of this Title are hereby superseded by the provisions of this Chapter and are repealed. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this Chapter through the issuance of rules or otherwise.

B. If any provision of this Chapter or the application thereof is held invalid, the remainder of this Chapter or other applications of such provision shall not be affected. No subsequent legislation shall be held to supersede or modify the provisions of this Chapter except to the extent that such legislation shall do so expressly.

C. The courts of this state shall take judicial cognizance of rules promulgated in the State Register under the provisions of this Chapter.

D. Repealed by Acts 1978, No. 252, 3.

Acts 1966, No. 382, 16, eff. July 1, 1967. Amended by Acts 1979, No. 578, 1, 2, eff. July 18, 1979.

§967. Exemptions from provisions of Chapter

A. Chapter 13 of Title 49 of the Louisiana Revised Statutes of 1950 shall not be applicable to the Board of Tax Appeals, the Department of Revenue, with the exception of the Louisiana Tax Commission that shall continue to be governed by this Chapter in its entirety, unless otherwise specifically provided by law, and the administrator of the Louisiana Employment Security Law; however, the provisions of R.S. 49:951(2), (4), (5), (6), and (7), 952, 953, 954, 954.1, 968, 969, and 970 shall be applicable to such board, department, and administrator.

B.(1) The provisions of R.S. 49:968(F) and 970 shall not be applicable to any rule promulgated by the State Civil Service Commission or the Public Service Commission.

(2) The provisions of this Chapter shall not be applicable to entities created as provided in Part V of Chapter 6 of Title 34 of the Louisiana Revised Statutes of 1950.

C. The provisions of R.S. 49:963, 964, and 965 shall not be applicable to any rule, regulation, or order of any agency subject to a right of review under the provisions of R.S. 30:12.

D.(1) The provisions of R.S. 49:968 shall not apply to any rule or regulation promulgated by the Department of Wildlife and Fisheries or the Wildlife and Fisheries Commission relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, finfish seasons and size limits, and all rules and regulations pursuant thereto. The Department of Wildlife and Fisheries and the Wildlife and Fisheries Commission may employ the provisions of R.S. 49:953(B) in promulgating rules and regulations relative to hunting seasons, trapping seasons, alligator seasons, shrimp seasons, oyster seasons, and finfish seasons and size limits, and all rules and regulations pursuant thereto.

(2) Those rules adopted annually pursuant to this Subsection by the Department of Wildlife and Fisheries which open and close the offshore and fall shrimp seasons, the oyster season, the marine finfish seasons, the webless migratory game bird hunting season, and the trapping season shall be effective for a period of time equal to the length of the respective season.

Acts 1983, No. 409, 2. Acts 1984, No. 244, 1; Acts 1985, No. 869, 1, eff. July 23, 1985; Acts 1986, No. 494, 1; Acts 1990, No. 248, 1; Acts 1992, No. 53, 1; Acts 1997, No. 1172, 9, eff. June 30, 1997; Acts 1997, No. 1484, 1, eff. July 16, 1997.

§968. Review of agency rules; fees

A. It is the declared purpose of this Section to provide a procedure whereby the legislature may review the exercise of rule-making authority and the adoption, increasing, or decreasing of fees, extensions of the legislative lawmaking function, which it has delegated to state agencies.

B. Prior to the adoption, amendment, or repeal of any rule or the adoption, increasing, or decreasing of any fee, the agency shall submit a report relative to such proposed rule change or fee adoption, increase, or decrease to the appropriate standing committees of the legislature and the presiding officers of the respective houses as provided in this Section. The report shall be so submitted on the same day the notice of the intended action is submitted to the Louisiana Register for publication in accordance with R.S. 49:953(A)(1). The report shall be submitted to each standing committee at the committee's office in the state capitol by certified mail with return receipt requested or by messenger who shall provide a receipt for signature. The return receipt or the messenger's receipt shall be proof of receipt of the report by the committee.

(1) The Department of Economic Development, all of the agencies made a part of it, and those agencies transferred to or placed within the office of the governor pursuant to R.S. 36:4(V) and 4.1 shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(2) Corrections services of the Department of Public Safety and Corrections and all the agencies of the department related to corrections and concealed weapons and concealed weapon permits, except as otherwise provided in this Subsection, the Louisiana State Board of Private Security Examiners, and the gaming enforcement section of the office of state police within the Department of Public Safety and Corrections shall submit all reports other than reports on proposed rule changes affecting prison enterprise programs, to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section C; however, the Crime Victims Reparation Board shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B.

(3) The Department of Culture, Recreation and Tourism and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(a) The office of the state library, the office of the state museum, the State Board of Library Examiners, the Louisiana Archaeological Survey and Antiquities

Commission, the Board of Directors of the Louisiana State Museum, the Board of Commissioners of the State Library of Louisiana, the Louisiana State Arts Council, the Louisiana State Capitol Fiftieth Anniversary Commission, and the Louisiana National Register Review Committee shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Education.

(b) The office of state parks and the State Parks and Recreation Commission shall submit the report to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Natural Resources.

(c) The office of tourism and promotion, the Louisiana Tourist Development Commission, and the Mississippi River Road Commission shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(4) The Department of State and all of the agencies made a part of it shall submit a report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(5) The Department of Labor and all of the agencies made a part of it shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(6) The Department of Transportation and Development and all of the agencies made a part of it shall submit the report, to the House Committee on Transportation, Highways and Public Works and the Senate Committee on Transportation, Highways and Public Works. The department shall also submit to the standing committees any policies or priorities developed for the expenditure or distribution of any monies from the Transportation Trust Fund as created by Article VII, Section 27 of the Constitution of Louisiana. The policies and priorities shall be submitted for review purposes only.

(7) Repealed by Acts 2001, No. 451, §, eff. Jan. 12, 2004.

(8) The Department of Justice and all of the agencies made a part of it shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section C.

(9) The Department of Civil Service and all of the agencies made a part of it shall submit the report to the House Committee on House and Governmental Affairs and the Senate Committee on Senate and Governmental Affairs.

(10) The Department of Revenue and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Ways and Means and the Senate Committee on Revenue and Fiscal Affairs; however, the office of charitable gaming shall submit the report to the House Committee on Administration of Criminal Justice and the Senate Committee on Judiciary, Section B.

(11) The Department of Natural Resources and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and the Senate Committee on Natural Resources. However, for exercises of the commissioner of conservation's rulemaking authority pursuant to Chapter 13-A-1 of Title 38 of the Louisiana Revised Statutes of 1950, the department shall submit the

report to the House Committee on the Environment and the Senate Committee on Environmental Quality.

(12) Public Safety Services of the Department of Public Safety and Corrections and all the agencies of the department related to public safety, except as otherwise provided in this Subsection, shall submit the report to the House Committee on the Judiciary and the Senate Committee on the Judiciary, Section B; however, the office of motor vehicles shall submit the report to the House Committee on Transportation, Highways and Public Works and the Senate Committee on the Judiciary, Section B; however, the office of the state fire marshal, code enforcement and building safety, shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection and International Affairs.

(13) The Department of Wildlife and Fisheries and all of the agencies made a part of it shall submit the report to the House Committee on Natural Resources and the Senate Committee on Natural Resources.

(14) The Department of Insurance and all of the agencies made a part of it shall submit the report to the House Committee on Insurance and the Senate Committee on Insurance.

(15)(a) The Department of the Treasury and all of the agencies made a part of it, except as otherwise provided in this Paragraph, shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(b) Each retirement system made a part of the Department of the Treasury shall submit the report to the House Committee on Retirement and the Senate Committee on Retirement.

(16) The Department of Health and Hospitals and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(17) The Department of Social Services and all of the agencies made a part of it shall submit the report to the House Committee on Health and Welfare and the Senate Committee on Health and Welfare.

(18) The Department of Agriculture and Forestry and all of the agencies made a part of it shall submit all reports, and the Department of Public Safety and Corrections and all the agencies made a part of it shall submit reports on proposed rule changes affecting prison enterprise programs to the House Committee on Agriculture, Forestry, Aquaculture and Rural Development and the Senate Committee on Agriculture, Forestry, Aquaculture and Rural Development.

(19) The Department of Education and all of the agencies made a part of it shall submit the report to the House Committee on Education and the Senate Committee on Education.

(20) The Department of Public Service and all of the agencies made a part of it shall submit the report to the House Committee on Commerce and the Senate Committee on Commerce, Consumer Protection, and International Affairs.

(21)(a) Except as provided in Paragraph (1) of this Subsection, the office of the governor and the office of the lieutenant governor and all of the agencies within or part of either and any other agency for which provisions are not

otherwise made in this Subsection, shall submit the report to the speaker of the House of Representatives and the president of the Senate, except that executive orders duly issued by the governor and attested to by the secretary of state are exempt from the provisions of this Chapter. The speaker of the House of Representatives and the president of the Senate shall promptly forward the report to the appropriate standing committee of their respective houses.

(b) The Louisiana Workforce Commission shall submit the report to the House Committee on Labor and Industrial Relations and the Senate Committee on Labor and Industrial Relations.

(c) The Office of Group Benefits shall submit the report to the House Committee on Appropriations and the Senate Committee on Finance.

(22) The Department of Environmental Quality and all of the agencies made a part of it shall submit the report to the House Committee on the Environment and the Senate Committee on Environmental Quality.

(23) The Louisiana Sentencing Commission shall submit the report to the House Committee on the Administration of Criminal Justice and the Senate Committee on the Judiciary, Section C.

(24) In addition to the submission of a report relative to a proposed rule change or fee adoption, increase, or decrease by an agency to the appropriate standing committee as specified in Paragraphs (1) through (23) of this Subsection, whenever the fiscal impact of the rule or fee adoption, increase, or decrease, as indicated by the statement of fiscal impact required by R.S. 49:968(C)(5), exceeds one million dollars, the report on the proposed rule change or fee adoption, increase, or decrease shall also be submitted to the Senate Committee on Finance and the House Committee on Appropriations and shall be subject to review by those committees in the same manner and to the same extent as the review of the standing committees provided for in Paragraphs (1) through (23) of this Subsection.

C. The report, as provided for in Subsection B of this Section, shall contain:

(1) A copy of the rule as it is proposed for adoption, amendment, or repeal and a statement of the amount of the fee to be adopted or the amount of the proposed increase or decrease. The rule shall be coded with any new rule or language that is to be added to an existing agency rule underscored and any language that is to be deleted from an existing agency rule in struck-through type.

(2) A statement of the proposed action, that is, whether the rule is proposed for adoption, amendment, or repeal; a brief summary of the content of the rule if proposed for adoption or repeal; and a brief summary of the change in the rule if proposed for amendment.

(3) The specific citation of the enabling legislation purporting to authorize the adoption, amending, or repeal of the rule or purporting to authorize the adoption, increasing, or decreasing of the fee.

(4) A statement of the circumstances which require adoption, amending, or repeal of the rule or the adoption, increasing, or decreasing of the fee.

(5) A statement of the fiscal impact of the proposed action and a statement of the economic impact of the proposed action, both approved by the Legislative Fiscal Office.

D.(1)(a) The chairman of each standing committee to which reports are submitted shall appoint an oversight subcommittee, which may conduct hearings on all rules that are proposed for adoption, amendment, or repeal and on all proposed fee adoptions, increases, or decreases. Any such hearing shall be conducted after any hearing is conducted by the agency pursuant to R.S. 49:953(A)(2).

(b) The agency shall submit a report to the subcommittee, in the same manner as the submittal of the report provided for in Subsection B of this Section, which shall include:

(i) A summary of all testimony at any hearing conducted pursuant to R.S. 49:953(A)(2).

(ii) A summary of all comments received by the agency, a copy of the agency's response to the summarized comments, and a statement of any tentative or proposed action of the agency resulting from oral or written comments received.

(iii) A revision of the proposed rule if any changes to the rule have been made since the report provided for in Subsection B of this Section was submitted, or a statement that no changes have been made.

(iv) A concise statement of the principal reasons for and against adoption of any amendments or changes suggested.

(2)(a) Except as provided in Paragraph H(2) of this Section, any subcommittee hearing on a proposed rule shall be held no earlier than five days and no later than thirty days following the day the report required by Subparagraph (1)(b) of this Subsection is received by the subcommittee.

(b) The oversight subcommittee may consist of the entire membership of the standing committee and shall consist of at least a majority of the membership of the standing committee, at the discretion of the chairman of the standing committee, with the concurrence of the speaker of the House of Representatives or the president of the Senate. House and Senate oversight subcommittees may meet jointly or separately to conduct hearings for purposes of rules review.

(3) At such hearings, the oversight subcommittees shall:

(a) Determine whether the rule change or action on fees is in conformity with the intent and scope of the enabling legislation purporting to authorize the adoption thereof.

(b) Determine whether the rule change or action on fees is in conformity and not contrary to all applicable provisions of law and of the constitution.

(c) Determine the advisability or relative merit of the rule change or action on fees.

(d) Determine whether the rule change or action on fees is acceptable or unacceptable to the oversight subcommittee.

E.(1)(a) Each such determination shall be made by the respective subcommittees of each house acting separately. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

(b) No later than three weeks before the deadline for legislative oversight action, the chairman of the subcommittee may request, by letter, the consent of the subcommittee members to have a mail ballot instead of a meeting to consider a proposed rule or proposed fee action.

If no objection is received within ten days of the chairman's request, the chairman shall cause a mail ballot to be sent to the members of the subcommittee. In order for the subcommittee to reject a proposed rule or proposed fee action, a majority of ballots returned to the chairman at least twenty-four hours prior to the deadline for legislative oversight action must disapprove the change. Any determination by the subcommittee shall be made within the period provided for oversight hearings in Paragraph D(2) of this Section.

(2) Failure of a subcommittee to conduct a hearing or to make a determination regarding any rule proposed for adoption, amendment, or repeal shall not affect the validity of a rule otherwise adopted in compliance with this Chapter.

F.(1) If either the House or Senate oversight subcommittee determines that a proposed rule change or proposed fee action is unacceptable, the respective subcommittee shall provide a written report which contains the following:

(a) A copy of the proposed rule or a statement of the amount of the proposed fee action.

(b) A summary of the determinations made by the subcommittee in accordance with Subsections D and E of this Section.

(2) The written report shall be delivered to the governor, the agency proposing the rule change, and the Louisiana Register no later than four days after the committee makes its determination.

G. After receipt of the report of the subcommittee, the governor shall have ten calendar days in which to disapprove the action taken by the subcommittee. If the action of the subcommittee is not disapproved by the governor within ten calendar days from the day the subcommittee report is delivered to him, the rule change shall not be adopted by the agency until it has been changed or modified and subsequently found acceptable by the subcommittee, or has been approved by the standing committee, or by the legislature by concurrent resolution. If a proposed rule change is determined to be unacceptable by an oversight committee and such determination is not disapproved by the governor as provided in this Section, the agency shall not propose a rule change or emergency rule that is the same or substantially similar to such disapproved proposed rule change nor shall the agency adopt an emergency rule that is the same or substantially similar to such disapproved proposed rule change within four months after issuance of a written report by the subcommittee as provided in Subsection F of this Section nor more than once during the interim between regular sessions of the legislature.

H.(1) If both the House and Senate oversight subcommittees fail to find a proposed rule change unacceptable as provided herein, or if the governor disapproves the action of an oversight subcommittee within the time provided in R.S. 49:968(G), the proposed rule change may be adopted by the agency in the identical form proposed by the agency or with technical changes or with changes suggested by the subcommittee, provided at least ninety days and no more than twelve months have elapsed since notice of intent was published in the State Register.

(2) Substantive changes to a rule proposed for adoption, amendment, or repeal occur if the nature of the proposed rule is altered or if such changes affect additional or different substantive matters or issues not included in the notice

required by R.S. 49:953(A)(1). Whenever an agency seeks to substantively change a proposed rule after notice of intent has been published in the Louisiana Register pursuant to R.S. 49:953(A)(1), the agency shall hold a public hearing on the substantive changes preceded by an announcement of the hearing in the Louisiana Register. A notice of the hearing shall be mailed within ten days after the date the announcement is submitted to the Louisiana Register to all persons who have made request of the agency for such notice. Any hearing by the agency pursuant to this Paragraph shall be held no earlier than thirty days after the publication of the announcement in the Louisiana Register. The agency hearing shall conform to R.S. 49:953(A)(2)(b), and a report on the hearing shall be made to the oversight committees in accordance with Subparagraph D(1)(b) of this Section. The agency shall make available to interested persons a copy of such report no later than one working day following the submittal of such report to the oversight committees. Any determination as to the rule by the oversight committees, prior to gubernatorial review as provided in Subsection G of this Section, shall be made no earlier than five days and no later than thirty days following the day the report required by this Paragraph is received from the agency.

(3) If a rule or part of a rule that is severable from a larger rule or body of rules proposed as a unit is found unacceptable, the rules or parts thereof found acceptable may be adopted by the agency in accordance with Paragraph (1) of this Subsection.

I. If the governor disapproves the action of an oversight subcommittee, he shall state written reasons for his action and shall deliver a copy of his reasons to the House and Senate oversight subcommittees, the agency proposing the rule change, and the State Register.

J. The State Register shall publish a copy of the written report of an oversight subcommittee and the written report of the governor in disapproving any such action, or if unduly cumbersome, expensive, or otherwise inexpedient, a notice stating the general subject matter of the omitted report and stating how a copy thereof may be obtained.

K. Each year, thirty days prior to the beginning of the regular session of the legislature, each agency which has proposed the adoption, amendment, or repeal of any rule or the adoption, increase, or decrease of any fee during the previous year, shall submit a report to the appropriate committees as provided for in Subsection B of this Section. This report shall contain a statement of the action taken by the agency with respect to adoption, amendment, or repeal of each rule proposed for adoption, amendment, or repeal and a report of the action taken by the agency with respect to any proposed fee adoption, increase, or decrease.

L. After submission of the report to the standing committee, a public hearing may be held by the committee for the purpose of reviewing the report with representatives of the proposing agency.

M. No later than the second legislative day of the regular session of the legislature, a standing committee to which proposed rule changes or proposed fee changes are submitted may submit a report to the legislature. This report shall contain a summary of all action taken by the committee or the oversight subcommittee with respect to agency rules and fees during the preceding twelve months. The report shall also contain any recommendations of the committee for

statutory changes concerning the agency, particularly in statutes authorizing the making and promulgation of rules and fees of the agency.

N. A standing committee may, at any time, exercise the powers granted to an oversight subcommittee under the provisions of this Section.

Acts 1990, No. 312, ¶; Acts 1990, No. 938, ¶; Acts 1990, No. 1085, ¶, eff. July 31, 1990; Acts 1991, No. 21, 2, eff. June 14, 1991; Acts 1991, No. 938, ¶; Acts 1992, No. 377, ¶, eff. June 17, 1992; Acts 1992, No. 447, ¶, eff. June 20, 1992; Acts 1993, No. 119, ¶; Acts 1993, No. 733, ¶; Acts 1995, No. 1057, ¶, eff. June 29, 1995 and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and Hospitals only); Acts 1996, 1st Ex. Sess., No. 36, ¶, eff. May 7, 1996; Acts 1997, No. 1, ¶, eff. April 30, 1997; Acts 1997, No. 1001, ¶; Acts 1999, No. 568, 2, eff. June 30, 1999; Acts 2001, No. 8, ¶, eff. July 1, 2001; Acts 2001, No. 9, ¶, eff. July 1, 2001; Acts 2001, No. 300, 3; Acts 2001, No. 451, ¶, eff. Jan. 12, 2004; Acts 2001, No. 1178, ¶, eff. June 29, 2001; Acts 2003, No. 49, ¶, eff. July 1, 2003; Acts 2003, No. 116, ¶, eff. May 28, 2003; Acts 2003, No. 183, 7; Acts 2003, No. 358, ¶; Acts 2003, No. 850, 3; Acts 2003, No. 1049, ¶.

NOTE: See Acts 1999, No. 568, ¶ and 7.

NOTE: See Acts 2001, No. 300, ¶.

NOTE: See Acts 2001, No. 451, 8(A) relative to effective date.

§969. Legislative veto, amendment, or suspension of rules, regulations, and fees

In addition to the procedures provided in R.S. 49:968 for review of the exercise of the rulemaking authority delegated by the legislature to state agencies, as defined by this Chapter, the legislature, by Concurrent Resolution, may suspend, amend, or repeal any rule or regulation or body of rules or regulations, or any fee or any increase, decrease, or repeal of any fee, adopted by a state department, agency, board, or commission. The Louisiana Register shall publish a brief summary of any Concurrent Resolution adopted by the legislature pursuant to this Section. Such summary shall be published not later than forty-five days after signing of such Resolution by the presiding officers of the legislature.

Added by Acts 1980, No. 660, ¶. Acts 1995, No. 1109, ¶, eff. Oct. 1, 1995.

§970. Gubernatorial suspension or veto of rules and regulations

The governor, by executive order, may suspend or veto any rule or regulation or body of rules or regulations adopted by a state department, agency, board or commission, except as provided in R.S. 49:967, within thirty days of their adoption. Upon the execution of such an order, the governor shall transmit copies thereof to the speaker of the House of Representatives and president of the Senate.

Added by Acts 1981, No. 453, ¶.

§971. Rejection of agency fee adoption, increases, or decreases; prohibition against fee increases and new fees; exceptions

A.(1) If either the House or Senate oversight subcommittees appointed pursuant to R.S. 49:968 determines that a proposed fee adoption, increase, or decrease is unacceptable, the respective subcommittee shall provide a written report containing the reasons therefor to the governor, the agency proposing the fee adoption, increase, or decrease, and the other house of the legislature. If the oversight subcommittee of the other house of the legislature likewise determines that the proposed fee adoption, increase, or decrease is unacceptable the fee action shall not be adopted by the agency.

(2) If a proposed fee adoption, increase, or decrease is found unacceptable as provided in this Section, the agency shall not propose a fee or a fee change or an emergency fee or an emergency fee change that is the same or substantially similar to the disapproved fee action nor shall the agency adopt an emergency fee or fee change that is the same or substantially similar to the disapproved fee action within four months after issuance of the subcommittee report nor more than once during the interim between regular sessions of the legislature.

(3) However, no state agency which has the authority to impose or assess fees shall increase any existing fee or impose any new fee unless the fee increase or fee adoption is expressly authorized pursuant to a fee schedule established by statute or specifically authorized by a federal law, rules, or regulations for the purpose of satisfying an express mandate of such federal law, rule, or regulation. No state agency shall adjust, modify or change the formula for any authorized fee in a manner that would increase the fee paid by any person by more than five percent of the relevant fee paid by such person in the previous fiscal year. Proposed fee increases of less than five percent shall be subject to oversight as required by R.S. 49:968.

(4)(a) The provisions of Paragraph (3) of this Subsection shall not apply to any department which is constitutionally created and headed by an officer who is duly elected by a majority vote of the electorate of the state.

(b) The provisions of Paragraph (3) of this Subsection shall not apply to any state professional and occupational licensing boards.

B. Action by a subcommittee shall require the favorable vote of a majority of the members of the subcommittee who are present and voting, provided a quorum is present.

Acts 1987, No. 240, ¶; Acts 1995, No. 1005, ¶, eff. Aug. 15, 1995; Acts 1995, No. 1057, ¶, eff. June 29, 1995, and Jan. 8, 1996 (1/8/96 date is applicable to Dept. of Health and Hospitals only).

NOTE: See Acts 1987, No. 240, 2.

§972. Family impact statement; issues to be considered; procedure; penalty

A. Prior to the adoption and implementation of rules, each state agency shall consider and state in writing the impact of such rules on family formation, stability, and autonomy. This written consideration shall be known as the "family impact statement".

B. The family impact statement will consider and respond in writing to the following regarding the proposed rule:

(1) The effect on the stability of the family.

(2) The effect on the authority and rights of parents regarding the education and supervision of their children.

(3) The effect on the functioning of the family.

(4) The effect on family earnings and family budget.

(5) The effect on the behavior and personal responsibility of children.

(6) The ability of the family or a local government to perform the function as contained in the proposed rule.

C. All family impact statements must be in writing and kept on file in the state agency which has adopted, amended, or repealed a rule in accordance with the applicable provisions of law relating to public records.

D. For the purposes of this Section, "family" shall mean a group of individuals related by blood, marriage, or adoption who live together as a single household.

Acts 1999, No. 1183, ¶.

Chapter 13-A. Revision of Louisiana's Administrative Code

§981. Continuous revision under supervision of division of administration, office of the state register

The office of the state register, as the official entity to receive, compute, index, and publish the Louisiana Register and Louisiana Administrative Code, shall direct and supervise the continuous revision, clarification, and coordination of the Louisiana Register and Louisiana Administrative Code in a manner not inconsistent with the provisions of this Chapter.

Acts 1993, No. 379, ¶.

§982. New regulation; incorporation in Louisiana Register and Louisiana Administrative Code; resolution of conflicting rules

A. Upon receipt of any rules promulgated under the Administrative Procedure Act, the office of the state register shall prepare the "Louisiana Register", containing the rules to be promulgated in the Louisiana Administrative Code as they may have been amended or repromulgated and omitting therefrom those sections that have been repealed. There shall also be incorporated therein, in an appropriate place and classification, the text of all the new rules of a general and public nature, assigning to these rules an appropriate title, part, chapter, and section number, and indicating the statutory authority of the rules from which they are taken.

B. When a conflict between two or more rules affecting the same subject matter in the same provision or regulation cannot be resolved for the purpose of incorporating the text into the Louisiana Administrative Code, the office of the state register shall so notify the secretary of the department or administrative officer charged with the promulgation of the rule prior to preparing the Louisiana Administrative Code. The secretary or administrative officer shall be notified of the proposed correction. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed correction is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall then direct the printer to incorporate into the Louisiana Administrative Code the text of the provision of the rule properly promulgated.

Acts 1993, No. 379, ¶.

§983. Incorporation of current rules and regulations procedure

A. In preparing the Louisiana Register or the Louisiana Administrative Code as provided for in R.S. 49:981, the office of the state register shall not alter the sense, meaning, or effect of any rule properly promulgated under the Administrative Procedure Act, but it may:

(1) Renumber and rearrange sections or parts of sections.

(2) Transfer sections or divide sections so as to give to distinct subject matters a separate section number, but without changing the meaning.

(3) Insert or change the wording of headnotes.

(4) Change reference numbers to agree with renumbered parts, chapters, or sections.

(5) Substitute the proper section, chapter, or part number for the terms "this part", "the preceding section", and the like.

(6) Strike out figures where they are merely a repetition of written words and vice-versa.

(7) Change capitalization for the purpose of uniformity.

(8) Correct manifest typographical and grammatical errors.

(9) Make any other purely formal or clerical changes in keeping with the purpose of the revision.

B. The office of the state register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, of the proposed revision is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall proceed with the revision.

Acts 1993, No. 379, ¶.

§984. Alphabetical or numerical sequence of laws

A. Whenever a rule defines terms, enumerates provisions or items, or otherwise sets forth provisions of a rule in a numerical or alphabetical listing or sequence, and such provision, as promulgated, fails to establish or fails to maintain an existing alphabetical or numerical sequence, the office of the state register, in preparing the Louisiana Register and the Louisiana Administrative Code as provided for by R.S. 49:983, shall rearrange and renumber or redesignate the provisions to the extent necessary to place all of them in consistent order.

B. The office of the state register shall notify the secretary or administrative officer charged with promulgation of the rule prior to making any proposed revision authorized by this Section. If no written disapproval of the secretary or administrative officer, or his designee, is received by the office of the state register within seven days after the secretary or administrative officer receives the notice, the office of the state register shall proceed with the revision.

C. This requirement is in addition to any other authority granted to the office of the state register in the preparation of the Louisiana Register or the Louisiana Administrative Code, particularly by R.S. 49:983.

Acts 1993, No. 379, ¶.

§985. Submitting copy to the proper party

A draft of the Louisiana Administrative Code prepared by the office of the state register shall be submitted to the appropriate secretary or administrative officer charged with the promulgation of any rule prior to transmittal to the printer.

Acts 1993, No. 379, ¶.

§986. Filing of copy with commissioner of administration; certificate of correctness; printing

Any edition of the Louisiana Administrative Code, or of any supplement thereto, prepared in the manner provided in R.S. 49:982 and 983, shall be certified by the office of the state register that each section therein has been compared with the original sections in the official copy of the Louisiana Register with the final provisions of the promulgated rules from which the sections were derived, and that with the exception of the changes of form permitted in R.S. 49:983, the sections are correct. The office of the state register shall order the printing of an edition sufficient in number to supply the demand. When the edition has been

printed, the office of the state register shall affix to one copy of the printed edition the office of the state register's original certificate and file the same for record in his office. All other copies of the same edition may contain a printed facsimile of the office's certificate.

Acts 1993, No. 379, ¶.

§987. Printing and publication of Louisiana Register; proof of certified edition

The office of the state register may enter into contracts with private publishers for the printing, publication, sale, and distribution of any edition of the Louisiana Register and the Louisiana Administrative Code prepared by the office of the state register and certified by it pursuant to the provisions of this Chapter. Those editions so authorized by the office of the state register and containing the printed facsimile of the office of the state register's certificate of correctness shall be admissible as prima facie evidence of the rules contained therein.

Acts 1993, No. 379, ¶.

Chapter 13-B. Division of Administrative Law

Part A. Administrative Law

§991. Creation of division of administrative law

The division of administrative law, hereafter referred to as "division", is created in the Department of State Civil Service.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 1997, No. 1162, 2, eff. July 1, 1998; Acts 2003, No. 956, ¶, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

§992. Applicability; exemptions; attorney fees; court costs

A.(1) Prior to October 1, 1996, the provisions of the Administrative Procedure Act shall apply to all adjudications as defined by that Act.

(2) On and after October 1, 1996, the division shall commence and handle all adjudications in the manner required by the Administrative Procedure Act provided that the provisions of that Act are not inconsistent with the provisions of this Chapter.

B.(1) Notwithstanding any other provision of the law to the contrary except as provided by R.S. 49:967 and the provisions of this Section, all adjudications shall be resolved exclusively as required by the provisions of this Chapter and the Administrative Procedure Act.

(2) In an adjudication commenced by the division, the administrative law judge shall issue the final decision or order, whether or not on rehearing, and the agency shall have no authority to override such decision or order.

(3) Nothing in this Section shall affect the right to or manner of judicial appeal in any adjudication, irrespective of whether or not such adjudication is commenced by the division or by an agency. However, no agency or official thereof, or other person acting on behalf of an agency or official thereof, shall be entitled to judicial review of a decision made pursuant to this Chapter.

C. The positions appointed by the director pursuant to this Chapter shall be in the classified service.

D.(1) Except as provided in Paragraphs (2) through (8) of this Subsection, the provisions of this Chapter shall apply to any board, commission, department, or agency of the executive branch of state government.

(2) Any board, commission, department, or agency which is required, pursuant to a federal mandate and as a

condition of federal funding, to conduct or to render a final order in an adjudication proceeding shall be exempt from the provisions of this Chapter to the extent of the federal mandate.

(3) The office of workers' compensation administration in the Department of Labor shall be exempt from the provisions of this Chapter.

(4) The office of regulatory services in the Department of Labor shall be exempt from this Chapter.

(5) State professional and occupational licensing boards shall be exempt from the provisions of this Chapter.

(6) The Department of Agriculture and Forestry shall be exempt from the provisions of this Chapter.

(7) All adjudications by the assistant secretary of the office of conservation pursuant to Chapter 1 and 7 of Subtitle 1 of Title 30 of the Louisiana Revised Statutes, except determinations of violations of laws, rules, regulations and orders, and determinations of penalties for such violations, shall be exempt from the provisions of this Chapter.

(8) The Public Service Commission and any entity which by law has its adjudications handled by the Public Service Commission shall be exempt from the provisions of this Chapter.

E. In the event that a person files a civil action to require that a state department, division, office, agency, board, commission, or other entity of state government conduct an adjudication as required by this Chapter and judgment is rendered in his favor, he shall be entitled to an award of reasonable attorney fees to be taxed as costs in the matter.

F. The provisions of this Chapter shall apply to all adjudications as defined in the Administrative Procedure Act pursuant to the Procurement Code.

G. Any board or commission authorized by law to conduct hearings may continue to hold such hearings.

H.(1) If an agency or official thereof, or other person acting on behalf of an agency or official thereof, files a petition for judicial review of a final decision or order in an adjudication proceeding and such agency, official, or person does not prevail in the final disposition of the judicial review, the agency shall be responsible for the payment of reasonable attorney fees and court costs of the other party.

(2) Notwithstanding any provision of R.S. 13:4521 to the contrary, an agency or official thereof, or other person acting on behalf of an agency or official thereof, which files a petition for judicial review of a final decision or order in an adjudication proceeding shall be required to pay court costs.

(3) All payments for litigation expenses required by this Subsection shall be paid from the agency's regular operating budget. Each agency which has paid such litigation expenses shall submit a detailed report of all such payments from the previous fiscal year to its legislative oversight committees and to the Joint Legislative Committee on the Budget no later than November fifteenth of each year.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 1997, No. 1172, 9, eff. June 30, 1997; Acts 1997, No. 1484, ¶, eff. July 16, 1997; Acts 1999, No. 1332, ¶, eff. July 12, 1999; Acts 2001, No. 527, ¶; Acts 2003, No. 956, ¶, eff. July 1, 2003; Acts 2003, No. 1271, ¶, eff. July 11, 2003.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

NOTE: See Acts 1999, No. 1332, 2 relative to the remedial nature of Act.

§993. Definitions; rules

A. The definitions for terms as provided by R.S. 49:951 shall apply to such terms used in this Chapter.

B. The division may promulgate rules according to the Administrative Procedure Act to insure compliance with the provisions of this Chapter.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 2003, No. 956, 1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

§994. Administrative law judges

A. The director of the division shall employ the administrative law judges for the division, each of whom shall have the following qualifications:

(1) An administrative law judge shall be a resident of Louisiana.

(2) An administrative law judge shall be licensed to practice law in Louisiana.

(3) An administrative law judge shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B. An administrative law judge shall be an employee of the division.

C. Notwithstanding the provisions of this Section, all persons employed in affected agencies on October 1, 1996, who handle adjudications and whether or not they meet the qualifications of this Chapter shall, unless the person declines, be transferred to and employed in the division created by this Chapter to handle adjudications in the manner provided in this Chapter. However, no person other than those provided for in this Subsection shall be employed as an administrative law judge who does not meet the requirements of this Section.

D. The administrative law judge shall have the authority to:

(1) Regulate the adjudicatory proceedings assigned to him.

(2) Issue such decisions and orders as are necessary to promote a fair, orderly, and prompt adjudication.

(3) Exercise those powers vested in the presiding officer in the Administrative Procedure Act.

(4) If the parties do not object, conduct adjudications or conferences in person or by telephone, video conference, or similar communication equipment, and administer oaths in such proceedings.

(5) Continue an adjudication in any case when a party or subpoenaed necessary witness has been called to service in the uniformed services as defined in R.S. 29:403, including but not limited to a proceeding pursuant to R.S. 32:667.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 2001, No. 84, 1; Acts 2001, 2nd Ex. Sess., No. 7, 2, eff. Oct. 16, 2001; Acts 2003, No. 956, 1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

§995. Director

A. The governor shall appoint, and the Senate shall confirm, a director for the division, who shall have the following qualifications:

(1) The director shall be a resident of Louisiana.

(2) The director shall be licensed to practice law in Louisiana.

(3) The director shall have been engaged in the actual practice of law for at least five years prior to his appointment.

B.(1) The director shall serve a six-year term and may be reappointed and confirmed for subsequent six-year terms without limitation.

(2) If a vacancy occurs during the director's term, the governor shall appoint a successor to fill the remainder of the vacant term.

(3) The first director shall be appointed on July 1, 1996, and shall take such action in compliance with this Chapter as necessary to ensure that the provisions of this Chapter are implemented by October 1, 1996.

C. The director shall be a full-time unclassified employee of the division and he shall not accept or engage in additional employment of any kind.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 2003, No. 956, 1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

§996. Duties of the director

The director of the division shall take the following actions:

(1) Administer and cause the work of the division to be performed in such a manner and pursuant to such a program as may be appropriate.

(2) Organize the division into such sections as may be appropriate.

(3) Assign administrative law judges as appropriate to perform duties vested in or required by the division.

(4) Develop and maintain a program for the continual training and education of administrative law judges and agencies in regard to their responsibilities under this Chapter and the Administrative Procedure Act.

(5) Secure, compile, and maintain all records of adjudications held pursuant to this Chapter or the Administrative Procedure Act, and such reference materials and supporting information as may be appropriate.

(6) Develop uniform standards, rules of evidence, and procedures, including but not limited to standards for determining whether or not a summary or ordinary hearing should be held, to regulate the conduct of adjudications.

(7) Promulgate and enforce rules for the prompt implementation and coordinated administration of this Chapter as may be appropriate.

(8) Administer and supervise the conduct of adjudications.

(9) Assist agencies in the preparation, consideration, publication, and interpretation of rules as appropriate pursuant to the Administrative Procedure Act.

(10) Employ the services of the several agencies and their employees in such manner and to such extent as may be agreed upon by the director and the chief executive officer of such agency.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 2003, No. 956, 1, eff. July 1, 2003; Acts 2003, No. 1056, 1.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

§997. Program of judicial evaluation

A. The director shall develop and implement a program of judicial evaluation to aid in the performance of his duties.

B. The judicial evaluation shall focus on three areas of judicial performance including competence, productivity, and demeanor. It shall include consideration of the following:

(1) Industry and promptness in adhering to schedules.

(2) Tolerance, courtesy, patience, attentiveness, and self-control in dealing with litigants, witnesses, and counsel and in presiding over adjudications.

(3) Legal skills and knowledge of the law and new legal developments.

(4) Analytical talents and writing abilities.

(5) Settlement skills.

(6) Quantity, nature, and quality of caseload disposition.

(7) Impartiality and conscientiousness.

C. The director shall develop standards and procedures for the judicial evaluation which shall include taking comments from randomly selected litigants and lawyers who have appeared before the administrative law judge under evaluation.

D. The judicial evaluation shall include a review of the methods used by the administrative law judge. The judicial evaluation shall not include a review of any result as determined by an administrative law judge in any adjudication.

E. Before implementing any action based on the findings of the judicial evaluation, the director shall discuss the findings and the proposed action with the affected judge.

F. The judicial evaluation and supporting documents shall be confidential and shall not be subject to open records provisions of R.S. 44:1 et seq.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 2003, No. 956, 1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

§998. Prehearing conference

A. The administrative law judge may conduct a prehearing conference pursuant to a motion of any party or on his own motion.

B. The administrative law judge shall set the time and place for the prehearing conference.

C. The administrative law judge shall give reasonable notice of the prehearing conference to all parties.

D. The prehearing conference may be conducted for the purpose of dealing with one or more of the following matters:

(1) Exploration of settlement possibilities.

(2) Preparation of stipulations.

(3) Clarification of issues.

(4) Rulings on the identities and limitation on the number of witnesses.

(5) Objections to proffers of evidence.

(6) Order of presentation of evidence and cross-examination.

(7) Rulings regarding issuance of subpoenas and protective orders.

(8) Schedules for the submission of written briefs.

(9) Schedules for the conduct of a hearing.

(10) Any other matter to promote the orderly and prompt conduct of the adjudication.

E. The administrative law judge shall issue a prehearing order, which he may direct one or more of the parties to prepare, incorporating the matters determined at the prehearing conference.

F. An administrative law judge assigned to render a decision or to make findings of fact and conclusions of law in a case of adjudication noticed and docketed for hearing shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his

representative, or with any officer, employee, or agent engaged in the performance of investigative, prosecuting, or advocating functions, except upon notice and opportunity for all parties to participate.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 2003, No. 956, 1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

§999. Disqualification and withdrawal of administrative law judge

A. An administrative law judge shall voluntarily disqualify himself and withdraw from any adjudication in which he cannot accord a fair and impartial hearing or consideration, or when required to be by applicable rules governing the practice of law in Louisiana.

B.(1) Any party may request the disqualification of an administrative law judge by filing an affidavit, promptly upon learning of the basis for the disqualification, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded.

(2) The director shall promptly determine whether or not to disqualify an administrative law judge based on the request, or alternatively, he may hold a preliminary hearing at least ten calendar days prior to the hearing date for the purpose of receiving evidence relating to the grounds alleged for disqualification.

Acts 1995, No. 739, 2, eff. Oct. 1, 1996; Acts 2003, No. 956, 1, eff. July 1, 2003.

NOTE: See Acts 1995, No. 947, 8 and No. 739, 3, 4.

§999.1. Contract for adjudication services; other governmental entities

The division is authorized to provide administrative law judges on a contractual basis to any governmental entity not covered by this Chapter, and to conduct administrative hearings for such entity.

Acts 1999, No. 416, 1; Acts 2003, No. 956, 1, eff. July 1, 2003.

Part B. Suspension and Revocation of License or Permit for Felonious Activity

§999.21. Suspension and ultimate revocation of license or permit; felony conviction

A. As used in this Part, the following terms shall have the following definitions:

(1) "Enforcing authority" means any of the following who have authority to enforce the provisions of this Part:

(a) The issuing agency which issued the license or permit.

(b) The attorney general.

(2) "Holder of a license or permit" means the natural person or other entity in whose name a license or permit is issued and who holds such license or permit.

(3) "Issuing agency" means a state agency, board, commission, department, or other entity of the state which issues a license or permit.

(4) "License or permit" means any license or permit issued to any person or other entity by a state agency, except for any license or permit issued pursuant to any provisions of the law in Title 37 or Title 3 of the Louisiana Revised Statutes of 1950.

B. Notwithstanding any other provision of law to the contrary, and in addition to any other sanction or penalty which may be imposed, any license or permit issued by any issuing agency may be suspended and ultimately revoked in

accordance with the procedures provided for in this Part if the natural person who is the holder of such permit or license, the natural person who owns in excess of fifty percent of an entity which holds the license or permit, or the natural person who is the chief executive officer of an entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, any crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

C. The license or permit may be suspended and its revocation shall be recommended to the courts by the issuing agency which has issued the license or permit upon its determination in the manner provided for in this Part that a person provided for in this Section has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit.

D. Such license or permit shall be revoked upon a final judgment by a court that the action of the issuing agency in suspending the license was in accord with the facts and law.

Acts 1997, No. 1162, \P , eff. July 1, 1998; Acts 2003, No. 956, \P , eff. July 1, 2003.

§999.22. Enforcing authority; initiation of action

A. Any enforcing authority may bring an action against the holder of a license or permit to suspend and ultimately revoke such license or permit in the manner and according to the procedure provided for in this Part if the enforcing authority obtains knowledge that the natural person who is the holder of the permit or license, or the natural person who owns in excess of fifty percent of the entity which holds the license or permit, or the natural person who is the chief executive officer of the entity which holds the license or permit has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to obtaining or keeping the license or permit.

B. The enforcing authority may initiate the action by providing written notice by certified mail of its intention to suspend and ultimately revoke the license or permit of the holder pursuant to this Part, sent to the holder of the license or permit, the person alleged to have been convicted of, or to have entered a plea of guilty or nolo contendere to, a felony under state or federal law related to obtaining or keeping the license or permit, and to the issuing agency which issued the license or permit, if different from the enforcing authority.

Acts 1997, No. 1162, \P , eff. July 1, 1998; Acts 2003, No. 956, \P , eff. July 1, 2003.

§999.23. Hearing before the issuing agency

A. An action to enforce the provisions of this Part shall be initiated by written application made by the enforcing authority to the issuing agency issuing the license or permit requesting such agency to order the suspension and recommend to the courts the revocation of the license or permit.

B. No determination shall be made and no license shall be ordered suspended and ultimately revoked without an adjudicatory hearing conducted in accordance with the Administrative Procedure Act and Part A of this Chapter.

C. Notwithstanding the provisions of R.S. 49:992 or any other law to the contrary, any hearing conducted pursuant to this Part may, at the request of the issuing agency, be

conducted by an administrative law judge in an adjudicatory hearing pursuant to Part A of this Chapter.

D. For purposes of this Part, the enforcing authority shall prove by a preponderance of the evidence that a person has been convicted of, or has entered a plea of guilty or nolo contendere to, a crime which is a felony under state or federal law related to the obtaining or keeping of the license at issue.

Acts 1997, No. 1162, \P , eff. July 1, 1998; Acts 2003, No. 956, \P , eff. July 1, 2003.

§999.24. Revocation

A.(1) Within thirty days after the issuance of a written determination and order by an administrative law judge or an issuing agency that the license or permit of a holder should be suspended, and a recommendation to the courts that such license or permit should be revoked, the enforcing authority shall file a petition in the Nineteenth Judicial District Court requesting such judge or court to uphold the determination of such issuing agency and order the revocation of the license or permit. A copy of the written determination and order of the administrative law judge or the issuing agency and a certified transcript of all proceedings had, if any, shall be filed with the court at the same time as the petition of the enforcing authority.

(2) The holder of the license or permit that has been ordered suspended may also file a petition requesting that the order of the administrative law judge or the issuing agency be set aside at any time after it is issued.

B.(1) After or in conjunction with the filing of a petition as provided for in Subsection A of this Section, the holder of the license or permit that has been ordered suspended may file an application with the court with supporting affidavits requesting the court to make an initial determination as to whether the suspension of the license or permit by the administrative law judge or the issuing agency should be upheld.

(2) The court shall assign a hearing on the application for the initial determination not less than two nor more than ten days after the filing of such application, in open court or in chambers.

(3) The court shall review the written determination and order of the administrative law judge or issuing agency, any affidavits which were filed with the application, and the transcript of the proceedings, if any.

(4) If the court upon a review of such documents and consideration of the issues involved finds both that it is not probable that the order of the administrative law judge or the issuing agency will be upheld and that the suspension of the license or permit will result in irreparable injury, loss, or damage to the holder of the license or permit, the court shall issue an order enjoining the suspension until it renders a final judgment on the matter.

C.(1) Except for the procedure as provided in Subsection B of this Section, all of the cases provided for in this Section shall be tried in the same manner as civil cases and shall be heard and determined as speedily as possible.

(2) If the court finds that the action of the administrative law judge or the issuing agency is in accordance with the facts and law, the court shall render a judgment upholding the order of the administrative law judge or the issuing

agency and revoking the license or permit of the holder. If not, the court shall either dismiss the order of the administrative law judge or the issuing agency and enjoin the suspension of the license or permit, or it shall remand the case to the administrative law judge or the issuing agency for further proceedings either with or without maintaining the suspension of the license or permit.

Acts 1997, No. 1162, **1**, eff. July 1, 1998; Acts 2003, No. 956, **1**, eff. July 1, 2003.

§999.25. Additional ground or cause

Notwithstanding any other law to the contrary, the provisions of this Part shall provide an additional ground or cause of action for suspension or revocation of a license or permit issued by an issuing agency and shall be in addition to any other sanction or penalty which such agency is specifically authorized to impose.

Acts 1997, No. 1162, **1**, eff. July 1, 1998; Acts 2003, No. 956, **1**, eff. July 1, 2003.

**Timetable for Adoption of rules, Fees, Emergency Rules and
Emergency Fees by Louisiana State Agencies**

Day	Time Requirement	Action
Agency Rule and Fee Proposal 10 days prior to Day 1	10 days prior to publication date of State Register in which notice of rulemaking or fee setting intent is published (Because the Register is published on the 20th day of the month, the deadline is always 10th day of month) (R.S. 49:951(7), 953(A)(1)(b)(i) and 968(B)).	Last day for agency to submit notice of intent of rulemaking or fee setting to State Register and legislative committee and presiding officers.
Day 1	State Register publication date (always the 20th day of month)	Notice of intent is published. By this date, also must submit notice to interested persons who have requested notice.
Day 36-41	Agency hearing, if requested, no earlier than 35 days and no later than 40 days after notice publication (R.S. 49:953(A)(2)).	The agency must conduct a hearing on the proposed rule or fee, if requested as specified in the law, and must provide for written comments.
***	Prior to legislative oversight, agency report to legislative committees (R.S. 49:968(D)). "Summary Report"	A report of the hearing, summary of comments received, and of any proposed revision must be provided to the legislative committee, with an explanation of agency action on changes suggested.
Legislative Oversight of Rules and Fees Day 1	Delivery of agency report to legislative committee (R.S. 49:968(D)) "Summary Report"	When the agency has completed its report and is ready for oversight, the report is submitted to the legislative committees. This starts the timetable for legislative oversight hearings.
Day 6-31	Legislative hearing no earlier than 5 days and no later than 30 days after agency report of hearing, comments, and/or revision (R.S. 49:968(D)(2) and 953(A)(2)(b)(ii)).	The legislative committees having jurisdiction may conduct a hearing to review and determine if the rule change or fee action is acceptable or unacceptable.
4th day after determination	Committee report to the governor, the agency, and the State Register not later than 4th day after committee determination, if the rule or fee is found unacceptable (R.S. 49:968(F)).	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register summarizing its determination.
10th day after receipt by governor	The governor has 10 days after receipt of committee report to disapprove committee action (R.S. 49:968(G)).	The governor may disapprove committee action. If he does not disapprove committee action the agency may not adopt rule unless modified and approved by committee. If he does disapprove committee action, the agency may adopt rule.
Legislative and Gubernatorial Oversight for Emergency Rules and Emergency Fees Day 1	Adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)).	Adoption of emergency rule or emergency fee begins time period for review by oversight subcommittee or by governor.
Day 2-60	Oversight subcommittee hearing or gubernatorial review within 60 days of adoption of emergency rule or emergency fee (R.S. 49:953(B)(4)(a) and (b)).	Oversight subcommittee may conduct a hearing or governor may review to determine if such rule or fee meets criteria as emergency and determinations as provided in R.S. 49:968(D)(3).
4th Day after determination	Committee report to the governor, the agency, and the State Register and gubernatorial report to the agency and State Register not later than 4th day after committee or gubernatorial determination, if the rule is found unacceptable (R.S. 49:953(B)(4)(a) and (b) and 968(F)).	If rule is found unacceptable, the committee must submit a report to the governor, the agency, and the State Register or the governor must submit a report to the agency and State Register summarizing their determination. Upon agency receipt of report from committee or governor, rule is null and ineffective.
Adoption and Effectiveness Rules and Fees 90 days after publication	First day agency may adopt rule or fee is 90 days after publication of notice in State Register and after compliance with rulemaking and oversight requirements (Last day for adoption is 12 months after notice publication) (R.S. 49:953(A)(1) and 968(H)).	Agency may adopt rule if the legislative committees of both houses fail to find the rule unacceptable or, if found unacceptable by a legislative committee of either house, if the governor disapproves committee action. Otherwise, it may not adopt the rule unless changed and approved by the committee. Agency may adopt fee if a legislative committee of one house fails to find the fee unacceptable. The governor has no authority to disapprove.
***	Effective date of adopted rule or fee is date of State Register publication of such rule or fee, unless rule or law provides later date	Final rules or fees are effective after adoption by the agency and upon publication in the State Register, unless a later date is provided in the rule, fee, or by law.
Emergency Rules and Emergency Fees Adoption or 60 days from adoption	Emergency rule or emergency fee is effective on date of adoption, or date specified by agency not more than 60 days from adoption provided written notice is given within 5 days of adoption to governor, attorney general, speaker, president, and Department of State Register (R.S. 49:951(7) and 954(B)(2)).	Agency may adopt emergency rule or emergency fee if emergency criteria are met. Emergency rule may be invalidated by declaratory judgment that it does not meet emergency criteria. (R.S. 49:953(B)(3)) Emergency rule is null upon agency receipt of report from oversight committee or governor that the rule is unacceptable. (R.S. 49:953(B)(4))
***	Not effective beyond publication date of State Register published in month following the month adopted, unless such rule or fee and the reasons for adoption are published (however, not effective for longer than 120 days) (R.S. 49:954(B)(2)).	Agency must publish emergency rule or emergency fee and the reasons for adoption in the State Register published the month after the month of adoption to continue effectiveness, provided not effective longer than 120 days.

This table uses the term legislative committee to include oversight committees of legislative committee. It should be noted that the APA authorizes and provides for oversight subcommittees of legislative committees to conduct hearings and make determinations; however, it also provides that the full committee may exercise this authority.

This table is a summary and does not purport to fully reflect the law. Please refer to the APA at LSA R.S. 49:950 et seq.

Revised by House Legislative Services 2/7/00.

0402#095

Potpourri

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Landscape Architect Registration Exam

The next landscape architect registration examination will be given June 14-15, 2004, beginning at 7:45 a.m. at the College of Design Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending the application and fee is as follows.

New Candidates:	February 20, 2004
Re-Take Candidates:	March 5, 2004
Reciprocity Candidates:	May 7, 2004

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, P.O. Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to February 20, 2004. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0402#018

POTPOURRI

Department of Agriculture and Forestry Horticulture Commission

Retail Floristry Examination

The next retail floristry examinations will be given May 3-7, 2004, 9:30 a.m. at the 4-H Mini Farm Building, Louisiana State University Campus, Baton Rouge, LA. The deadline for sending in application and fee is March 19, 2004. No applications will be accepted after March 19, 2004.

Further information pertaining to the examinations may be obtained from Craig Roussel, Director, Horticulture Commission, Box 3596, Baton Rouge, LA 70821-3596, phone (225) 952-8100.

Any individual requesting special accommodations due to a disability should notify the office prior to March 19, 2004. Questions may be directed to (225) 952-8100.

Bob Odom
Commissioner

0402#014

POTPOURRI

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

Adjudicatory Hearing? Establishment of 2004 Assessment

As required by Boll Weevil Eradication Law and Rules and Regulations, the Boll Weevil Eradication Commission will hold an adjudicatory hearing beginning at 10 a.m., March 12, 2004, at the Louisiana Department of Agriculture and Forestry, First Floor Auditorium, located at 5825 Florida Boulevard, Baton Rouge, LA. The 2004 assessment will be set at this time. Based upon a referendum held in accordance with R.S. 3:1613 and regulations of the Boll Weevil Eradication Commission, this assessment shall not exceed \$6 per acre of cotton planted for 2004 in the Red River Eradication Zone and \$6 per acre of cotton planted for 2004 in the Louisiana Eradication Zone.

All interested persons are invited to attend and will be afforded an opportunity to participate in the adjudicatory hearing. Written comments will be accepted if received prior to March 11, 2004, P.O. Box 3596, Baton Rouge, LA 70821-3596.

Dan P. Logan
Chairman

0401#013

POTPOURRI

Department of Agriculture and Forestry Office of Forestry and Department of Revenue Tax Commission

Timber Stumpage Values

The Louisiana Department of Agriculture and Forestry, Office of Forestry is hereby giving notice of the stumpage values that were amended at the joint meeting of the Forestry Commission and Tax Commission held on January 27, 2004. The following stumpage values were adopted for the purpose of determining timber severance tax for calendar year 2004.

The Louisiana Forestry Commission, and the Louisiana Tax Commission, as required by R.S. 47:633, determined the following timber stumpage values based on current average stumpage market values to be used for severance tax computations for 2004.

	Price/Scale	Price/Ton
Trees and Timber		
Pine Sawtimber	\$324.50/MBF	\$40.56/Ton
Hardwood Sawtimber	\$298.22/MBF	\$31.39/Ton
Pine Chip and Saw	\$94.96/CD	\$35.17/Ton
Pulpwood		
Pine Pulpwood	\$19.16/CD	\$7.10/Ton
Hardwood Pulpwood	\$16.09/CD	\$5.64/Ton

Bob Odom
Commissioner

0402#094

POTPOURRI

Department of Environmental Quality Office of Environmental Assessment Environmental Planning Division

Advance Notice of Proposed Rulemaking Underground Storage Tanks Regulations (LAC 33:XI.Chapters 1-13)(UT011)

The Department of Environmental Quality is issuing an advance notice of proposed rulemaking (ANPR) in order to obtain early comment on issues associated with the draft amendments to the Underground Storage Tanks regulations, LAC 33:Part XI (Log #UT011).

This ANPR requests public input on the draft amendments regarding:

1. determination of the fiscal and economic impact of the proposed amendments;
2. clarification of standards for release detection methods, corrosion protection, permanent closure, and temporary closure;
3. amendments to financial responsibility requirements for Motor Fuels Underground Storage Tank Trust Fund (MFUSTTF) participants;
4. addition of new definitions; and
5. deletion of the UST Certification Board.

The goal of the agency is to develop proposed regulations that will further the protection of the environment with little or no fiscal effect to the regulated community or the public.

All interested persons are invited to submit written comments on the ANPR. Persons commenting should reference the draft regulation by UT011. Such comments must be received no later than April 16, 2004, at 4:30 p.m., and should be sent to Sharon Parker, Office of Environmental Assessment, Environmental Planning Division, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or to FAX (225) 219-3582 or by e-mail to sharon.parker@la.gov. Copies of this draft regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of UT011.

UT011 is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive,

Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

Title 33

ENVIRONMENTAL QUALITY

Part XI. Underground Storage Tanks

Chapter 1. Program Applicability and Definitions

§103. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Section shall have the following meanings, unless specifically defined otherwise in LAC 33:XI.1105 or 1303.

De Minimis Concentration? the concentration of a regulated substance below which no significant impact to human health or the environment would result if a release occurred, as determined by LAC 33:I.1307.

Owner?

- a. the current owner of the land under which the tank is or was buried;
- b. any legal owner of the tank;
- c. any known operator of the tank;
- d. any lessee;
- e. any lessor;
- f. if one person defined as an owner complies, it shall be deemed compliance by all persons defined as owners.

Permanent Closure? the process of removing and disposing of a UST system no longer in service, including the process of abandoning such a system in place through the use of prescribed techniques for the purging of vapors and the filling of the vessel with an inert material, the process of properly labeling a tank, and the process of collecting subsurface samples. Abandoning such systems in place shall be done in accordance with methods approved by the administrative authority.

Release? any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a UST system.

Response Action? any technical services activity or specialized services activity including, but not limited to, assessment, planning, design, engineering, construction, operation of recovery system, or ancillary services, which are carried out in response to any discharge or release or threatened release of motor fuels into the groundwater, surface waters, or subsurface soils.

Response Action Contractor? a person who has been approved by the department and is carrying out any response action, excluding a person retained or hired by such person to provide specialized services relating to a response action. When emergency conditions exist as a result of a release from a motor fuel underground storage tank, this term shall include any person performing department-approved emergency response actions during the first 72 hours following the release.

Technical Services? activities performed by a response action contractor including, but not limited to, oversight of all assessment field activities; all reporting, planning, and development of corrective action plans and designing of

remedial activities; performance of groundwater monitoring and discharge monitoring; performance of operation and maintenance of remedial systems; and oversight of specialized services performed by a subcontractor.

Temporary Closure? the temporary removal from service of a UST.

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), LR 18:727 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 27:520 (April 2001), LR 30:

Chapter 3. Registration Requirements, Standards, and Fee Schedule

§301. Registration Requirements

A. Existing UST Systems

1. All owners of *existing UST systems* (as defined in LAC 33:XI.103) were required to register such systems by May 8, 1986, (USTs installed after that date were required to be registered within 30 days of bringing such tanks into use) on a form approved by the department. Tanks filled with a solid, inert material before January 1, 1974, are not required to be registered with the department. No person shall allow a regulated substance to be placed into an existing UST system that has not been registered and does not have a current certificate of registration.

A.2 - B.2. ...

3. No person shall allow a regulated substance to be placed into a new UST system that has not been registered and does not have a current certificate of registration.

C. All UST Systems. Beginning on the effective date of these regulations, any person who sells a UST must notify the purchaser of that tank of the owner's registration obligations under this Section's requirements, specifically as follows.

1. Any person who sells a UST system shall so notify the Office of Environmental Services, Permits Division in writing within 30 days after the date of the transaction.

2. Any person who acquires a UST system shall submit to the Office of Environmental Services, Permits Division an amended registration form within 30 days after the date of acquisition.

3. A current copy of the registration form must be kept on-site or at the nearest staffed facility.

4. The current Certificate of UST Registration shall be kept conspicuously posted in the place of business at all times, in such a manner as to be visible to the person placing or dispensing a regulated substance into the UST.

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 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:727 (July 1992), LR 20:294 (March 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002); amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 30:

§303. Standards for UST Systems

A. A code of practice developed by a nationally-recognized association or an independent testing laboratory shall be used to comply with this Section. An approved list of Industry Codes and Standards for UST Systems may be obtained at the department's website or at www.epa.gov/swrust1/cmplastc/standard.htm, or by contacting the Office of Environmental Services, Permits Division or the Office of Environmental Compliance, Enforcement or Surveillance Division.

B. Standards for New UST Systems. In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the requirements of this Subsection. No portion of a new UST system shall be installed within 50 feet of an active or abandoned water well unless the entire system meets the requirements of LAC 33:XI.703.C.2.

1. Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the tank is constructed of fiberglass-reinforced plastic; or

NOTE: Repealed.

b. the tank is constructed of metal and cathodically protected in the following manner:

i. the tank is coated with a suitable dielectric material;

ii. field-installed cathodic protection systems are designed by a corrosion expert;

iii. impressed current systems are designed to allow determination of current operating status as required in LAC 33:XI.503.A.3; and

iv. cathodic protection systems are operated and maintained in accordance with LAC 33:XI.503 or according to guidelines established by the department; or

NOTE: Repealed.

c. the tank is constructed of a metal-fiberglass-reinforced-plastic composite; or

NOTE: Repealed.

d. the tank is constructed of metal without additional corrosion protection measures, provided that:

i. the tank is installed at a site that a corrosion expert determines will not be corrosive enough to cause the tank to have a release due to corrosion during its operating life; and

ii. owners and operators maintain records that demonstrate compliance with the requirements of Clause B.1.d.i of this Section for the remaining life of the tank; or

e. the tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the constructions listed in Subparagraphs B.1.a-d of this Section.

2. Piping. Piping that routinely contains regulated substances and is in contact with the ground or water must be properly designed, constructed, and protected from corrosion in accordance with Subsection A of this Section and as described below:

a. the piping is constructed of fiberglass-reinforced plastic; or

NOTE: Repealed.

b. the piping is constructed of metal and cathodically protected in the following manner:

i. the piping is coated with a suitable dielectric material;

ii. field-installed cathodic protection systems are designed by a corrosion expert;

iii. impressed current systems are designed to allow determination of current operating status as required in LAC 33:XI.503.A.3; and

iv. cathodic protection systems are operated and maintained in accordance with LAC 33:XI.503 or guidelines established by the department; or

NOTE: Repealed.

c. the piping is constructed of metal without additional corrosion protection measures, provided that:

i. the piping is installed at a site that a corrosion expert determines is not corrosive enough to cause the piping to have a release due to corrosion during its operating life; and

ii. owners and operators maintain records that demonstrate compliance with the requirements of Clause B.2.c.i of this Section for the remaining life of the piping; or

NOTE: Repealed.

d. the piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in Subparagraphs B.2.a-c of this Section.

3. Spill and Overfill Prevention Equipment

a. Except as provided in Subparagraph B.3.b of this Section, to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use:

i. spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

ii. overfill prevention equipment that will:

(a). automatically shut off flow into the tank when the tank is no more than 95 percent full;

(b). alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

(c). restrict flow 30 minutes prior to overfilling, or alert the operator with a high-level alarm one minute before overfilling, or automatically shut off flow into the tank so that none of the fittings on top of the tank are exposed to product because of overfilling.

b. Owners and operators are not required to use the spill and overfill prevention equipment specified in Subparagraph B.3.a of this Section if:

i. alternative equipment is used that the department determines is no less protective of human health and the environment than the equipment specified in Clause B.3.a.i or ii of this Section; or

ii. the UST system is filled by transfers of no more than 25 gallons at one time.

4. Installation, Certification of Installation and Verification of Installer Certification, and Notification of Installation

a. Installation. All tanks and piping must be installed in accordance with Subsection A of this Section and in accordance with the manufacturer's instructions.

NOTE: Repealed.

b. Certification of Installation and Verification of Installer Certification

i. From the date of promulgation of these regulations until January 20, 1992, owners and operators must certify installations as follows. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with Subparagraph B.4.a of this Section by providing a certification of compliance on the UST registration forms (UST-REG-01 and 02) in accordance with LAC 33:XI.301:

(a). the installer has been certified by the tank and piping manufacturers; or

(b). the installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(c). the installation has been inspected and approved by the department; or

(d). all work listed in the manufacturer's installation checklists has been completed; or

(e). the owner and operator have complied with another method for ensuring compliance with Subparagraph B.4.a of this Section that is determined by the department to be no less protective of human health and the environment.

ii. Beginning January 20, 1992, all owners and operators must ensure that the individual exercising supervisory control over *installation critical junctures* (as defined in LAC 33:XI.1303) of a UST system is certified in accordance with LAC 33:XI.Chapter 13. To demonstrate compliance with Subparagraph B.4.a of this Section, all owners and operators must provide a certification of compliance on the UST Registration of Technical Requirements Form (UST-REG-02) within 60 days of the introduction of any regulated substance. Forms shall be filed with the Office of Environmental Services, Permits Division.

c. Notification of Installation. The owner and operator must notify the Office of Environmental Compliance, Surveillance Division in writing at least 30 days before beginning installation of a new UST system by:

i. completing the Installation, Renovation and Upgrade Notification Form (UST-ENF-04);

ii. notifying the appropriate regional office of the Office of Environmental Compliance, Surveillance Division by mail or fax seven days prior to commencing the installation and before commencing any *installation critical juncture* (as defined in LAC 33:XI:1303);

iii. including in the notification a statement of the number of active or abandoned water wells within 50 feet of the UST system and the type of system to be installed; and

iv. including in the notification the methods to be used to comply with LAC 33:XI.Chapter 7.

C. Upgrading Existing UST Systems to New System Standards

1. Not later than December 22, 1998, all existing UST systems must comply with one of the following sets of requirements:

- a. new UST system performance standards under Subsection B of this Section; or
- b. the upgrading requirements in Paragraphs C.3-6 of this Section.

2. After December 22, 1998, all existing UST systems not meeting the requirements of Paragraph C.1 of this Section must comply with closure requirements under LAC 33:XI.Chapter 9, including applicable requirements for corrective action under LAC 33:XI.715.

3. Tank Upgrading Requirements. Metal tanks must be upgraded in accordance with Subsection A of this Section and meet one of the following requirements.

a. Internal Lining. A tank may be upgraded by internal lining if:

- i. the lining is installed in accordance with the requirements of LAC 33:XI.507; and
- ii. within 10 years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

b. Cathodic Protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of Clauses B.1.b.ii, iii, and iv of this Section, and the integrity of the tank is ensured using one of the following methods.

i. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes before the cathodic protection system is installed.

ii. The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with LAC 33:XI.701.A.4-8.

iii. The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of LAC 33:XI.701.A.3. The first tightness test must be conducted before the cathodic protection system is installed. The second tightness test must be conducted between three and six months after the first operation of the cathodic protection system.

iv. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than the methods specified in Clauses C.3.b.i-iii of this Section.

v. All procedures used to upgrade existing UST systems by cathodic protection shall be conducted in accordance with applicable requirements of the Louisiana Department of Transportation and Development, or its successor agency.

c. Internal Lining Combined with Cathodic Protection. A tank may be upgraded by both internal lining and cathodic protection if:

- i. the lining is installed in accordance with the requirements of LAC 33:XI.507; and
- ii. the cathodic protection system meets the requirements of Clauses B.1.b.ii, iii, and iv of this Section.

NOTE: Repealed.

4. Piping Upgrading Requirements. Metal piping that routinely contains regulated substances and is in contact with the ground or water must be cathodically protected and must meet the requirements of Clauses B.2.b.ii, iii, and iv of this Section.

NOTE: Repealed.

5. Spill and Overflow Prevention Equipment. To prevent spilling and overflowing associated with product transfer to the UST system, all existing UST systems must comply with the requirements for spill and overflow prevention equipment for new UST systems specified in Paragraph B.3 of this Section.

6. Reporting Requirements

a. The owner and operator must notify the Office of Environmental Services, Permits Division, or the Office of Environmental Compliance, Surveillance Division, in writing at least 30 days before beginning a UST system upgrade.

b. An amended registration form (UST-REG-02) must be submitted to the Office of Environmental Services, Permits Division within 30 days after the UST system is upgraded. The owner and operator must certify compliance with Subsection C of this Section on the amended registration form (UST-REG-02). Beginning January 20, 1992, the amended registration forms (UST-REG-01 and 02) shall include the name and department-issued certificate number of the individual exercising supervisory control over those steps in the upgrade that involve *repair critical junctures* or *installation critical junctures* (as defined in LAC 33:XI.1303) of a UST system.

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 11:1139 (December 1985), amended LR 16:614 (July 1990), LR 17:658 (July 1991), LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 28:475 (March 2002), LR 30:

§305. Interim Prohibitions for Deferred UST Systems

A. The following requirements apply to all UST systems deferred under LAC 33:XI.101.C.

B. No person may install a UST system listed in LAC 33:XI.101.C for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction) meets the following requirements.

1. The UST system will prevent releases due to corrosion or structural failure for the operational life of the UST system.

2. The UST system is cathodically protected against corrosion, is constructed of noncorrodible material or of metal clad with a noncorrodible material, or is designed in a manner to prevent the release or threatened release of any stored substance.

3. The UST system is constructed or lined with material that is compatible with the stored substance.

C. Notwithstanding Subsection A of this Section, a UST system without corrosion protection may be installed at a site that a corrosion expert determines is not corrosive enough to cause the UST system to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this Subsection for the remaining life of the

tank. A code of practice developed by a nationally-recognized association or an independent testing laboratory shall be used to comply with this Section. An approved list of Industry Codes and Standards for UST Systems may be obtained at the department's website or at www.epa.gov/swerust1/cmplastc/standard.htm, or by contacting the Office of Environmental Services, Permits Division or the Office of Environmental Compliance, Enforcement or Surveillance Division.

NOTE: Repealed.

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 11:1139 (December 1985), amended LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

Chapter 5. General Operating Requirements

§501. Spill and Overflow Control

A. A code of practice developed by a nationally-recognized association (i.e., National Fire Protection Association) or an independent testing laboratory shall be used to comply with this Chapter. An approved list of Industry Codes and Standards for UST Systems may be obtained at the department's website or at www.epa.gov/swerust1/cmplastc/standard.htm, or by contacting the Office of Environmental Services, Permits Division or the Office of Environmental Compliance, Enforcement or Surveillance Division.

B. Owners and operators must ensure that releases due to spilling or overfilling do not occur. Before a transfer is made, the owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank and that the transfer operation is monitored constantly to prevent overfilling and spilling. Spill and overflow controls shall be conducted in accordance with Subsection A of this Section.

NOTE: Repealed.

C. Owners and operators must report, investigate, and clean up any spills and overfills, in accordance with LAC 33:XI.713.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§503. Operation and Maintenance of Corrosion Protection

A. All owners and operators of metal UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances.

1. All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of external portions of the tank and piping that routinely contain regulated substances and are in contact with the ground or water.

2. All UST systems equipped with cathodic protection systems must be inspected for proper operation by a

qualified cathodic protection tester in accordance with the following requirements.

a. Frequency. All cathodic protection systems must be tested within six months after installation and at least every three years thereafter.

b. Inspection Criteria. The criteria used to determine whether cathodic protection is adequate as required by this Section must be in accordance with LAC 33:XI.501.A.

NOTE: Repealed.

3. UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure that the equipment is running properly.

4. For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with LAC 33:XI.509) to demonstrate compliance with the performance standards in this Section. These records must provide the following:

a. the results of the last three years of inspections required in Paragraph A.3 of this Section; and

b. the results of testing from the last two inspections required in Paragraph A.2 of this Section.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§505. Compatibility

A. ...

NOTE: Repealed.

B. Owners and operators storing alcohol blends shall do so in accordance with LAC 33:XI.501.A.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§507. Repairs Allowed

A. Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements.

1. Except in emergencies, the owner and operator shall notify the department's Office of Environmental Compliance, Surveillance Division in advance of the necessity for conducting a repair to a UST system.

2. Repairs to UST systems must be properly conducted in accordance with LAC 33:XI.501.A. Beginning January 20, 1992, all owners and operators must ensure that the individual exercising supervisory control over *repair critical junctures* (as defined in LAC 33:XI.1303) is certified in accordance with LAC 33:XI.Chapter 13.

NOTE: Repealed.

3. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with LAC 33:XI.501.A.

4. Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings must be repaired or

replaced in accordance with the manufacturer's specifications.

5. Repaired tanks and piping must be tightness tested in accordance with LAC 33:XI.701.A.3 and B.2 within 30 days after the date that the repair is completed, except under the following circumstances:

a. the repaired tank is internally inspected in accordance with LAC 33:XI.501.A; or

b. the repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in LAC 33:XI.701.A.4-8; or

c. another test method is used that has been given prior approval by the department after it determined the method to be no less protective of human health and the environment than those listed above.

6. Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with LAC 33:XI.503.A.2 and 3 to ensure that it is operating properly.

7. Owners and operators of UST systems must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this Section.

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 Environmental Assessment, Environmental Planning Division, LR 26:2558 (November 2000), LR 30:

§509. Reporting and Recordkeeping

A. Reporting. Owners and operators must submit the following information to the department:

1. registration forms (UST-REG-01 and 02) for all UST systems (LAC 33:XI.301), including certification of installation and verification of installer certification for new UST systems, in accordance with LAC 33:XI.303.B.4.b;

2. - 5. ...

B. Recordkeeping. Owners and operators must maintain the following information:

1. a corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (LAC 33:XI.303.B.1.d and B.2.c);

2. documentation of operation of corrosion protection equipment (LAC 33:XI.503.A.4);

3. documentation of UST system repairs (LAC 33:XI.507.A.7);

4. documentation of recent compliance with release detection requirements (LAC 33:XI.705);

5. copies of the most current registration forms (UST-REG-01 and 02) filed with the department;

6. documentation of the type and manufacturer of the tank, piping, leak detection equipment, and spill and overflow protection equipment; and

7. documentation of permanent closure, where applicable.

C. ...

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 18:728 (July 1992), amended by the Office of

Environmental Assessment, Environmental Planning Division, LR 30:

Chapter 7. Methods of Release Detection and Release Reporting, Investigation, Confirmation, and Response

§701. Methods of Release Detection

A. - A.1.f. ...

g. Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of Paragraph A.1 of this Section.

NOTE: Repealed

2. - 5.c.ii. ...

iii. The slotted portion of the RDD must be designed to prevent migration of soils or the filter pack into the RDD and to allow entry of the regulated substance on the water table into the RDD under both high and low groundwater conditions.

5.c.iv. - 6. ...

a. For double-walled UST systems, the sampling or testing method must be capable of detecting a release through the inner wall in any portion of the tank that routinely contains product. The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

NOTE: Repealed.

b. - c. ...

7. Statistical Inventory Reconciliation (SIR)

a. The SIR method used must analyze inventory control records in a manner that can detect a release of 0.2 gallons per hour from any portion of the UST system that routinely contains product with a probability of detection of at least 0.95 and a probability of false alarm of no greater than 0.05.

b. The UST system owner or operator must receive a monthly report from the SIR provider/vendor that actually performs the SIR analysis within 15 days following the last day of the calendar month for which the analysis was performed. The SIR analysis report must include, at a minimum:

i. the name of the SIR provider/vendor and the name and version of the SIR method used for analysis;

ii. the name of the company and individual who performed the analysis;

iii. the name and address of the facility at which the analysis was performed and a description of the UST system for which the analysis was performed;

iv. a quantitative statement, in gallons per hour, for each UST system monitored for the month analyzed, of the leak threshold, the minimum detectable leak rate, and the indicated leak rate; and

v. a quantitative statement of "pass," "fail," or "inconclusive" for each UST system monitored.

8. Other Methods. Any other type of release detection method, or combination of methods, can be used if it meets the following requirements.

a. The release detection method can detect a 0.2-gallon-per-hour leak rate or a release of 150 gallons within a month with a probability of detection of at least 0.95 and a probability of false alarm of no greater than 0.05.

b. The release-detection method has been approved by the Office of Environmental Compliance, Surveillance Division on the basis of a demonstration by the owner and operator that the method can detect a release as effectively as any of the methods allowed in Paragraphs A.3-8 of this Section. In comparing methods, the Office of Environmental Compliance, Surveillance Division shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed on its use by the Office of Environmental Compliance, Surveillance Division.

B. ...

1. Automatic Line Leak Detectors. Methods that alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of three gallons per hour at 10-pounds-per-square-inch line pressure within one hour. A test of the operation of the leak detector shall be conducted every 12 months in accordance with the manufacturer's requirements and also by simulating a release in order to determine if the system is fully operational.

2. ...

3. Applicable Tank Methods. Any of the methods in Paragraphs A.5-8 of this Section may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§703. Requirements for Use of Release Detection Methods

A. - B. ...

1. Tanks. Tanks must be monitored at least every 30 days for releases using one of the methods listed in LAC 33:XI.701.A.4-8, except for the following.

a. UST systems that meet the performance standards in LAC 33:XI.303.B or C, and the monthly inventory control requirements in LAC 33:XI.701.A.1 or 2, may use tank tightness testing (conducted in accordance with LAC 33:XI.701.A.3) at least every five years until December 22, 1998, or until 10 years after the tank is installed or upgraded under LAC 33:XI.303.C.3, whichever is later.

b. UST systems that do not meet the performance standards in LAC 33:XI.303.B or C may use monthly inventory controls (conducted in accordance with LAC 33:XI.701.A.1 or 2), and tank tightness testing every 12 months (conducted in accordance with LAC 33:XI.701.A.3) until December 22, 1998, when the tank must be upgraded under LAC 33:XI.303.C or permanently closed under LAC 33:XI.905.

1.c. - 2.a.i. ...

ii. have a line tightness test conducted every 12 months in accordance with LAC 33:XI.701.B.2, or have monthly monitoring conducted in accordance with LAC 33:XI.701.B.3.

2.b. - 2.b.iv. ...

v. a method is used that allows compliance with Clauses B.2.b.ii-iv of this Section to be readily determined and verified.

C. - C.2. ...

a. Secondary containment systems must be designed, constructed, and installed in accordance with LAC 33:V.4437 to:

i. - iii. ...

NOTE: Repealed.

b. - e.iii. ...

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 Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:

§705. Release Detection Recordkeeping

A. All UST system owners and operators must maintain records in accordance with LAC 33:XI.509 demonstrating compliance with all applicable requirements of LAC 33:XI.701-703. These records must include the following.

1. All written performance claims pertaining to any release detection system used and documentation of the manner in which these claims have been justified or tested by the equipment manufacturer, installer, or third party independent testing laboratory must be maintained throughout the operational life of the release detection system.

2. The results of any sampling, testing, or monitoring must be maintained for at least three years, except that the results of tank tightness testing conducted in accordance with LAC 33:XI.701.A.3 must be retained until the next test is conducted.

3. Written documentation of all calibration, maintenance, and repair of release detection equipment used on-site must be maintained for at least three years after the servicing work is completed. Any schedules of required calibration and maintenance provided by the manufacturer of the release detection equipment must be retained for five years from the date of installation.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§707. Reporting of Suspected Releases

A. All owners, operators, employees, agents, contractors, or assigns having knowledge of any of the conditions listed below shall notify the Office of Environmental Compliance in the manner provided in LAC 33:I.3923 within 24 hours after becoming aware of the occurrence or, if they have knowledge of an emergency condition, shall report it immediately in accordance with LAC 33:I.Chapter 39. After discovery of any of the following conditions, owners and operators of UST systems shall follow the procedures specified in LAC 33:XI.711:

1. released regulated substances are discovered at the UST site or in the surrounding area (such as the presence of

free product or vapors in soils, basements, sewer and utility lines, or nearby surface water);

2. unusual operating conditions are observed (such as the erratic behavior of product-dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced;

3. monitoring results from a release detection method required under LAC 33:XI.703.B and C indicate that a release may have occurred, unless:

a. the monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring conducted within 24 hours does not confirm the initial result; or

b. in the case of inventory control, a second month of data does not continue to indicate a loss;

4. monitoring results from the SIR method allowed under LAC 33:XI.701.A.7 indicate:

a. a UST system analysis report result of "fail;" or

b. a UST system analysis result of "inconclusive" that has not been investigated and quantified as a "pass" in the form of a replacement UST system analysis report meeting the requirements of LAC 33:XI.701.A.7.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, Underground Storage Tank Division, LR 16:614 (July 1990), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2559 (November 2000), LR 30:

Chapter 9. Out-of-Service UST Systems and Closure

§901. Applicability to Previously Closed UST Systems

A. The owner and operator of a UST system permanently closed before July 20, 1990, must assess the excavation zone and close the UST system in accordance with this Chapter if directed to do so by the department. The department shall direct that such closure be undertaken if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

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 by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§903. Temporary Closure

A. - B. ...

1. leave vent lines open and functioning;

2. cap and secure all other lines, pumps, manways, and ancillary equipment; and

3. submit a completed copy of the registration form UST-REG-01 to the Office of Environmental Services, Permits Division.

C. When a UST system is temporarily closed for more than six months, owners and operators must permanently close the UST system if it does not meet either the performance standards in LAC 33:XI.303.B for new UST systems or the upgrading requirements in LAC 33:XI.303.C.3-6, except that the spill and overfill equipment requirements do not have to be met.

D. When a UST system is temporarily closed for more than 24 months owners and operators must permanently close the UST system in accordance with LAC 33:XI.901 and 905-907, unless the department approves an extension of the 24-month temporary closure period. Owners and operators must complete a site assessment in accordance with LAC 33:XI.907 and submit documentation of recent compliance with temporary closure requirements in Subsection A of this Section before they can apply for such an extension.

E. A tank tightness test in accordance with LAC 33:XI.701.A.3 must be conducted within five days after a UST system that has been temporarily closed for three months or more is brought back into service.

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 Environmental Assessment, Environmental Planning Division, LR 30:

§905. Permanent Closure and Changes-in-Service

A. At least 30 days before beginning either permanent closure or a change-in-service under Subsections B, C, and D of this Section, owners and operators must notify the Office of Environmental Compliance, Surveillance Division of their intent to permanently close or make the change-in-service, unless such action is in response to corrective action.

1. Notification shall be made by:

a. completing the notification form UST-SURV-01; and

b. notifying the appropriate regional office of the Office of Environmental Compliance, Surveillance Division by mail or fax seven days prior to implementing the removal or change.

2. Beginning January 20, 1992, all owners and operators must ensure that an individual exercising supervisory control over closure critical junctures (as defined in LAC 33:XI.1303) is certified in accordance with LAC 33:XI.Chapter 13. The assessment of the excavation zone required under LAC 33:XI.907 must be performed after the department is notified but before the permanent closure or change-in-service is completed.

B. To permanently close a UST, owners and operators must empty and clean the tank and all associated piping by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material.

C. Continued use of a UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with LAC 33:XI.907.

D. The following cleaning and closure procedures shall be used to comply with this Section:

1. American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks";

2. American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks";

3. American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks" (may be used as guidance for compliance with this Section); and

4. The National Institute for Occupational Safety and Health, "Criteria for a Recommended Standard ... Working in Confined Space" (may be used as guidance for conducting safe closure procedures at some hazardous substance tanks).

NOTE: Repealed.

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 Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), LR 30:

§907. Assessing the Site at Closure or Change-in-Service

A. Before permanent closure or a change-in-service is completed, owners and operators must measure for the presence of a release where contamination is most likely to be present at the UST site, utilizing the procedure approved by the department. In selecting sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. Results of this assessment must be submitted in duplicate to the Office of Environmental Compliance, Surveillance Division within 60 days following permanent closure or change in service. The assessment results shall include a site diagram indicating locations where samples were collected and a written statement specifying which USTs have been closed.

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, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 18:728 (July 1992), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2560 (November 2000), LR 30:

Chapter 11. Financial Responsibility

§1121. Use of the Motor Fuel Underground Storage Tank Trust Fund

A. The administrative authority was authorized by R.S. 30:2194-2195.10 to receive and administer the Motor Fuel Underground Storage Tank Trust Fund (MFUSTTF) to provide financial responsibility for owners or operators of underground motor fuel storage tanks. Under the conditions described in this Section, an owner or operator who is eligible for participation in the MFUSTTF may use this mechanism to partially fulfill the financial responsibility requirements for eligible USTs. To use the MFUSTTF as a mechanism for meeting the requirements of LAC 33:XI.1107, the owner or operator must be an "eligible participant," as defined in Subsection B of this Section. In addition, the owner or operator must use one of the other mechanisms described in LAC 33:XI.1111-1119 or 1123-1125 to demonstrate financial responsibility for the amounts

of the deductibles specified in Subsection C of this Section, which are the responsibility of the participant and not covered by the MFUSTTF.

B. Definitions. The following terms shall have the meanings ascribed to them as used in this Section.

Advisory Board? the Underground Motor Fuels Storage Tank Advisory Board (established under R.S. 2195.8), whose six members consist of the following:

a. the secretary of the Department of Environmental Quality or his designee;

b. two members appointed by the president of the Louisiana Oil Marketers Association;

c. one member appointed by the Mid-Continent Oil and Gas Association; and

d. two members appointed by the secretary who represent the response action contractor community.

Cost-Effective Procedures? the basis used to determine the method of payment to a response action contractor for performing assessment or remediation work at an MFUSTTF-eligible site. For assessment work, the method of payment is based on time and materials rates and unit activity rates as established in the Louisiana Motor Fuels Underground Storage Tank Trust Fund Cost Control Guidance Document. For remediation work, the method of payment for an approved corrective action plan is based on time and materials rates and unit activity rates as established in the Louisiana Motor Fuels Underground Storage Tank Trust Fund Cost Control Guidance Document, or a payment structure established in a *pay-for-performance agreement*. The method of payment for remediation work is at the discretion of the administrative authority, on a case-by-case basis.

Date of Release? the specific date on which evidence indicates that a release (leak) is occurring or has occurred. If a tank is taken out of service, the date of release is the last date of operation.

Eligible Participant? for releases occurring prior to August 1, 2001, any owner of an underground storage tank who has registered said newly-installed or operating tank with the department prior to the date of a release, has paid the annual tank registration fees along with any late payment fees, and has met the financial responsibility requirements imposed by Subsection C of this Section. For releases occurring on or after August 1, 2001, in addition to these requirements, the owner must also be in *substantial compliance* as defined in this Subsection.

Motor Fuel Underground Storage Tank? a UST used only to contain an accumulation of motor fuels.

Operating Tank? a tank that is actively receiving and dispensing motor fuels, including a tank that actively receives used motor oil.

Pay-For-Performance Agreement? a method to reimburse response action contractors performing remediation work based on set payments for reaching specific contamination reduction goals at an MFUSTTF-eligible site.

Substantial Compliance? when an owner or operator of a UST system has registered that tank with the department in accordance with LAC 33:XI.301, has generally complied with the state and federal laws and regulations applicable to USTs and any noncompliance with such laws and regulations has not caused or contributed to a release, has

met the financial responsibility requirements specified in Subsection C of this Section, and has promptly notified the administrative authority of any third-party claim or suit made against him or her.

Third-Party Claim? any civil action brought or asserted by any person against the secretary of the department and any owner of any underground storage tank for damages to person or property when damages are the direct result of the contamination of groundwater and/or subsurface soils by motor fuels released during operation of storage tanks that were being operated in substantial compliance as provided for in this Section. The term *damages to person* shall be limited to damages arising directly out of the ingestion or inhalation of petroleum constituents from water well contamination or inhalation of petroleum constituents seeping into homes or buildings, and the term *damages to property* shall be limited to the unreimbursed costs of a response action and the amount by which property is proven to be permanently devalued as a result of the release.

C. Financial Responsibility Requirements for MFUSTTF Participants

1. Unless revised by the administrative authority in accordance with R.S. 30:2195.9(A)(5), MFUSTTF participants taking response actions must pay the following amounts before any disbursements are made from the fund:

a. \$10,000 per occurrence for cleanups and \$10,000 per occurrence for third-party judgments for the period following July 15, 1988 through the year 1989;

b. \$15,000 per occurrence for cleanups and \$15,000 per occurrence for third-party judgments for the period from January 1, 1990 through July 14, 1992;

c. for the period from July 15, 1992 through June 15, 1995:

i. \$5,000 per occurrence for cleanups and \$5,000 for third-party judgments for owners with 1 to 12 tanks in Louisiana;

ii. \$10,000 per occurrence for cleanups and \$10,000 for third-party judgments for owners with 13 to 99 tanks in Louisiana; and

iii. \$15,000 per occurrence for cleanups and \$15,000 for third-party judgments for owners with 100 or more tanks in Louisiana;

d. \$5,000 per occurrence for cleanups and \$5,000 per occurrence for third-party judgments beginning on June 16, 1995 and continuing through February 19, 2004.

2. Thereafter, the advisory board shall review these amounts annually and may recommend adjustments to the administrative authority.

3. The administrative authority shall determine and set these amounts annually (as provided in R.S. 30:2195.9(A)(5)).

4. Eligible participants must demonstrate financial responsibility for the established amounts by the allowable mechanisms described in LAC 33:XI.1111-1119 and 1123-1125.

D. Conditions for Use of the MFUSTTF. Funds in the MFUSTTF shall be used under the following conditions.

1. Whenever the administrative authority determines that an incidence of groundwater or subsurface soils contamination resulting from the storage of motor fuels may pose a threat to the environment or to public health, safety, or welfare, and the owner or operator of the UST system has

been found to be an *eligible participant* as defined in Subsection B of this Section, the department shall obligate monies available in the MFUSTTF to provide for the following response actions.

a. Monies shall be obligated for investigation and assessment of sites shown to be contaminated by a release into the groundwater or subsurface soils from an underground motor fuel storage tank.

b. Monies shall be obligated for interim replacement and permanent restoration of potable water supply where it has been demonstrated that the supply was contaminated by a leak from an underground motor fuel storage tank.

c. Monies shall be obligated to remediate sites contaminated by a leak from an underground motor fuel storage tank to the extent necessary to return the site to the use and occupancy in effect at the time the release occurred. Rehabilitation and remediation of sites contaminated by a leak into the groundwater or subsurface soils from an underground motor fuel storage tank may consist of cleanup of affected soil, groundwater, and inland surface waters, using cost-effective methods that are technologically feasible and reliable, while ensuring adequate protection of the public health, safety, and welfare, and minimizing environmental damage, in accordance with the site selection and cleanup criteria established by the department.

i. Nothing herein shall be construed to authorize or require the department to obligate funds for payment of costs that may be associated with, but are not integral to, site rehabilitation, such as the cost of retrofitting or unapproved purchases of equipment needed in assisting cleanup operations.

ii. The monies expended from the MFUSTTF for any of the above approved costs shall be spent only up to such sum as is necessary to satisfy petroleum UST financial responsibility requirements specified in LAC 33:XI.1107.

2. Whenever the department has incurred costs for taking response actions with respect to the release of motor fuels from a UST system, or the department has expended funds from the MFUSTTF for response costs or third-party liability claims, the owner or operator of the underground motor fuel storage tank shall be liable to the department for such costs only if the owner or operator was not an eligible participant or not in substantial compliance on the date of discharge of the motor fuels that necessitated the cleanup. Otherwise, liability is limited to the provisions contained in Subsection C of this Section. The expenditure of funds to reimburse any party for costs otherwise authorized by this Section shall be expressly prohibited if the costs were incurred as a result of a release of motor fuels, excluding new or used motor oil, that occurred prior to July 15, 1988. For releases of new or used motor oil, the expenditure of funds to reimburse any party for costs otherwise authorized by this Section shall be expressly prohibited for any costs relating to a release that occurred prior to September 6, 1991. Nothing contained herein shall be construed as authorizing the expenditure from the MFUSTTF on behalf of any owner or operator of a UST system who is not an eligible participant and whose tanks are not in substantial compliance at the time of the release for any third-party liability.

3. If the administrative authority has expended funds on behalf of an owner or operator who was not in substantial compliance, and the MFUSTTF is entitled to reimbursement of those funds so expended, the administrative authority shall have the authority to, and is obligated to, use any and all administrative and judicial remedies that might be necessary for recovery of the expended funds plus legal interest from the date of payment by the administrative authority and all costs associated with the recovery of the funds.

4. The MFUSTTF may be used for reimbursement of any costs associated with the review of applications for reimbursement from the MFUSTTF, legal fees associated with the collection of costs from parties not in substantial compliance, audits of the MFUSTTF, and accounting and reporting regarding the uses of the MFUSTTF.

5. The MFUSTTF may be used to make payments to a third party who brings a third-party claim against the administrative authority and any owner or operator of an underground motor fuel storage tank because of damages caused by a release into the groundwater, surface waters, or subsurface soils and who obtains a final judgment in said action enforceable in Louisiana against the owner or operator and the administrative authority if and only if it has been satisfactorily demonstrated that the owner or operator was an *eligible participant* and the tanks were in *substantial compliance* as defined in Subsection B of this Section when the release occurred. The indemnification limit of the MFUSTTF with respect to satisfaction of third-party claims shall be that which is necessary to satisfy the requirements of this Chapter.

E. Procedures for Disbursements from the MFUSTTF

1. Monies held in the MFUSTTF are disbursed by the administrative authority in the following manner.

a. Payments are made in reasonable amounts to eligible participants for reimbursement of payments to approved response action contractors for response actions when authorized by the administrative authority only after the owner or operator of the underground motor fuel storage tank or those acting for the owner or operator have paid the amount required by Subsection C of this Section. Any work contracted for on or after August 1, 1995, shall be paid by the department to the response action contractor who performed the department-approved assessment or remediation work upon presentation of proper invoices for the work.

b. Cost-effective procedures, as established by the administrative authority, shall be implemented by eligible participants using MFUSTTF monies.

2. Payments are made to third parties who bring suit against the administrative authority in his or her official capacity as representative of the MFUSTTF and the owner or operator of an underground motor fuel storage tank who is an *eligible participant* as defined in Subsection B of this Section when such third party has obtained a final judgment in that action enforceable in Louisiana. The owner or operator stated above shall pay the amount required by Subsection C of this Section toward the satisfaction of said judgment, and after that payment has been made the MFUSTTF will pay the remainder of said judgment. The attorney general of the state of Louisiana is responsible for appearing in said suit for and on behalf of the administrative

authority as representative of the MFUSTTF. The administrative authority as representative of the MFUSTTF is a necessary party in any suit brought by any third party that would allow that third party to collect from the MFUSTTF, and the administrative authority must be made a party to the initial proceedings. Payment shall be made to the third-party claim if and only if the judgment is against the administrative authority and an owner or operator who was an eligible participant on the date that the incident that gave rise to the claim occurred. The costs to the attorney general of defending these suits, or to those assistants that the administrative authority employs or the attorney general appoints to assist, shall be recovered from the MFUSTTF. If the MFUSTTF is insufficient to make payments when the claims are filed, such claims shall be paid in the order of filing when monies are paid into the MFUSTTF. Neither the amount of money in the MFUSTTF, the method of collecting it, nor any of the particulars involved in setting up the MFUSTTF shall be admissible as evidence in any trial in which suit is brought when the judgment rendered could affect the MFUSTTF. If the attorney general declines to appear in a suit for and on behalf of the secretary as representative of the MFUSTTF, or does not respond to the administrative authority's request for representation within 60 days of such request and agree to appear on behalf of the administrative authority, an attorney from the department may, with the concurrence of the attorney general, appear in said suit for and on behalf of the administrative authority as representative of the trust.

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 Environmental Assessment, Environmental Planning Division, LR 26:2561 (November 2000), LR 27:521 (April 2001), LR 30:

§1133. Recordkeeping

A. - B.4. ...

5. An owner or operator covered by the Underground Motor Fuel Storage Tank Trust Fund must maintain on file documentation that he or she has met the financial responsibility requirements of LAC 33:XI.1121.C.

6. ...

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Underground Storage Tank Division, LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

Chapter 13. Certification Requirements for Persons Who Install, Repair, or Close Underground Storage Tank Systems

§1303. Definitions

A. The terms defined in this Section shall have the following meanings in this Chapter.

Individual Certification? certification in either installation/repair or closure of a UST system.

Renewal Fee? biannual fee for installation/repair and/or closure certification.

UST Certification Board? repealed.

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 LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§1307. Certification Examinations

A. ...

B. Source of Examination Questions. Questions used in the examination shall be derived from standards, instructions, and recommended practices as listed on the department's website under permits/ustworkcertstudyguide. Additional questions may be derived from regulations adopted by the department and from state and federal laws pertaining to UST system installation, repair, or closure.

C. Administration of Examinations

1. Examinations shall be conducted by personnel of the department or persons designated by the department.

2. Beginning after July 20, 1991, the department or persons designated by the department shall conduct written examinations at such times and locations within the state as the department may designate in order to identify persons as being qualified to receive UST certification.

C.3. - E. ...

F. Revision, Security, and Administration of Certification Examinations. The department shall update examinations, preserve the security of examinations, and administer examinations.

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 LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§1311. Denial of Issuance or Renewal of a Certificate or Revocation of a Certificate

A. Should an applicant be denied issuance or renewal of a UST certificate or should a person's certificate be revoked, the reason or reasons for such denial or revocation shall be set forth in writing to the person by the administrative authority.

B. Possible reasons for denial of issuance or renewal of a certificate or for revocation of a certificate include the following:

1. failure to achieve a passing grade on the written examination described in LAC 33:XI.1307;
2. failure to submit required documentation;
3. previous revocation of a certificate held by the applicant;
4. evidence of fraud or deceit with respect to documentation required by and submitted to the department;
5. failure to present the identification card upon request of a department representative at a UST system installation, repair, or closure;
6. willful violation of the laws and regulations of Louisiana regarding UST system installation, repair, or closure; or
7. any other cause that, in the opinion of the administrative authority, constitutes adequate grounds for denial or revocation of a certificate.

C. Appeal of Denial or Revocation. A person who has been denied issuance or renewal of a certificate or who has had a certificate revoked may appeal the action in accordance with R.S. 30:2024(A).

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 LR 16:614 (July 1990), amended LR 17:658 (July 1991), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

§1313. UST Certification Board

Repealed.

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 LR 16:614 (July 1990), amended LR 17:658 (July 1991), repealed by the Office of Environmental Assessment, Environmental Planning Division, LR 30:

James H. Brent, Ph.D.
Assistant Secretary

0402#032

POTPOURRI

**Department of Environmental Quality
Office of Environmental Assessment
Environmental Planning Division**

2003 State Implementation Plan (SIP)? General Revisions

Under the authority of the Environmental Quality Act, R.S. 30:2051 et seq., the secretary gives notice of proposed general revisions to the air quality State Implementation Plan (SIP). The revisions include amendments to various air quality rules in LAC 33:III.Chapters 9 and 21 that were previously promulgated in 2003, and that were not previously included in other revisions to the SIP.

A public hearing will be held on March 26, 2004, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room C111, 602 N. Fifth Street, Baton Rouge, Louisiana. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith Schuerman, Office of Environmental Assessment, Regulation Development Section, Box 4314, Baton Rouge, LA 70821-4314 or at (225) 219-3550. Free parking is available across the street in the Galvez parking garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed 2003 SIP general revisions. Comments must be submitted no later than 4:30 p.m. on April 2, 2004. Comments should be mailed to Sandra Hilton, Office of Environmental Assessment, Plan Development Section, Box 4314, Baton Rouge, LA 70821-4314 or faxed to (225) 219-3582. Copies of this document can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. A check or money order is required in advance for each copy of the document.

A copy of the general revisions to the SIP may be viewed Monday through Friday, from 8 a.m. to 4:30 p.m., at the

following DEQ locations: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 201 Evans Road, Building 4, Suite 420, New Orleans, LA 70123; 111 New Center Drive, Lafayette, LA 70508; 104 Lococo Drive, Raceland, LA 70394 or on the Internet at <http://www.deq.louisiana.gov/planning/regs/index.htm>.

James H. Brent, Ph.D.
Assistant Secretary

0402#031

POTPOURRI

**Office of the Governor
Division of Administration
Office of Risk Management**

New Mailing Address

Due to the large volume of mail that the Office of Risk Management receives annually, it has become necessary for us to acquire our own unique post office box number. This will facilitate the timely distribution of incoming mail. We will begin utilizing our new post office box effective, February 1, 2004, and ask that all correspondence be sent to the new address listed below.

Office of Risk Management
Post Office Box 91106
Baton Rouge, Louisiana 70821-9106

The physical address and telephone numbers remain the same. For additional information, please visit our website at <http://doa.Louisiana.gov/orm>.

J. S. Thompson, Jr.
Director

0402#085

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
E.C. Wentworth	Golden Meadow	L	Allan Land Company	1	062075
Siesta Oil & Expl. Co., Inc.	West Catahoula Lake	M	Urania Lumber Company	A-1	117550
Muslow Oil Co.	Caddo Pine Island	S	Muslow	2	990449

Temple Hargrove <i>et al.</i>	Golden Meadow	L	John Plaisance Unit 1	1	055637
D.G. Scott	Eola	M	A. Mizer	1	023470
E.T. Nichols	Trout Creek	M	Corley <i>et al.</i>	1	44858
Chenola Oil Corporation	Eola	M	Ritchie Grocery	1	23773 (30)
Chenola Oil Corporation	Eola	M	Ritchie Grocery	2	23764 (30)
Chenola Oil Corporation	Eola	M	Samuel Haas Est.	2	24534 (30)

James H. Welsh
Commissioner

0402#042

POTPOURRI

**Department of Social Services
Office of Community Services**

2004 Louisiana Emergency Shelter Grants Program? Anticipated Funds Availability

The Louisiana Department of Social Services (DSS) anticipates the availability of \$1,480,263 in grant funds for distribution to applicant units of local government under the 2004 State Emergency Shelter Grants Program (ESGP). Program funds are allocated to the State by the U.S. Department of Housing and Urban Development (HUD) through authorization by the Stewart B. McKinney Homeless Assistance Act, as amended. Funding available under the Emergency Shelter Grants Program is dedicated for the rehabilitation, renovation or conversion of buildings for use as emergency shelters for the homeless, and for payment of certain operating costs and social services expenses in connection with emergency shelter for the homeless. The Program also allows use of funding in homeless prevention activities as an adjunct to other eligible activities. As specified under current State ESGP policies, eligible applicants are limited to units of general local government for all parish jurisdictions and those municipal or city governmental units for jurisdictions with a minimum population of 10,000 according to recent census figures. Recipient units of local government may make all or part of grant amounts available to private nonprofit organizations for use in eligible activities.

Application packages for the State ESG Program shall be issued by mail to the chief elected official of each qualifying unit of general local government. The application package can be viewed on the Internet at the following website: <http://www.dss.state.la.us/departments/dss/rfps.html>. In order to be considered for funding, applications must be received by DSS/Office of Community Services by 4:00 p.m., Friday, April 2, 2004.

Nonprofit organizations in qualifying jurisdictions which are interested in developing a project proposal for inclusion in an ESGP funding application should contact their respective unit of local government to advise of their interest. To be eligible for funding participation, a private nonprofit organization as defined by ESGP regulations must be one which is exempt from taxation under subtitle A of the Internal Revenue Code, has an accounting system and a

voluntary board, and practices nondiscrimination in the provision of assistance.

To be eligible for funding, a project/organization must be a part of a Homeless Management Information System (HMIS). In areas of the State where HMIS is still in the process of development, a project/organization must be committed to and participating in HMIS development.

The State DSS will continue use of a geographic allocation formula in the distribution of the State's ESG funding to ensure that each region of the State is allotted a specified minimum of State ESG grant assistance for eligible ESGP projects. Regional allocations for the State's 2004 ESG Program have been formulated based on factors for low income populations in the parishes of each region according to U.S. Census Bureau data. Within each region, grant distribution shall be conducted through a competitive grant award process.

The following table lists the allocation factors and amounts for each region.

Region	Factor	Allocation
Region I New Orleans	.1537939	227,655
Region II Baton Rouge	.1210838	179,236
Region III Thibodaux	.0659078	97,561
Region IV Lafayette	.1537187	227,544
Region V Lake Charles	.0522069	77,280
Region VI Alexandria	.0714394	105,749
Region VII Shreveport	.1235570	182,897
Region VIII Monroe	.0950414	140,686
Region IX Northshore	.0751581	111,254
Region X Jefferson	.0880929	130,401

Regional funding amounts for which applications are not received shall be subject to statewide competitive award to applicants from other regions and/or shall be reallocated among other regions in accordance with formulations consistent with the above factors.

Grant awards shall be for a minimum of \$10,000. Applicable grant maximums are as follows:

- ?? Individual grant awards to applicant jurisdictions of less than 49,000 population shall not exceed \$50,000.
- ?? For a jurisdiction of over 49,000 population, the maximum grant award shall not exceed the ESGP allocation for that jurisdiction's respective region.

Grant specifications, minimum and maximum awards may be revised at DSS's discretion in consideration of individual applicant's needs, total Program funding requests, and available funding. DSS reserves the right to negotiate the final grant amounts, component projects, and local match with all applicants to ensure judicious use of Program funds.

Program applications must meet State ESGP requirements and must demonstrate the means to assure compliance if the proposal is selected for funding. If, in the determination of DSS, an application fails to meet Program purposes and standards, even if such application is the only eligible proposal submitted from a region or subregion, such application may be rejected *in toto*, or the proposed project(s) may be subject to alterations as deemed necessary by DSS to meet appropriate Program standards.

Proposals accepted for review will be rated on a comparative basis based on information provided in grant applications. Award of grant amounts between competing

applicants and/or proposed projects will be based upon the following selection criteria:

Nature and extent of unmet need for emergency shelter, transitional housing and supportive services in the applicant's jurisdiction 40 points

The extent to which proposed activities will address needs for shelter and assistance and/or complete the development of a comprehensive system of services which will provide a continuum of care to assist homeless persons to achieve independent living 30 points

The ability of the applicant to carry out the proposed activities promptly 15 points

Coordination of the proposed project(s) with available community resources, so as to be able to match the needs of homeless persons with appropriate supportive services and assistance 15 points

ESGP recipients are required to provide matching funds (including in-kind contributions) in an amount at least equal to its ESG Program funding unless a jurisdiction has been granted an exemption in accordance with Program provisions. The value of donated materials and buildings, voluntary activities and other in-kind contributions may be included with "hard cash" amounts in the calculation of matching funds. A local government grantee may comply with this requirement by providing the matching funds itself, or through provision by nonprofit recipients.

A recipient local government may at its option elect to use up to 2.439 percent of grant funding for costs directly related to administering grant assistance, or may allocate all grant amounts for eligible Program activities. Program rules do not allow the use of ESGP funds for administrative costs of nonprofit subgrantees.

Availability of ESGP funding is subject to HUD's approval of the State's FY 2004 Consolidated Annual Action Plan for Housing and Community Development Programs. No expenditure authority or funding obligations shall be implied based on the information in this notice of funds availability.

Inquiries and comments regarding the 2004 Louisiana Emergency Shelter Grants Program may be submitted in writing to the attention of the Emergency Shelter Grants Program Coordinator at the Office of Community Services, Contracts and Eligibility Section, Box 3318, Baton Rouge, Louisiana, 70821, or telephone (225) 342-4583.

Ann S. Williamson
Secretary

0402#049

POTPOURRI

**Department of Social Services
Office of Community Services**

Public Hearing? Louisiana's Child and Family Services
Plan and Annual Progress and Services Report

The Louisiana Department of Social Services (DSS) announces opportunities for public review of the State's Child and Family Services Plan and the 2003 Annual Progress and Services Report. The Child and Family Services Plan is a planning document which outlines the

goals and objectives/outcomes for the Office of Community Services for the time period of October 1, 1999 through September 30, 2004 with regard to the use of Title IV-B, Subpart 1 and Subpart 2, Title IV-E Independent Living Initiative and Child Abuse Prevention & Treatment ACT (CAPTA) funds. The Annual Progress and Services Report is the report on the achievement of goals and objectives/outcomes and amends any changes to the agency's plan in the provision of services. It is completed on an annual basis for each year of the Child and Family Services Plan. The 2003 Annual Progress and Services Report provides information on the achievement of goals and objectives for year four of the Child and Family Services Plan.

Louisiana through the DSS Office of Community Services (OCS) provides services which include Child Protection Investigations, Family Services, Foster Care, Adoption and the John H. Chafee Independence Program. OCS will use its allotted funds provided under the Social Security Act, Title IV-B, subpart 1, to provide child welfare services to prevent child abuse and neglect; to prevent foster care placement; to reunite families; to arrange adoptions; and to ensure adequate foster care. Title IV-B, subpart 2, entitled Promoting Safe and Stable Families, includes services to support families and prevent the need for foster care. The John H. Chafee Independent Living Program funds services to assist foster children 15 years old and older who are likely to remain in foster care until age 18. Former foster care recipients who are 18 to 21 years of age who have aged out of foster care are also eligible for services. The services include basic living skills training and education and employment initiatives. The CAPTA funding is used to complement and support the overall mission of OCS with emphasis on developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

We are encouraging public participation in the planning of services and the writing of this document. The Child and Family Services Plan and Consolidated Plan and the Annual Progress and Services Report is available for public review at OCS parish and regional offices Monday through Friday from 8:30 a.m. to 4:00 p.m. Copies are available for review in the state library located at 701 N. Fourth Street, Baton Rouge, LA and its repositories statewide. Inquiries and comments on the plan may be submitted to the OCS Assistant Secretary, P.O. Box 3318, Baton Rouge, LA 70821.

A public hearing on the Child and Family Services Plan and the Annual Progress and Services Report is scheduled for March 11, 2004 at 10 a.m. at the Office of Community Services, Room 652, 333 Laurel Street, Baton Rouge. At the public hearing, all interested persons will have the opportunity to provide recommendations on the plan, orally or in writing.

Ann S. Williamson
Secretary

0402#048

POTPOURRI

Department of Social Services Office of Family Support

Temporary Assistance to Needy Families (TANF) Caseload Reduction Report

The Department of Social Services, Office of Family Support, hereby gives notice that, in accordance with federal regulations at 45 CFR 261.40, the Temporary Assistance to Needy Families (TANF) Caseload Reduction Report for Louisiana is now available to the public for review and comment.

In order to receive a caseload reduction credit for minimum participation rates, the agency must submit a report based on data from the Family Independence Temporary Assistance Program (FITAP) and the Strategies to Empower People Program (STEP) containing the following information:

1. a listing of, and implementation dates for, all state and federal eligibility changes, as defined at §261.42, made by the State since the beginning of FY 1995;
2. a numerical estimate of the positive or negative impact on the applicable caseload of each eligibility change (based, as appropriate, on application denials, case closures, or other analyses);
3. an overall estimate of the total net positive or negative impact on the applicable caseload as a result of all such eligibility changes;
4. an estimate of the state's caseload reduction credit;
5. the number of application denials and case closures for fiscal year 1995 and the prior fiscal year;
6. the distribution of such denials and case closures, by reason, for fiscal year 1995 and the prior fiscal year;
7. a description of the methodology and the supporting data that it used to calculate its caseload reduction estimates;
8. a certification that it has provided the public an appropriate opportunity to comment on the estimates and methodology, considered their comments, and incorporated all net reductions resulting from federal and state eligibility changes; and
9. a summary of all public comments.

Copies of the TANF Caseload Reduction Report may be obtained by writing Tara Nelson, Department of Social Services, Office of Family Support, P.O. Box 94065, Baton Rouge, LA 70804-9065, by telephone at (225)342-4096, or via E-mail at tnelson@dss.state.la.us.

Written comments regarding the report should also be directed to Ms. Nelson. These must be received by close of business on March 20, 2004.

Ann Silverburg Williamson
Secretary

0402#046

CUMULATIVE INDEX
(Volume 30, Number 2)

2004	
Pages	Issue
1 - 170.....	January
171 - 374.....	February
EO? Executive Order PPM? Policy and Procedure Memoranda ER? Emergency Rule R? Rule N? Notice of Intent CR? Committee Report GR? Governor's Report L? Legislation P? Potpourri	

ADMINISTRATIVE CODE UPDATE

Cumulative

January 2003? December 2003, 161

AGRICULTURE AND FORESTRY

Agriculture and Environmental Sciences, Office of

Boll Weevil Eradication Commission

Adjudicatory hearing, 164P, 356P
 Program participation/fee payment/penalties, 274N

Commercial feed fees, 7ER

Fertilizer Commission

Fees, 195R
 Fertilizer sale
 Tonnage reports/inspection fees, 8ER

Structural Pest Control Commission

License, 196R
 Termite minimum specifications, 105N

Agro-Consumer Services, Office of

Weights and Measures Division

Taxi meter registration, 102N

Commissioner, Office of the

Advisory Commission on Pesticides

Pesticide testing fees, 197R

Agricultural Commodities Commission

Commodities, 197R
 Chloramphenicol, 174ER, 176ER

Feed Commission

Inspection fees, 198R
 Meat and poultry inspections, 196R
 Pet turtles testing/quarantine, 103N, 275N

Seed Commission

Noxious weed seeds, 198R
 Sugarcane certification, 104N, 276N
 Tropical soda apple, 198R

Forestry, Office of

Indian Creek recreation area user fees, 195R
 Timber stumpage values, 356P
 Tree seedling prices, 200R

Horticulture Commission

Landscape architect registration exam, 164P, 356P
 Retail floristry examination, 356P

Livestock Sanitary Board

Mycoplasma bovis, 180ER

CIVIL SERVICE

Civil Service Commission

Retesting standards, 277N

ECONOMIC DEVELOPMENT

Business Development, Office of

Small and Emerging Business Development
 Program, 108N

Secretary, Office of the

Capital Companies Tax Credit Program, 33R

EDUCATION

Elementary and Secondary Education, Board of

Bulletin 741
 High school diploma and endorsements, 278N
 Record of suspensions or expulsions, 281N
 Social studies, 282N
 Teacher, part-time/seasonal/temporary, 280N
 Bulletin 746
 Certificates
 Reading competencies policy, 289N
 Special education undergraduate programs, 283N
 Validity/reinstatement/renewal/extension, 119N
 Highly qualified teachers/paraprofessionals, 200R
 Practitioner teacher, 206R

Bulletin 1963

Curriculum development, 209R

Student Financial Assistance Commission

Student Financial Assistance, Office of
 Scholarship/Grants, 8ER, 123N

ENVIRONMENTAL QUALITY

**Environmental Assessment, Office of Environmental
 Planning Division**

Fugitive emission control, 296N
 LPDES water quality regulation restructure, 229R
 NO_x emissions, contingency plan, 293N
 Severe ozone nonattainment area major source fee,
 313N
 SIP general revisions, 368P
 Unauthorized discharges, 301N
 Underground storage tanks proposed rulemaking,
 357P

Environmental Assessment, Office of

Permits Division

Emissions estimation, 9ER

EXECUTIVE ORDERS

- MJF 03-31? Bond Allocation? Louisiana Public Facilities Authority, 1EO
- MJF 03-32? Bond Allocation? Industrial Development Board of the City of New Orleans, Louisiana, Inc.? Florida II A, LLC, 1EO
- MJF 03-33? Bond Allocation? Industrial Development Board of the City of New Orleans, Louisiana, Inc.? Guste I, LLC, 2EO
- MJF 03-34? Bond Allocation? Industrial Development Board of the City of New Orleans, Louisiana, Inc.? Fischer III, LLC, 2EO
- MJF 03-35? Bond Allocation? Industrial Development Board of the City of New Orleans, Louisiana, Inc.? Savoy Place Associates, Limited Partnership, 2EO
- MJF 03-36? Bond Allocation? Louisiana Public Facilities Authority, Ascension Water Company, 3EO
- MJF 03-37? Bond Allocation? Louisiana Public Facilities Authority, Air Products and Chemicals, Calcasieu Parish, 3EO
- MJF 03-38? Bond Allocation? Parish of Jefferson Home Mortgage Authority, 4EO
- MJF 03-39? Bond Allocation? Louisiana Public Facilities Authority, 4EO
- MJF 03-40? Hours of Service of Drivers of Gas and/or Electric Utility Service Vehicles, 5EO
- MJF 04-01? 2003 Carry-Forward Bond Allocation Louisiana Housing Finance Agency Single Family Mortgage Revenue Bond Program, 171EO
- MJF 04-02? 2003 Carry-Forward Bond Allocation Louisiana Housing Finance Agency Multi-Family Housing Development Program, 171EO
- MJF 04-03? Bond Allocation? Cost Limitation Waiver, 172EO

GOVERNOR

- Administration, Division of**
- Racing Commission**
Penalty guidelines, 131N
- Risk Management, Office of**
New mailing address, 369P
- Architectural Examiners, Board of**
Per diem compensation, 315N
- Financial Institutions, Office of**
Capitol companies tax credit, 10ER, 33R
- Interior Designers, Board of Examiners of**
Comprehensive rule revision, 124N
- Law Enforcement and Administration of Criminal Justice, Commission on**
POST instructor development course, 130N
- New Orleans/Baton Rouge Steamship Pilots, Board Examiners for the**
Drug and alcohol policy, enhanced, 38R
- Patient's Compensation Fund Oversight Board**
Enrollment/surcharges, 132N
- Real Estate Commission**
Transactions, 41R
- Used Motor Vehicle and Parts Commission**
Off-site displays and complaints, 316N

HEALTH AND HOSPITALS

- Embalmers/Funeral Directors, Board of**
Examinations, 164P
- Medical Examiners, Board of**
Dispensing medications, 134N
- Fees
- Acupuncturists, 41R, 234R
 - Athletic trainers, 42R, 234R
 - Clinical exercise physiologists, 43R, 235R
 - Midwives, 43R, 236R
 - Occupational therapists/assistants, 44R, 237R
 - Physician assistants', 45R, 237R
 - Physicians/Surgeons, 238R
 - Podiatrists, 45R, 239R
 - Respiratory therapists
fees, 46R, 239R
licensure, 134N
- Public Health, Office of**
Birth defects surveillance system, 317N
- Secretary, Office of the**
- Community Supports and Services, Bureau of**
Facility Need Review
Bed abeyance, 149N
Home/Community Based Waiver Program
New opportunities waiver, 137N
- Health Services Financing, Bureau of**
Adult day health care, 242R
All inclusive care for the elderly, 244R
Durable Medical Equipment Program
HIPAA implementation, 186ER
Motorized wheelchairs, 250R
Early and Periodic Screening, Diagnosis and Treatment Program
Dental Program reimbursement, 11ER, 252R
Early intervention/disabilities, 147N, 186ER
Eyeglasses, 187ER
KidMed services, 12ER, 148N
Personal care/extended nursing services, 252R
- Eligibility
Medicaid estate recovery, 152N
- Facility Need Review
Beds for ICF-MRs, 188ER
- Hospice, 320N
- Hospitals
Disproportionate share hospital, 181ER
ICF-MR (Intermediate Care Facility-Mentally Retarded)
Client and agency planning inventory, 154N
Reimbursement reduction, 16ER, 155N
- Inpatient Services
Admissions criteria, 46R, 240R
Outlier payments
Psychiatric residential treatment, 54R
Private
Reimbursement reduction, 15ER
Public
Psychiatric, 12ER
Upper payment limit, 254R
- Laboratory and X-ray
X-ray portage fees, 18ER, 322N

HEALTH AND HOSPITALS (continued)

Mental Health Rehabilitation Services
Reimbursement reduction, 13ER, 321N
Sanctions, 52R
Nursing Facilities Services
Private, reimbursement reduction, 16ER, 156N
Public reimbursement, 53R
Personal care services
Long term care, 13ER
Pregnant women dental services, 189ER
Professional services
Anesthesia/Anesthetists
HIPAA implementation, 17ER
Reimbursement, 323N
Rehabilitation Services
Reimbursement, 190ER, 324N
Transportation
Non-emergency, 53R
Veterinary Medicine, Board of
Board nominations, 164P
Fees/prescribing/dispensing drugs, 135N

LEGISLATION

State Legislature, 2003 Regular Session

Administrative Procedure Act, 333L

NATURAL RESOURCES

Conservation, Office of

Orphaned oilfield sites, 164P, 369P
Statewide order no. 29-B, 254R
Statewide order no. 29-L-3, 255R

Pipeline Division

Pipeline safety, 257R

Secretary, Office of the

Fisherman's Gear Compensation Fund,
Loran coordinates 167P

PUBLIC SAFETY AND CORRECTIONS

Correction Services, Office of

Records access
Adult, 75R, 264R
Juvenile, 77R
Telephone use, juvenile, 327N
Youth placement, 80R

Gaming Control Board

Promotions, 90R
Video draw poker, 266R

State Police, Office of

DNA samples, 270R

REVENUE AND TAXATION

Policy Services Division

Athletic teams withholding, 90R
Books of corporation, 157N
Fees, 329N
Hunting/Fishing licenses, 331N
Lien issuance and cancellation, 329N
Manufactured and mobile home settlement fund,
330N
Ships/ship supplies, 327N

Tax Commission

Timber stumpage values, 356P

SOCIAL SERVICES

Community Services, Office of

2004 Louisiana Emergency Shelter Grants Program
Anticipated funds availability, 369P
Louisiana's child and family services plan and
annual progress and services report, 370P

Family Support, Office of

Child immunization, 191ER
Food Stamp Program
Alien time limitations, 19ER
Reporting requirements, 191ER
STEP Program, 19ER
TANF
Caseload reduction report, 371P
Initiatives, 192ER

Licensing, Bureau of

Adult residential care facility, 92R
Transitional living, 92R

TRANSPORTATION AND DEVELOPMENT

Highways/Engineering, Office of

Wireless telecommunications permit, 272R

TREASURY

Louisiana State Employees' Retirement System

Deferred Retirement Option Plan (DROP)
Self-directed plan, 27ER

Teachers' Retirement System

DROP account management, 100R
Earnable compensation, 273R

WILDLIFE AND FISHERIES

Wildlife and Fisheries Commission

Abandoned crab traps, removal, 101R
King mackerel, 29ER
Oyster
Lake Borgne, 31ER, 158N
Red snapper, 29ER, 30ER
Shrimp, 32ER
Spotted seatrout season, 159N